

LCRO 68/2015

CONCERNING

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

AND

CONCERNING

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

BETWEEN

Mr and Mrs AB

Applicants

AND

WA, TE, SF, VB, UC, and RG

Respondents

DECISION

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

Introduction

[1] Mr and Mrs AB have applied for a review of a decision by the [City] Standards Committee [X] to take no further action in respect of their complaint concerning the conduct of the respondents, Messrs WA, VB and UC, Ms TE, Ms SF and Ms RG.

Background

[2] The respondents are members of the [Town] Standards Committee who considered complaints against two practitioners who had represented Mr and Mrs AB. The practitioners had separately represented Mr and Mrs AB in litigation concerning the lease of a motel. Mr and Mrs AB were the lessees of a motel complex, which traded under the name of EFG Limited (EFG).

[3] Mr and Mrs AB have applied for a review of the [Town] Standards Committee decisions in respect to both practitioners.

[4] In addition, Mr and Mrs AB filed a separate complaint against the members of the [Town] Standards Committee. That complaint was considered by [City] Standards Committee [X] who determined to take no further action on the complaint.

[5] It is the decision of [City] Standards Committee [X] that is the subject of this review.

The complaint and the Standards Committee decision

[6] Mr and Mrs AB lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) dated 9 February 2015. The substance of their complaint was the members of the [Town] Standards Committee had:

- (a) Pre-determined the decisions.
- (b) Wrote the decisions with intent to conspire to defeat justice.
- (c) Made their decisions without receiving full responses from the practitioners, when the practitioners were concealing the truth and obstructing the administration of justice.
- (d) Were aware that the matters the practitioners refused to respond to were substantive and criminal matters and the Committee concealed this.
- (e) Allowed the lawyers to obstruct, hinder, resist and deceive the Standards Committee.
- (f) Ignored the evidence provided by Mr and Mrs AB and concealed documents with the intent to deceive in breach of s 258 of the Crimes Act 1961.
- (g) Overlooked the criminal conduct of Mr FT, Mr IP and the four practitioners who had been the subject of their initial complaint in an effort to deflect attention from an earlier corrupt decision of the [Area] Standards Committee.
- (h) Ignored and were in breach of s 4 of the Lawyers and Conveyancers Act 2006 (the Act).
- (i) Ignored the provisions contained in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) and breached rule 12 of those Rules.
- (j) Denied Mr and Mrs AB natural justice.

[7] In summarising their complaint Mr and Mrs AB argue that the members of [Town] Standards Committee perverted the course of justice, and failed to uphold the law and the administration of justice.

[8] Mr and Mrs AB also complained about the legal standards officer who had assisted the Committee and submitted that NZLS discriminates against non-lawyers.

[9] The [City] Standards Committee [X] delivered its decision on 5 March 2015.

[10] The Committee determined, pursuant to s 138(1)(f) of the Act to take no further action on the complaint as Mr and Mrs AB's remedy lay with an application for review to the Legal Complaints Review Officer (LCRO). The Committee noted that it had no jurisdiction to consider the actions of lay members of the Standards Committee or the legal standards officer as the Act applies only to those with a current practising certificate.

[11] In reaching its decision the Committee concluded that:

- (a) In essence Mr and Mrs AB were complaining about the decisions of the [Town] Standards Committee against the two practitioners, rather than the conduct of the Committee members.
- (b) The complaints appeared to be targeted at bringing the members of the Standards Committee in line with Mr and Mrs AB's views that the two practitioners complained about breached their professional obligations to Mr and Mrs AB.
- (c) It was not appropriate for the Committee to review the decision of the [Town] Standards Committee. The appropriate action for Mr and Mrs AB to take was to file a review application with the LCRO.

Application for review

[12] Mr and Mrs AB filed an application for review on 15 April 2015. The outcome sought is for the LCRO to fully investigate the complaint and to exercise all the powers available under s 211 of the Act.

[13] Mr and Mrs AB submit that a serious miscarriage of justice has occurred due to the continual refusal of the Complaints Service to investigate the corrupt actions of lawyers. They also state that NZLS is deeply involved in the wilful concealment and

cover-up of possibly the largest corruption by lawyers in the recent history of New Zealand.

[14] Mr and Mrs AB submit that the [Town] Standards Committee should have required the two practitioners to provide details relating to EFG's business assets.

[15] Mr and Mrs AB submit that [City] Standards Committee [X] when considering their complaint about the members of [Town] Standards Committee:

- (a) Totally ignored their complaints about the two practitioners and made no mention of the Contractual Remedies Act 1979 in their decision.
- (b) Omitted several of their complaints with the intention of misleading and hindering the LCRO.
- (c) Wrongly determined their complaint was about the decisions of the [Town] Standards Committee when it was about the conduct of the Standards Committee members.
- (d) Did not consider the way [Town] Standards Committee handled the complaints and whether they afforded Mr and Mrs AB natural justice.
- (e) Was pre-determined and the Committee were biased.
- (f) Had abdicated their responsibility to investigate the complaint under the Act by referring to s 138(1)(f) of the Act.
- (g) Deliberately omitted to refer to some of the complaints made by Mr and Mrs AB and made certain incorrect statements in the decision in an attempt to obstruct, hinder, resist and deceive the LCRO.

[16] On review Mr and Mrs AB also raised issue that they had made complaint about the Complaints Service and had forwarded a copy of this to the LCRO. They believe that the LCRO should provide a response to that complaint.

[17] The Respondents were invited to comment on Mr and Mrs AB's review application. All of the respondents advised that they wished to rely on submissions presented to the Standards Committee.

[18] In response Mr and Mrs AB advised that they had contacted the Complaints Service which had advised Mr and Mrs AB that the Respondents had not filed a response with the Complaints Service. Mr and Mrs AB submit that the Respondents'

intention in their response was to mislead the LCRO into believing they had sent responses to the Complaints Service which had been accepted by the Standards Committee when this was not in fact the case.

Review Hearing

[19] This review was one of a bundle 11 reviews that were heard on 23 and 24 June 2016.

The role of the LCRO on review

[20] 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.¹

Submissions at hearing

[21] At hearing, Mr and Mrs AB submitted that:

- (a) There was no evidence in the Committee decision that the Committee members had properly investigated their complaint against the four practitioners who were the subject of their first complaint to the Complaints Service.
- (b) Decisions issued by [City] Standards Committee [X] were contaminated as a member of the [City] Standards Committee [X], Mr GD, had been instructed by Mr and Mrs AB in regard to the litigation that was at the centre of their complaints.
- (c) Mr IP (Mr and Mrs AB's former lawyer) had formerly worked for Mr GD.
- (d) If their matters had been considered by another Standards Committee, the truth would have "come out".
- (e) None of the Committee decisions properly record that their company had been defrauded.

¹ *Deliu v Hong* [2012] NZHC 258, [2012] NZAR 209 at [41].

- (f) The practitioners who had acted for them in the litigation had been corrupted by the practitioners who had acted for the landlord of the motel.
- (g) The Committee inquiry lacked procedural fairness, and was not conducted with reference to natural justice principles.
- (h) The “high level” of evidence they had provided had been ignored.
- (i) The collusion of the lawyers involved will become the subject of fraud allegations to be pursued with the Police.
- (j) The Committee should have obtained original documentation.
- (k) The Complaints Service should have put their matter before another Committee.

Analysis

[22] As noted, this is one of a number of review applications being pursued by Mr and Mrs AB.

[23] It is important at the outset, to clarify the scope of this review. It is a review application which challenges a Committee’s decision to decline to uphold Mr and Mrs AB’s complaint against members of the Standards Committee who had declined to make further inquiry into complaints Mr and Mrs AB lodged against two practitioners who had represented them.

[24] The complaint which precipitates the review is unusual, in that it is not purportedly a complaint about the Committee members’ decision (which is the subject of a separate review) but a complaint about the decision makers.

[25] This approach inevitably raises question as to whether complaint against the Committee members as decision makers, is simply a collateral attack on the Committee’s decision.

[26] It is not possible to address issues raised in this particular review by a consideration, as would commonly be the approach, of the issues which are discrete to the particular review.

[27] In both their written and oral submissions, Mr and Mrs AB do not confine themselves to addressing matters raised by the specific review, but frequently refer to

other complaints they have lodged, and other Committee decisions. The explanation for that expansive approach is that they retain a firm conviction that they are the victims of a corrupt complaints process which has deliberately set out to ensure that they are unable to achieve justice.

[28] I have now delivered decisions in respect to a number of the review applications filed by Mr and Mrs AB.

[29] Whilst there are on occasions fresh issues raised by those reviews, there is a considerable degree of overlap in the matters traversed by the various reviews, and a considerable degree of repetition in the submissions advanced by Mr and Mrs AB.

[30] The complaints filed by Mr and Mrs AB, and the applications that have sought to review a number of Standards Committee decisions, have their genesis in a dispute that Mr and Mrs AB became engaged in with the lessors (HJ) of a motel complex that they had leased for a number of years.

[31] The background to that dispute has been set out in a number of decisions and there is no need to traverse that background in any detail.

[32] Mr and Mrs AB believed, and continue to believe, that the lawyers acting for HJ in that dispute provided misleading information to the Court. They argue that the Court proceeded on assumption that their company was indebted to HJ, when they say it was not.

[33] Argument that the HJ lawyers misled the Court and that they have suffered financial loss as a consequence, is the thread that runs through the complaints and reviews. Running alongside that argument is Mr and Mrs AB's belief that practitioners who acted for HJ colluded with their own lawyers, and that as a consequence of that malevolent influence, their own lawyers conspired to work against their interests.

[34] Mr and Mrs AB argue that their attempts to have the corruption of these lawyers exposed and addressed through the Complaints Service has been met with a consistent and deliberate response from all engaged in the complaints process to cover up and conceal the egregious behaviour of the HJ practitioners.

[35] Mr and Mrs AB complain about staff who work for the Complaints Service. They allege that members of Committees who have been tasked with making inquiry into their complaints have been corrupt and have set out to pervert the course of justice. They believe that they have been the victims of wide-ranging and systemic corruption.

[36] They argue that they have been unable to secure the services of a lawyer who is capable of correcting the injustice they have suffered, as every lawyer approached has refused to act for them. This resistance to represent is prompted say Mr and Mrs AB, by a reluctance of members of the legal profession to put themselves offside with the HJ practitioners.

[37] At commencement of this review hearing, Mr and Mrs AB began their submissions with argument that nowhere in the decision issued by the [City] Standards Committee [X], was there evidence that the Committee had investigated their complaint regarding the alleged criminality of the HJ lawyers. It was then immediately apparent, that their approach to pursuing objection to the [City] Standards Committee [X] decision makers was not initially to specifically identify areas in which they considered the Committee members had breached their duties in such a way as could reasonably lead to conclusion that the Committee members had engaged in corrupt behaviour, but to raise allegation that there had been a continued failure to expose the alleged corruption of the HJ practitioners.

[38] Mrs AB described that perceived omission as “sadly is the sole reason, about why we have to continue to make complaints”.

[39] That submission, whilst genuinely advanced, underscores and emphasises how Mr and Mrs AB have adopted the approach that any decision that is not in their favour, must inevitably be challenged. They acknowledge that their decision to pursue so many complaints is a direct consequence of a Standards Committee delivering a decision from their first complaint that they disagreed with.

[40] The point must be emphasised. Whilst their purpose in proceeding this review is to purportedly challenge the decision of [City] Standards Committee [X] to decline to uphold their complaint against the members of the [Town] Standards Committee, at the commencement of their submissions they immediately traverse argument that a conduct complaint, several steps removed from the complaint which is the subject of this review, was incorrectly determined.

[41] In addition to being diverted by focus on argument that the first complaint was not properly determined, Mr and Mrs AB have expectation that the complaints process will, if it gives proper consideration to the evidence they provide, arrive at inevitable conclusion that their company was not indebted to HJ when it was placed in liquidation. They have expectation that the complaints process will, if it gives proper consideration to the evidence they provide:

- Conclude that proofs of debt provided to the High Court and to the company liquidator were incorrect.
- Arrive at conclusion that a decision of the Court of Appeal which upheld a statutory demand, should be overturned.
- Arrive at a different view to that of the High Court when that Court, in a decision delivered on [Day Month Year], refused leave to Mr and Mrs AB to pursue their matters further and recorded that their claims against HJ had not been quantified, and that it had been established through litigation, that their company was in debt to HJ.²

[42] Despite the fact that there has been considerable judicial scrutiny of their matters, they have expectation the complaints process will accord them opportunity to continue to litigate. That is an expectation that is misplaced, and one that has lead them into a circuitous and repetitive path of complaint.

[43] Mr and Mrs AB have adopted the approach, when faced with a decision from a Committee with which they disagree, to challenge the decision not just by the process of review accorded to them (a process which focuses on the substance of the complaint) but by laying complaint against the members of the Committee. This is attack on the decision by means of attack on the decision maker.

[44] I have dealt at some length with the consequences of this approach in previous decisions, and do not propose to cover that ground again. Suffice to say, that whilst it is not inconceivable that on occasions legitimate complaint could be pursued against a lawyer arising from that lawyer's involvement as a member of a Standards Committee, it would be rare that complaint of that nature would arise. Challenge to a Standards Committee decision is most properly progressed by way of a review of the decision to the Office of the LCRO. Achieving expeditious resolution of complaints, would be significantly compromised, if Standards Committee decisions were the subject of continued attack by means of launching of repetitive complaint against Standards Committee members. That approach can quickly become a transparent abuse of process.

[45] When attention is diverted from their concerns regarding the outcome of the HJ litigation, and from their focus on the earlier Committee decision which they identify as the source of their problems, they contend that there were a number of procedural irregularities in the manner in which the Committee conducted its review.

² *EFG's Ltd (in liq) v HJ Ltd* [XXXX] NZHC [XXX]at [26].

[46] I have considered all matters raised and do not consider that the procedural errors complained of, are established. In any event, defects in the manner in which a Committee has conducted its review process, are capable of cure on review.

[47] Whilst I have made it clear, that I consider that the fundamental drivers of this review are Mr and Mrs AB's dissatisfaction with the outcome of their first complaint and their expectation that the complaints process will provide them opportunity to relitigate matters that were previously before the Court, I have nevertheless given, as I am required to do, careful attention to all of the submissions advanced by Mr and Mrs AB.

[48] A common feature of those submissions is that they level allegation of a serious nature in a seemingly random fashion. By that I mean that emphatic statements are made without evidence being provided to substantiate the statement. The submissions frequently reduce to expressions of opinion.

[49] Three examples of this approach will suffice, to illustrate the approach adopted by Mr and Mrs AB.

[50] Complaint is made that Committee members ignored their complaints about the two practitioners, and that the Committee failed to make reference to the Contractual Remedies Act 1979 in their decision.

[51] It was not the Committee's task to focus on the complaint about the two practitioners who had represented Mr and Mrs AB. Their primary task was to address complaint that the Committee members had, in conducting their inquiry had conspired to pervert the course of Justice. That is the substance of the complaint levelled against the Committee members. Complaint that the Committee members failed to properly address the concerns raised about the practitioners were issues that as the Committee noted, could most appropriately be challenged, and indeed, were challenged, by Mr and Mrs AB through the review process.

[52] By electing to challenge a Committee decision by means of launching separate complaint against the Committee members, Mr and Mrs AB become entangled in their own stratagem. They have difficulty identifying specific grounds to attack the Committee members in their role as decision makers, and seek refuge in allegations that traverse issues quite peripheral to the complaint that they have been endeavouring to establish. Fundamentally, they justify their allegation that six lawyers have behaved reprehensibly, by recourse to argument that the entire system is corrupt. That approach absolves Mr and Mrs AB of the responsibility of supporting serious

allegation with serious evidence. Any opposition to their central thesis is answered by accusation that the party opposing is acting in bad faith.

[53] Mr and Mrs AB complain that the Committee failed to consider a provision of the Contractual Remedies Act. It did not fall to the Standards Committee considering complaint that lawyers had improperly conducted a Standards Committee inquiry, to address argument as to whether a provision in a particular statute should have been pleaded before the Court. They are arguing that a particular defence should have been pleaded in their historical litigation, and are convinced that if it had been, the outcome would have been different. Advancing submissions of this nature simply reinforces Mr and Mrs AB's mistaken belief that they are able to relitigate matters which have had considerable airing before the Courts, through the complaints process.

[54] Mr and Mrs AB submit that none of the Committee decisions record that their company had been defrauded. Mr and Mrs AB are demanding that a Standards Committee make findings on issues arising from their protracted civil dispute, a dispute that was traversed before a number of Courts. A refusal of a Committee to act in the role of a de-facto Court is advanced by Mr and Mrs AB as evidence of Standards Committees failing in their duties.

[55] There has been no decision from any Court which affirms Mr and Mrs AB's belief that they were defrauded. Mr and Mrs AB returned to the Court in [Month] [Year], seeking leave to pursue further action against HJ Limited. The Court delivered its judgment on [Day Month Year].³ In that judgment the Court noted that:

- (a) Mr and Mrs AB believed they had suffered a number of grievances resulting from the actions of HJ Limited.
- (b) The proceedings in which Mr and Mrs AB had been engaged had a very unfortunate and protracted history.
- (c) Whilst Mr and Mrs AB genuinely believed they had been the victims of injustice, their options for seeking redress had been exhausted.

[56] Mr and Mrs AB are endeavouring in this review, to relitigate matters which have been addressed by the Court.

³ *EFG's Ltd (in liq) v HJ Ltd* [xxxx] NZHC [xxx]

[57] But underpinning their criticism of the lawyers as decision makers, is allegation that the Committee members were corrupt, and deliberately colluded to deliver a decision which was adverse to them.

[58] There is no evidence to support allegation that Committee members corruptly set out to pervert the course of justice

[59] Regrettably, the expansive approach adopted by Mr and Mrs AB has frequently resulted in them pursuing criticism of one Committee, by launching attack on the decision of another Committee. It is unclear on occasions, which particular Committee members are being challenged.

[60] Mr and Mrs AB complain that their complaints about the Complaints Service should have been referred to the LCRO, and that they should have received a response from the Office to their complaint.

[61] A substantial component of the submissions they file on review, traverse argument that the NZLS is involved in what they describe as the wilful concealment and cover up of corruption.

[62] The functions of the LCRO are prescribed in s 192 of the Act. One of the LCRO's functions pursuant to s 192(c) of the Act is to provide advice to NZLS on any issue that the LCRO identifies whilst carrying out reviews in relation to the manner in which complaints are received and dealt with under the Act. This section does not require the LCRO to respond individually to every complaint made about the Complaints Service, unless the LCRO identifies any particular issue he or she may consider necessary to raise.

[63] The complaints Mr and Mrs AB make about the Complaints Service are extensive and raise matters which, in my view, go well beyond the scope of the advisory role of the LCRO required by s 192(c) of the Act. The matters of which Mr and Mrs AB make complaint, should be addressed directly with the New Zealand Law Society.

[64] I reiterate that I have given careful consideration to all of the matters raised by Mr and Mrs AB in respect to this particular review. I have considered all of the submissions filed. I do not consider it necessary to provide a response to every issue traversed, indeed the discursive and expansive approach adopted by Mr and Mrs AB in the advancing of submission, makes it difficult to do so.

[65] The application for review is dismissed.

[66] I see no grounds which could persuade me to depart from the Committee's decision.

Decision

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

DATED this 11th day of July 2016

R 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 AB and Mrs AB as the Applicants
Mr WA, Ms TE, Ms SF, Mr VB, Mr UC and Ms RG as the Respondents
[City] Standards Committee [X]
The New Zealand Law Society