

**LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2021] NZLCRO 125

Ref: LCRO 9/2021

CONCERNING

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

AND

CONCERNING

a determination of [Area] Standards Committee [X]

BETWEEN

VG

Applicant

AND

AJ, BJ, CJ, KN and OP

Respondents

**DIRECTION TO STANDARDS COMMITTEE
PURSUANT TO s 209 OF THE LAWYERS AND CONVEYANCERS ACT 2006**

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

[1] In a decision dated 17 December 2020, [Area] Standards Committee [X] made a finding of unsatisfactory conduct against Mr VG pursuant to ss 12(a) and (c) of the Lawyers and Conveyancers Act 2006 (the Act). The Committee ordered Mr VG to reduce his fee from \$133,700 to \$5,000.

[2] Mr VG applied for a review of that decision and a hearing was held in Auckland on 24 June 2021.

[3] Pursuant to s 209 of the Act, I direct the Committee to reconsider its determination.

[4] The primary reason for this direction is if the Committee remains (subject to the further directions below) of the view that Mr VG should reduce his fee to that extent, then the Committee is directed to consider whether or not this is a matter that should be referred to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. In this regard, I draw the Committee's attention to the following:

- (a) The reduction ordered by the Committee amounts to a reduction by some 96 per cent of the fee charged by Mr VG.
- (b) Findings of misconduct for overcharging have been made against lawyers in circumstances where the percentage of the reduced fee ordered by the Tribunal, compared to the fee charged, is much less.
- (c) By way of example, I refer to *Auckland Standards Committee No. 1 v Hart*.¹ In this case, the Tribunal accepted that a reasonable fee would be in the region of \$15,000 – \$16,000 as against the fee of \$35,000 charged by Mr Hart – i.e. 44 per cent. The Tribunal's decision was that this amounted to gross overcharging and made a finding that the charge of professional misconduct was established.
- (d) A consideration of the *Hart* decision will also provide an indication of the considerable evidence and factors taken into account by the Tribunal to reach its decision. In the present instance, the Committee's determination appears to be based on the view of counsel for the complainants and the reduction ordered is considerably more than that recommended by the costs assessor appointed by the Committee, Mr YB.

[5] Prior to making the decision as directed in [4] above, I direct the Committee to reconsider its determination afresh, taking note of the following:

- (a) Mr YB and the Committee are extremely critical of the nature of the proceedings pursued by Mr VG and comment on a number of occasions that, even if opposition to the grant of Probate of the will had been successful, ownership of the property would still not have been rectified and/or the prior unsigned will would need to be validated. The Committee needs to consider the consequences of an intestacy, bringing into play the provisions of the Administration Act 1969.

¹ [2012] NZLCDT 20.

- (b) Notwithstanding the above, the Tribunal has previously commented:²

We wish to make it clear that it is not this Tribunal's role to closely analyse and second guess every move of counsel during each piece of litigation. We consider our role is to take an overview, and to look at patterns of behaviour. However we do have expert evidence from both Mr Keyte and Mr Templeton, of some glaringly poor decisions and mismanagement which simply cannot be ignored by the Tribunal.

The Committee will need to objectively determine whether the views of Mr YB and the Committee amount to 'expert' evidence, and also take into account that this 'evidence' has not been subject to critique or cross-examination. The Committee will also need to consider if the somewhat trenchant criticisms by Mr YB amount to an objective assessment of the advice provided by Mr VG.

- (c) Has due note been taken of the comment by Jagose J at [44] of his judgment that there were 'reasonable grounds to oppose' validation of the will?
- (d) At the review hearing, Mr BM pointed to a number of occasions where Mr VG had provided advice as to the likelihood of success of the course adopted, and alternatives available. That does not mesh with the Committee's view that Mr VG had failed to discuss alternatives and provide a cost/benefit analysis. The Committee is directed to provide Mr BM with the option of providing the detail of the advice provided by Mr VG referred to at the review hearing. This is then to be referred to the complainants for comment.
- (e) Much of the reasoning advanced by the Committee for its decision proceeds on speculation as to what the complainants would have done had different advice been provided. Speculation does not provide a sound basis for an adverse determination.

[6] In general terms, the Committee is directed to consider its determination afresh. The reasons for this are provided above. I draw the Committee's attention to the fact that Mr VG has accepted that there can be no separate charge for the time expended on the file by his PA.

[7] Before embarking on a reconsideration of its determination, I direct that the Committee (again) promote resolution of this matter by way of negotiation, conciliation or mediation as required by s 130(b) of the Act. In doing so, I acknowledge that this

² *Auckland Standards Committee No. 3 v Castles* [2013] NZLCDT 53 at [177].

approach has been rejected by the complainants previously and also at the review hearing. The complainants are however to be provided a further opportunity to reconsider.

[8] Following a reconsideration of the determination as directed, I request, pursuant to s 209(1)(c) of the Act, that the Committee provide a follow up report after compliance with this direction.

DATED this 9TH day of AUGUST 2021

O 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 VG as the Applicant
Mr BM QC as Representative for the Applicant
Messrs AJ, CJ and BJ, Ms KN and Ms OP as the Respondents
Messrs JR and FD as Representatives for the Respondents
[Area] Standards Committee [X]
New Zealand Law Society