

LCRO 54 / 09

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

AND

CONCERNING A determination of the Canterbury
Standards Committee 2

BETWEEN **COMPLAINANT W** of Christchurch
Applicant

AND **PARTY C** of Christchurch
Respondent

DECISION

Background

[1] The applicant, Complainant W, complained to the Law Society on 27 January 2009 in respect of Party C's conduct in the role of a Tenancy Tribunal Adjudicator. Complainant W complains (amongst other things) that Party C, when acting as an Adjudicator, ignored evidence and refused to grant an application for a rehearing. Complainant W also questions the judgement of Party C given the adverse finding before the Tribunal against what was, in her view, the weight of evidence.

[2] The Canterbury Standards Committee 2 concluded that no further action was necessary on the basis that Party C has the benefit of an immunity under s 70 of the Residential Tenancies Act. The Committee also observed that the proper avenue for complaint as regards the outcome of the hearing was appeal. Complainant W made an application for review to this office on 22 April 2009.

[3] This review was conducted on the basis of the application, the file of the Standards Committee which was made available to me and the submissions of the parties. I note that Complainant W provided supporting documents and numerous photographs. I have not considered them to be relevant to the disposition of this application. The parties have consented to this matter being considered without a formal hearing and therefore in accordance with s 206(2) of the Lawyers and

Conveyancers Act 2006 this matter is being determined on the material made available to this office by the parties and without a hearing in person.

[4] I am satisfied that the decision of the Standards Committee in this case was appropriate. The Standards Committee relied on s 70 of the Residential Tenancy Act 1986 which provides that every Tenancy Adjudicator has the same protection as Justices of the Peace acting in their criminal jurisdiction. That protection is found in s 193 (1) of the Summary Proceedings Act 1957 (as amended in 1998) and provides:

No action shall be brought against any District Court Judge or Justice or Community Magistrate for any act done by him, unless he has exceeded his jurisdiction or has acted without jurisdiction.

In the present case there is no suggestion that Party C exceed her jurisdiction or acted without jurisdiction in the present matter. It is perhaps moot whether a complaint to a professional body is an “action” and therefore precluded by s 193. However, I do not consider it necessary to rely on s 70 and s 193 of those respective Acts in reaching this decision.

[5] The complaint of Complainant W relates entirely to the conduct of Party C as a Tenancy Tribunal Adjudicator. While there might be extraordinary cases where disciplinary action would follow for misconduct by a lawyer when the lawyer was discharging some other distinct role, this is clearly not such a case. The complaints made against Party C all go to her competence as an adjudicator and the correctness of her decision. The proper avenue for redress in respect of an erroneous Tribunal decision is appeal. Provision for such an appeal exists in s 117 of the Residential Tenancies Act 1986.

[6] The Lawyers and Conveyancers Act 2006 explicitly recognises that the complaints process should not be used to attack a decision of some unrelated Tribunal. Section 138(1)(f) provides that a Standards Committee may resolve to take no further action on a complaint where there is an adequate remedy or right of appeal that it would be reasonable for the complainant to exercise. Certainly it is beyond the scope of the complaints and discipline process in relation to lawyers to consider whether findings of fact and credibility made by Party C in her role as a Tenancy Tribunal Adjudicator were sustainable.

[7] I also note that Complainant W has complained about the conduct of Party C to the Principal Tenancy Tribunal Adjudicator. Such a “head of bench” is the proper

person to consider a complaint against a judicial officer such as a Tenancy Tribunal Adjudicator. Those matters were further raised with various administrative officers within the Ministry of Justice, Ministers of the Crown, and the Chief District Court Judge. It appears that no adverse findings were made against Party C as a result of those complaints. By now complaining to the Law Society Complainant W seeks to revisit the matter already dealt with by the Principal Tenancy Tribunal Adjudicator. There is a strong public interest in neither the Standards Committee nor this office interfering with the internal complaints process of a Court or Tribunal.

[8] For the reasons given I conclude it was appropriate for the Standards Committee to decline to inquire further into the complaint.

Decision

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

DATED this 13th day of May 2009

Duncan Webb
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:

Complainant W as Applicant
Party C as Respondent
The Canterbury Plenty Standards Committee 2
The New Zealand Law Society