

CONCERNING

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

AND

CONCERNING

determinations of the Waikato Bay of Plenty Standards Committee 2

BETWEEN

MR IY

Applicant

AND

MR AO

Respondent

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

DECISION

Background

[1] In October 2008 Mr AO lodged a complaint with the New Zealand Law Society Complaints Service. He alleged poor service, unethical business practices, and over-charging by Mr IY and Ms KZ, an employee of the firm. He also alleged that they were inexperienced in the matters in which he had instructed them and that this contributed to the over-charging.

[2] Following an unsuccessful attempt by the parties to resolve the matter, the Complaints Service commissioned a report from a Costs Assessor. From that time on, the complaint was treated as a complaint about costs and in addition, proceeded as a complaint about Mr IY alone.

[3] The Standards Committee issued its decision on 9 March 2011.

[4] Both Mr IY and Mr AO have lodged applications for review of that decision, and this decision is in respect of both applications.

Review

[5] In its decision, the Standards Committee made a finding that “the fees charged were grossly excessive and such charging amounted to misconduct under section 106 of the Law Practitioners Act 1982 (LPA) and that the Practitioner was guilty of misconduct.”

[6] A Standards Committee cannot make a finding of misconduct. Under the Lawyers and Conveyancers Act 2006, that is a finding which can only be made by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. On that basis alone, the determination of the Standards Committee must be reversed.

[7] It would also seem that there has been a procedural error by the Standards Committee in that I can find no evidence on the Standards Committee file that a Notice of Hearing was sent to the parties. Mr IY became aware that the matter was to go before the Standards Committee following receipt of a letter dated 24 November 2010 from Mr X enclosing a report to the Committee from a Committee member which referred to a possibility of a finding of misconduct. The letter informally sought any comments in response from Mr IY as well as any comment on potential sanctions that could be imposed.

[8] Where a Standards Committee intends to inquire into a complaint, the Committee’s Procedures Manual provides that a formal Notice of Hearing be provided to the parties, seeking submissions on the issues as identified in the Notice. As indicated, I can see no evidence on the file that a Notice was sent to the parties, and Mr IY expresses some alarm in his letter of 30 November 2010 that a finding of misconduct may be made against him. He requested an adjournment so that he may seek legal advice and provide submissions.

[9] That letter was responded to by Mr X by letter dated 2 February 2011 enclosing Mr AO’s submissions and referring to a summary of the issues in the Committee member’s report.

[10] There is on file immediately before the Committee’s determination, an unsigned and undated Notice of Hearing, but none of the correspondence I have seen refers to this Notice being sent to the parties. Both Mr AO and Ms KZ provided submissions for the Committee, so it seems that neither party will have been prejudiced by this procedural defect, but the file seems to have progressed somewhat unusually in this regard.

[11] The bills rendered by the firm were rendered prior to the commencement of the Lawyers and Conveyancers Act on 1 August 2008. The complaint was lodged after the commencement of that Act. Consequently, the Standards Committee had to determine whether or not the conduct was such that disciplinary proceedings could have been commenced under the Law Practitioners Act 1982. If so, then the complaint would meet the threshold required by section 351 of the Lawyers and Conveyancers Act for acceptance by the Complaints Service.

[12] Disciplinary proceedings under the Law Practitioners Act could be commenced where a Practitioner's conduct was considered to be capable of constituting misconduct or conduct unbecoming (sections 106 and 112 of the Law Practitioners Act). Other categories referred to in those sections are not relevant.

[13] In *Client Z and Client Za v Lawyer D LCRO 4/2008*, the LCRO considered what billing practices would amount to misconduct, such as would then enable a complaint to reach the threshold required by section 351. Having reached that threshold, the complaint is then accepted by the Complaints Service established by the New Zealand Law Society.

[14] Under the Lawyers and Conveyancers Act, a Standards Committee may determine pursuant to section 152 of the Act, to either lay charges before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, or make a finding that the conduct constitutes unsatisfactory conduct. If it determines that the conduct constitutes unsatisfactory conduct, then it may proceed and make Orders which in respect of conduct which took place prior to 1 August 2008 may only be penalties that could have been imposed at the time the conduct took place.¹

[15] In the present instance, the Committee considered that the billing practices adopted by the firm amounted to misconduct. I have already noted that the Committee does not have jurisdiction to make such a finding.

Mr AO's complaints

[16] Mr AO's complaints related to 8 separate areas of what he refers to as "misconduct." These were identified under the following headings in his letter of complaint dated 10 October 2008:-

¹ Section 352 Lawyers and Conveyancers At 2006.

- that Mr IY, and in particular Ms KZ, accepted instructions in a matter for which they were not qualified;
- that Mr IY and Ms KZ deliberately misled Mr AO into thinking that they would engage a private investigator to ensure that Mr AO's ex-wife was not breaching the terms of an interim custody order;
- that they breached confidentiality by telling Mr AO's sister personal information about the case;
- that they did not listen to what Mr AO wanted;
- that Mr IY and Ms KZ failed to return phone calls or reply to emails;
- that Ms KZ in particular provided incorrect information which in one instance resulted in Mr AO being accused of making contact with his ex- wife;
- that funds were retained from the sale of the matrimonial home due to Mr AO without authority.

[17] These were expressed differently by him in his letter to the Standards Committee dated 23 March 2009:-

- “1. Mr [IY] and in particular Ms [KZ] I believe are inexperienced in family law and were unqualified to take on my case.
2. They did not listen to what I wanted.
3. They deliberately misled me on several occasions.
4. They ignored my instructions.
5. They kept my money against my wishes.
6. They breached confidentiality.
7. They often did not return phone calls or respond to my emails.
8. They gave me wrong information.
9. They did not keep me informed of progress.
10. They overcharged me.”

[18] Mr AO stated in his letter of 23 March 2009, that his “complaint [was] not primarily about costs.” The Committee has focused on only one aspect of Mr AO's complaint and has failed to address the other matters complained about by Mr AO. The Committee will therefore need to address the other aspects of the complaint when reconsidering this matter.

[19] In reconsidering this matter the Committee will need to determine whether to lay charges with the New Zealand Lawyers and Conveyancers Disciplinary Tribunal or make a finding that the conduct in question constituted conduct unbecoming, and therefore constituted unsatisfactory conduct by reason of section 12(b) of the Lawyers and Conveyancers Act 2006.

[20] I acknowledge that the decision to return the matter to the Standards Committee will further delay finalising this complaint but that is the only proper decision

that can be made in the circumstances. I also acknowledge that through an administrative error in this Office, issuing of this decision has been delayed and I express my apologies to the parties.

[21] In the circumstances, I request that the Standards Committee accord some priority to processing and finalising this complaint.

Decision

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

Pursuant to section 209 of the Lawyers and Conveyancers Act the Standards Committee is directed to reconsider this complaint generally for the reasons stated above. In the course of reconsidering the complaint generally the Committee is to have particular regard to the following matters:-

(a) The complaint was lodged against Mr IY and Ms KZ.

(b) The matters other than costs referred to in the complaint and recorded at paragraphs [16] and [17] above.

In the course of reconsidering this matter the Committee will need to reconsider its determination in respect of the costs charged by the respondent.

DATED this 18th day of June 2012

O W J Vaughan
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 IY as the Applicant
Mr AO as the Respondent
The Waikato Bay of Plenty Standards Committee 2
The New Zealand Law Society