

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

[2021] NZLCRO 86

Ref: LCRO 71/2019

**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**

**QX**

Applicant

**AND**

**GM and NY**

Respondent

**DECISION**

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

**Introduction**

[1] Mr QX has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) which determined Mr QX's complaints regarding conduct on the part of Ms GM and an inquiry initiated by the Committee regarding Mr NY's part in events, pursuant to s 152(2)(c) of the Lawyers and Conveyancers Act 2006 (the Act), on the basis that further action was not necessary.

**Background**

[2] Mr QX's complaint is made on behalf of his company (Company A). The background facts are neatly encapsulated in the Committee's determination, as are its reasons for concluding that it was not necessary for the Committee to take any further action regarding the subject matter of the complaint.

[3] Mr QX disagrees, and has applied to this Office for a review of the Committee's decision.

### **Application for review**

[4] Mr QX's application for review proceeds on the basis that:

The [Area] Standards Committee has erred in its decision as the alleged invoices relied upon are in dispute, and no debt has been ascertained against the complainant by a court of law.

Therefore, the withholding of client funds by [Law Firm A] is unlawful and in breach of the Lawyers and Conveyancers Act 2006.

[5] Mr QX invites this Office to direct the Committee to:

Reconsider the entire complaint, to confirm, modify or reverse the decision of the Standards Committee, or that the Legal Complaints Review Officer exercise the powers that could have been exercised by the Standards Committee in relation to this complaint.

[6] In addition to the materials that were available to the Committee, counsel for Ms GM and Mr NY supplied a copy of a reserved decision given in the District Court by [Judge] on [Date] in which His Honour considered broadly the same issues that are before this Office on review. His Honour summarised those issues at paragraph [1] as follows:

Is a solicitor obliged to comply with a client's direct instruction that funds held in the firm's trust account not be used to pay a barrister's fee? If not, can the solicitor lawfully make such payment contrary to the client's specific instruction?

[7] Ms GM and Mr QX both gave oral evidence in that proceeding.<sup>1</sup> His Honour dealt with the "just claim" argument raised by [Company A] in the District Court and addressed by the Committee. His Honour noted that no complaint had been made about [Ms AB's] invoices, and that the whole purpose of paying funds into [Law Firm A]'s firm's trust account was to meet counsel's fees. Having heard from the parties, His Honour's views included:

The actions of [Company A] and its directors in making such payments, demonstrates an unequivocal waiver of any right to claim that they are not contractually bound to pay [Ms AB's] invoices...

...it would simply be unconscionable to allow [Company A] and its directors to decline payment of the disputed invoices...

I am accordingly satisfied that [Company A]'s claim that it is not liable to pay invoices rendered... is simply unconscionable...

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<sup>1</sup> Para [24] et seq.

[8] [Company A]'s claims failed entirely. His Honour had before him the Committee's decision, noted there was no complaint that [Ms AB's] fees were unreasonable or otherwise inappropriate, and concluded that:

[Law Firm A] would have had a legal and ethical obligation to sue [Company A] for [Ms AB's] unpaid fees.

[9] Judgment was entered for [Law Firm A].

### **Review on the papers**

[10] This review has been undertaken on the papers pursuant to s 206(2) of the Act, which 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.

[11] I record that having carefully read the complaint, the response to the complaint, the Committee's decision and the submissions filed in support of and in opposition to the application for review, 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**

[12] 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>

... 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.

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

[13] 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**

[14] This review has been determined pursuant to s 205(1)(a) and (d) of the Act which enables a LCRO to strike out an application for review, in whole or in part, if the LCRO is satisfied that the application for review:

- (a) discloses no reasonable cause of action; or
- ...
- (d) is otherwise an abuse of process.

[15] The materials available on review add nothing of substance to the evidence considered by [Judge] in the District Court. His Honour also had the benefit of hearing evidence from the parties in person.

[16] In my view, much like [Company A]'s application to the District Court, the application for review discloses no reasonable cause of action. Coupled with the Committee's decision, the District Court was in receipt of oral evidence from the parties. All that should have been said by either party regarding the matters that are the subject of this application for review has been said.

[17] Mr QX's contention that the Committee erred in its decision because no debt has been ascertained as between the parties to this review by a court of law is clearly now incorrect. In the absence of a complaint or any evidence to support the contention that counsel's fee was unfair or unreasonable there is no satisfactory basis for Mr QX's argument that withholding client funds is unlawful or in breach of the Act.

[18] The materials also disclose no proper basis on which this Office could direct the Committee to reconsider all or part of the complaint. Doing so is likely to undermine or detract from the District Court decision. The materials available on review do not give rise to any cause for concern in a disciplinary sense.

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

[19] I agree with the Committee's decision. It is well reasoned, and addresses the issues raised between the parties to this review. This review is determined on the basis that there is no reason to say anything more about conduct on the part of Ms GM or Mr NY or the Committee's decision. That stands unaltered.

[20] For the foregoing reasons Mr QX's application for review is struck out on the basis that it discloses no reasonable cause of action and because, now the District Court has issued its decision, and there is no suggestion that is to be appealed, it would be an unnecessary duplication of effort and an abuse of process for this Office to take matters any further.

*Anonymised publication*

[21] 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**

Pursuant to s 205(1)(a) and (d) of the Lawyers and Conveyancers Act 2006 this application for review is struck out.

**DATED** this 16<sup>th</sup> day of June 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 QX as the Applicant  
Ms GM and Mr NY as the Respondents  
[Ms KD] as the Respondents' representative  
[Mr UW] as the Related Person  
[Area] Standards Committee [X]  
New Zealand Law Society