

CONCERNING

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

AND

CONCERNING

a determination of a Wellington based Standards Committee

BETWEEN

MR EA

Applicant

AND

MS FC

Complainant

**The names and identifying details of the parties in this decision have been changed.
Portions of this decision have also been redacted.**

DECISION

Introduction

[1] Mr EA applied for a review of a Standards Committee decision declining to uphold his complaint against law practitioner, Ms FC.

[2] Mr EA had complained about Ms FC having made a complaint against Mr DP, who was at the time employed in Mr EA's chambers, DQQ. Mr EA's complaint was the result of Ms FC's complaint against DP.

Relevant Background

[3] Mr EA's complaint against Ms FC is inextricably linked to Ms FC's complaint against Mr DP. [Portions redacted.]

[4] Ms FC's concern about Mr DP had its genesis in a conveyancing transaction. She acted for a vendor in respect of a sale and purchase agreement that had ended; Mr DP was instructed by the purchaser to recover the deposit held by Ms FC.

[5] Ms FC objected to emails that Mr DP had sent to her. One threatened a complaint against her if she failed to refund the deposit, and in another he informed Ms FC:¹

I will now take instructions from my client regarding whether to add you as a party to this proceeding and I would advise that you inform your insurer regarding the likely upcoming proceeding.

Ms FC undertook some enquiry into Mr DP and discovered he was a junior barrister currently practising from DQQ. Her research led her to a [X] website, ZZU where she noted that Mr DP was advertising legal services.

[6] Ms FC prepared a “Confidential Report” to the New Zealand Law Society, pursuant to Rules 2.8, 2.9 and 2.11 of the Rules of Conduct and Client Care (the Rules),² alleging lack of professionalism on the part of Mr DP. Her Report referred to his “unauthorised practice of law”, explaining that she had found Mr DP to be currently advertising himself on a local [X] website (she included the web address of ZZU), wherein “...he has his own discussion forum. He is directly accepting instructions from private clients and giving the information [sic] misleading the public”.³ Ms FC enclosed four web pages from that site that she had translated into English from [X]. The Report also attached copies of emails that Mr DP had sent her.

[7] The Auckland Standards Committee dealt with the Report as if it was a complaint under s 132 of the Lawyers and Conveyancers Act 2006 (the Act) and accordingly notified Mr DP.

[8] On behalf of Mr DP, Mr EA forwarded lengthy submissions in a 10 September 2010 letter. In the concluding two pages Mr EA set out complaints of his own against Ms FC. Mr EA’s complaints were dealt with by a wellington based Standard Committee (referred to as W.SC), the whole of the September letter was sent to that Committee.

[9] In the meantime the Auckland Committee dismissed Ms FC’s complaint under s 152(2)(c) of the Act on the basis that Mr DP’s conduct did not raise professional concerns. In relation to the ZZU website issue the Committee had “...noted its reliance on her translations of the postings and that any further investigation of the matter would require a third party supplied translation”.⁴

[10] It is relevant to this present review to note that Ms FC sought a review of that part of the Committee’s decision concerning the ZZU issue. I dealt with that review application, and I noted that the Standards Committee had undertaken no enquiry into the matter,

¹ Email from Mr DP to Ms FC (8 June 2010).

² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

³ Report from Ms FC to NZLS (8 June 2010).

⁴ Standards Committee decision (19 September 2010).

ostensibly because Ms FC had not provided an independent translation. Ms FC said she had indeed sent in an independent translation, and as a result I directed the Standards Committee to reconsider the complaint with reference to that document.

Mr EA's Complaints - W.SC Decision

[11] As noted above, Mr EA's complaint against Ms FC is to be found at the tail end of his 10 September 2010 submissions to the Auckland Standards Committee when responding to Ms FC's complaint against Mr DP.

[12] Mr EA's own complaint against Ms FC arises from her complaint against Mr DP. Mr EA wrote, "[t]he particulars of the complaint are contained in the preceding 10 pages of this letter."⁵ He clarified his complaint:⁶

I now write, in my personal capacity, to make a new complaint against Ms FC for the following breaches:

1. Making a frivolous (and indeed at time scandalous) complaint against Mr DP with improper ulterior motives to vex and harass him in an effort to prevent lawful proceedings from being instigated against her and/or to collaterally attack her business competitor [DQQ] of which I am the head...
2. Secondly, I make a complaint against Ms FC for failing to provide a true, accurate and independent transliteration in support of her complaint, especially in circumstances where I am advised by my [X] staff that she fraudulently denotes that "[Mr DP]" had said something when the [X] text contains no such name and that could thus only have been intended to misled the society in thinking Mr DP had written something where in fact there is no evidence that he had.

(A third complaint alleged that Ms FC had wrongly caused a client of DQQ to lose \$20,000. Mr EA advised that might need to await resolution of the substantive District Court proceeding. As this was not progressed for the review I have not considered it further.)

[13] The W.SC received the whole of Mr EA's 10 September 2010 letter (which for the most part contained his submissions in answer to Ms FC's complaint against Mr DP). The W.SC appears not to have sought any details about Ms FC's complaint, and thus remained unaware that Ms FC had made a Confidential Report to the NZLS pursuant to the above Rules. The file shows that the W.SC also received a copy of the Auckland Standards Committee decision (to take no further action against Mr DP) before issuing its own decision in respect of Mr EA's complaints against Ms FC.

⁵ Complaint letter from Mr EA to NZLS (10 September 2010).

⁶ Above n6.

[14] The W.SC dismissed the substantive complaints on the grounds that Mr EA did not have sufficient personal interest in the subject matter of the complaints (s 138(1)(e) of the Act), and because no further action appeared necessary or appropriate (s 138(2) of the Act), noting that Ms FC's complaint was about Mr DP, not Mr EA, and accepting Ms FC's submission that the two translations of the webpage disclosed the same set of facts. (A third reason noted that proceedings against Ms FC had been discontinued.) This outcome is the subject of the present review.

Review Application - Procedure

[15] Mr EA applied to this Office for a review of the W.SC decision. He provided no reasons despite a request to do so, advising that he would prefer to make oral submissions on the day, foreshadowing that they would reflect his submissions to the Committee, that "[i]n a nutshell" she had "...acted inappropriately towards [Mr DP]" and that he was "...dumbfounded how [his] complaint could have been dismissed over lack of standing".⁷ Mr EA declined to consent to the review being conducted on the papers, and he was informed an Applicant-only hearing would be scheduled to ascertain what, if any, further steps would be required.

[16] In the course of these email exchanges he sought my recusal on the grounds of having committed "judicial fraud",⁸ objected to an Applicant-only hearing which he saw as "shielding [Ms FC] from questioning", describing it as "a clear abuse" of the processes of this Office, and seeking an urgent interlocutory hearing to make a recusal application on the grounds of bias.⁹ He was informed that no such procedure existed, but was invited to forward written submissions. In the event he made a formal application, with submissions, at the review hearing.

Review Hearing

[17] An Applicant-only review hearing took place on 26 June 2012. At the outset Mr EA sought my recusal largely on the grounds of dishonesty, producing at the hearing a large volume of information to support that application, and made extensive oral submissions to support his allegations of intentional misfeasance in Office, fraud and bias, and other dishonesties. Allegations of this kind are the most serious that could be made against a judicial officer. The submissions appeared to me to be based on his personal perspectives and/or interpretations, with no reliable evidential support.

[18] Mr EA's objections also extended to what he saw as my disparate treatment in the handling of his review application, and the way that the review had been conducted in

⁷ Email from Mr EA to LCRO (17 May 2011).

⁸ Email from Mr EA to LCRO (26 July 2011).

⁹ Email from Mr EA to LCRO (21 May 2012).

respect of the *FC v DP* matter. This related to my having scheduled the *FC v DP* matter as a both party hearing, whereas Mr EA's review application had been set down as an Applicant-only hearing. His objection was that this had the effect of shielding Ms FC from questioning, which he perceived as a "clear abuse" of the process of this Office.

[19] The Legal Complaints Review Officer (LCRO) has discretion as to the conduct of the review, and there are many reasons why a direction may be given for an Applicant-only hearing, including ascertaining whether further enquiry is needed. A review hearing is only part of a review and does not prevent further enquiry being made if necessary.

[20] The Applicant-only hearing in this case is readily explained. Unlike Ms FC, Mr EA had not provided reasons for his review application despite being asked to do so. He was expressly informed that an Applicant-only hearing would be held to assist in discerning the grounds of his review. In the event the hearing revealed the reasons for the review application.

[21] I do not need to further address the recusal application because at the end of the review hearing Mr EA in fact withdrew his application. I refer to this again below.

Grounds for Review:

[22] The grounds for Mr EA's review may be summarised as:

- a) no reasons were given by the W.SC Committee;
- b) there was an error of law on the part of that Committee;
- c) unreasonable failure to take into account that Ms FC had no reasonable grounds for making any complaint; and
- d) Ms FC's complaint was vexatious.

Steps Taken After Review Hearing

[23] After hearing from Mr EA I agreed that the Standards Committee had not dealt with all of the elements of the complaint he had made and I informed him that I would seek from the Committee a statement of reasoning for the decision, that Ms FC would then have the opportunity to respond, and that he (Mr EA) would receive her response and be invited to comment, and that these steps, when completed, would conclude the review.

[24] Mr EA was satisfied with this proposal and at this juncture he withdrew his recusal application. Thereafter this Office wrote to the W.SC and sought and obtained a statement of reasoning for the decision it had made. This was copied to both Mr EA and Ms FC.

[25] In Ms FC's response she questioned Mr EA's reasons for mounting his complaint against her, suggesting that his intentions in doing so should be questioned. Replying to his question as to her bona fides, Ms FC explained that she had made the Confidential Report to the Law Society about Mr DP pursuant to her duties as a lawyer – making reference to Rules 2.8, 2.9 and 2.11. She considered she had supplied “solid evidence”¹⁰ to prove her complaint, and she only did what any lawyer of integrity would have done in such circumstances. Ms FC continued that she was “not in a position to demand exactly what the Law Society should do and what LCRO should do”.¹¹

[26] In commenting on Ms FC's response, Mr EA submitted that she had not provided any true facts or solid evidence and alleged that she had misled the Standards Committee in respect of her initial complaint. The email is lengthy and I have read and considered it, but it is not necessary to record the full range of Mr EA's criticisms of Ms FC, the essential elements of which are discussed below.

[Portions redacted.]

Considerations

[27] The question is whether the Standards Committee was correct in dismissing Mr EA's complaints against Ms FC. The review process requires me to independently consider whether Ms FC's conduct raises professional conduct concerns.

[28] The complaint arises from Ms FC's contact with the NZLS, and that is a good starting point. The *FC v DP* review file shows that on 8 June 2010 Ms FC filed a “Confidential Report” to the NZLS pursuant to Rules 2.8, 2.9 and 2.11. That this clear from the words “CONFIDENTIAL REPORT”¹² appearing in large bold letters at the top of her report, followed by reference to the above Rules.

[29] Rule 2.8 imposes a mandatory duty on lawyers to make a confidential report to the New Zealand Law Society in the following situation:¹³

Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of misconduct must make a confidential report to the Law Society at the earliest opportunity.

¹⁰ Letter from Ms FC to LCRO (16 August 2012).

¹¹ Above n11.

¹² Above n4.

¹³ Above n2 at Rule 2.8.

[30] Rule 2.9 makes provision for a lawyer to forward a confidential report to the NZLS in the following situation:¹⁴

Subject to the obligation on a lawyer to protect privileged communications, a lawyer who has reasonable grounds to suspect that another lawyer has been guilty of unsatisfactory conduct may make a confidential report to the Law Society, in which case rule 2.8.1 will likewise apply.

[31] Rule 2.11 provides that:¹⁵

If a lawyer learns that a person is committing an offence by—

- (a) providing unauthorised services in reserved areas of work; or
- (b) providing unauthorised conveyancing services; or
- (c) providing legal services in breach of any of sections 21, 22 or 23 of the Act (which relate to persons, not being lawyers, engaging in misleading conduct regarding their right or qualifications to practise law)—

the lawyer must immediately report the matter to the Law Society and, unless it is contrary to the interests of the lawyer's client, refuse to deal with that person.

[32] The Rules are the practice rules made under the Act. Rules 2.8, 2.9 and 2.11 provide for professional conduct concerns to be conveyed to the NZLS on a confidential basis, and make reporting mandatory in the case of Rules 2.8 and 2.11. These provide for the reporting of misconduct or unsatisfactory conduct in the form of a Confidential Report, and are intended to provide some assurance of anonymity when lawyers exercise their responsibility under those provisions. This implies that the matters being reported are not in the nature of a complaint involving the author. In this case, insofar as Ms FC's Confidential Report referred to activity on a website believed to involve Mr DP, it did not involve her personally.

[33] A Report of this nature should be dealt with in the first instance by way of a preliminary enquiry by the NZLS as to whether the matters set out disclose any disciplinary concerns. If such a Report disclosed evidence of a concern about a lawyer's professional conduct it is expected that the NZLS would embark on an own-motion enquiry. Given that the Confidential Report provision would appear to exclude the author from any further

¹⁴ Above n2 at Rule 2.9.

¹⁵ Above n2 at Rule 2.11.

involvement, such an enquiry would be undertaken without that person's involvement, and on that basis, there should have been no further involvement of Ms FC.¹⁶

[34] Materially, even if the NZLS decided, for whatever reason, to take no action on a Confidential Report, it is difficult to see proper basis for criticism of its author for having sent it. There is a sound policy reason for not subjecting a lawyer to disciplinary proceedings for having sent a Confidential Report to the NZLS pursuant to Rules 2.8, 2.9 or 2.11, regardless of the outcome. To do otherwise would very likely discourage lawyers from complying with the duty to report, and obstruct the main objectives of the Act, which is to protect consumers of legal services and to regulate the professional conduct of lawyers.

[35] Ms FC's Report also, however, referred to emails sent to her by Mr DP, and this clearly was a matter that did involve Ms FC personally. Where a Confidential Report in effect discloses a matter involving the author, it would be appropriate for the author to then be informed that the matter will be dealt with as a formal complaint under s 132 of the Act. This part of the Report was properly converted to a formal complaint against Mr DP.

[36] It is apparent from the file that the W.SC was unaware that Ms FC's 'complaint' was in fact information she had provided in a Confidential Report made under Rules 2.8, 2.9 and 2.11. The information that the W.SC received was a copy of Mr EA's September submissions (as counsel for Mr DP answering Ms FC's complaint), at the end of which Mr EA added complaints of his own against Ms FC. The W.SC had sought no further information about Ms FC's complaint against Mr DP, but did receive a copy of the decision from the Auckland Standards Committee on that complaint, which was not upheld.

[37] However, the failure of either of the Standards Committees to have noted or mentioned the Confidential Report is immaterial to the fact that Ms FC's correspondence was made pursuant to a confidential communication to the NZLS. Given the nature of Mr EA's allegations against her it is important to note the circumstances in which Ms FC contacted the NZLS about her concerns regarding Mr DP. She sent her communication under the Rules which provide for mandatory and voluntary reporting, and a lawyer who sends a Confidential Report to the NZLS pursuant to those Rules could reasonably expect that their identity would not be disclosed.

[38] It is also appropriate to observe that Mr EA would, or ought, to have, known that Ms FC had communicated with the NZLS by way of a Confidential Report. Mr EA is known

¹⁶ Significantly, there is no mandate for the NZLS to take any steps on receiving a Confidential Report. This is wholly different from the situation arising when a complaint is made pursuant to s 132 of the Act, which in turn triggers procedural steps to be taken by a Standards Committee, and where natural justice ensures that both the complainant and complaine are involved.

to be familiar with the provisions that place professional reporting responsibilities on lawyers.

[39] Turning now to the substance of the complaints, Mr EA's 10 September 2010 letter captures the full breadth of his allegations against Ms FC. In essence they alleged that Ms FC's complaint was not made in good faith, was vexatious, was made for improper ulterior motives, was an abuse of the complaints process, that she had failed to provide a sufficient evidential basis for the complaints, and had deliberately misled the Standards Committee by providing an inaccurate translation of the ZZU material.

[40] My considerations in this decision have included not only the W.SC's file, but have necessarily required reference to the *FC v DP* review file given that Mr EA's own complaints against Ms FC are referenced to that matter.

ZZU Website Matter

[41] Ms FC reported her belief that Mr DP was advertising general legal services (including conveyancing), giving legal advice and taking on private clients without an instructing solicitor, on a [X] website, ZZU. She provided her own translation of some pages from that website from [X] into English.

[42] One of Mr EA's complaints was that Ms FC had not provided an "independent transliteration"¹⁷ of the ZZU website material. After being notified of this complaint Ms FC responded by obtaining an independent translation. This was received by the W.SC which was considering Mr EA's complaint. However, this was information that pertained to the matter that had been under the consideration of the Auckland Standards Committee. Through Mr EA's submissions at the review hearing I became aware that Ms FC's independent translation had been provided after the Auckland Standards Committee had already determined the issue concerning Mr DP's involvement with the website.¹⁸ This gave rise to the somewhat peculiar situation of the W.SC receiving information the substance of which was relevant to the matter considered (and already determined) by the Auckland Standards Committee, and immaterial to the complaints being considered by the W.SC.

[43] Mr EA's complaint was that Ms FC had not provided an independent translation. I note that the Auckland Standards Committee had not asked Ms FC to provide an independent translation. Being fluent in [X] and English, Ms FC could have expected that her translation was acceptable unless informed otherwise. I can see no substance to a

¹⁷ Above n6.

¹⁸ By then the Auckland Standards Committee had already issued its decision deciding to take no action, having noted that no independent translation had been provided.

complaint that Ms FC did not provide an independent translation to the Auckland Standards Committee.

[44] Mr EA also challenged the accuracy of Ms FC's translation. This was a matter that Mr DP was entitled to have questioned, and it was always a matter that could ultimately have been resolved by way of an independent translation if the Auckland Standards Committee had any concerns about the accuracy of Ms FC's translation. As noted, that Committee neither advised Ms FC of any concerns nor asked her to provide an independent translation.

[45] The challenge as to accuracy of the translation became the subject of Mr EA's own complaint. The accuracy of Ms FC's translation of the ZZU material was relevant to the matter under the consideration of the Auckland Standards Committee, but that Committee appears to have required no further clarification of it. The substantive content of the material was not relevant to the W.SC which had only to consider whether the translation supplied by Ms FC differed to that provided by an independent translator. The W.SC had both translations and was therefore in a position to compare them, and in the event the W.SC accepted Ms FC's evidence that both translations disclosed the same set of facts. I have seen no evidence to show otherwise.

[46] Mr EA's allegation that Ms FC's translation was not accurate is linked with the further allegation that she intentionally misled the Committee in linking Mr DP to the ZZU website. He contended that there was nothing to link Mr DP to the website postings. Ms FC explained the reasons for citing Mr DP in the matter, namely that to the best of her knowledge Mr DP was the only person who spoke [X] (at that time) in DQQ and that she had noted his name in a footnote in one of the messages.

[47] I note that the ZZU website postings clearly identified the responses as emanating from "[DQQ]", and on one page there is a reference to "DP".

[48] An accusation of dishonesty against a colleague is serious and it is expected that an allegation of this nature would be supported by solid evidence. The complaint involves allegations of both misleading the Standards Committee and intention to mislead the Committee.

[49] I take into account the fact that Ms FC provided a Confidential Report under the Rules with an expectation that the matter would then be evaluated by the NZLS. In these circumstances it is highly unlikely that she would have expected her Report to be dealt with as a complaint by a Standards Committee at all, making it improbable that she intended to mislead the (Auckland) Standards Committee.

[50] It could not be said that the information she provided was misleading. Ms FC made abundantly clear in her Report what her discoveries were, and she included many examples of the communications she found on the internet. Ms FC reported, “[b]ased on the above evidence I have reason to believe that [Mr DP] has the following misconducts”.¹⁹ After referring to the Rules she reiterated, “[f]rom the above evidence, I have reasonable grounds to suspect that [Mr DP] has been providing a solicitor’s service from a Barristers Chamber.”²⁰

[51] Having reported her concerns, it was then the role and responsibility of the NZLS to act on the information or not. In the event the matter was considered by the Auckland Standards Committee, but this makes no difference to the circumstances in which the Report was sent, or the content of that Report. I have found no basis for the allegation that Ms FC intended to mislead anyone, or that the Committee which considered the information was misled in any way.

[52] Mr EA also questioned Ms FC’s bona fides, challenging her motives in extensive submissions (in his September letter) which posited reasons for her having brought Mr DP to the attention of the regulatory services. The reasons for Ms FC reporting the matter is to be found in her Report, referring to a professional obligation to do so and wherein she also enclosed a translation that she considered provided evidence of his contravention of the professional rules. The W.SC was well placed to consider, in the light of Mr EA’s allegations, whether or not Ms FC was motivated by factors other than as she had stated. There is nothing to indicate that it perceived any professional wrongdoing arising from Ms FC’s communication.

[53] I can find nothing to suggest Ms FC was motivated by anything other than her duty as a responsible lawyer. Only a person fluent in a [X] language would be in a position to understand the information on the ZZU website, and only a lawyer subject to the professional rules would be under an obligation to report any conduct issues that offended the Rules governing lawyers. The only plausible explanation for Ms FC’s motive is those to which she refers in the Report itself. There is no reasonable basis for imputing to Ms FC any motive other than a professional duty to report a matter that she perceived raised concerns for members of the public, in particular the [X] community.²¹

[54] That the Auckland Standards Committee undertook no enquiry into the complaint does not lead to a conclusion that the complaint was improperly motivated or that it had no

¹⁹ Above n4 at [2].

²⁰ Above n4.

²¹ The regulatory responsibilities of the NZLS are intended to ensure the protection of consumers of legal services, which is a stated principle purpose of the Lawyers and Conveyancers Act 2006, s 6.

validity. In my view Ms FC acted responsibly in bringing the matter to the attention of the NZLS.

Mr EA's Complaint that Ms FC Complained About Mr DP's Emails

[55] Mr EA's complaint also challenged Ms FC's motives in respect of notifying the NZLS about Mr DP's emails. His email to this Office on 10 October 2012 suggested that Ms FC's motivation was to prevent lawful proceedings from being instigated against her, and/or being a collateral attack on a business competitor, and was an abuse of the complaints process.

[56] Section 132 of the Act provides that a complaint may be made by "any person". It would seem inconsistent with the Act to subject a complainant, being a lawyer, to disciplinary enquiry for exercising their statutory right to make a complaint. The Act does not require a complainant to explain their motives for making the complaint, and Standards Committees have wide powers to deal with complaints that are perceived to have been made for reasons other than that intended by the purposes of the Act (s 132(1) of the Act).

[57] I also take into account that Rule 2.3 states that a lawyer must use legal processes only for proper purposes. Rule 2.10 states that a lawyer must not use, or threaten to use, the complaints or disciplinary process for an improper purpose. A lawyer who is found to have used a legal process (which would include the complaints service) for improper purposes may be exposed to a finding that he or she has breached Rule 2.3 of the Rules. This is likely the Rule that Mr EA had in mind.

[58] I have considered the substantive complaint. It is fair to recognise that it is inherently difficult to provide evidential support for an allegation of improper motive, and overall circumstances may need to be considered. However, the person alleging wrongdoing has the burden of providing evidence, on the balance of probabilities, to support the allegation.

[59] Ms FC's Confidential Report had enclosed copies of the emails that Mr DP had sent to her, and to which she took exception. The emails disclosed the nature of the threats she perceived; the content shows that this was clearly not a vexatious complaint. Mr EA ignores the evidence of Mr DP's emails, and I do not accept his speculations about Ms FC's motive as plausible. The most obvious reason for the complaint having been made is that stated by Ms FC herself, with reference to the content of emails. It is clear that Ms FC is familiar with the Rules governing the professional conduct for lawyers.

[60] Mr EA was entitled to make independent complaints against Ms FC for having made complaints against Mr DP, but it was also open to the W.SC to dismiss the

complaints. It is unlikely that the Committee would have done so if it had concerns about Ms FC's professional conduct. The W.SC was right to have dismissed the complaints.

Additional Comments and Observations

(a) Conduct of a Party to a Review – Costs Alert

[61] Section 210 of the Act confers on the LCRO a wide discretionary power to award costs against any party to the proceeding. Guidelines have been issued by this Office as to the circumstances in which a costs Order may be made. The conduct of a review applicant is a matter that an LCRO may consider when deciding whether a costs Order should be made.

[62] I mention this particularly in relation to Mr EA's application for my recusal. He has routinely made such applications and on each occasion (including this review) was given reasons why the application was declined. In this case Mr EA took early steps when emailing the case manager with a request that I be recused from dealing with this file (and any further files) on the basis that he had made a complaint to Parliament and that it would "...breach the Saxmere bias test for her to continue to sit in judgment of my files when such serious allegations of mine are extant against her".²² He attached an email that he had sent three days earlier.

[63] Mr EA's application for my recusal repeated submissions previously made, based on allegations of fraud, dishonesty, bias, and adding "manipulating the record".²³ These are exceedingly serious allegations to make against a judicial officer.

[64] However, in the case of this review, Mr EA subsequently withdrew his recusal application towards the end of the review hearing, when I agreed to seek reasons from the W.SC for its decision. This has caused me to question his motives for making the recusal application at all. An honest and genuinely held belief in the dishonesty of the presiding judicial officer is unlikely to be so readily withdrawn.

[65] One further incident needs to be mentioned. In the course of emails exchanged between Mr EA and this Office, one in particular included a threat against the Jurisdiction Manager when she sought clarification about the scope of his (above) request, and asked him to list files that were intended to be covered by his request, to which Mr EA replied:²⁴

No, you have the files it is fallacious to make me have to tell you your own files.

Either my request is properly handled or I will see you in the High Court.

²² Email from Mr EA to LCRO (29 February 2012).

²³ Transcript of hearing (26 June 2012).

²⁴ Above n25.

Such a response is unacceptable and will not be tolerated by this Office.

[66] Matters such as the above would be a proper basis for consideration of a costs Order. At this stage Mr EA is put on notice that any conduct concerns arising in connection with a review may expose him to a costs award.

(b) Dealing With Confidential Reports Made Pursuant to Rule 2 of the Act

[67] When a Confidential Report pursuant to Rule 2 is received by the NZLS, it is imperative that the status of that communication is not overlooked. The mandatory (and discretionary) reporting obligations contained in Rule 2 have an important function in the overall scheme of the Act, the primary purpose of which is to protect consumers of legal services. Where there exists reasonable grounds for suspecting that there has been misconduct, a lawyer has a professional duty to bring this to the attention of the NZLS in the form of a Confidential Report. This intends to bring to the attention of the regulatory arm of the NZLS matters of concern involving professional practice. In the event that further enquiry is considered necessary, the NZLS has an own-motion jurisdiction to take such further action as it considers necessary.

[68] The reporting responsibility is particularly relevant to sections of the New Zealand community that may be considered vulnerable, for example those unfamiliar with the English language, or unaware of the professional rules governing providers of legal services, or those unfamiliar with legal processes. Where there are language barriers the NZLS is necessarily reliant on the professionalism of its members who may be in a position to assist in ensuring that the professional standards are maintained

[69] This present case demonstrates how errors led to two Standards Committees considering complaints, neither aware that the matters raised had originated in a Confidential Report, and how a lawyer acting in good faith and under a mandatory professional obligation to report, unwittingly became the subject of a complaint for doing her duty.

Decision

Pursuant to s 211 of the Lawyers and Conveyancers Act 2006 the W.SC decision is confirmed.

DATED this 20th day of December 2013

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:

Mr EA as the Applicant
Ms FC as the Respondent
The W.SC
The New Zealand Law Society