

LCRO 26 / 09

**CONCERNING** An application for review pursuant to  
Section 193 of the Lawyers and  
Conveyancers Act 2006

**AND**

**CONCERNING** A determination of Auckland Standards  
Committee No 3

**BETWEEN** **COMPLAINANT U** of Auckland

Applicant

**AND** **LAWYER F** of Auckland

Respondent

## **DECISION**

### **Background**

[1] Complainant U is in dispute with Lawyer F's employer. Lawyer F acted as in house counsel for that employer. In that capacity Lawyer F wrote a "cease and desist" letter to Complainant U on 22 May 2007 regarding certain actions he had threatened. Complainant U took exception to the content and tone of that letter. Complainant U also alleged that Lawyer F spoke to him in an insulting manner when he delivered a letter to her in the reception of Lawyer F's company. Complainant U also provided material relating to the substantive dispute he has with Lawyer F's employer. It was however accepted at the hearing that for the purposes of this review the issue was whether Lawyer F had engaged in unprofessional conduct either in writing the letter or in the manner of speaking to Complainant U.

[2] Lawyer F replies that she does not consider the contents of the letter to have breached any professional obligation and she denies that she said the alleged words (or words to that effect) to Complainant U in the reception area of her workplace.

[3] On 2 November 2008 Complainant U complained about the conduct of Lawyer F to the New Zealand Law Society. The Auckland Standards Committee 3 considered

this matter on 11 February 2009 and dismissed the complaint on the basis that it considered that there was no discourtesy in the letter of 22 May and no evidence whatsoever of wrongdoing on Lawyer F part. It concluded that the complaint appeared to be vexatious in nature and dismissed the complaint pursuant to s 138(1)(c) of the Lawyers and Conveyancers Act 2006. Complainant U sought a review of that decision by application made on 12 March 2009.

[4] On reading the file I concluded that there was not a prima facie case for Lawyer F to answer. On this basis Complainant U was invited to attend a “case to answer” hearing to present any further argument or evidence in support of the application and to determine whether the matter should proceed further. Lawyer F was informed of the hearing but was not required to attend and chose not to do so.

### **Background**

[5] This complaint is made against the background that Complainant U is of the view that he has a legitimate and longstanding grievance against Lawyer F’s employer. That grievance stems from an incident when Complainant U was undertaking electrical work on a vessel in the Auckland Viaduct in 2001. An employee of Lawyer F’s company inspected the work and formed the view that it was not of an adequate standard. Complainant U maintains that he was thrown out of his place of work by Lawyer F’s company. Various incidents and exchanges have followed. He has since then maintained that he has a claim against them. He is of the view that Lawyer F’s company has since that time worked to discredit him. He is of the view that Lawyer F has been part of that effort to discredit him.

### **The letter of 22 May 2007**

[6] The applicant considers the content and tone of the letter written by Lawyer F on 22 May 2007 to be threatening and unprofessional. The paragraphs of the letter that Complainant U takes objection to are couched in measured but strong terms. They threaten an action for damages against Complainant U should his actions damage the business of Lawyer F’s company and also indicate injunctive proceedings may be taken. The final paragraph of the letter states “we urge you to carefully consider the contents of this letter before taking any of the actions against Lawyer F’s company you describe in your correspondence”. That appears to refer to statements in an email of 18 May in which Complainant U indicated an intention to contact the media, and said, “it will be my intention to be damaging and an embarrassment to your company at every opportunity”.

[7] One of the fundamental duties of a lawyer is to protect and promote the interests of his or her client to the exclusion of the interests of third parties. However in doing this a lawyer must also conduct dealings with others, including self represented persons, with integrity, respect, and courtesy. That obligation must of course be viewed against the fact that lawyers practice is what is often a necessarily conflict ridden environment.

[8] The issue for determination is whether the letter of 22 May fell foul of professional standards. I am satisfied that in this case lawyer F did not breach any professional standards in writing the letter of 22 May. It is a usual incident of professional practice for letters sometimes to be sent in a forceful tone and to set out possible consequences of a course of action that may not be what the recipient wants to hear. The letter was not discourteous even though it set out in clear terms that Lawyer F's company would respond aggressively to any actions of Complainant U that it considered damaging to it.

#### **The encounter in reception**

[9] Complainant U alleges that on an occasion when he met Lawyer F in the reception area of Lawyer F's workplace she was insulting to him. He says he was attending at her offices to deliver a letter dated 3 May 2007 to her. Clearly there was an encounter at the premises of layer F's company at around this time. Lawyer F states in her letter of 21 November 2008 that one of the few occasions when she had contact with Complainant U was "when he confronted me at the offices of Lawyer F's company".

[10] In his application to this office he alleged that she said "I didn't do a seven year law degree to deal with filth like you". This allegation appears to have been first made when Complainant U responded to Lawyer F' reply to his complaint on 21 November 2008.

[11] Complainant U responded to Lawyer F' reply on 29 November 2008. In that response he states that the encounter referred to occurred at reception and that she said "I didn't do a seven year law degree to deal with people like you". Lawyer F denied that she spoke in such a manner to Complainant U stating in an email to the Standards Committee of 5 February 2009 that "At no point in our encounter, or in our other communications, did I ever say to Complainant U that it was beneath me or my legal training to speak with him or to deal with his complaint against my client as he alleges. I certainly never uttered the phrase he claims at paragraph 12 or indeed any words to that effect".

[12] At the hearing I explained to Complainant U that this issue is matter of credibility and that I have to determine whether there is sufficient evidence to find that Lawyer F said the offending words (or words to that effect) or not. Complainant U argued that Lawyer F was motivated to say the words alleged as part of her involvement in the wider campaign to undermine and discredit him. It appears likely that Lawyer F did not want to engage in any substantive conversation on the occasion in question. This reluctance of Lawyer F (along with the corresponding reluctance of her company to deal further with Complainant U on this matter) is a source of frustration to Complainant U. He is of the view that Lawyer F acted in an inappropriately dismissive manner. It appears likely that Complainant U felt that he had been “brushed off” by Lawyer F on that occasion. The issue for determination is whether Lawyer F spoke the words alleged or similar words which were so offensive as to be a breach of professional standards.

[13] I note also that the allegation against Lawyer F in this regard is a serious one and would require clear evidence before being upheld.

[14] I noted at the hearing that the words alleged to be spoken were at the least “surprising” and that some explanation as to why Lawyer F would engage in such conduct was needed. Complainant U was of the view that Lawyer F did not want to engage in substantive discussion about Complainant U’s claims and the use of these words was a strategy to avoid doing so.

[15] In considering this matter I also took into account the fact that the words that were said altered (albeit slightly) over time. Had Lawyer F in fact called Complainant U “filth” this would have been very memorable indeed. That word did not form part of the initial allegation in respect of the incident in the response to the Law Society of 29 November 2008. It formed part of the complaint only when it was lodged as an application for review in this office.

[16] I enquired of Complainant U whether any third party heard this exchange. He noted that while a receptionist was present, she was unlikely to have heard the words spoken. On this basis there is no corroborating evidence of the allegation.

[17] I also found it surprising that this allegation was not made at the outset in the complaint to the Law Society. Clearly if words of the kind alleged were spoken they were far more egregious than the contents of the letter of 22 May 2008 also complained about. The allegation that the words were spoken was only made on 29

November in response to Lawyer F' reply to his complaint when she mentioned having spoken to Complainant U at the offices of United Gooder.

[18] Having read the material made available to me, including the file of the Standards Committee, and having heard Complainant U, I am of the view that there is not sufficient evidence to substantiate the allegation that Lawyer F said the words asserted to Complainant U.

### **Conclusion**

[19] The application for review is declined and the decision of the Standards Committee is upheld.

**DATED** this 6<sup>th</sup> day of April 2009

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Duncan Webb

### **Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act this decision is to be provided to:

- Complainant U as applicant
- Lawyer F as respondent
- The Auckland Standards Committee 3
- The New Zealand Law Society