

CONCERNING

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

AND

CONCERNING

a determination of the Standards Committee [City A]

BETWEEN

BB

Applicant

AND

WT

MS

HE

AW

CC

ML

ER

Respondents

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

DECISION

Introduction

[1] Mr BB has applied for a review of a decision of the Standards Committee [City A] in which the Committee determined to take no action in respect to a complaint Mr BB had pursued against seven practitioners who were members of a Standards Committee that had considered a complaint brought against Mr BB.

Background

[2] A complaint was lodged with the New Zealand Law Society Lawyers Complaints Service, concerning Mr BB's conduct. The complaint was considered by members of the Standards Committee [City B] who delivered their determination in

respect to the complaint on 16 December 2014. That Committee made a finding of unsatisfactory conduct against Mr BB.

[3] On 7 January 2015, Mr BB forwarded correspondence to the [City B] Law Society. In that correspondence he advised that he wished to make a complaint about the Standards Committee [City B] decision, specifically comments made in a paragraph of the Committee's decision which Mr BB considered cast aspersions on his integrity. Relevantly, Mr BB emphasises in that correspondence, that:¹

...for the avoidance of doubt I'm not asking for a review of the decision. I accept the overall result and the money is to be paid. This is a complaint to the Lawyers Complaints Service specific to clause 16.

[4] Mr BB made further complaint, that whilst the Committee had directed that the decision was not to be published, the decision had been provided to the Ministry of Justice.

[5] On 12 January 2015 Mr BB's complaint was forwarded to the complaints service. Receipt of his complaint was immediately acknowledged, and he was advised that a copy of his complaint would be provided to the lawyers for comment.

[6] In essence, Mr BB was asking that a Standards Committee consider, by way of a separate stand-alone complaint, his objection to elements of a determination delivered by another Standards Committee. He was not exercising his rights to review the first decision, but pursuing objection to a paragraph in that decision, by way of a separate complaint.

Standards Committee Decision

[7] Mr BB's complaint was considered by the Standards Committee [City A]. In its decision delivered on 13 February 2015, the Committee determined pursuant to s 138(1)(f) of the Lawyers and Conveyancers Act 2006 (the Act), to take no further action on the complaint. In reaching that decision, the Committee concluded that:

- It was not appropriate to attempt to review a Standards Committee decision, by means of lodging a complaint.
- The appropriate vehicle for challenging a Committee decision was by way of application to the office of the Legal Complaints Review Officer (LCRO) for review.

¹ Email BB to NZLS (7 January 2015).

- A Committee may elect to take no further action on a complaint, if there is, in the circumstances, an appropriate remedy or right of appeal.

Application for Review

[8] Mr BB filed his application to review the decision of the Standards Committee [City A] on 26 March 2015. He submits that:

- His complaint about a paragraph (clause 16) in the Standards Committee [City B] decision was not a reviewable matter in terms of s 194 of the Act.²
- His complaint had simply sought to have a paragraph deleted from the Standards Committee [City B] decision.
- Without his knowledge, the complaint had been forwarded to [City A], (the Complaints Service) and was escalated to a level beyond his contemplation.
- The Standards Committee [City B] decision was disseminated to the Ministry of Justice after he had filed his complaint.
- There was delay in providing him with a copy of the Standards Committee [City A] decision, and that delay had the effect of barring him from seeking a review of the Standards Committee [City B] decision.

[9] Mr BB protests that what he describes as his “cry of outrage and grievance” has gone as far as it has. He considers himself to have been poorly treated by the [City A] and [City B] Committees. He is concerned that the complaint filed translated into complaint against seven practitioners.

Role of the LCRO on review

[10] The role of the LCRO on review is to reach his own view of the evidence before him. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting his own judgment for that of the standards Committee, without good reason.

[11] In *Deliu v Hong* it was noted that a review is:³

² Section 194 provides that a specified person may seek a review of any determination, requirement, or order made, or direction given by a Standards Committee in relation to a complaint.

³ *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [40]-[41].

... much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her.

The Hearing

[12] A hearing was convened on 24 September 2015. Mr MS appeared on behalf of the members of the Standards Committee.

Analysis

Preliminary Comments

[13] Mr BB initially sought to challenge an aspect of a Standards Committee decision, not by exercising the statutory power of review, but by lodging a separate complaint against the Standards Committee members who delivered the decision.

[14] That approach, if permitted, would have serious consequences for the disciplinary process, and potentially provide an insurmountable obstacle to the fundamental objective of ensuring that complaints are dealt with expeditiously.

[15] Mr BB's application raises the potential spectre of parties who are disgruntled with the outcome of a Standards Committee decision having the opportunity to pursue interminable challenge to a decision, by means of challenge through the complaints process itself, rather than by pursuing their rights of review.

[16] The complaints process is governed by part 7 of the Act. Complaints against lawyers are initially dealt with by reference to Standards Committees. After enquiring into a complaint, Standards Committees may make one or more of the determinations described in s 152 of the Act being:

- A determination that the complaint or matter, or any issue involved in the complaint or matter, be considered by the Disciplinary Tribunal.
- A determination that there has been unsatisfactory conduct.
- A determination that the Standards Committee take no further action.

[17] Any person who is the subject of a complaint may exercise a right to review the Committee's determination.⁴ The right of review applies to any determination,

⁴ Lawyers and Conveyancers Act 2006, s 193.

requirement, or order made, or direction given, by a Standards Committee in relation to a complaint or a matter arising from a complaint.⁵

[18] A Review Officer, in reviewing a final determination of a Standards Committee, may review all aspects or any of the aspects of any inquiry carried out by or on behalf of the Standards Committee in relation to the complaint or matter to which the final determination relates.⁶

[19] The powers available to a Review Officer include the power to direct a Standards Committee to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of the complaint, matter, or decision to which any application for review relates.⁷

[20] On completing a review, a Review Officer may confirm, modify, or reverse any decision of the Standards Committee, including any determination, requirement, or order made, or directions given, by the Standards Committee, or exercise any of the powers that could have been exercised by the Standards Committee in the proceedings in which the decision was made.⁸

[21] It is within the background of that statutory framework, that Mr BB's application falls for consideration.

Issue 1- Determination

[22] Mr BB's objection to the Standards Committee [City B] decision did not centre on argument that the Committee erred in reaching its conclusion, nor did he raise objection to the orders made. He was critical of a single paragraph in the decision. The paragraph to which Mr BB takes exception, reads as follows:⁹

Finally, Mr BB claims he has not been paid any money by Mr SF or the SF family. As a barrister Mr BB does not have a trust account. He claims – and in the absence of proof to the contrary the Committee accepts – that he has received no money from the SF family and that he paid the \$1500 from his personal finances. This despite Ms HR advising the Committee that Mr BB had told her that the funds had come from a private source to pay her.

[23] Mr BB submits that he was unable to mount a challenge to the offending paragraph as the right to review a Committee's decision is confined to reviewing a "determination, requirement or order made or direction given".

⁵ Section 194.

⁶ Section 203.

⁷ Section 209(1)(a).

⁸ Section 211(1)(a) and (b).

⁹ [City B] Standards Committee decision (16 December 2014) at [16].

[24] I do not agree with the restrictive approach Mr BB adopts in considering the scope of a review, particularly argument that application of s 194, denied him opportunity to challenge an aspect of the Standards Committee [City B] decision through the review process.

[25] The Act uses the word “determination” in respect of complaints in a number of places in a quite specific way. On every occasion it is used it appears to refer to the disposal of the complaint.

[26] In the context of the consideration of a dispute or complaint the natural and ordinary meaning of the word “determination” refers to the conclusive disposition of the complaint. See for example the *Shorter Oxford English Dictionary* which provides as a definition “the settlement of a suit or controversy by the authoritative decision of a judge or arbiter, a settlement or decision so made, an authoritative opinion” and “the settlement of a question by reasoning or argument”.¹⁰ The natural meaning of determination relates to some final decision on the matter in hand.

[27] An interpretation of “determination” that construes it as a final disposition of a complaint is consistent with the use of the word throughout the Act. Section 152 empowers a standards Committee to make a number of specified “determinations” (in particular it may determine that there has been unsatisfactory conduct, that the complaint be considered by the Disciplinary Tribunal, or that the Standards Committee take no further action).

[28] In my view, background information, analysis, comments and reasons provided in a Committee’s decision, form part of the composition of the determination and are properly able to be the subject of review.

[29] Support for that position is provided by an examination of the powers available to a Review Officer in conducting a review. Those powers include the ability to direct a Standards Committee to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of the complaint, matter, or decision to which any application for review relates.¹¹

[30] A power to direct a Committee to review any part of a complaint or decision provides Mr BB with precisely the remedy he seeks, being an opportunity to have a specific paragraph in the first decision reconsidered.

¹⁰ *Shorter Oxford English Dictionary* (5th ed, 2002).

¹¹ Above n 7.

[31] Further, a Review Officer's power on completing a review, to confirm, modify, or reverse any decision of the Standards Committee,¹² provides further opportunity for redress of the type Mr BB seeks. It is not uncommon for this office to issue decisions which affirm a Committee's findings, but in doing so modify or reverse aspects of the decision.

[32] I agree with the Standards Committee [City A] that Mr BB's remedy lay in an application for review to this Office.

Escalation of complaint

[33] Mr BB complains that he sought a simple outcome, a single paragraph to be excised from the Standards Committee [City B] decision, and submits that he should have been directly approached and the matter resolved. The Standards Committee [City B] decision, once issued, could not be amended by reference back to the Committee. Standards Committees have no jurisdiction to amend decisions once issued, and the remedy available to Mr BB was to exercise his right of review. Standards Committees have no statutory power to recall, amend, modify, reverse or alter in any way a decision, once delivered. Having delivered its decision, the Committee was functus.

[34] Mr BB indicates on review that he had an expectation that his complaint would be dealt with locally, and he expresses surprise that his complaint was forwarded to the complaints service, but Mr BB made it emphatically clear that he was lodging a complaint against the Standards Committee [City B] decision, and that he was making that complaint to the Lawyers Complaints Service.

[35] Mr BB says that he was put into an uncomfortable position by the complaints service naming the members of the Standards Committee [City B] Committee as the subjects of the complaint. This brought him, he says, into conflict with members of the [City B] "hierarchy". As he specifically advised in his letter of complaint that he was bringing complaint against the [City B] Standards Committee, the complaints service appropriately framed the complaint against the individual members of the Committee.

Disseminating Standards Committee [City B] decision to Ministry of Justice.

[36] If a person who is the subject of a Standards Committee determination is a provider under the Legal Services Act 2011, the Standards Committee must provide a written notice of the determination to the Secretary for Justice.¹³ Mr BB is a Ministry of

¹² Section 211(1)(a).

¹³ Section 158(3).

Justice Legal Aid provider. He says that he understands that a Standards Committee has an obligation to provide copies of its decision to the Secretary of Justice, but assumes, incorrectly, that his filing of a separate complaint would act as a de facto stay, and fetter the Committee's ability to provide its decision to the Secretary. The Committee had a statutory obligation to provide a copy of its decision to the Secretary. Mr BB's decision to proceed with a separate stand-alone complaint against the Standards Committee [City B] Committee members, did not absolve the Committee of its statutory obligation to provide a copy of its decision. Even if Mr BB had pursued an application for review at first step, filing such an application does not stay the Committee's statutory obligation to provide a copy of its decision to the Secretary. The LCRO has a similar obligation, where the practitioner is a legal aid provider, to provide copies of its decision to the Secretary.¹⁴

Timeliness of Standards Committee [City A] decision.

[37] Mr BB makes complaint about the timeliness of delivery of the Standards Committee [City A] decision. He submits that:

- The time frame engaged to lodge an application to review the Standards Committee [City B] decision ended on 26 January 2015.
- He lodged his complaint on 9 January 2015.
- He did not receive the Standards Committee [City A] decision until 13 February 2014.
- The delay in receiving the Standards Committee [City A] decision had the effect of statute barring him from seeking a review of the first decision.

[38] Mr BB describes himself, in his review application, as being "thoroughly confused" by the process but with every respect to Mr BB, responsibility for any confusion rests squarely at his door, and not at the door of either of the Standards Committees.

[39] Mr BB protests that he has been "statute barred" from pursuing a review because of alleged delay on the part of the Standards Committee [City A] in delivering its determination. Mr BB was not "statute barred" from pursuing a review. He could have lodged a review at any time within the 30 working day period

[40] In fairness to Mr BB, my impression is that a significant number of his problems with the process arose from his initial mistaken impression that he was unable to seek

¹⁴ Section 213(3).

a review of the first decision because of the narrow interpretation he had placed on the word determination. Further, his acceptance of the Committee's findings, and his indication that he would comply with the orders made, may have diverted him into belief that he could have the paragraph "removed" by way of an informal request.

[41] The Standards Committee [City A] were correct to determine to take no further action on the complaint on grounds that Mr BB's remedy lay in an application to the LCRO.

Decision

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

DATED this 9th day of October 2015

Rex Maidment
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 BB as the Applicant
Mr WT, Mr MS, Mr HE, Ms AW, Ms CC, Ms ML and Mr ER as the Respondents
Standards Committee [City A]
New Zealand Law Society
Secretary for Justice