

LCRO 11/2019

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

AA

Applicant

AND

ZZ

Respondent

DECISION

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

Introduction

[1] Mr AA has applied for a review of the determination by [Area] Standards Committee [x] (the Committee) to take no further action on his complaints about Mr ZZ. In his application for review dated 12 January 2019, he considers that the determination was “influenced by the misleading statement by Mr ZZ ...” and that paragraph [8] of the Committee’s determination “reflects the massive amount of misleading and falsified evidence in this case all of which originates from Mr ZZ and investigators he appointed and controlled”.

[2] Mr AA also says he has rectified the lack of evidential foundation or logic in his original complaint, referred to by the Committee in paragraph [21] of its decision.

[3] Mr AA says he is in the United Kingdom and is “not allowed to return to New Zealand”.

Background

[4] Mr and Mrs AA owned a substantial property in [Town B]. At a time when they were in [Town A] their property was substantially damaged by fire. They lodged a claim with their insurers, [Insurer A].

[5] [Insurer A] had doubts about the causes of the fire and instructed Mr ZZ, a partner in the firm of [Law Firm C], to advise them with regard to the claim and the issues arising from it.

[6] Both the police and [Insurer A] carried out investigations of the causes of the fire and Mr AA was charged with arson.

[7] Following two lengthy pre-trial hearings, evidence which the Crown wished to lead was deemed by the Court to be inadmissible. As a result, Mr AA's counsel successfully applied pursuant to s 347 of the Crimes Act 1961 to have Mr AA discharged.

[8] The final paragraph of Judge [BB's] judgment reads:¹

[Citation Removed]

[9] At some stage before the acquittal, Mr AA had:

[6] ... [written] to Mr ZZ and [Insurer A] making various demands for payment in connection with the civil proceedings and the evidence to be given in the arson prosecution, together with threats regarding disclosure and publication of allegations made by Mr AA regarding [Insurer A]'s investigators and Mr ZZ's conduct.

[7] A complaint was made to the Police and Mr AA was charged with blackmail.

[10] Mr AA was convicted of blackmail and sentenced to nine-month home detention. In her sentencing judgment, [Judge] referred to the fact that Mr AA had no prior convictions in New Zealand but [overseas convictions] and he had been sentenced to "4 years imprisonment on all charges".²

[11] In his complaint, Mr AA asserted that Mr and his wife a letter by email making a settlement offer on behalf of [Insurer A] which he and his wife had accepted.

[12] Mr ZZ said that he had not sent the email and that it had been forged.

¹ [Citation removed].

² [Citation removed].

Mr AA's complaints

[13] In his complaint, Mr AA asked the New Zealand Law Society to investigate Mr ZZ's "illegal actions". He also (subsequently) complained that Mr ZZ had been involved with:

... editing or creating reports provided by [Company B] in the course of investigation of the AA's [Insurer A] Insurance claim and that Mr ZZ was involved in falsifying evidence against Mr AA to frame him for arson and allow [Insurer A] to avoid meeting the insurance claim.

The Committee determination

[14] The Committee determined to take no further action on Mr AA's complaints. It said:

The Committee notes that a complaint is with the Police who are the appropriate agency to investigate the matter.

Mr ZZ denies the further allegations made by Mr AA and referred to in paragraph 12 above.

There is no evidential foundation, or a logical basis, on the material before the Committee, on which to find there has been unsatisfactory conduct by Mr ZZ in relation to any of the matters complained of by Mr AA.

Review

[15] Mr AA's application for review is extensive. In his submissions in support of the application he says:

The decision also states in Paragraph 21 that there is 'no evidential foundation or a logical basis,' I believe that I have rectified those deficiencies in this document and its attachments. In the complaint, I referred to this material by internet links to pages on the blog which detailed the evidence but it seems this was legally not acceptable.

Mr ZZ in his 'Response to the complaint' dated 31 August 2018 ...regarding the 'illegal actions' of Mr ZZ, states that it is difficult to supply a response without knowing the specific basis on which the complaint is made. These are all on the website in detail, referred to in the complaint but I have detailed some of the more serious issues in this document and supplied the evidence to support them.

[16] The documentation supplied by Mr AA with his application is copies of the material that he says he "referred to ... by internet links to pages on the blog which detailed the evidence".⁴ The documentation is set out in the schedule to this decision,

³ Standards Committee determination at [12].

⁴ Submissions in support of application paragraph 1.9.

being the list of documents which Mr AA provided with his application. The documentation does not provide evidence to support Mr AA's complaint.

Mr ZZ's role

[17] In a letter dated 31 August 2018 on behalf of Mr ZZ to the Lawyers Complaints Service, Mr NO (a partner in the firm [Law Firm C]) explains Mr ZZ's role:

Due to the suspicious nature of the fire, [Insurer A] instructed [Law Firm C] and Mr ZZ to act, and JK of [Company A] NZ and PR of [Company B] were engaged to carry out an investigation in to the fire.

[18] Mr NO continues:

The [Town B] Police also carried out an investigation into Mr AA's involvement in the fire.

Following their investigation ... the [Town B] Police charged Mr AA with arson and using a document to dishonestly obtain a pecuniary advantage ...

[Insurer A] also determined that the fire had been deliberately lit by Mr AA, and on [date] the AAs' insurance claim was formally declined.

[19] Mr AA seems to proceed on the basis that it was Mr ZZ himself who made the decision to decline his claim. A lawyer advises a client. He or she does not make the ultimate decisions. In this case the decision to accept or decline the AAs' claim would have been made by [Insurer A].

[20] Mr AA also seems to suggest that [Law Firm C] had a motive for ensuring that his claim was not met. That is a suggestion or inference that cannot be accepted or drawn.

[21] The complaints against Mr ZZ have no logical foundation.

Mr AA's assertions

[22] In his application for review, Mr AA asserts:

1.8 I ask for a Review since the Notice of Decision quotes, in Paragraph 8, a serious deception perpetrated by Mr ZZ in dealing with our case. It is now the major issue in the case and the decision has clearly been affected by that misleading statement.

[23] The "serious deception" Mr AA refers to is that in paragraph [8] of its decision, the Committee says that "the arson charges were withdrawn". Mr AA asserts that Mr ZZ misled the Committee. At the time, s 347(4) of the Crimes Act 1961 provided that a judge may direct an accused be discharged, and that a discharge is deemed to be an acquittal.

The deeming provision is immaterial to the decision to take no further action on Mr AA's complaints about Mr ZZ.

[24] Further from Mr AA:

1.19 Mr ZZ on behalf of [Insurer A] instigated the continuance of the blackmail case against me that led, in strange circumstances, to my conviction even after the decisions of many top Judges in New Zealand that the two cases were linked together.

[25] Mr AA accuses Mr ZZ of "instigating the continuance of the blackmail case". Blackmail is a criminal offence. Neither [Insurer A] or Mr ZZ could direct the course of a Police prosecution.

[26] Further:

1.40 Mr LM took a calculable risk by introducing his falsified excerpt as evidence. It is inconceivable that he would have done so without instructions and assurances from his employer [Insurer A] through his contact with [Insurer A], Mr ZZ.

[27] Mr LM was engaged to investigate the causes of the fire. He was engaged by [Insurer A]. There is no reason or evidence that supports the contention that he would endanger his own career by giving false evidence.

[28] Mr AA's speculations provide absolutely no basis on which to make an adverse finding against Mr ZZ.

[29] At [1.55] Mr AA refers to a decision in which the Judge describes Mr ZZ drawing a link between two sets of criminal charges against Mr AA, arson and blackmail, as "an abuse of the legal system". Mr AA contends Mr ZZ's submission should translate into a professional standards issue. There is no merit to this argument. If Mr AA had objected to a decision of the Court, he had remedies in Court.

[30] Further,

1.67 They still put forward to Justice [XX] that I was guilty of Arson. This deliberately misleading evidence clearly must have had a profound influence on the decision of Justice [XX].

[31] Mr AA's characterisation of [XX] J's capabilities is absurd, and is rejected accordingly.

Lawyers and Conveyancers Act 2006, s 205

[32] Section 205(1) of the Lawyers and Conveyancers Act 2006 provides:

- (1) The Legal Complaints Review Officer may strike out, in whole or in part, an application for review if satisfied that it—
- (a) discloses no reasonable cause of action; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of process.

[33] In *Heenan v Attorney-General*, the Court of Appeal discussed an earlier decision of the Court,⁵ and observed that a factor to consider when determining whether or not proceedings could be termed “vexatious”, was to determine whether the proceedings had a reasonable basis and consider how they had been conducted.⁶

[34] Mr AA’s application has no reasonable basis, and applying the test referred to by the Court, they are vexatious.

[35] Much of the material Mr AA has provided on review traverses technical and evidentiary issues that challenge the evidence involved in the criminal charges brought against him. That is not the evidence the Committee was referring to when it said that “there is no evidential foundation, or a logical basis, on the material before [it] on which to find there has been unsatisfactory conduct by Mr ZZ”.

[36] The Committee was correct.

Decision

[37] Mr AA’s application shows no reasonable cause of action, is vexatious, and borders on an abuse of process.

Pursuant to s 205(1) of the Lawyers and Conveyancers Act 2006, the whole of Mr AA’s application for review is struck out.

⁵ *Brogden v Attorney-General* [2001] NZAR 809 (CA).

⁶ *Heenan v Attorney-General* [2011] NZCA 9, [2011] NZAR 200 at [22].

DATED this 31st day of July 2019

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 AA as the Applicant
Mr ZZ as the Respondent
Mr CC QC as the Respondent's Representative
Mr FF as a Related Person
[Area] Standards Committee [X]
New Zealand Law Society