

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

[2021] NZLCRO 111

Ref: LCRO 92/2021

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the [Area] Standards Committee [X]

**BETWEEN**

**AZ**

Applicant

**AND**

**BY**

Respondent

**DECISION**

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

**Introduction**

[1] Mr AZ has applied for a review of a decision by the [Area] Standards Committee [X] which determined his complaint regarding conduct on the part of Ms BY on the basis that further action was not necessary or appropriate.

**Background**

[2] Mr AZ is one of a number of family members who, having received independent legal advice, signed a Deed of Family Arrangement (the Deed). Having signed the Deed, Mr AZ has quite a number of queries about the way Ms BY, who is understood to be acting for the deceased's estate, has been giving effect to the Deed. Instead of taking matters that arise from the interpretation of the Deed and the application of its terms based on that interpretation to Court for determination, Mr AZ raised his concerns with

the New Zealand Law Society (NZLS) in the form of a professional standards complaint made against Ms BY.

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

[3] The Committee received a substantial amount of information from Mr AZ, much of which relates to steps Ms BY has taken since the parties signed the Deed. The general thrust of Mr AZ's complaint is that, in giving effect to the terms of the Deed, NZLS should closely manage Ms BY.

[4] The Committee considered the materials and the various aspects of Mr AZ's complaint and decided to take no further action on his complaint.

[5] Mr AZ is dissatisfied with the outcome of his complaint and has applied to this Office for a review.

### **Application for review**

[6] In his application for review Mr AZ says:

- (a) The Committee should have drawn the parties in to a more detailed inquiry process;
- (b) Ms BY is not to be believed, and is not administering her firm's trust account according to the Regulations;<sup>1</sup>
- (c) Despite her having adopted the position that what she is doing is "contemplated" in the Deed, Ms BY is not administering the estate according to the Deed and has exceeded the authority given by the signatories to the Deed; and
- (d) The Committee didn't get the facts quite right and left too many of his questions unanswered, including such things as why he is "now being directed to the Trustees for matters that [Ms BY] chose to manage?".

[7] Mr AZ seems to think Ms BY is obliged to talk to him on the phone or participate in a conference with "all parties" to resolve matters of concern to him.

[8] In summary, Mr AZ says that in his opinion, the Committee did not read the evidence he provided, and relied on Ms BY's responses without refutation from him. He

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<sup>1</sup> Mr AZ alleges Ms BY has contravened reg 7(c), presumed to mean reg 7(1)(c) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

says the process was flawed and this Office should review Mr AZ's objections "to determine if misconduct has occurred".

[9] Mr AZ confirms Ms BY's firm is holding funds in its trust account pending resolution of all disputes between the parties and Ms BY has not issued her final invoice. Mr AZ says Ms BY has foreshadowed "applying to the Courts". Mr AZ's position is that a determination from this Office is a prerequisite to him agreeing to the final account because he (and others) believe Ms BY "should have released the full amount of funds post transmission and transfer of property and should not have paid for non-related invoices that the Trustees would manage, invoices in advance or invoices without review and approval of the involved parties".

[10] As an outcome of the process of review, Mr AZ would like:

A determination as to the correct procedure and due diligence that [Ms BY] should have completed in her capacity as a lawyer. From this, it will determine what funds should be released and if further recourse is required.

Reimbursement of [Ms BY's] fees for our portion of contribution of the final account and reimbursement for my time and effort in resolving the matter.

### **Review on the papers s 206(2) and strike out s 205(1)(d)**

[11] This review has been undertaken on the papers pursuant to s 206(2) of the Lawyers and Conveyancers Act 2006 (the Act), and struck out pursuant to s 205(1)(d). The former allows a Legal Complaints Review Officer (LCRO) to conduct the review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties. The latter provides that a LCRO may strike out, in whole or in part, an application for review if satisfied that it is an abuse of process.

[12] I record that having carefully read the materials, including those supplied by Mr AZ in support of his complaint, there are no additional issues or questions in my mind that necessitate any further submission from either party. On the basis of the information available I have concluded that the review can be adequately determined in the absence of the parties.

### **Nature and scope of review**

[13] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>2</sup>

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<sup>2</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

... the power of review conferred upon Review Officers is not appropriately equated with a general appeal. The obligations and powers of the Review Officer as described in the Act create a very particular statutory process.

The Review Officer has broad powers to conduct his or her own investigations including the power to exercise for that purpose all the powers of a Standards Committee or an investigator and seek and receive evidence. These powers extend to “any review” ...

... the power of review is much broader than an appeal. It gives the Review Officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and therefore clearly contemplates the Review Officer reaching his or her own view on the evidence before her. Nevertheless, as the Guidelines properly recognise, where the review is of the exercise of a discretion, it is appropriate for the Review Officer to exercise some particular caution before substituting his or her own judgment without good reason.

[14] More recently, the High Court has described a review by this Office in the following way:<sup>3</sup>

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO’s own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee’s determination.

## Analysis

[15] Mr AZ considers the Committee should have drawn the parties in to a more detailed inquiry process. The lengths to which a Committee goes in inquiring into a complaint is a matter of discretion for the Committee. Having considered all of the materials I share the Committee’s view. This complaint was ideally suited to resolution through the Early Resolution Service.

[16] As part of the “very particular statutory process” of review under the Act, according to s 200 of the Act, this Office:

must conduct any review with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the requirements of this Act; and
- (b) a proper consideration of the review; and
- (c) the rules of natural justice.

[17] It is not a function of this Office (or a Standards Committee) to resolve disputes over the interpretation of the terms of a Deed of Family Arrangement or to closely

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<sup>3</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

supervise a lawyer in undertaking that work. Fundamentally, that is what Mr AZ is asking for.

[18] If, as Mr AZ says, Ms BY is not to be believed, her evidence can be tested in an adversarial process. Such a process could also resolve, as a matter of fact and law, whether or not Ms BY has been administering her firm's trust account according to the Regulations.<sup>4</sup>

[19] Mr AZ says that Ms BY's position is that she is doing what the Deed contemplates. If that is correct, there would be nothing unusual in it. It is consistent with those responsible for estate administration abiding the decision of the Court if the parties do not resolve disputes. Simple submission to the Court's jurisdiction tends to be an economically appealing approach where interested parties do not agree. Lawyers cannot be expected to hold funds subject to claims by different parties in their trust accounts indefinitely. There has to be some end to it.

[20] It is beyond the jurisdiction of this Office to say whether or not Ms BY is administering the estate according to the Deed, or to answer the related question of whether she might have exceeded the authority given by the signatories to the Deed. Each of the signatories will know what their intentions were. They are not parties to this review. Disagreements over what facts the Committee recorded as arising from the materials provided by Mr AZ are of marginal relevance, given the evidence of the parties, only one of whom is Mr AZ, would carry far more weight.

[21] It is accepted that Mr AZ has unanswered questions. As Mr AZ is not Ms BY's client, it is not correct for him to assert that she is obliged to talk to him. On the contrary, in the absence of his lawyer, she should not.<sup>5</sup>

[22] It is not for the Committee or this Office to provide the answers Mr AZ seeks, or to direct Ms BY to convene or participate in a conference with "all parties" so that Mr AZ can have all the matters that concern him resolved.

[23] If, as Mr AZ says, Ms BY has not issued a final account and her firm is holding funds on trust pending resolution of all disputes between the parties, all is as it should be. As seems to be the usual way in matters such as this, "applying to the Courts" so that Ms BY can release the balance of funds is an entirely predictable response if, for whatever reasons, the parties who claim interests in funds held in trust do not reach

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<sup>4</sup> Mr AZ alleges Ms BY has contravened reg 7(c) of the Trust Account Regulations. There is no such regulation, although there is a reg 7(1)(c).

<sup>5</sup> Rule 10.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Communicating with another lawyer's client, as it read at the time of the conduct complained about).

agreement. In the absence of agreement, that is all consistent with the way the system works. Ms BY may well issue a final account when she has completed her instructions from the estate. That is for her to decide.

[24] Mr AZ's position that a determination from this Office is a prerequisite to him agreeing to the final account, for whatever reason, is unsustainable. It is not accepted that a determination from this Office should be a prerequisite to Mr AZ agreeing anything. It is untenable for him to use the complaints and review processes under the Act as leverage against Ms BY.

[25] This Office is not a substitute for independent legal advice.

[26] Just as it is not a function of this Office to resolve disputes over estates or between families, it is not a feature of the process of review by this Office to convene hearings or call evidence from expert witnesses.

[27] It is not a function of this Office to decide what the "correct procedure and due diligence" were for a lawyer in the position of Ms BY once the parties had signed the Deed, nor should this Office be involved in deciding how much money interested parties should receive by way of reimbursement based on a reinterpretation of the Deed.

[28] In my assessment, if the many concerns raised in the complaint and continued in the application for review cannot be resolved by agreement, with the benefit of further independent advice it might be concluded that resolution is only possible with the intervention of a Court. Responsibly, Ms BY has instructed counsel. Perhaps a solution short of litigation might yet be reached.

[29] While the materials are indicative of some slightly complicated post-settlement administrative and accounting tasks, the evidence does not suggest unsatisfactory conduct or misconduct on the part of Ms BY. It is accepted that a Court process might flush out a different view, in which case disciplinary issues might perhaps surface.

[30] The issues Mr AZ raises in his complaint are simply not resolvable within the disciplinary framework of the Act. None of the purposes of the Act would have been met by the Committee process advancing beyond where it did. Even if Mr AZ's opinion is correct (which is doubtful) and the Committee did not read the evidence he provided, all of those materials have been considered on review.

[31] In my view it would be an abuse of the statutory process of review for this Office to attempt to take matters further.

[32] Thus, pursuant to s 205(1)(d) of the Act, the whole of Mr AZ's application for review is struck out on the basis that it is an abuse of the statutory process of review under the Act.

[33] The decision of the Committee is unaffected.

*Anonymised publication*

[34] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

**Decision**

[35] Pursuant to s 205(1)(d) of the Lawyers and Conveyancers Act 2006 the whole of Mr AZ's application for review is struck out on the basis that it is an abuse of process.

**DATED** this 19<sup>th</sup> day of JULY 2021

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**D Thresher**  
**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 AZ as the Applicant  
Ms BY as the Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society