

CONCERNING

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

AND

CONCERNING

a determination of the Standards Committee

BETWEEN

KV

Applicant

AND

TE

Respondent

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

DECISION

[1] Mr KV has applied for a review of a decision by the Standards Committee in which the Committee decided that it was not necessary to take any further action on Mr KV's complaints, pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

Background

[2] Between 2008 and March 2010 Mr KV instructed Mr TE to represent him in criminal matters and on appeal. Mr KV was convicted and sentenced to a lengthy term of imprisonment. The appeal was unsuccessful. Mr KV says he expressed dissatisfaction to Mr TE about his conduct of the trial and requested copies of information from his file after his appeal. He says Mr TE did not provide him with any information either when his matters were current, or when he later requested it.

[3] Mr KV says he also requested information about the \$28,000 of fees he paid to Mr TE.

[4] By late April 2011 Mr KV had instructed alternate counsel to pursue an appeal to the Court of Appeal, and sought information about the contents of an affidavit apparently sworn in October 2010 by the victim of the offences for which he has been imprisoned. He was aware that an affidavit may have existed from conversations with the victim's mother and with Mr TE, and it appears the affidavit formed part of the file Mr TE provided to Mr KV after he complained to the New Zealand Law Society (NZLS).

[5] Mr KV sought to rely on the affidavit, and wanted information from Mr TE, or whichever of his colleagues had prepared it, about its purpose, meaning and origins. He made enquiries of Mr TE but received no response.

[6] Mr KV says he wrote to NZLS in August and September 2011 about Mr TE failing to provide information, and asking whether he could claim a refund of the fees he had paid because Mr TE had lost his trial.

[7] He followed that up with a complaint dated 17 October 2011 referring to Mr TE's failure to respond to his enquiries about the affidavit, and his failure to provide Mr KV's file.

Standards Committee

[8] The Committee considered the three areas of concern to Mr KV: the file, the affidavit, and whether he could reclaim some of the money he had paid to Mr TE.

[9] The Committee concluded that as Mr TE had, by then, provided Mr KV with a copy of his file, it did not need to consider that aspect of his complaint further.

[10] The Committee was of the view that no professional standards issues appeared to arise from the complaint about the affidavit, saying "a lawyer is entitled to interview and take an affidavit from a witness, even if that person is the victim/complainant in criminal matters".

[11] With respect to fees, the Committee considered itself unable to answer Mr KV's queries about claiming a refund. The Committee considered its function related to determining whether a lawyer's fees were fair and reasonable, and that was not the substance of Mr KV's complaint.

[12] In all the circumstances, the Committee decided it was not necessary to take any further action pursuant to s 138(2) of the Act.

[13] Mr KV was not satisfied with that outcome, and applied for a review.

Review Application

[14] Mr KV's review application focuses entirely on his unmet queries of Mr TE over the contents of the affidavit, its nature, purpose and meaning, and his refusal to respond.

Role of LCRO on Review

[15] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.¹

Scope of Review

[16] The LCRO has broad powers to conduct her own investigations, including the power to exercise for that purpose all the powers of a Standards Committee or an investigator, and seek and receive evidence. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review and the extent of the investigations necessary to conduct that review.

Review Hearing

[17] Mr KV attended a review hearing by telephone on 8 June 2015. English is not his first language, so Mr KV was assisted by an interpreter. Mr TE was not required to attend, and the hearing proceeded in his absence.

Review Issue

[18] At the review hearing Mr KV sought to expand his review application to include a challenge to the Committee's treatment of his concern over delay in Mr TE responding to his request for his file, including police disclosure and the trial transcript. He considered a delay of over two years was unprofessional and unacceptable. I agree.

[19] However, that was not the focus of Mr KV's review application, which was directed entirely at his concerns over the affidavit, "particularly with regards to its intended purpose, its contents and its meanings".²

¹ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [40]-[41].

² KV to LCRO (16 February 2012).

[20] Mr TE responded to Mr KV's review application in August 2012 on the basis that the only issue relates to his failure to reply to Mr KV's queries about the affidavit. He explained his lack of response to Mr KV saying the affidavit had been prepared by a clerk in his chambers without Mr TE's direction, authority or prior knowledge. When Mr TE became aware of the affidavit he says he discussed it with Mr KV's new lawyer, but had concerns about how helpful it might be to Mr KV, given it appeared to confirm he had committed a serious offence.

[21] In September 2012 Mr TE was struck off as a lawyer for unrelated matters. He is no longer in practice. This Office has no power to compel him to answer the matters Mr KV now raises in his extended review application. On that basis, further action is neither necessary nor appropriate.

[22] The only question that can now be considered on review is whether any professional conduct issue arises from Mr TE refusing to respond to Mr KV's enquiries as to the nature, purpose, contents and meaning of the affidavit. The answer to that question is no, for the reasons discussed below.

Discussion

[23] Mr TE did not swear the affidavit. The person who swore the affidavit is the only person who can satisfactorily explain its nature, purpose, content and meaning. Mr KV's complaint against Mr TE is misdirected, and does not raise any professional conduct issue for Mr TE.

[24] In the circumstances, further action on Mr KV's complaint is not necessary or appropriate.

Decision

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Standards Committee is confirmed.

DATED this 15th day of June 2015

D Thresher
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:

Mr KV as the Applicant
Mr TE as the Respondent
Mr CF as the Representative of the Respondent
New Zealand Law Society
Standards Committee