

LCRO 75/2014

**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**

**Ms DE, Mr GH, Mr JL, Mr OP,  
Ms RS, Ms UV and Mr XY**

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 [City] Standards Committee [X] to take no further action in respect of their complaint concerning the conduct of the respondents, Ms DE, Mr GH, Mr JL, Mr OP, Ms RS, Ms UV and Mr XY. Ms DE is a legal standards lawyer. Messrs GH, JL, OP and XY, Ms RS and Ms UV are members of the [XX] Standards Committee.

**Background**

[2] Mr and Mrs AB were the lessees of a motel complex, which traded under the name of EFG Limited (EFG).

[3] They became embroiled in a dispute with the lessor (HJ), over issues relating to the maintenance of the complex. The dispute came before the Court. EFG was ultimately unsuccessful in the ensuing litigation.

[4] Throughout the dispute HJ was represented by its solicitors, LN. There were a number of Court proceedings and the substantive dispute was also the subject of arbitration.

[5] Mr and Mrs AB laid a complaint with the New Zealand Law Society Complaints Service (NZLS) in relation to four LN practitioners on 30 October 2013.

[6] The complaint about the practitioners was considered by the [XX] Standards Committee and a decision was issued on 18 December 2013.

[7] Mr and Mrs AB filed an application for review of the Committee's decision on 7 February 2014.

[8] In addition to the application for review made on 7 February 2014, Mr and Mrs AB pursued a further complaint to NZLS in relation to the members of the [XX] Standards Committee who had determined the complaint against the practitioners. That complaint also engaged the legal standards lawyer (Ms DE) who had assisted the Committee.

[9] The complaint about the members of the [XX] Standards Committee and the legal standards lawyer was considered by [City] Standards Committee [X].

[10] Mr and Mrs AB lodged an application for review of the [City] Standards Committee [X] decision on 31 March 2014.

### **The complaint and the Standards Committee decision**

[11] The members of the [XX] Standards Committee had dismissed Mr and Mrs AB's complaint against the four practitioners. Mr and Mrs AB described that decision as corrupt, dishonest, and incomplete, and claimed that it had been compiled to "whitewash" the four practitioners.

[12] Mr and Mrs AB submitted that the Committee:

- (a) Ignored the fundamental obligation of lawyers contained in s 4 of the Lawyers and Conveyancers Act 2006 (the Act), and in particular the obligation to uphold the rule of law and facilitate the administration of justice in New Zealand.
- (b) Relied on rule 6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) and effectively ignored

other provisions in those rules and was a ruling that there was no effective restraint on the four practitioners and that they were permitted to indulge in illegal activities to protect their client.

- (c) Misinterpreted legislation in favour of the practitioners complained about.
- (d) Ignored examples of where the practitioners had acted outside the law and legal precedent.
- (e) Did not require the practitioners to answer each allegation against them.
- (f) Did not fully investigate the complaint made.
- (g) Prejudged the complaint.
- (h) Denied Mr and Mrs AB procedural fairness and natural justice.

[13] Mr and Mrs AB argued that the Committee's, and Ms DE's, actions amounted to a blatant cover-up, were corrupt and required a full investigation.

[14] The [City] Standards Committee [X] delivered its decision on 12 March 2014.

[15] The Committee determined, pursuant to s 138(1)(f) and 138(2) of the Act to take no further action on the complaint about the members of the [XX] Standards Committee or in relation to the complaint about Ms DE as no further action was necessary or appropriate.

[16] In reaching that decision the Committee concluded that:

- (a) The complaints process cannot be used as a forum to reconsider matters that are subject to a decision of another Standards Committee.
- (b) Once a Standards Committee decision has been made, the only way of challenging that decision is by application to the Legal Complaints Review Officer (LCRO).
- (c) Mr and Mrs AB have a remedy in relation to the [XX] Standards Committee decision under part 7 of the Act and the process identified in that part of the Act cannot be ignored either by the Standards Committee or by Mr and Mrs AB.

- (d) Ms DE was not a member of the [XX] Standards Committee and had signed the decision on behalf of the Committee and not in her own name.
- (e) Although the complaints process may possibly be used to complain about Ms DE's role, there was no justification for the complaint about Ms DE as there had not been a breach of any duty which she owed to Mr and Mrs AB.

### **Application for review**

[17] Mr and Mrs AB filed an application to review the [City] Standards Committee [X] decision on 31 March 2014.

[18] The outcome sought is a rigorous investigation into their initial complaint. On the assumption that the application is upheld, Mr and Mrs AB seek orders:

- (a) Rescinding the [City] Standards Committee [X] decision.
- (b) Requiring NZLS to reimburse Mr and Mrs AB's costs.
- (c) Requiring an investigation into the Complaints Service.
- (d) Any other matters that the LCRO sees fit and appropriate.

[19] Mr and Mrs AB submit that [City] Standards Committee [X] when considering their complaint against the members of the [XX] Standards Committee:

- (a) Twisted their complaint about the allegedly corrupt actions of the [XX] Standards Committee and considered it as a request to reconsider a decision by another Committee so that the [City] Standards Committee [X] could decide that they had no authority to consider the complaint.
- (b) Conspired to "rail road" the complaint so that the decision of the [XX] Standards Committee remained intact.
- (c) Have assisted together with the [XX] Standards Committee LN in the concealment of illegal actions and perversions of justice.
- (d) Was incorrect to find that they did not have jurisdiction to consider the conduct of the lay Committee members as s 129(g) of the Act does not distinguish between a member who is a lawyer or a lay person.

[20] Complaint against the outcome of the first Standards Committee inquiry, has evolved into separate complaint against the members of the Committee who considered the first complaint (the decision makers complaint) and, in following a determination of the decision makers complaint, into allegation that members of a second Standards Committee are guilty of corrupt practice.

[21] Mr and Mrs AB submitted that as their complaint was that the [XX] Standards Committee decision was corrupt, the Complaints Service should have referred the complaint to the LCRO and not to the [City] Standards Committee.

[22] Mr and Mrs AB argued that a practitioner employed by the Complaints Service or appointed to a Standards Committee is obliged to comply with the fundamental obligations prescribed in s 4 of the Act. In the circumstances here:

- (a) [City] Standards Committee [X] did not uphold the rule of law when reaching its decision; and
- (b) The NZLS did not uphold the rule of law because it failed to take steps to correct that decision.

[23] In providing a summary of their review grounds, Mr and Mrs AB make general assertion that the Committee corruptly misinterpreted legislation, did not investigate the substantial complaint, denied Mr and Mrs AB procedural fairness and natural justice and perverted the course of natural justice.

[24] The members of the [XX] Standards Committee and Ms DE were invited to comment on Mr and Mrs AB's review application. The Committee's response was provided by Mr BD a barrister instructed to act for the Committee members and Ms DE.

[25] Mr BD observed that the application for review contained criticisms of [City] Standards Committee [X]. He noted that he was not responding to Mr and Mrs AB's criticisms of the members of the [City] Standards Committee, but acknowledged that there was some overlap in his response on behalf of the [XX] Standards Committee members and Ms DE. He submitted:

- (a) The complaint underlying the review application is in substance a complaint about the decision of the [XX] Standards Committee. Mr and Mrs AB have framed that application in strident terms but have provided no evidence to support the serious allegations of illegality, corruption, collusion and perversion of justice.

- (b) The application is an abuse of process because it attempts to re-litigate a matter namely the original complaint, which is already the subject of a final decision by the [XX] Standards Committee, which itself is a competent authority.
- (c) Taking into account the serious nature of the allegations and the absence of any evidence to support those allegations, the application is an attempt to harass and oppress the respondents, so bringing the administration of justice and the LCRO procedures into disrepute.
- (d) There is nothing to show that the [XX] Standards Committee decision was anything other than the result of an inquiry conducted in good faith and that the decision itself was made in good faith after that Committee properly addressed issues of fact and law.
- (e) Disregarding the strident language used by Mr and Mrs AB, their application does not identify any conduct issues which could have been the subject of an adverse finding by the [XX] Standards Committee or which can be the subject of this review. This is because there was no such conduct.
- (f) The LCRO must guard against an unsuccessful party, who is disgruntled with the outcome of proceedings, using the disciplinary process available under the Act in an attempt to obtain redress.
- (g) There is no principled reason why the statutory immunity to Standards Committee members and persons assisting them conferred by ss 185 and 272 of the Act should not apply to the complaint and review applications against Standards Committee members and personnel in cases like this.
- (h) There is no evidence which remotely suggests that the Committee's conduct here amounted to or constituted bad faith.

[26] Mr BD argued that the application should be dismissed or disposed of as a matter of urgency, due to the potential adverse effect on the members of the Committee and persons assisting them and generally to uphold the standing and integrity of LCRO processes.

[27] Mr and Mrs AB were given opportunity to respond to Mr BD. In doing so, they:<sup>1</sup>

- (a) Repeated their criticism of the four practitioners who were the subject of their October 2013 complaint as well as their submissions made in support of their application to review the [XX] Standards Committee decision to dismiss that complaint.
- (b) Emphasised that their current application is directed at the [City] Standards Committee decision to dismiss their complaint regarding the conduct of the members of the [XX] Standards Committee.
- (c) Reiterate allegations of corruption, dishonesty and illegality against the four LN practitioners, the members of the two Committees and introduce Mr BD as a new subject of complaint.

[28] Mr BD was invited to reply to Mr and Mrs AB's further submissions. In correspondence dated 10 November 2014, Mr BD acknowledged that a reference at paragraph [2.2](b) of his 19 May 2014 letter was incorrect and that the excerpt relied on should have correctly referenced paragraph [13] of the [City] Standards Committee [X] decision. He reiterated earlier submission that the [City] Standards Committee [X] decision was correctly decided.

### **Review Hearing**

[29] An Applicant-only hearing was held on 23 and 24 June 2016.

### **The role of the LCRO on review**

[30] 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.<sup>2</sup>

### **Analysis**

#### *Preliminary issues*

[31] Mr and Mrs AB raised several new issues on review, being complaint that:

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<sup>1</sup> Letter AB to LCRO (21 October 2014).

<sup>2</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [41].

- (a) Ms DE failed in her duty of care to Mr and Mrs AB by posting the Committee's decision rather than serving it by email. Ms DE's letter requesting that Mr and Mrs AB "keep correspondence succinct and focussed on the lawyer's conduct or the particular service provided that you are concerned about ..." was a breach of duty of care and a perversion of justice.
- (b) Both the members of the Committee and Ms DE had not followed legal processes stipulated in the Act and this was a breach of Rule 2.3.
- (c) The practitioners' and Ms DE's actions constituted misconduct as prescribed by s 7 of the Act.

[32] The LCRO cannot consider new complaints raised at the review stage. The jurisdiction of the LCRO is confined to addressing the complaints considered by the Committee.

*Complaints about Standards Committee members exercising their statutory role as decision makers*

[33] Mr and Mrs AB lay challenge not only to the decision of the Committee, but also to the decision makers who delivered the decision.

[34] Their complaint against the individual practitioners and the legal standards lawyer is that their actions, when conducting their inquiry, were corrupt and a blatant cover up.

[35] This review application is one of a bundle of 11 applications being heard together.

[36] The genesis for all of the applications filed to date is the litigation referred to in [2] – [4] above.

[37] Issue immediately arises as to whether it is an appropriate use of the complaints and review process to challenge a Committee's decision in respect to a substantive conduct complaint (allowed for by the process of review) but then to mount further challenge by launching of separate complaint against the decision makers.



[38] It is a fundamental objective of the complaints process, established under the Act, that complaints are resolved expeditiously.<sup>3</sup>

[39] It presents as so obvious as to approach the trite, that achieving the goal of expeditious resolution would be immeasurably compromised if the resolution of complaints was impeded by a party prolonging the process through continued lodging of complaint against the Standards Committee members who had delivered decisions. There is potential for that approach to evolve into a continuous and circuitous raft of complaints.

[40] I intend to address the issues raised by this review in reasonably comprehensive fashion, as a number of the issues posed by the review have relevance to other review applications.

[41] The complaint concerned the individual actions of the practitioners whilst sitting as Standards Committee members.

[42] Standards Committee members are appointed by the New Zealand Law Society. Advice of a lawyer's appointment to a Standards Committee must be notified to the Minister responsible for the administration of the Act.

[43] Committee members fulfil a statutory role, one of those roles being to inquire into and investigate complaints made under s 132 of the Act.

[44] Standards Committees are empowered to hear and determine complaints against lawyers. They are made up of a combination of lawyer and non-lawyer members. A Standards Committee is a decision-making body. Lawyer members who sit on Standards Committees are not providing legal advice. Their role is to conduct inquiries and deliver determinations.

[45] Standards Committees and the LCRO are creatures of statute. Their powers are provided by the Act.

[46] Section 137 of the Act provides that on receiving a complaint a Standards Committee may:

- (a) inquire into the complaint; or
- (b) give a direction under section 143; or

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<sup>3</sup> Lawyers and Conveyancers Act 2006, s 120(2)(b).

- (c) decide, in accordance with section 138, to take no action on the complaint.

[47] If a Standards Committee decides to inquire into a complaint and conducts a hearing, it is able to make the following determinations:<sup>4</sup>

- (a) That the complaint or matter be considered by the Disciplinary Tribunal.
- (b) That there has been unsatisfactory conduct on the part of the practitioner.
- (c) To take no further action.

[48] Should a determination be made that conduct warrants a disciplinary sanction there are two findings that can be made, unsatisfactory conduct pursuant to s 12 of the Act and misconduct pursuant to s 7. A misconduct finding can only be made by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

[49] Unsatisfactory conduct is defined in s 12 of the Act. Sections 12(a), (b) and (d) refer to conduct which occurs at a time when a lawyer is providing regulated services.

[50] Unsatisfactory conduct may nevertheless arise when a lawyer who is not providing regulated services at the time contravenes the Act, or any regulations or practice rules made under the Act.<sup>5</sup>

[51] There are limited circumstances in which a lawyer who is not providing regulated services may still be subject to a misconduct finding under the Act. This category of behaviour is defined in s 7 of the Act. Where relevant that section provides:

- 7 Misconduct defined in relation to lawyer and incorporated law firm
  - (1) In this Act, **misconduct**, in relation to a lawyer or an incorporated law firm,—
    - ...
    - (b) Includes—
      - ...
      - (ii) conduct of the lawyer or incorporated law firm which is unconnected with the provision of regulated services by the lawyer or incorporated law firm but which would justify a finding that the lawyer or incorporated law firm is not a fit

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<sup>4</sup> Section 152.

<sup>5</sup> Section 12(c).

and proper person or is otherwise unsuited to engage in practice as a lawyer or an incorporated law firm.

[52] Both sections of the Act make reference to conduct that occurs at a time a practitioner is providing “regulated services”.

[53] “Regulated services” are comprehensively defined in the Act and refers to “legal services”.<sup>6</sup> “Legal services” is defined as services that a person provides by carrying out legal work for another person. Legal work includes work in connection with proceedings or anticipated proceedings, giving legal advice in other matters, preparing legal documents and things incidental to the above.<sup>7</sup> A common theme is the existence of a client, at its core it relates to the giving of legal advice.

[54] Lawyer members of Standards Committees are not providing regulated services when sitting as Committee members.

[55] The Act prescribes who may bring a complaint, and who a complaint may be brought against. For the most part, for a lawyer to fall within the disciplinary reach of the Act, that lawyer must have been providing regulated services.

[56] The above is the statutory framework around which a complaint against a lawyer member of a Standards Committee, acting in that capacity, must be examined. The question in each case will be: does the alleged conduct infringe either s 12(c) or s 7(1)(b)(ii) of the Act?

[57] It is readily apparent that the complaints made by Mr and Mrs AB, if established, would potentially attract either an unsatisfactory conduct finding, or most likely considering the nature of the complaints, the possibility of charges being framed for prosecution before the Lawyers and Conveyancers Disciplinary Tribunal.

[58] The complaints made are couched in the language of corruption. Committee members are accused of deliberately perverting the course of justice. Committee members are accused of deliberately concealing illegal actions. These are very serious allegations. This conduct, if proven would constitute a clear breach of a practitioner’s obligation to uphold the rule of law and to facilitate the administration of justice, and a flagrant breach of a practitioner’s obligation to not obstruct, prevent, pervert or defeat the course of justice.<sup>8</sup> It would also be conduct that would merit finding that the practitioner was not a fit and proper person or was otherwise unsuited to engage in the practice of law.

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<sup>6</sup> Section 6.

<sup>7</sup> Section 6.

<sup>8</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, rr 2 and 2.3.

*Examination of the conduct*

[59] I have given careful consideration to the extensive written submissions, and the submissions advanced at the review hearing.

[60] It is impossible, in considering those submissions, to not be drawn into the wider thread of complaint that permeates the review application.

[61] The submissions filed in support of the review traverse a wide raft of complaints the ABs have with the Complaints Service concerning the management of a number of their complaints.

[62] Those submissions can be summarised as complaint that the New Zealand Law Society and members of Standards Committees have conspired to pervert the course of justice, specifically by assisting the practitioners who were the subject of their first complaint to conceal unlawful actions.

[63] In as much as the submissions focus on the Committee members that are the subject of this review, the complaint is that the Committee decision stands as clear evidence that the Committee members had approached the task of determining Mr and Mrs AB's complaint with a corrupt and deliberate intention to deliver a decision adverse to the ABs. Explanation as to why a group of statutory decision makers would so manifestly compromise their positions is advanced as being that the decision makers were endeavouring to provide protection to the practitioners under investigation.

[64] There is no credible evidence advanced to support such serious allegation.

[65] Argument that the Committee members were corrupt in the manner they dealt with their complaint reduces on careful examination to no more than an expression of dissatisfaction with the Committee's decision.

[66] I have given careful attention to all of the materials that have been provided, a significant component of which comprises information advanced to support Mr and Mrs AB's argument that the lessor was at fault in their dispute. It is not the role of this review, to provide a forum for Mr and Mrs AB to relitigate their initial complaint.

[67] Disagreement with a decision cannot, and should not, be parlayed into accusation that the decision makers are corrupt, without evidence to support such serious allegation.

[68] There is no evidence that the decision of the [City] Standards Committee [X] was made after an insufficient inquiry or that the decision was made in bad faith.

[69] Allegations of corrupt actions and blatant cover-ups are allegations which constitute a significant assault on a practitioner's reputation. They must be supported by credible evidence. Such allegations should not be bandied around indiscriminately.

[70] I have carefully considered all the submissions provided. There is no relevant evidence advanced to support the serious allegations that have been made.

*Re-litigating Court proceedings*

[71] Previous decisions of this Office have made it clear that it is "improper to use the complaints process as a means to undermine or attack a decision of another Court or Tribunal".<sup>9</sup>

[72] The proper route for challenge of a decision of another Tribunal is appeal. This is further recognised in s 138(1)(f) of the Act which states that a Standards Committee may resolve to take no further action where there is an adequate right of appeal that the complainant could exercise. Where proceedings are brought for a collateral purpose this will weigh in favour of them being found to be vexatious.<sup>10</sup>

[73] It is clear that Mr and Mrs AB believe they can relitigate their dispute with HJ through the complaints process. They arrive at this position by argument that the lawyers representing HJ misrepresented to the Court that Mr and Mrs AB's company was indebted, when that was not the case.

[74] Mr and Mrs AB were represented in the litigation. Whilst they are critical of the performance of their own legal representatives (whose task it could have been expected would have been to advance their position and to challenge any erroneous information put to the Court by the HJ lawyers), they believe that it was the actions of the HJ lawyers which were responsible for them losing a significant amount of the assets they had worked hard to achieve.

[75] Tellingly, Mr and Mrs AB commenced their submissions by advancing argument that the [XX] Standards Committee decision "still leaves the situation that our assets were stolen". They say that they "wouldn't have had to do all this" (pursue numerous complaints) if the [XX] Standards Committee had got it right at the start.

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<sup>9</sup> Complainant P v Lawyer H LCRO 02/09 at [11].

<sup>10</sup> *L v W* [2003] NZFLR 961 at 974.

[76] By “got it right”, Mr and Mrs AB mean that the [XX] Standards Committee should have properly arrived at conclusion that practitioners representing a party opposing them in a dispute, had misled the Court.

[77] In advancing this argument, Mr and Mrs AB are asking the Complaints Service to determine matters that are more properly addressed by the Court.

[78] Mr and Mrs AB had been engaged in a dispute with HJ over many years. The dispute engaged a number of issues including argument about which of the parties was responsible for the maintenance and upkeep of the motel, and argument as to whether either party had breached their obligations under the lease. Rent was withheld. The lessor re-entered the premises. Statutory demands were issued and proceedings arising from the issuing of those demands came before the High Court on two occasions, and once before the Court of Appeal.

[79] Mr and Mrs AB were unsuccessful in challenging the statutory demands. Mr and Mrs AB’s company was placed into liquidation. That was not the end of the litigation. Mr and Mrs AB made further application to the High Court in which they sought leave to bring claims against HJ for:

- (a) Breaching the lease agreement.
- (b) Illegally terminating the lease.
- (c) Retaining EFG’s business assets for a price lower than their true value;  
and
- (d) Misleading the Court about the EFG’s debt to HJ.

[80] These are the precise issues (particularly (c) and (d)) that Mr and Mrs AB ask the Standards Committees to determine, by argument that lawyers representing HJ presented misleading information to the Court, thus triggering, in their view, the legitimate instigation of a conduct complaint.

[81] In a decision delivered on 28 April 2015, the Court declined the AB’s application to bring a derivative action against HJ. In declining that application the Judge noted that:<sup>11</sup>

In my assessment, the fact that the Official Assignee has determined that there is no merit in the claim which Mr and Mrs AB wish to bring against HJ is [Redacted] first application.

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<sup>11</sup> *EFG’s (in liq) v HJ –High Court decision.*

[82] Mr and Mrs AB sought an order from the Court that the liquidator's final report be cancelled. In declining that order, the Court noted that:<sup>12</sup>

- (a) it had been established that HJ was entitled to cancel the lease and that EFG's is in debt to HJ;
- (b) the other claims against HJ have not been quantified;

[83] In concluding his judgment, [the judge] made the following observation:<sup>13</sup>

This proceeding has had a [Redacted]. Whilst I appreciate Mr and Mrs AB genuinely believe they have been the [Redacted], their options for seeking redress have now been exhausted.

In the unusual circumstances of this case I will not order any costs in the hope that Mr and Mrs AB accept this matter is now at an end.

[84] Despite indication that the Court considered that Mr and Mrs AB had exhausted their avenues for redress, Mr and Mrs AB continue the battle through the complaints process. What they refuse to accept is that they are endeavouring to find remedy in the wrong forum.

[85] It is not the role of a Standards Committee, or the Office of the LCRO, to determine civil disputes. Mr and Mrs AB are insistent that argument that their company was not indebted to HJ be determined by the complaints process. In order to achieve that outcome, they provide extensive and detailed submissions which traverse the matters put before the High Court. They provide expert reports to support their view as to the state of the motel premises. They provide analysis of the financial records of their business in order to substantiate their pivotal argument that their business was not indebted to HJ. Their position is, irrespective of the findings of the Courts and the position of the company liquidator, that Standards Committees and the Office of the LCRO should be emphatically persuaded that their company was not in debt, and once so persuaded, move to conclusion that the lawyers acting for HJ were corrupt, and that professional censure and compensation orders should follow. Further, a refusal by the [XX] Standards Committee to make findings that the Courts had failed to do, can only, in Mr and Mrs AB's view, be indicative of systemic corruption.

[86] Whilst Mr and Mrs AB would argue that it is the conduct of the practitioners which is their focus, and that they are entitled (as they clearly are) to pursue complaint against lawyers, the disciplinary findings that they seek, inevitably can only be arrived

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<sup>12</sup> At [26].

<sup>13</sup> At [31] – [32].

at, if a Standards Committee was to conclude at first step, that Mr and Mrs AB's allegations that the Court was misled, and argument that their company was not indebted, were established.

[87] Neither a Standards Committee nor the Office of the LCRO are able to determine those issues. Mr and Mrs AB's attempt to have what the Court has described as their unfortunate and protracted proceedings considered further by the Court as recently as April 2015, gives clear indication in my view that Mr and Mrs AB were aware as to the appropriate forum for determining argument as to whether their company was indebted when placed into liquidation, and argument as to whether the Court had been misled in earlier proceedings.

[88] Mr and Mrs AB contend that the Committee failed to make proper inquiry into their complaint. I do not consider that to be the case. Argument that the Committee did not address the issues it considered the Committee should address, is not evidence of a Committee failing in its duty. The Committee's conclusion that the issues raised by Mr and Mrs AB were more appropriately dealt with by way of review to the LCRO was an appropriate response, and not indicative of a Committee that had failed in its duty to make proper inquiry. On reaching that view, as it was entitled to, the Committee had no need to go further.

#### *The Flavour of the Complaints*

[89] Mr and Mrs AB adopt a consistently intemperate approach in their criticisms of the Committee Members. They couch their allegations in the language of corruption. They make bold allegations of improper conduct, without reliable evidence to support the allegations made. They make allegation of an all embracing conspiracy that extends to parties who work within the Complaints Service.

[90] A refusal of a Committee to uphold complaint that members of another Committee have behaved in a corrupt manner, translates into accusation that the tentacles of corruption have embraced a further Committee. Their approach is unforgiving. There is no room for argument that the Committee, even if it had delivered a decision that Mr and Mrs AB disagreed with, did so in good faith. There is no room for argument that a Committee erred or was mistaken. The argument immediately escalates to allegation of a collective and corrupt collusion.



*Lay members of the Committee-Legal Standards Officer- Scope of Review Power*

[91] On review Mr and Mrs AB argued that the Committee was wrong to conclude that they did not have jurisdiction to consider the actions of the lay members of the Committee.

[92] Section 132(1)(a)(i) of the Act provides that “Any person may complain to the appropriate complaints service about the conduct of a practitioner or former practitioner ...”.

[93] I agree with the Standards Committee that they did not have jurisdiction to consider the actions of the lay members of the [XX] Standards Committee as part of the complaints process. The Act does not provide them with that power.

[94] Nor do I consider that any disciplinary issues arise as a consequence of Ms DE signing the decision on behalf of the Committee.

[95] Section 158 of the Act directs that a Standards Committee must provide a copy of its decision to specified parties. Whilst it is common practice for decisions to be signed off by Committee convenors, and that is in my view best practice, there is no specific prohibition against a decision being signed off by the legal standards officer who has been assisting the Committee.

[96] Mr and Mrs AB also make criticism of the manner in which their complaint was managed by the Complaints Service.

[97] The functions of the LCRO are to exercise the powers of review conferred on that Office by the Act.

[98] Those persons able to exercise a right to review are detailed in ss 194 to 197 of the Act.

[99] A right to review exists in respect of the following:

- (a) A determination under s 152;
- (b) A requirement under ss 141 or 147;
- (c) An order made under s 156; and
- (d) A direction given pursuant to ss 142 or 143.

[100] The parameters of the LCRO's power to review were considered in the decision of *Lydd v Maryport*.<sup>14</sup> In that decision it was noted that "It is clear that not every step taken by a Standards Committee is reviewable. Rather the action must fall within one of the categories set out in s 194(1)."

[101] For the most part, applications filed with the LCRO seek to review Standards Committee determinations, i.e. final and decided outcomes of a complaint.

[102] A number of LCRO decisions have reinforced that "determination", as applied in s 194(2) of the Act, is intended to refer to determinations which constitute a final decision.

[103] In *Lydd*, the LCRO gave careful consideration to the construction to be placed on the term determination and noted that:<sup>15</sup>

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. Nowhere is it used in a way that might suggest it refers to some preliminary or quasi-interlocutory decision of the Committee. Moreover, in relation to the power of appointment exercised by the Committee in this case there is no use of the word "determination" at all ...

[104] Not every action or decision of a Standards Committee is subject to review by the LCRO. Only those decisions which constitute a determination, requirement, order or direction are subject to review.

[105] In the course of progressing its inquiry into a complaint, the Complaints Service and Standards Committees will inevitably be called on to make a number of decisions which impact on how the inquiry will proceed.

[106] Decisions will be made on a number of matters which are essentially of an administrative nature.

[107] It is not the role of the LCRO through the process of review to provide overview of every administrative decision taken by a Committee.

[108] Whilst the Office of the LCRO plays an important role in monitoring the work of Committees (particularly their decisions) it would be calamitous to the process of expeditious resolution of complaints if parties were allowed unfettered opportunity to challenge by way of review, every aspect of a Committee's decision making process.

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<sup>14</sup> *Lydd v Maryport* LCRO 164/2009 at [10].

<sup>15</sup> At [18].

[109] The requirement to limit the LCRO's power of review to the circumstances set out in s 194(1) is a necessary and important constraint, and ensures that Committees are free to manage the process of inquiry, without hindrance of oppressive intervention cloaked in the disguise of review.

[110] I see no basis to disturb the Committee's decision.

### **Conclusion**

[111] The application for review is dismissed.

### **Decision**

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

**DATED** this 11<sup>th</sup> day of July 2016

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**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  
Ms DE, Mr GH, Mr JL, Mr OP, Ms RS, Ms UV and Mr XY as the Respondents  
[City] Standards Committee [X]  
The New Zealand Law Society