LCRO 71/2011

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 4
BETWEEN	**MRS GN** of Auckland Applicant
AND	**MR TS** of Auckland Respondent

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

DECISION

[1] Mrs GN, (the Applicant) lodged complaints against lawyer Mr TS (the Practitioner) with the New Zealand Law Society. In February 2011 the Standards Committee issued its decision, declining to uphold any of the complaints, and resolved to take no further action pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006. The Applicant applied for a review of that decision.

Background

[2] In around 2005 the Applicant issued proceedings against ACQ Insurance Co. Ltd and Ors seeking judgment for loss she claimed to have suffered as a result of ACQ's failure to pay on an insurance policy. In that proceeding the Applicant was represented by solicitor Mr TR, and counsel he had instructed.

[3] The Practitioner represented ACQ Insurance.

[4] A reserved decision of Judge Mathers issued in March 2007 gave judgment for the Applicant, and when the parties were subsequently unable to agree on quantum, that was also determined by Judge Mathers in November 2007.

[5] The Applicant held a long-standing personal grievance against one of ACQ's employees, M, who she considered was materially responsible for ACQ having declined her insurance claim in the first instance. It is clear from all of the information on the file that the Applicant wanted M to personally answer for her conduct, but in the event, M was not required to give evidence in that proceeding. Nor, it appears, were professional conduct issues pleaded as part of that proceeding.

[6] In 2009 the Applicant, then self-represented, filed proceedings in the District Court, naming M as the first defendant and ACQ Insurance as the second defendant. The Practitioner again represented both respondents and filed a strike-out application on the basis that the Applicant's Claim failed to disclose a reasonable cause of action, and that the proceeding related to matters that were, or ought to have been, the subject of the Applicant's earlier proceeding (against ACQ) under which the Applicant had recovered a final judgment and had been unsuccessful on appeal. The Judge granted the strike out application and made a significant costs award against the Applicant.

[7] The Applicant disagreed with the judgment made by the District Court (as well as objecting to the costs order), but took no steps to appeal that decision. She contended that she has lost faith in the justice system.

Complaints

[8] The Applicant then filed complaints against the Practitioner with the New Zealand Law Society. In particular she alleged that the Practitioner had provided false information to the District Court (in the proceeding against M) insofar as information given to the Court by the Practitioner was misleading. She disputed that the Claim related grievances had been included in earlier litigation, and asserted that this was known to the Practitioner.

[9] She also required the Practitioner to explain why the earlier proceeding had been transferred to another court, and the reasons for an adjournment. She raised further issues about the bundle of documents that had been put into Court in connection with the earlier proceeding.

[10] The Applicant had referred the Standards Committee to a letter dated 2 November 2006 exchanged between her solicitor, Mr TR and Counsel he had instructed to represent the Applicant, which had described the issue (then before the

Court) as being "*quite simple and narrow*", but had noted that the Applicant was looking to put in further evidence to expand her grievance about the conduct-related matters involving ACQ and its employee, M. In that letter Counsel wrote *"the issues* [the Applicant] *wishes to raise about the conduct of* [ACQ] *subsequently will have to be dealt with separately and later after we have the judgement of the Court, and all quantification and costs are determined".* The Applicant offered this as evidence that her grievance against M had not been part of the original proceeding.

[11] In response to the complaints, the Practitioner informed the Standards Committee that he represented the respondents in "contentious litigation." He denied owing the Applicant any professional duty, and that his submissions were in support of his (clients') Strikeout Application. He considered that the Applicant's proceeding in the District Court against ACQ and its employee was "*marked by a lack of understanding and/or direction,...",* and described the Applicant's proceeding as *"an attempt to re-litigate aspects of the first proceeding that* [the Applicant] *felt should have been dealt with then*." He noted that the District Court proceeding (involving M) found in his client's favour on all grounds, and that the Applicant had not appealed that decision.

[12] The Practitioner also noted that the Applicant had the opportunity to make her own submissions to the Court in relation to his submissions and had taken that opportunity. He referred to the Judge's decision which he considered showed that the Judge had not been misled in any way by him, and had agreed with the Practitioner's description of the proceeding as 'frivolous' and 'vexatious'.

[13] The Practitioner's letter was forwarded to the Applicant and she sent her further comments to the Standards Committee shortly afterward. She questioned whether the Court process was about truth, and insisted on being entitled to natural justice. After considering all of the information the Standards Committee declined to uphold the complaints.

[14] The Applicant sought to have the decision reviewed. Her review application set out in 41 separate paragraphs her "supporting reasons for application", which largely comprised a time line of events between 2002 and 2006. The Applicant did not identify any specific part of the Standards Committee's decision that she considered was wrong. Her complaint largely focussed on submissions that the Practitioner had made to the District Court which she considered were wrong and misleading. It was clear that she disagreed with the Standards Committee decision.

[15] The Applicant wanted to be heard on her review application and a hearing was held on 26 October 2011 with only the Applicant. The Practitioner was informed of the hearing, was entitled to attend but elected not to do so.

[16] The LCRO Guidelines provide for Applicant-only hearings in certain circumstances, which include situations where a review Applicant has not fully set out the reasons for the application, or where further information is required to progress the review. A hearing will assist in ascertaining whether, and what, further enquiry needs to be made. In this case, after hearing from the Applicant and reviewing all of the material she provided, I saw no need to make further enquiry.

Considerations

[17] The historical evidence on the file shows clearly that the Applicant had long held a personal grievance against the ACQ employee, M. It does not appear that 'unprofessional conduct' issues were pleaded in the original litigation, which concerned ACQ's liability in relation to an insurance policy. That this is so was effectively confirmed in the 2 November letter (referred to above). There can be little doubt that the Applicant has held on to the idea that she could pursue the conduct-related issues against M at a later date, which may not be surprising since the letter may be seen as having given that impression.

[18] It was Judge Mathers who dealt with the substantive claim against ACQ, and decided it in the Applicant's favour. When the parties were unable to agree on quantum, Judge Mathers decided this matter in a further decision dated 23 November 2007, also then observing that the Applicant sought to claim general damages against ACQ in relation to allegations of 'unprofessional conduct', this being a new claim that was not part of the liability finding, and therefore could not be considered.

[19] The Applicant appealed that decision to the High Court, particularly in relation to the general damages claim having been declined. Venning, J's decision of 10 April 2008 covered her discussion with the Applicant and what she had meant by 'general damages'. The Judge's understanding of what the Applicant sought was described in her decision, but included no reference to unprofessional conduct (of ACQ or its employees). In her summary, Her Honour noted that any dissatisfaction that the Applicant had with the way that the (original) proceeding was conducted was a matter to take up with her legal adviser.

[20] I note at this juncture that the Applicant did file a complaint against her legal adviser in relation to the proceeding, and this was considered prior to the

commencement of the Lawyers and Conveyancers Act 2006. When the Applicant sought to resurrect that complaint after the new Act came into force, the Standards Committee declined to consider the complaint anew on the basis that it had been 'disposed of' pursuant to section 351 of the Lawyers and Conveyancers Act. On review by LCRO Duncan Webb, the Standards Committee decision was upheld.

[21] Returning to the present review, I have no information about the basis of the Applicant's Claim to the District Court (concerning the M proceeding). She was invited to forward a copy of her Statement of Claim to this office along with any affidavit, but despite reminders she did not send this information. This meant that the only information available to me about that Claim emerges from the Practitioner's information to the District Court and the observations of the Judge, both of whom were addressing, or dealing with, the matters raised by the Applicant in her Claim.

[22] The Judge acknowledged that the naming of M in the proceeding could possibly be seen as distinguishing it from the previous (proceeding) but concluded that the "*vast weight of evidence*" did not support this because M's actions were also the subject of evidence in the previous proceeding before the Court. In taking this view Her Honour referred to the Applicant's Statement of Claim, in the light of which she considered that the submissions made by the Practitioner (for the respondents) were entirely correct.

[23] In this hearing the Practitioner represented the respondents, M and ACQ. The Applicant was a self-represented plaintiff. She had every opportunity to support her complaints and argue against the submissions of the Practitioner. In these circumstances it is by no means clear how it could be said that the Court was misled on material matters.

[24] The Judge was clearly of the view that the Practitioner's submissions had validity and that she preferred those to the evidence of the Applicant. That is the role of judges. It is clear from the following extract from her decision that the Judge considered both positions that were put forward.

> *"In her oral submissions to me, she* [the Applicant] *went through the entire history of this matter, from its commencement to the present date, referring to a considerable number of the large file of documents which she supplied to me that I have already mentioned. What is plainly obvious throughout the course of* [the Applicant's] *"submissions" to me was that she was really giving the evidence that she would like to give in terms of a hearing of her case, putting in all of the documents upon which Venning J has already ruled against in the High Court and made comments that they would have no bearing on the outcome of the case.*
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> *.....*
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> *"I am inexorably drawn to the conclusions that, by everything* [the Applicant] *said to me, by every document that she put before the Court and referred me to,* [the

> Applicant] *is attempting to re-litigate matters which were before Judge Mathers, could have been before Judge Mathers, might have been before Judge Mathers, or should have been before Judge Mathers. That conclusion is absolutely inescapable from everything [the Applicant] has put before me."*

[25] The heart of the complaint against the Practitioner is that the conduct-related issues before the District Court had not been previously litigated, and that the Practitioner ought not to have challenged her Claim on this ground. However, the Court found that these were matters that had been, could have been or ought to have been included in her original proceeding. The Judge referred to the basis of the Applicant's Claim which she agreed was either that which the Applicant had already received under the judgment, or had been declined under the judgment, or she was simply not entitled to.

[26] On this basis the Judge confirmed her agreement with the position advanced by the Practitioner. The Judge also accepted the Practitioner's submission that the claim was, in any event, out of time as being outside the statute of limitations, and finally concluded that the proceeding filed by the Applicant was vexatious.

[27] What I concluded from the above was that Judge perceived that some conduct-related issues were included, at least to some extent, in the earlier proceeding, but that any claims based on professional conduct could have been, and ought to have been, included in the original proceeding. It seems that the Judge had good reason upon which to form the view that much of the Applicant's dissatisfaction arose from the earlier proceedings. However, the parameters of the earlier litigation was not the responsibility of the Practitioner and I see no basis for disciplinary issues arising for the Practitioner.

[28] The Practitioner represented ACQ and its employee, M, and it was his role to represent his clients in answer to the Applicant's Claim in terms she had pleaded. He owed no duty towards the Applicant. That is not to overlook that as an officer of the Court a lawyer has a primary duty of honesty to the Court. I observe that the Practitioner was not giving *evidence* to the Court, but was making submissions on behalf of his clients in opposing the Applicant's Claim. The Practitioner was entitled to make such submissions as properly arose out of the Claim and the evidence, and disciplinary consequences do not arise for a lawyer in doing so. It is clear from the information that both the Practitioner and the Judge were addressing the Applicant's Claim which was perceived to be a re-litigation of prior issues.

[29] The fact that the Practitioner's submissions did not accord with the views taken by the Applicant is not evidence of his having misled the Court, and it is clear that the

Applicant had the opportunity of addressing the Court in answer to the Practitioner's submissions. The nature of litigation is that opposing viewpoints are presented to the Court for adjudication.

[30] The Applicant's complaint essentially challenges the Court's view of the matter. Had the Applicant considered the Court to have erred, it was open to her to have appealed that decision. I do not accept her explanation that she has lost faith in the justice system as the reason for not appealing that decision. It is not the role of this office to review decisions made by the courts.

Additional complaints

[31] A further complaint concerned the transfer of proceedings from the North Shore District Court to the Auckland District Court. The Applicant considered that the Practitioner *"was required to provide details as to why that matter was transferred …from one Court to the other."* The transfer of proceedings from one court to another are matters for the Courts to deal with. It may be assumed that the party seeking the transfer was able to satisfy the Court as to the appropriateness of it. It is difficult to see any basis for disciplinary issues arising from such an application having been made.

[32] A further complaint concerned the content of an "*agreed bundle of documents*" that had been filed in the Court in the earlier proceeding. The Applicant was represented by her own counsel in the earlier proceeding and there is no basis for holding the Practitioner responsible for disclosure of documents to the Court.

[33] There is nothing in any of the documentation that I have seen, or anything that I have heard from the Applicant herself, that leads me to any different view from that taken by the Standards Committee in declining to take any further action against the practitioner. The application is declined.

Decision

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

DATED this 24th day of November 2011

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 GN as the Applicant
Mr TS as the Respondent
The Auckland Standards Committee 4
The New Zealand Law Society