

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

[2021] NZLCRO 017

Ref: LCRO 78/2019

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

EW

Applicant

AND

PT and AM

Respondents

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

Introduction

[1] Mr EW filed an Application for Review dated 19 June 2019, received in this Office on 20 June 2019. Part 2 of the application form requires the name of the other party to the review to be completed. Mr EW named the other party as being [Law Firm A].

[2] The application for review related to the determination of Mr EW's complaint about Messrs PT and AM (complaint numbers XXX and XXX) issued on 23 May 2019.

[3] The Case Manager telephoned Mr EW to advise that the form had been completed incorrectly. Mr EW confirmed that the application form was to be amended to show the names of Messrs PT and AM as the other parties to the application.

[4] The application form was amended accordingly.

[5] Part 6 of the application form requires details of the Standards Committee determination which is to be reviewed. Mr EW completed this in the following manner: “[AREA] and [AREA] Committees X”. He recorded the date of the determination as being 23 May 2019.

[6] With his Application for Review, Mr EW included the determination of complaint number XXX, being a determination of Mr EW’s complaint about Mr RD dated 21 March 2019. An application for review of the Standards Committee determination must be lodged within 30 working days of the date of the determination. Mr EW was informed that the determination of the complaint about Mr RD was not able to be reviewed as it was out of time.

Background

[7] Mr EW sought advice from [Law Firm A] with regard to a claim lodged by him with his Insurer following flood damage to his business premises in City A.

[8] Mr AM was assigned to provide this advice. Mr PT was Mr AM’s supervisor.¹

[9] As matters progressed, Mr EW advised that he was considering whether to relocate his business to other premises. As a result, it was necessary to advise Mr EW about the requirements of the lease of the premises and the Franchise Agreement under which Mr EW’s company (City A Company Limited) operated.

[10] [Law Firm A] does not provide advice with regard to leasing or franchise matters and referred Mr EW to [Law Firm B] (Mr RD) for advice on these matters.

[11] [Law Firm A] rendered an account to Mr EW on 12 June 2017 for \$2,669.15. Mr EW paid this account on 30 June and, by email on the same day, advised Messrs AM and PT that he was terminating their instructions.

[12] Mr RD rendered an account to Mr EW on the same day.

Complaint

[13] I discern Mr EW’s complaints about [Law Firm A] to be:

- Mr AM appeared to be subservient to the insurer’s loss adjuster (Ms GR).

¹ Messrs PT and AM will be collectively referred to subsequently as “[Law Firm A]”.

- Mr AM agreed with much of what Ms GR said.
- Legal advice received by Mr EW from his new lawyers had not followed the direction taken by [Law Firm A]. Implicit in this is a complaint about the advice tendered by [Law Firm A].
- [Law Firm A] did not make it clear that its invoice did not include work undertaken by Mr RD.

[14] Part 5 of the complaint form requires details of complaints about costs. Mr EW says: “They have served a notice of proceedings on me as director”. Mr EW is referring to action taken by [Law Firm B] against Mr EW for payment of Mr RD’s fee.

[15] Part 6 of the complaint form requests an indication from the complainant as to what outcome the complainant seeks. Mr EW says:

“I don’t believe a separate relationship existed as outlined in my letter of complaint, so don’t believe anything is owing”.

The Standards Committee determination

[16] The Standards Committee (the Committee) identified the issues to be addressed as being:²

- (i) Whether Mr PT and/or Mr AM acted competently in the advice given to Mr EW concerning his insurance claim, and if not, whether they breached Rule 3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (“RCCC”).
- (ii) Whether at all times, Mr PT and/or Mr AM exercised their professional judgment solely for the benefit of Mr EW, subject only to the bounds of the law and their professional obligations, and if not, whether they breached Rule 5.2 of the RCCC.

[17] The following extracts from the Committee’s determination address these issues:³

... It would not have assisted Mr EW to refuse to make any concessions.

Mr EW gave no details of how Mr AM had been subservient to Ms GR, or what issues he considered that Mr AM failed to pursue on his behalf. The email sent by the loss adjuster after the meeting did not appear to be consistent with such an assertion.

There was nothing to suggest that Mr PT and Mr AM had not acted competently in the advice given to Mr EW. He said that his new lawyers had pursued a different strategy to that suggested by [Law Firm A] Lawyers. No further detail

² Standards Committee determination, 23 May 2019, at [6].

³ At [16]–[18].

was given. It is not unusual for different lawyers to recommend different strategies, and that of itself is not enough to lead to a finding that Mr AM or Mr PT had given incompetent advice.

[18] Having made these observations the Committee determined that neither Mr PT nor Mr AM had breached the Rules referred to.

[19] The Committee addressed the quantum of the fee issued by [Law Firm A] and determined it to be fair and reasonable.

[20] The Committee determined, pursuant to s 138(1) of the Lawyers and Conveyancers Act 2006, to take no further action on Mr EW's complaints.

Mr EW's application for review

[21] In his application for review, Mr EW is critical of the process adopted by the Lawyers Complaints Service (the Complaints Service) which separated his complaint into two separate complaints,⁴ and referred each matter to separate Standards Committees.

[22] Mr EW refers to a situation where correspondence was sent to another law firm in error and difficulties occasioned by him opening correspondence from the Complaints Service.

[23] Mr EW also considers that the Committee should have ensured that proceedings by [Law Firm B] to recover fees were stayed in accordance with s 161 of the Lawyers and Conveyancers Act 2006 Act pending determination of his complaint.

[24] He refers to these issues as breaches of the rules of natural justice.

[25] Mr EW considers the Committee did not address the combined fees charged by both law firms when determining that the fee issued by [Law Firm A] was fair and reasonable.

[26] Overall, Mr EW's application for review blends together his complaint about both firms.

[27] The outcomes Mr EW seeks from this Review are:⁵

An immediate and permanent stay on the District Court proceedings considering they appear to be a breach of the Lawyers and Conveyancers Act.

⁴ Messrs PT and AM jointly – and Mr RD separately.

⁵ Application for Review, 19 June 2019, Part 8.

A thorough investigation on the costs charged by each firm while considering the issues in 7 above.

A thorough look at all issues raised above and in my application to the Law Society.

[28] Having received a copy of Mr EW's Application for Review, Messrs PT and AM advised they had nothing further to add to their responses to the Committee.

Review

Process

[29] The decision by the Complaints Service to separate Mr EW's complaint into two separate complaints is an administrative decision made by the Complaints Service. This Office has jurisdiction only to review aspects of the inquiry carried out by the Committee,⁶ as distinct from the Complaints Service itself.

[30] Nevertheless, when looked at objectively, it was logical to separate Mr EW's complaints in the manner adopted by the Complaints Service:

- [Law Firm A] did not have the resources available to them to provide advice about leases or franchise agreements.
- Mr AM referred Mr EW to Mr RD for that advice.
- Mr RD's firm was [Law Firm B].
- Mr RD provided separate terms of engagement.
- Mr EW was to meet separately with Mr RD.

Dealings with Ms GR

[31] Mr EW complains that Mr AM deferred to Ms GR. He says that advice from the lawyers he consulted subsequently is that they would have dealt with matters differently.

[32] Mr EW has not provided details of what strategy his subsequent lawyers have suggested. A confrontational strategy (if that is what Mr EW means) would not necessarily have resulted in a positive outcome. In this regard, it is helpful to refer to a

⁶ Lawyers and Conveyancers Act 2006, s 203.

comment made by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal in *Auckland Standards Committee 3 v Castles*:⁷

We wish to make it clear that it is not this Tribunal's role to closely analyse and second guess every move of counsel during each piece of litigation.

Although this comment was made with regard to strategies adopted with regard to litigation, they are equally applicable to the strategy adopted by Mr AM in the present situation.

[33] Having made these observations, and in the absence of any specific information from Mr EW as to what it is he is referring to, there can be no decision other than to confirm the Standards Committee determination to take no further action.

Two invoices

[34] Mr EW says:⁸

It was always my belief that [Law Firm B] were acting under instructions from [Law Firm A] and as no face to face meeting took place a separate or independent relationship never truly began. I received and paid an account from [Law Firm A], that given the size of it for the little bit of work undertaken, my reasonable assumption was that it covered [Law Firm B]'s work, as instructions had come from [Law Firm A].

[35] This was not a case of two lawyers doing the same job.⁹ Each lawyer had specialist knowledge in the areas being dealt with. The only issue that could arise from Mr EW's complaints and his expectations, is that Mr AM did not make it clear to Mr EW that Mr RD would be rendering a separate account.

[36] The following facts are relevant to a determination of that issue:

- In his complaint Mr EW says:
 - ... [Law Firm A] had advised that they could not and would not get involved in lease or franchise matters, which was part of this unfortunate matrix. They suggested [Law Firm B] as being a law firm they worked with. I expected to be able to meet with Mr RD.
- [Law Firm B] was obviously a separate firm from [Law Firm A]. Their offices were physically separated by some distance.
- Mr RD sent separate terms of engagement to Mr EW.

⁷ *Auckland Standards Committee 3 v Castles* [2013] NZLCDT 53 at [177].

⁸ Supporting reasons for complaint.

⁹ Email from Mr EW to Lawyers Complaints Service (1 March 2019).

- Mr RD gave detailed advice on matters relating to the lease and Franchise Agreement.¹⁰ Mr AM was involved with matters relating to insurance.

[37] If Mr EW assumed that the costs of Mr RD's advice was to be included in Mr AM's account, then it was a mistaken assumption on his part, which cannot be attributed to Mr AM. There are no breaches of any professional duties by Mr PT or Mr AM arising from Mr EW's misunderstanding.

Fees

[38] Mr EW complains about the time spent by Mr AM discussing matters with Mr PT and Mr RD.

[39] As Mr AM's supervising director, Mr PT had an obligation to ensure that the work being carried out by Mr AM was competent and appropriate. Mr PT's time has not been recorded or charged. Mr EW was receiving the benefit of both lawyers' time in discussing and reviewing issues arising.

[40] Mr AM was a senior solicitor in a firm which specialised in insurance law. His hourly rate (\$300) was in line, if not at the lower end, of rates charged by lawyers with similar experience in the marketplace.

[41] The matters being dealt with by Mr AM, and those being dealt with by Mr RD, were inextricably linked. The time spent by Mr AM liaising with Mr RD was necessary and appropriate.

Other issues

[42] Other matters raised by Mr EW in his application for review do not require to be addressed. They refer to matters arising during the course of the Committee's consideration of Mr EW's complaints, none of which would have led to the Committee reaching a different view.

Decision

[43] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Committee to take no further action on Mr EW's complaints is confirmed.

¹⁰ For example, email from Mr RD to Mr EW (7 June 2017).

DATED this 3RD day of FEBRUARY 2021

O Vaughan
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 EW as the Applicant
Messrs PT and AM as the Respondents
Ms ST as a related Person
Messrs TE and FR as Related Persons
[AREA] Standards Committee X
New Zealand Law Society