

CONCERNING An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING A determination of the Auckland Standards Committee No 1

BETWEEN **COMPLAINANT R** of Whangamata

Applicant

AND **LAWYER D** of Auckland

Respondent

DECISION

[1] Complainant R applied for a review of a decision by Auckland Standard Committee 1 in respect of a complaint against Lawyer D. The complaint which had originally been made by Complainant R's mother on 20 November 2008 alleged that Lawyer D had not replied to correspondence sent to him by her solicitor, Mr XX.

Background

[2] The background to the complaint related to a debt of \$89,000 said to be owed to Complainant R's mother by an estate. Lawyer D acts for the estate. Complainant R's mother's solicitor, Mr XX, had written on a number of occasions to Lawyer D with regard to repayment of the debt, and when no response was forthcoming, Complainant R's mother wrote to the Law Society complaining about Lawyer D's failure to respond.

[3] The Standards Committee considered the complaint on 1 April 2009, and particularly noted (a) that Lawyer D had been in contact with the solicitor for Complainant R's mother and had made a proposal to the complainant to resolve the issues, and (b) that Complainant R's mother had meanwhile passed away. These

were the circumstances cited as reasons for deciding, pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006, that any further action was unnecessary.

Application for review

[4] This application for review was made by, Complainant R, as the executor of his mothers estate. He referred to what he considered to be an unsatisfactory proposal to settle the debt, and added that no statement of assets and liabilities had been provided by Lawyer D in relation to the debtor's estate. Mr XX also wrote in support of the review application, adding that notwithstanding contact had since made by Lawyer D, he had received very little of the information he had sought.

[5] Lawyer D's response to the review application noted that no grounds had been forwarded for the review. He also questioned whether *"the provision or omission of information could constitute a reason for a review."*

[6] The parties have consented to this matter being considered without a formal hearing and therefore in accordance with s 206(2) of the Lawyers and Conveyancers Act 2006 this matter is being determined on the material made available to this office by the parties and without a hearing in person.

Review

[7] Since the original complaint was made, the subject of the complaint appears to have enlarged to include substantive issues surrounding the proposal for settling the debt. However, the role and functions of the LCRO are confined to matters pertaining to the conduct of lawyers, and do not extend to consideration of substantive matters in respect of which legal remedies are available. Furthermore, the scope of a review is confined to the original complaint and the decision of the Standards Committee.

[8] In this case the original complaint to the New Zealand Law Society by the mother of complainant R was about the delays experienced by her lawyer in obtaining a response to his letters from Lawyer D. The focus of this review is therefore confined to consideration of the complaint concerning delay.

[9] The evidence shows that letters were sent to Lawyer D by Mr XX on 15 August 2008, 17 September 2008, and faxed letters on 22 and 29 October 2008. The last

faxed communication from Lawyer D had been on 13 June 2008. On 20 November Complainant R's mother sent her complaint to the New Zealand Law Society, and asked, "*Could you please help me obtain some response from them.*"

[10] The complaint concerns conduct that occurred after the commencement of the Lawyers and Conveyancers Act 2006, which introduced new standards for professional conduct for lawyers. The conduct complained of in this case is to be considered in terms of the *Lawyers: Conduct and Client Care Rules 2008*, being the rules that govern professional conduct of lawyers. Rule 10 requires a lawyer to treat other lawyers with respect and courtesy. Rule 12 also governs the conduct of lawyers when acting in their professional capacity with third parties, holding lawyers to a standard of '*integrity, respect and courtesy*'. I have no doubt that a requirement of respect and courtesy encompasses timeliness in responding to communications from a professional colleague.

[11] The evidence in this case shows that there had been a delay of about three months when Complainant R's mother made her complaint, and a further delay of another month before Lawyer D responded, after being notified of the complaint.

[12] On 12 December 2008 Lawyer D wrote to the Standards Committee in reply to the complaint, confirming that he had responded to Mr XX's letters, and explaining the delays on the basis of valuations being sought.

[13] Also on 12 December Lawyer D wrote to Mr XX with a settlement proposal in respect of Complainant R's mother's claim. This seems to have been the response he had referred to in his letter to the Standards Committee.

[14] Complainant R's mother was invited to comment on the progress that had been made in relation to the communications. She wrote back to the Standards Committee on 22 January 2009 to say that Lawyer D had still not answered a number of questions put to him by her lawyer. This was forwarded to Lawyer D for his response, who wrote to the Standards Committee on 11 February that he had endeavoured to contact Mr XX by telephone, that he and Mr XX had missed each others calls, but they had managed to talk that day. Lawyer D said that he had explained to Mr XX the rational for the proposals for settling the matter. Mr XX was then invited to forward any further information but he did not comment further.

[15] The Standards Committee then considered the matter and declined to uphold the complaint for reasons noted earlier.

[16] It appears that the Committee's decision was based on its perception that communications between the lawyers were back on track. That is to say, the Committee's decision did not appear to have addressed the matter of delay that was the substance of Complainant R's mother's complaint.

[17] In considering this complaint in terms of the standard imposed by the new Rules, the question is whether Lawyer D failed to meet the professional standard envisaged by the Rule 10.1 in particular in respect of his professional dealings with Mr XX. Rule 10 imposes an obligation of respect and courtesy.

[18] I have taken into account that this matter involved several attempts on Mr XX's part to communicate with Lawyer D, and included two reminder letters which were also not answered. Lawyer D responded only after having been notified of a complaint against him. In total the delay in providing any response was around 4 months.

[19] I have also considered Lawyer D's explanations, in particular that he was awaiting a valuation, and that he was guided by his client's instructions. These explanations do not, however, address the matter of failing to reply at all.

[20] With reference to the rules governing professional conduct, it seems to me that professional courtesy would reasonably envisage that a colleague would have, within a reasonable time, responded to a letter, even if only to acknowledge receipt and to explain any delay in addressing substantive matters. It is not necessary to define a 'reasonable time' in order to reach a decision that the delay in this case was unreasonable.

[21] In these circumstances I have little difficulty in finding that the delay in responding in this case fell short of the obligation of respect and courtesy envisaged by the required standard. By section 12(c) of the Lawyers and Conveyancers Act 2006 a contravention of the Rules made under the Act (which includes the Rules of Conduct and Client Care) amounts to unsatisfactory conduct. I therefore find that Lawyer D's failure to have responded in a timely manner to correspondence he received amounts to unsatisfactory conduct in that it failed to meet the standard of courtesy envisaged by Rule 10.

Submission on penalty and costs

[22] This may also be a case in which it would be appropriate to make an order of costs against Lawyer D in favour of the New Zealand Law Society in respect of the conduct of the proceedings before this office. Such an order would be made in accordance with s 210(3) of the Lawyers and Conveyancers Act 2006.

[23] Lawyer D is invited to make written submissions on penalty and costs within 10 working days of the date of this decision.

Publication

[24] I am of the view that the publication of this decision may be of public interest and therefore appropriate. I note that I have a power to publish decisions pursuant to s 206(4) of the Lawyers and Conveyancers Act. Should either party wish to make submissions in relation to publication they should do so within 10 working days of the date of this decision.

Decision

[25] The application for review is upheld pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act. The decision of the Auckland Standards Committee is reversed.

DATED this 19th 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:

Complainant R as Applicant
Mr XX as Applicant's Counsel
Lawyer D as Respondent
The Auckland Standards Committee 1
The New Zealand Law Society