

LCRO 39/2009

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the [Area] Standards Committee [X]

BETWEEN

FG

Applicant

AND

ZS

Respondent

DECISION

The names and identifying details of the parties in this decision have been changed.

[1] Mrs FG sought a review of the decision by the [Area] Standards Committee No. [X] regarding complaints against Mr ZS. After considering the complaints the Standards Committee determined that they should not be upheld.

[2] The decision of the Standards Committee identified and considered the principal issues and the Committee's view was that the explanation given in Mr ZS' letter of 24 September 2008 "*provided a more than adequate explanation in relation to the complaints.*"

[3] The reasons for Mrs FG's application were that she perceived the Standards Committee had simply accepted Mr ZS' point of view, and that the Standards Committee's decision had not covered all of the issues arising in her

complaints. In the circumstances I decided to undertake a review of the evidence which this office is empowered to do.

Background

[4] Mr ZS had acted for the complainant's husband, RG, during his life and was one of three executors appointed by his will. Mr ZS also acted as solicitor for the estate.

[5] The complaints arise in relation to the will. The testator had directed that a charitable trust be established in his name and he bequeathed to this trust all of his company shares. At the time of his death the company records showed outstanding shareholder loans in respect of all three companies. This meant that the gift to the charitable trust was burdened by a very substantial debt owed by the companies to the residual estate. The beneficiaries of the residual estate included his former wife, NG as to a life interest with the remainder shared equally between RG's children as to one half and the other half to the [XY charity]

[6] The testator appointed, as trustees of the charitable trust, his wife Mrs FG (the complainant), NG and LM (who was also one of the estate executors). After the trust was formed they also became the directors of the three companies. The executors of the estate were Mr ZS, LM and one other. In accordance with the will the executors established the RG Charitable Trust (RGCT) and transferred the company shares to the trust.

[7] There was no immediate demand made on the RGCT for repayment of the debt to the residual estate. However, about 18 months after the testator's death the executors took steps to obtain security for the debts. Security documents were signed by two of the RGCT trustees, NG and Mr LM, in their role as company directors. Mrs FG refused to participate in the decision or the securities.

[8] When one company later sold its property, the estate executors decided that the sale proceeds should be applied to part repayment of the loans. By this time Mr LM had already resigned as an RGCT trustee, and was no longer director. The estate executors were unable to obtain the consent to repayment from both the remaining directors (Mrs FG refused to consent and continued to dispute the legitimacy of the debt.) and they were left to consider their remedies, eventually serving a

statutory demand, and threatening to call for repayment of the entire debt. In March of this year the executors obtained summary judgement for the amount claimed.

[9] After Mr LM's resignation in 2005 a dispute arose between the two remaining trustees, with Mrs FG opposing NG's wish to have her son, BM, appointed as a trustee. There was disagreement about whether or not attempts to appoint him were procedurally effective. Efforts thus far have failed to resolve this dispute. Throughout the dispute between the two trustees, Mr ZS has acted as lawyer for NG. Mrs FG has been represented by her own lawyers.

The complaints

[10] From the outset Mrs FG disputed the shareholder debt that accompanied the company shares gifted to the RGCT, describing it as illegal. She says her husband did not intend that his charitable trust should be burdened with debt from its commencement. Mrs FG holds the view that Mr ZS has a professional obligation to carry out her husband's true intentions, including the intention to have removed the debt burden from the charitable trust.

[11] To summarise the complaints, Mrs FG accuses Mr ZS of being in breach of his professional obligations towards her husband in failing to carry out his intentions. The alleged failings include Mr ZS having refused or declined to exercise his discretion to rectify the situation of the RGCT debt. She alleges a breach of Mr ZS' professional duty to protect the interests of the RGCT by pursuing the debts attributed to the companies. She alleges that Mr ZS has placed himself in a position of conflict of interest a conflict of interest with regard to his professional duty towards the RGCT, and at the same time protecting the interests of the estate beneficiaries, and the interests of NG. These are now considered in more detail.

Complaint - *that Mr ZS has breached his professional duty to her husband by failing to carry out his true intentions.*

[12] Mrs FG claims that Mr ZS has a duty to protect the interest of the trust and that he has breached this duty. In her view Mr ZS had the power or discretion to have arranged matters to ensure that the debts were not claimed against the trust, and refused to take such action as necessary to protect the trust from the debt.

[13] Mr ZS' response is that as executor for the estate his duty is to administer the will according to its terms. He disputes that he has any discretionary power in relation to the shareholder debt.

[14] I note that Mr ZS had acted for the testator prior to his death, and that he was both executor and solicitor in relation to the estate. I mention this to acknowledge that the functions of an executor and those of a lawyer are recognised as distinct. However, the close relationship between the two renders any distinctions as less than useful when their legal duties are considered in a professional context. (*Hansen v Young* [2004] 1 NZLR 37), and thus Mr ZS' conduct may be examined in this forum.

[15] Mrs FG holds a particular view of Mr ZS' professional obligations. In her view Mr ZS has a professional duty to implement AW's true intentions regarding protecting the interests of the RGCT, regardless of the terms of AW's will. She believes that Mr ZS has a discretionary power to take such action as promotes the interests of the RGCT, including the power to remove the debt burden. That is to say, Mrs FG seeks to impose upon Mr ZS an obligation to put into effect an intention that the testator himself did not provide for, namely to rectify the testator's omission concerning the debt falling on the RGCT.

[16] There is a fundamental reason why Mrs FG's complaint cannot be upheld, and that is because the law requires an executor to follow the testator's directions in the administration of a will. This is not a matter of choice. An executor simply has no discretionary power to decide whether and how the estate shall be administered. The will is the legal mechanism whereby an individual may provide for the disposal of their property after death. If an individual fails to make testamentary provisions that record his intentions there is nothing to be done about it after that person's death. It is precisely for this reason that Mrs FG's complaints against Mr ZS cannot succeed when she contends that he has a professional duty to implement intentions that are not included in the will, and indeed are contrary to the testamentary instrument.

[17] This matter is complicated by Mrs FG's additional allegation that Mr ZS refused or failed to attend upon AW prior to his death to discuss his concerns about the testamentary debt. The Standards Committee declined to consider this complaint for the reason that it fell outside of the 6-year time frame for bringing a complaint. This office likewise has no power of review in relation to this complaint. However, it has not been suggested that Mr ZS received instructions from AW to draft a new will or amend the existing will and failed to carry out the instructions. This complaint is being considered in the context that Mr ZS, as executor, has administered AW's will

according to its terms, and not according to the testator's wishes as they are described by Mrs FG

[18] That is not to say that a will cannot be challenged. There is evidence that during 2001 the RGCT sought and received legal advice about how it might challenge the will or alter the terms. The options included a challenge through the courts, or reaching an accommodation with the beneficiaries of the residuary estate. The Minutes of RGCT Trustee meetings during 2001 show that the options were to some extent explored. For example there is a record that IN (one of the testator's sons and a beneficiary) had been contacted but was not interested, that he would be contacted again, and that the boys would be asked for a 'yes or no' on the shareholder advance issue.

[19] The Minutes also record that a letter would be sent to the G family beneficiaries before going to [XY charity]. The draft copy of the letter included this paragraph:

"However, the trustees are of the view that the situation that presently exists, whereby the advances are part of the residuary estate, is not likely to have been what [RG] actually intended.

The trustees are keen to see whether your views concur with ours, and if so is there a possibility for the trustees and the residuary family beneficiaries to come to an agreement that gives proper effect to [RG]'s true intentions."

[20] There was a response from one son only, who agreed that forgiveness of the debt had very likely been intended by his father, but added that the effect on the residual estate was also a consideration, adding that RG would then have altered the makeup of the residual estate by making changes to other parts of the estate. This did not progress the matter. No contact was made with [XY charity].

[21] By the end of 2001 the RGCT lawyers wrote that the question of whether or not Mr RG's will matched his wishes needed to be progressed, or a decision made that it was not worth pursuing the matter; the Minutes of the trustee's meeting of 6 December 2001 records the trustees decision to 'agree to disagree' with the lawyers' suggestions. In the event no steps were taken by the RGCT to mount any legal challenge to any part of the will.

[22] There was also a legal opinion made available to the RGCT trustees regarding the interpretation of the terms of the will, which was evaluated by a barrister acting for the RGCT. There is no suggestion that the RGCT lawyers considered the question of the loans to be equivocal.

[23] From the above it is clear that the RGCT trustees were advised about how they might set about challenging the will in respect of the shareholder debt. While some effort was made to contact the beneficiaries, there is also evidence of inaction with regard to the matter, and no steps were taken to instigate court proceedings.

[24] Mrs FG expressed the view that if the estate trustees were serious about implementing her husband's wishes they could have engaged with the beneficiaries. This appears to suggest that Mr ZS had the responsibility of seeking the agreement of the beneficiaries to relinquish that part of the residual estate represented by the debt. I cannot agree that it was Mr ZS' role or responsibility (as executor or lawyer) to have done so. These were matters properly within the control of the RGCT, or any other beneficiary who sought to challenge the will.

[25] Mr ZS' legal responsibilities were, and are, to the estate and I am unable to see that he had any greater responsibility in the matter than to carry out the testator's will in accordance with its terms, or as amended if there had been a successful challenge.

Complaint - *that Mr ZS failed in his professional or moral duty to protect or promote the interest of the RGCT*

[26] Mrs FG claims that Mr ZS has a professional duty to protect the interest of the RGCT. Her complaint is that Mr ZS has breached his duty insofar as his pursuit of the debt against the RGCT-owned companies, the demand for securities for the debt and partial repayment were not in the interests of the RGCT.

[27] Mr ZS' response is that his role as executor and lawyer for the estate is to protect the interests of the estate. He denies that he has ever acted for the RGCT and refutes any professional obligations to protect its interests. He considers that the role of the executors was complete when the trust was established, at which time it came under the control of the trustees. He referred to the duty of executors to carry out the terms of the will. He sees no objection to the executors having sought security for the debts owed to the residuary estate by the companies that were in the ownership of the RGCT, noting that these were debts that accompanied the bequest to the RGCT.

[28] I previously noted that the duty of the executors is to administer the will. In this case the executors had been directed to establish a charitable trust. They carried out this instruction, and registered the trustees as a trust board under the Charitable Trusts Act. I accept that their role and responsibility was complete when the trust was established, charitable status approved, and the assets had been transferred. It cannot

be disputed that the trust then became a separate legal entity. From that time onward it was under the full control and governance of the trustees, and from that time the responsibility for protecting the interests of the RGCT lay with the trustees, and its legal advisors.

[29] There is no evidence that Mr ZS had any further involvement with the RGCT, as an advisor or lawyer, also noting that the RGCT had engaged its own lawyer. In these circumstances I am unable to see any reason why the executors should not have dealt with the RGCT as a separate legal entity.

[30] The executors also have an obligation to protect the estate assets. Given that there had been no challenge to the will during the eighteen months following the testator's death, it is neither surprising nor unreasonable that the executors would have turned their attention to their responsibilities in executing the will. This would reasonably involve consideration of securing the debt owed by the RGCT-owned companies to the estate. I am unable to see that the steps taken by the executors, or by Mr ZS as an executor or as estate lawyer, to secure or enforce the debt, are open to criticism.

[31] Mr ZS' letter to the RGCT trustees of 14 March 2002 set out the position of the executors in relation to securities that were sought for the loans. The letter was considered by the RGCT lawyers who noted that no claim had been formalised in relation to challenging RG's will, and they were thus proceeding on the basis that the loans were due by the companies. They noted the loans were repayable on demand by the estate executors, and included comments and suggestion for the trustees' further consideration.

[32] In the event security documents forwarded by the executors were signed by RGCT trustees NG and Mr LM in their capacity as directors of the companies, their two signatures being sufficient to bind the companies.

[33] Mrs FG continued to protest the debt. However, this could have no bearing on the matter, and did not, and could not, alter the legal reality of the situation concerning the debt. That she continued to dispute the debt suggests that she may not have fully understood the legal basis for the claim, nor that the security documents effectively acknowledged the debt by the RGCT-owned companies.

[34] Still protesting the debt, Mrs FG, as director, subsequently refused to consent to the estate's demand for partial repayment of the debt by the company following sale of

property. Her consent was required as one of the two remaining directors; NG, the other director, had consented. This impasse led the executors to commencing legal proceedings against the company, and obtaining summary judgement. In the circumstances that this involved two separate legal entities that were effectively debtor and secured creditor, it is difficult to see any objection to the executors having taken this action.

[35] For the sake of thoroughness I also refer to a further complaint wherein Mrs FG implicated Mr ZS in the clause of the RGCT Trust Deed that provided for majority voting. This clause had allowed NG and Mr LM to vote 'as a block' in approving the securities. Mrs FG noted Mr ZS had drafted the Deed with this clause, and she contended that this method of voting ensured that the executors' demands were complied with by parties whose interests she considered were in conflict. She considered that Mr LM (also an estate executor) pressed the RGCT into providing security sought by the executors, and that NG had a personal interest in protecting the debt that secured her life interest in the residuary estate.

[36] These concerns are not reflected in the Minutes of the trustees meetings, but in any event are not matters that concern Mr ZS except to the extent that it was Mr ZS' decision to provide for majority voting in the Trust Deed. Be that as it may, it is not unusual that a charitable trust should provide for majority voting, and I am unable to see that such a provision is indicative of any wrongdoing on Mr ZS' part. Furthermore, NG's personal interest as a beneficiary of the estate is immaterial to, and separate from, the matter of the legality of the debt, which I have previously noted arose from the will.

Complaint - *that Mr ZS has breached professional standards by acting for parties whose interests are in conflict*

[37] Mrs FG has alleged conflicts of interest on Mr ZS' part. I have understood that this complaint proceeds from Mrs FG's view of Mr ZS' legal or moral duty to implement the wishes of her husband and to protect the charitable trust that was so dear to him. This complaint commences from the viewpoint that Mr ZS is under a professional duty to protect the interests of the RGCT.

[38] Mrs FG contends that Mr ZS is in breach of his duty to the RGCT in preferring to protect the interests of the estate beneficiaries by pursuing the debts, the security and repayment, none of which are in the interests of the RGCT.

[39] Mrs FG contends that Mr ZS is in breach of his duty to the RGCT by acting for NG in relation to the current dispute between herself and NG as the remaining trustees, particular insofar as she considers that his advice to NG is contrary to, and does not promote, the interests of the RGCT. She referred to Mr ZS' advice to NG to not attend any further trustee meetings, and his professional involvement in pursuing NG's wish to appointment her son as a trustee.

[40] Mr ZS denies that he has ever acted for the RGCT and disputes any professional responsibilities towards the trust. He sees no barrier to pursuing the interests of the estate. He also sees no reason why he should not act personally for NG in relation to the dispute between the RGCT trustees. He sees no conflict between his executor duties to protect the estate assets and acting personally for NG in relation to the trustee related dispute.

[41] A conflict of interest arises where a lawyer places himself in a position of having legal obligations to two (or more) parties whose interests are in conflict or may become conflicted. If it were the case that Mr ZS had a professional obligations to the RGCT then consideration would need to be given to the allegations.

[42] I have already given reasons why I accept that Mr ZS' involvement (and that of the other executors) with the RGCT ended when that trust was established when it then becoming a separate legal entity. There is no evidence that Mr ZS had any involvement with the business or the affairs of the RGCT. The fact that a lawyer creates a legal entity does not give rise to any ongoing professional relationship with that entity. The trust then came under the full control of the trustees, who were at liberty to engage such professional; advice as they saw fit. I have noted that the RGCT had engaged its own legal advisers.

[43] Having concluded that Mr ZS has no legal obligation to protect the interests of the RGCT, I can see no objection to his involvement in protecting the interests of the estate with regard to the RGCT-owned companies' debts.

[44] For the same reason I can see no objection to Mr ZS acting for NG in her trustee capacity. He has no responsibility to lead his client to an accommodation that accords with Mrs FG's view of a resolution, but he is answerable to NG in respect of his legal advice to her as an RGCT trustee.

Complaint - *that Mr ZS has behaved in a proprietorial, bullying, threatening and arrogant manner, and also failed to maintain a standard of profession conduct in relation to other practitioners.*

[45] These complaints concern conduct which occurred prior to 1 August 2008 and as such the applicable rules are those in force at that time. In particular, s 352 of the Lawyers and Conveyancers Act 2006 states that penalties may only be imposed in respect of conduct which could have been imposed for that conduct at the time the conduct occurred. The relevant standards are set out in ss 106 and 112 of the Law Practitioners Act 1982. Those sections provide that disciplinary sanction may be imposed where a practitioner is found guilty of misconduct in his professional capacity, or conduct unbecoming a barrister or a solicitor (the provisions relating to negligence and to criminal convictions are not relevant here). Further guidance can be obtained from the Rules of Professional Conduct for Barristers and Solicitors which were the applicable rules at the time in question.

[46] The threshold for disciplinary intervention under the Law Practitioners Act 1982 is therefore relatively high. Misconduct is generally considered to be conduct:

of sufficient gravity to be termed 'reprehensible' (or 'inexcusable', 'disgraceful' or 'deplorable' or 'dishonourable') or if the default can be said to arise from negligence such negligence must be either reprehensible or be of such a degree or so frequent as to reflect on his fitness to practise.

(*Atkinson v Auckland District Law Society* NZLPDT, 15 August 1990; *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105). Conduct unbecoming is perhaps a slightly lower threshold. The test will be whether the conduct is acceptable according to the standards of "competent, ethical, and responsible practitioners" (*B v Medical Council* [2005] 3 NZLR 810 per Elias J at p 811.). Mr ZS' conduct is to be examined on the basis of these standards.

[47] These complaints appear to arise mainly from the correspondence exchanged between Mr ZS (acting for NG) and the lawyers acting for the RGCT trust and for Mrs FG in relation to the disputes between the trustees. I have considered the correspondence, and I accept several of Mr ZS' comments could fairly be described as assertive and even coercive.

[48] I am not persuaded, however, that they crossed the boundaries of the standards that apply to lawyers for the reason that our legal system is an adversarial one, and permits some latitude in adversarial conduct. One of the fundamental duties

of a lawyer is to protect and promote the interests of his or her client to the exclusion of the interests of third parties. It is part and parcel of an adversarial system to exchange claims and counterclaims, as the parties seek to advance their own views. These exchanges may be vigorous at times, and include threats to litigate, but this dialogue anticipates that doubtful claims will be challenged appropriately.

[49] I also take into account that with regard to the trustees' dispute Mrs FG has had her own legal representation throughout, as does the charitable trust, and that Mr ZS' more assertive letters were written to other lawyers and not directly to Mrs FG. The letters must be considered as part of an adversarial process. In that context it is my view the conduct complained of in this case does not reach a threshold that would have led to disciplinary proceedings against Mr ZS.

[50] Mrs FG and her advisers have no obligation to continue with dialogue that they consider is unproductive in achieving a resolution. There can be little doubt that the RGCT is in a difficult legal position due to the dispute between the trustees, noting that already it appears to be in breach of some of the requirements of the Charitable Trusts Act. There are legal remedies provided by that Act (or the Trustee Act) which maybe pursued by either of the if this course is appropriate to protect the interests of the RGCT.

[51] Mrs FG is entitled to challenge the position taken by Mr ZS for his client in respect the appointment of NG's son. Both she and NG have similar rights to take such steps as they consider are necessary to protect the RGCT's interests.

Concluding comments

[52] The following additional observations are included with the aim of providing some further clarification or perspective. On the whole Mrs FG has viewed the actions of the estate executors, and particularly of Mr ZS and NG, in terms of a conspiracy. It is from this viewpoint that she justified her complaints.

[53] Mrs FG also raises questions that have no answer unless a somewhat different perspective is considered. Questions that she considers of some importance are why has the estate been allowed to "*languish for nine years*" with no interest being paid in respect of the loans, and why has the estate not has taken no steps to call up the loans. The answers are given many times throughout the documents provided, in terms of the assistance these arrangements provided to the RGCT.

[54] It is not quite correct to say that the estate has 'languished' due to non-payment of interest, since the principal remains intact. Any interest charged would have been payable to NG pursuant to her life interest, and not to the estate. It is unlikely that the executors could have left the loan with the RGCT companies on an interest-free basis without the agreement of NG. The most reasonable explanation is that NG has been willing to forgo the personal benefits of the interest on the loans to which she was entitled, in order to confer a benefit on the RGCT. One might wonder whether the testator had anticipated this when appointing her as a trustee.

[55] With regard to the estate not having made demands for repayment, if the relationship is seen as one of debtor and creditor it will become apparent to Mrs FG that an 'on-demand' debtor may repay a creditor at any time without a demand having been made. The RGCT should consider itself a debtor at liberty to repay the debt to the creditor estate. The fact that no demand was made over so many years is more readily explained on the basis of the willingness of the estate, and more particularly NG, to avoid a financial burden for the RGCT that could arise if the loans were to be repaid, or if the RGCT were charged interest.

[56] From a conspiratorial perspective, Mrs FG perceives that NG's objective, with the assistance of Mr ZS, is to seize the assets of the RGCT for the benefit of herself and her family. It seems somewhat difficult to see how the obvious advantages to the RGCT of an interest free loan support allegations of conspiracy to seize the trusts' assets. Nevertheless, Mrs FG referred to a valuation that had been obtained of the properties owned by the RGCT that had assessed the value as equal to the amount of the loans. She considered the valuations excessively low. It was initially suggested that the valuations were obtained by the executors, but Mrs FG appeared less certain at the hearing that this was so.

[57] In any event, the material point is that the assets are owned by the RGCT-owned companies, and this is a separate issue from the debt. Were the assets, or any part, to be sold to repay the debt, RGCT would be at liberty to obtain its own valuations.

[58] Throughout Mrs FG appears to have taken the view that Mr ZS has been in control of matters involving the RGCT, without perhaps fully comprehending that the fate of the RGCT is in the hands of the trustees. In this light both trustees are accountable, and should be concerned about the present situation of the RGCT. It would be a mistake for Mrs FG to assume that all of the current problems arise from the fault of others. It seems clear, however, that each of the trustees has contributed to

the RGCT in important ways. Mrs FG is clearly passionate about the trust and might be seen as the directing energy behind the activities of the RGCT. I have noted that mediation has been mooted on more than one occasion.

[59] The trustees (either or both) are entitled to pursue concerns about the management of the trust (including the appointment of another trustee). If they are not able to resolve these matters between then it is open to either (or both) of them to pursue the statutory legal remedies available to them. The Charitable Trusts Act in particular includes provisions for the management of a charitable trust. In any event, it is open to Mrs FG to seek legal advice in respect of her options.

[60] For all of the reasons included in this decision the review application is declined on all grounds.

Decision: Pursuant to section 211(1) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

Costs

[61] An application for costs was made by Mr ZS. The application referred to there being no basis for Mrs FG's application for review in the absence of an error by the Standards Committee. This overlooks that the nature of a review may include a review of the evidence.

[62] Reference was also made to the considerable amount of time and effort of the estate executors in pursuing the legal rights of the estate in the face of unmeritorious claims by the complainant. It was also stated that the complaint against Mr ZS was principally in his capacity as trustee rather than as a lawyer, a distinction that I have commented upon above. I have also considered the remaining grounds for the applications for costs. Mrs FG also made submissions opposing the application

[63] Section 210(1) of the Lawyers and Conveyancers Act 2006 give the LCRO a general power to make such order for payment of costs and expenses as the LCRO thinks fit. This may extend to an award of costs as between lawyers and complainant in respect of the review.

[64] The LCRO guidelines set out the approach taken in relation to party to party costs, and indicate that the power to award inter party costs against an applicant will be

exercised sparingly. Where the application for review was reasonable (whether or not the decision of the Standards Committee is modified or reversed) and the parties have acted appropriately, parties will generally be expected to bear the costs they incur in being a party to the review.

[65] A costs order may be made against a party to the review (whether a practitioner or a lay person) in favour of the other party where there has been some improper conduct in the course of the review. Examples of such conduct are referred to in the LCRO guidelines.

[66] Having considered the grounds for the application, and the circumstances of this application, I accept that the reasons for Mrs FG pursuing the review related her belief that not all of her information had been considered by the Standards Committee. Notwithstanding that the Committee's determination identified the issues of concern to Mrs FG, its reasons for accepting Mr ZS' explanations may not have been altogether lucid.

[67] I do not doubt Mrs FG's sincerity regarding her concerns about the viability of the trust and about the current relationship between the trustees. Nor do I doubt that she genuinely holds the grievances that are the subject of the complaints. In my view she has acted in good faith throughout. That she holds erroneous views on a number of matters does not prevent my taking this approach. In all of the circumstances I see no reasonable basis for penalising Mrs FG in this case. The application is declined.

Publication

[68] Any publication of this decision will accord with the LCRO guidelines by removal of identifying details.

DATED this 29th day of June 2009

Hanneke Bouchier

Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Ms Wylie as Applicant
Mr ZS as Respondent
Mr HU QC as Respondent's Counsel
The [Area] Standards Committee [X]
The New Zealand Law Society