LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2023] NZLCRO 157

Ref: LCRO 118/2023

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a decision of the [Area] Standards Committee [X]
BETWEEN	**TC** Applicant
AND	**GS** Respondent

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

DECISION

Introduction

[1] The applicant, Mr TC, has applied for review of a decision by the [Area] Standards Committee [X] (the Committee) dated 27 June 2023 in which it resolved under s 138(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act) to take no further action in relation to his complaint dated 20 October 2022 about the professional conduct of the respondent, Mr GS.

[2] The respondent is partner of [Law Firm A], a law firm headquartered in [City A] (the Firm).

[3] The Firm's client in respect of the legal work in question was the applicant in his capacity as trustee, along with [Trustee Ltd A], of the [Trust A] (the Trust).

Background

[4] In January 2019, the applicant instructed the respondent to act for him regarding a contract he had entered to on behalf of the Trust (the Contract) for the purchase of a property (the Property).

[5] The Property was Māori freehold land for the purposes of the Te Ture Whenua Maori Act 1993 (TTW Act) and accordingly subject to the jurisdiction of the Māori Land Court (the Court).

[6] The Contract was conditional on:

(a) a prior sale agreement not being confirmed by a specified date;

(b) the vendor obtaining the approval of the Court of the transfer as an alienation under the TTW Act, this condition not being subject to a time limit;

(c) the vendor registering an easement prior to settlement giving the purchaser legal access;

(d) the purchaser's lawyer approving title by a specified date.

[7] The respondent approved title and the prior sale agreement was not confirmed by the specified date. This left finance and Court approval as the remaining unsatisfied conditions. The access condition was a condition of settlement rather than of the Contract.

[8] The applicant on behalf of the Trust duly sought finance from his usual bank. The vendor duly sought Court approval.

[9] The bank agreed to finance the purchase by the Trust, subject to usual bank conditions, principally that it would obtain valid security on the Property on settlement.

[10] In [redacted] 2020, the Court granted an approval for the alienation of the Property. The approval, however, was for a transfer to the applicant personally, not to the Trust.

[11] The applicant believed the vendor was trying to avoid the Contract and was anxious to secure the Property. On [redacted] 2020, he instructed the respondent to declare the contract unconditional. The applicant apparently believed that settlement could occur immediately.

[12] The respondent considered that this instruction put him in a difficult legal and ethical position. He had professional obligations to both the Trust and the bank. He considered that he was not able to provide a solicitor's certificate to the bank because he believed:

(a) the finance offer was to the Trust as purchaser under the Contract, not to the applicant, but the Court approval was for transfer to the applicant personally;

(b) the necessary mortgage of the Property also required Court approval;

(c) the Court's approval of the alienation of the Property was potentially subject to appeal within two months pursuant to section 58 of the TTW Act.

[13] The respondent raised these issues with the solicitor for the vendor by telephone. They apparently had a difference of opinion at least about the third issue.

[14] The respondent also had a discussion with the bank manager about the possible issues for him in giving a solicitor's certificate in the circumstances and suggested that the bank might have its in-house lawyers review the loan documents before drawdown with specific reference to the possible issue with section 58 of the TTW Act, rather than rely on his certificate.

[15] On 17 March 2020, the applicant apparently came to the view that the respondent was wrong at least in relation to the issue of the need for Court approval of the mortgage. The applicant stated that this was on the basis of a conversation he had with the vendor's lawyer.

[16] On or about the same date, "it was brought to [the applicant's] attention that an unknown lawyer familiar with Māori Land Court rulings approached [his bank] with the information that there may be a further appeal to the Māori Land Court judgement".

[17] On 18 March 2020, the applicant terminated the respondent's retainer, uplifted his file and instructed another lawyer.

[18] The applicant then obtained a replacement offer of finance from a different bank. The applicant stated that he felt it necessary to move all his existing mortgage loans to the new bank.

[19] On 31 March 2020, the Firm rendered an invoice to the Trust for the legal work undertaken between January 2019 and termination of the retainer in March 2020. The invoice was for a total of $3,620.00.

[20] On 2 April 2020, the applicant sent an email to the Firm requesting an explanation, in the following terms:

> Would you please email me why you guys did not settle the [purchase] on Monday? and why your boss called the bank on [the following] Tuesday so I am looking for answer? because you told me on Monday that you can not settle because you need another permit from maori court but it was not the case I found on Tuesday, I am trying to understand when I told you many times to be unconditional and I thought you did however I am in the stuck trying to find the loan so I suggest you to think that we both live in the same community and we will come across in the future so I am asking you last more time why? I wish you to explain to me, please…

[21] The respondent responded by email the same day with the requested explanation. The explanation covered the following issues:

(a) that the Court approval was in the applicant's personal name, whereas the Contract and the bank documents were in the name of the Trust;

(b) that the bank's instructions were based on the title being "Freehold" whereas the Court approval required the land to remain "Maori Freehold", that this required both bank approval and a change of documentation and that the bank was happy with the change provided its security position was not compromised;

(c) that, in relation to providing his solicitor's certificate, the bank would not have valid security until the Court granted its consent to the mortgage and this was sealed and released, and that this process could take a further month;

(d) that the bank's security might have been put at risk if an appeal was to be lodged (under section 58 of the TTW Act), that he and the vendor's lawyer had a difference of views on the matter, that he had sent the vendor's lawyer a copy of the relevant section and that the vendor's lawyer had not come back to him disputing the matter.

[22] In relation to the issue of the applicant's instruction to declare the Contract unconditional, the respondent wrote as follows:

> You have commented that you told [us] many times to make the agreement unconditional. In response to this, we advised the vendor that you were willing to satisfy all the conditions, this included your finance condition which you instructed us to confirm even before you had a formal offer from the bank, however it always remained conditional on the Vendor obtaining the Consent of the Maori Land Court in relation to the sale to you as a non-approved alienee. During this process the vendor had written requesting that we leave them to complete this process, as it was a condition to be satisfied by them. We appreciate that given the application by other parties this [has] been [a] very long process for all involved.

> Notwithstanding the agreement [being] unconditional in other respects, it remained conditional on the Maori Land Court's approval. This was not something that we had control over. Once this approval had [been] obtained (other than the potential right of appeal as noted above), it is still necessary to meet the bank's requirements, which based on the Bank's documents that we had received and the fact that it was to remain Maori Freehold land, we were not able to settle that day. When we advised you of this you immediately uplifted your file and told us not to do anything further on the matter.

[23] On 17 April 2020, the applicant signed a deed of nomination by which the Trust nominated the applicant personally to complete the purchase of the Property. In May 2020, he settled the purchase of the Property.

[24] The applicant did not pay the Firm's invoice.

[25] In July 2020, the respondent wrote to the applicant regarding the unpaid invoice and the concerns of the applicant that he had apparently expressed. Relevantly, he recorded that:

(a) the Firm had been instructed not to contact the applicant's new lawyers and had respected that instruction;

(b) the applicant's allegation that the Firm that was "… scared that the Maori will be protesting you that's why you hesitated to settle" was denied and the Firm was "… not sure who would be protesting about what";

(c) the applicant's allegation that the Firm "… informed the bank manager not to settle" was denied and that the discussion was about the difficulty with the bank's required solicitor's certificate and the need for the bank's in-house lawyers to review the loan documents before drawdown;

(d) his understanding of the applicant's complaint was that it related to:

    (i) the Firm's failure to settle the purchase on 17 March 2020, following the Court order being received from the Court;

    (ii) the suggestion that the Firm's actions caused the bank to withdraw its offer of lending;

(e) he referred to his emailed explanation of 2 April 2020;

(f) he could not comment on the bank's decision to withdraw finance but noted that the issue of a possible appeal "would have only caused a delay in settlement and should not have been grounds for [the bank] to withdraw its offer";

(g) he referred to an offer the applicant had made to pay the Firm $1,000 in total in respect of both the invoice relating to the Property purchase and an earlier unpaid invoice relating to a different transaction; and

(h) he made a counteroffer to the applicant on a without prejudice basis.

[26] The applicant made a complaint to the New Zealand Law Society Lawyers Complaints Service (NZLS) in October 2020.

The complaint

[27] In his complaint, the applicant recorded some of the relevant facts detailed above, from his viewpoint. As the substance of his complaint is difficult to make out, I record what appear to be the material paragraphs:

> After providing all required information to [the Firm] and advising them to go Unconditional, I was stunned to hear from [the Firm] in [redacted] March that they could not settle due to a problem with Maori Land Court (MLC) registration and need for another MLC permit. My understanding had been that the judgements from MLC allowed the sale of this land and this was also the understanding of the Vendors lawyer.
>
> [The respondent] advised on a 18 March 2020 telephone call that some people may appeal that MLC judgement/decision.
>
> I continued to ask for an explanation and a definitive answer on this point but received none.
>
> I then found that an unknown lawyer had approached [the bank] and stated that there may be a further appeal to the MLC judgement!
>
> This resulted in [the bank] declining the loan and me having to spend another month (at some cost!) working with another law firm… and bank… before finally settling the property purchase (without any special MLC permit!) and the bank loan in May 2020.
>
> In fact, I felt it necessary to move all my loans to [the new bank].
>
> Clearly, [the Firm] gave weight to some imagined maori land issue either with their existing or potential clients or the MLC, at my expense!!
>
> [The Firm] billed me 3.0 k, which I have not paid and it cost me 6.8K for [the other firm] to take over plus a lot of my time when very busy running businesses.

[28] The applicant sought as the outcome of his complaint:

> 1. $35,000 in compensation for the stress, delays, disruption and direct cost of involving another law firm.
>
> 2. Apology from [the Firm] and remedial action taken to address their failings.

[29] The NZLS interpreted the complaint in part as a fees complaint and advised the respondent accordingly.

The Standards Committee decision

[30] The Committee appears to have had a similar difficulty in making out the substance of the complaint. It considered that the only potentially applicable provision of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) was Rule 3. This rule provides that:

> In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

[31] The Committee acknowledged the frustration the applicant had experienced when the settlement of the purchase did not occur on the date he had originally anticipated but referred to the respondent's explanations of the issues that had arisen.

[32] In the circumstances, it found that the respondent had not failed to act competently, that he had not failed to follow the applicant's instructions and that his conduct was not improper.

[33] The Committee noted that when settlement did not occur, the applicant immediately uplifted his file and advised the Firm not to do anything further on the matter. It expressed the view that had the applicant not taken this immediate action, the bank's solicitors could have made their own assessment of the risk if settlement was to proceed before the expired appeal period and that matters might have been resolved.

[34] The Committee further noted that the Firm's "time spent on the matter has been written off" and determined that, as the respondent had not breached the Rules, there was no basis for him having to pay the invoice of the applicant's new lawyer or for any award of compensation to be made to the applicant.

[35] On that basis, the Committee resolved to take no action on the complaint pursuant to section 138(1)(c) of the Act. The implication of this decision is that the Committee considered the complaint to have been either frivolous, or vexatious, or not made in good faith. It did not specify which of these criteria it considered to be applicable.

[36] The implication of the Committee's decision to take no action rather than to take no further action is that it did not consider it necessary to conduct an inquiry into the complaint. The nature of the discussion in the decision indicates, however, that it did inquire into the issues in a preliminary way and came to an unequivocal conclusion.

Application for review

[37] The applicant's application for review specified three grounds for review. These related to:

(a) the delay in settlement;

(b) the Firm's discussion with the bank; and

(c) recovery action on fees.

[38] In relation to the issue of delay in settlement, the applicant stated as follows:

> … despite issues raised by [the Firm] in March 2020 concerning a) not being able to sign off a solicitor's certificate for [the bank] concerning valid security and b) not getting the mortgage registered on the title until the MLC granted its consent never eventuated!
>
> [The other firm was] able to quickly address these issues, liaise with [the other bank] and obtain settlement within approx. 1 month. these potential issues should have been anticipated and dealt with by [the Firm] much earlier so that settlement could have occurred in March as required by the purchaser. It must be recognised that were (sic) under intense pressure to settle in March 2020 as a competing bid was in the wind.

[39] In relation to the issue of the discussion with the bank, the applicant stated as follows:

> … at no stage did [the Firm] inform me of any intention or action to approach [the bank] to consider making their own assessment, rather than relying on a [Firm] solicitor's certificate. This was a significant development and departure from the process expected by the purchaser.

[40] In relation to the third issue regarding recovery action on fees, the applicant stated that:

> … it is stated by [the Firm] in the decision[1] that "the [time] had been written off and no steps have been taken to recover it from you". This is not correct as can be seen by the letter from [the Firm] dated 29 July 2020 (attached).

[41] The applicant seeks as the outcome of his application for review:

1. Apology from [the Firm] for failure to settle, lack of timely communication including responses to queries.

2. Compensation of $10,000 for the stress, delays, disruption, and cost of having to engage another law firm, cost of shifting three other mortgage[s] to [the other bank].

[42] The respondent responded succinctly to the application for review, noting that:

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[1] I presume the applicant intended to refer to the Committee, not the Firm.

(a) the Firm's client was the Trust and he did not consider the Trust could suffer "stress" or claim to be awarded "general damages" as a result;

(b) any costs and delays suffered were a consequence of the Court process and the Trust's decision to immediately uplift its file and its commercial decision to change bank lenders;

(c) the Firm did not continue to seek to enforce recovery of its outstanding fee relating to the transaction, and that it wrote off its fee and issued a credit note on 17 March 2021.

Review on the papers

[43] 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. The parties were given an opportunity to comment on my provisional view that the review could properly be dealt with in that manner. The respondent agreed to that course of action. The applicant expressed no objection to it.

[44] I record that having carefully read 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 generally

[45] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[2]

> … 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

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

> 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.

[46] More recently, the High Court has described a review by this Office in the following way:[3]

> 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.

Issues

[47] The issues for consideration in this review are:

(a) Can the complaint reasonably be regarded as "frivolous, vexatious or not made in good faith"?

(b) Did the respondent display any lack of competence, taking into account the terms of the retainer and the duty to take reasonable care?

(c) Did the respondent display any lack of timeliness, taking into account the terms of the retainer and the duty to take reasonable care?

(d) Did the respondent fail to comply with instructions?

(e) Was there anything inappropriate about the respondent's discussion with the bank?

(f) Was the fee charged by the Firm to the Trust fair and reasonable having regard to the interests of both parties?

(g) Does the applicant have any basis for a claim for compensation?

(h) What is the appropriate outcome of the application for review?

Discussion

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

(a) Can the complaint reasonably be regarded as "frivolous, vexatious or not made in good faith"?

[48] I raise this as the first issue because this is the basis on which the Committee resolved to take no action on the complaint but without explanation of which of the three grounds it had in mind. As explained above, although I must reach my own view on the evidence before me, the review incorporates an assessment of the fairness of the substance of the Committee's decision.

[49] The descriptors "frivolous, vexatious or not made in good faith" in s 138(1)(c) of the Act are alternatives. Frivolous can mean carefree and superficial or not having any serious purpose. Neither meaning can be arguably applicable to this complaint.

[50] In the context of a professional disciplinary complaint, the word "vexatious" means to bring the complaint without sufficient grounds that has the effect of causing annoyance to the respondent, the complainant's purpose being relevant but not being determinative.[4]

[51] It was open to the Committee (and is open to me) to find that there were not sufficient grounds for the complaint. I do not consider it reasonable to suggest, however, that causing annoyance was the applicant's sole purpose or that, if so, this was determinative of the effect of the complaint. He was seeking compensation for perceived professional failures.

[52] Whether he was doing so in good faith is a different question. The complaint was made to the Firm in the first instance after the Firm issued a fees invoice for its work. It appears that the applicant had failed to pay a previous invoice relating to a separate transaction. The complaint to the NZLS was made over six months after the Firm's careful explanation of 2 April 2020 in reply to concerns the applicant had raised.

[53] In addition, the complainant included in his complaint an unsubstantiated and, on its face, preposterous claim for $35,000 in compensation from the Firm for its alleged failings.

[54] I consider it likely that the Committee had this ground in mind when it resolved to take no action under s 138(1)(c), given the preliminary view it had formed that the complaint had no factual or legal substance.

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[4] See *P v H* LCRO 02/09 (20 March 2009) at [9]–[14].

[55] If that is correct, I consider it was reasonable for the Committee to have arrived at that view given the information before it. For the same reasons, I gave consideration to the possibility of striking out the application for review under s 205 of the Act.

[56] The approach I prefer to take with the benefit of the information before me is to allow for the possibility that the applicant's stated perceptions and beliefs were and remain genuinely held, and to deal with the particulars of the original complaint and the grounds for review on their merits after inquiring into them.

(b) Did the respondent display any lack of competence, taking into account the terms of the retainer and the duty to take reasonable care?

[57] I appreciate that the applicant has not expressed his complaint by reference to any specific provision of the Rules. That exercise has been undertaken initially by the NZLS and then by the Committee.

[58] I consider the Committee was correct to regard r 3 of the Rules as being primarily relevant to the conduct in question. I consider rr 5.2 and 5.3 to be relevant as well.

[59] The reference in the first ground of the review application to "delay in settlement" implies an issue of timeliness. In context, however, this aspect of the complaint is more about the outcome of the steps taken by the respondent on 16 and 17 March 2020. The implication is partly one of alleged lack of competence and partly one of alleged failure to comply with the applicant's instructions.

[60] It is for the applicant to establish the basis of his complaint on the balance of probabilities. The applicant has not identified, and I cannot identify, any element of arguable lack of competence in the legal work undertaken by the respondent for the Trust and for the bank.

[61] The applicant has formed an opinion that there was no legal basis for the concerns the respondent identified and sought to resolve for the Trust. The applicant appears to have formed that opinion on the basis of what he says was a different understanding on the part of the vendor's lawyer.

[62] There is no evidence before me of any independent, expert view that the potential legal complications identified by the respondent were without foundation. Nor is there any evidence of the supposed legal opinion of the vendor's lawyer, which in any event would not have been independent. The applicant's own opinion is uninformed and unhelpful.

[63] It is not the function of the LCRO to make any findings of law as to the application of the Court approval and appeal provisions of the TTW Act to the circumstances. It is therefore not appropriate for me to express a view as to whether the respondent was legally "right" or "wrong" on either of those issues.

[64] It is nevertheless appropriate for me to make a finding on the demonstration of professional competence of the respondent in identifying legal issues that had the potential to derail the completion of transaction in a legally compliant manner and put his client Trust at material risk, and then to seek to resolve those issues.

[65] The same applies to the respondent's professional obligations to the bank. The applicant needs to appreciate that a lawyer acting on a bank-financed property purchase acts for both the purchaser and the bank and has contractual and ethical obligations to both.

[66] Their common interest was in concluding the property transfer in a manner that complied with the Trust's instructions regarding transaction, the bank's instructions regarding the loan and security arrangements and, in both cases, applicable law. This encapsulates "the terms of the retainer and the duty to take reasonable care" for the purposes of r 3.

[67] I have mentioned rr 5.2 and 5.3 as also being relevant. Rule 5.2 provides that:

> The professional judgement of a lawyer must at all times be exercised within the bounds of the law and the professional obligations of the lawyer solely for the benefit of the client.

[68] Rule 5.3 provides that:

> A lawyer must at all times exercise independent professional judgement on the client's behalf. A lawyer must give objective advice to the client based on the lawyer's understanding of the law.

[69] I find without hesitation that the respondent complied with both of these rules in his advice to each of his clients, the Trust and the bank.

[70] It is self-evident that the respondent could not apply loan monies approved by the bank for lending to the Trust towards the purchase by the applicant personally, for the simple reason that he could not give a solicitor's certificate to the bank on that basis. Consequently, the immediate settlement desired by the applicant could never have been achieved.

[71] It was also both competent and ethically appropriate for the respondent to raise with both the Trust and the bank, in the exercise of his independent professional

judgement, the possibility that the mortgage needed separate Court approval. If there was legal doubt about the matter, the respondent would have needed to qualify his solicitor's certificate. This is not something any competent lawyer can or should do without first alerting the bank to the issue.

[72] It appears from the complaint particulars that the applicant was able to settle the transaction in due course without obtaining Court approval of the mortgage to the new bank. This is not evidence supporting the applicant's complaint. It may be that Court approval was not required. It may be that Court approval was required and the applicant elected not to obtain it. It may be that the new bank took its own legal advice regarding the matter and did not require the applicant's new lawyer to provide a certificate regarding that aspect of security.

[73] Be that as it may, it was appropriate for the respondent to identify the possible issue and seek to resolve it for the benefit of both the Trust and the bank.

[74] Nor is there any evidence that the respondent was wrong to raise, and seek to address appropriately, the risk of an appeal against the Court approval of the alienation of Māori freehold land. The right of appeal is plainly available as a matter of law. It is available to anyone who can argue they are affected. Such appeals are not uncommon.

[75] The respondent obviously could not certify to the bank that no appeal could or would be made. All he sought to do was to exclude that matter from his certificate and have the bank assess and take its own risk on the matter. This was prudent, responsible and professional on the respondent's part. He would otherwise have been potentially liable for legal action at the suit of both the bank and potentially the Trust if an appeal had been lodged.

[76] The applicant may well have been ignorant of or misunderstood these issues as at 16 – 17 March 2020. They were clearly and carefully explained to him on 2 April 2020. I struggle to see, as the Committee did, how the applicant could persist in his stated understanding having had the benefit of that explanation.

(c) Did the respondent display any lack of timeliness, taking into account the terms of the retainer and the duty to take reasonable care?

[77] I have included this as an issue because of the applicant's reference to "delay in settlement" and his claim for compensation for associated, unspecified costs.

[78] It is obvious that any delay in settlement there might have been, was not due to any lack of timeliness on the respondent's part.

[79] The evidence is that the respondent acted immediately on receipt of the Court approval of the alienation of the Property to progress the transaction towards settlement. This involved identifying and resolving any perceived impediments to settlement, as discussed above.

[80] The applicant abruptly terminated the respondent's retainer and took both his legal business and his banking business elsewhere. He was entitled to do so. He cannot reasonably argue that his decision was either necessary or desirable as a result of anything the respondent had done or not done, however.

[81] The respondent also replied the same day, comprehensively, to the concerns the applicant raised on 2 April 2020. The applicant has no ground for complaint in relation to timeliness on that score.

[82] The applicant also claimed in his review application that his new lawyer was able to achieve settlement within "approx. 1 month". He had stated in his complaint, however, that settlement occurred in May 2020. I do not have a copy of the Court approval but infer that it was issued on or about 16 March 2020. I observe that the appeal period under the TTW Act was two months, thus expiring in May.

[83] In any event, there is no reason to assume that the respondent would not have been able to achieve settlement within the same timeframe on the basis of original retainer assuming the applicant had not decided to restructure his affairs (and assuming no appeal was lodged).

(d) Did the respondent fail to comply with instructions?

[84] I have expressed this as a possible issue because of the applicant's statement that he expected the respondent to achieve settlement immediately following the grant of Court approval. To the extent this constituted an instruction, I am satisfied that it was not an instruction that could reasonably be complied with.

[85] I note also that the applicant stated that he required settlement in March 2020 "as a competing bid was in the wind". The applicant does not explain this comment. The Trust had a binding contract for the purchase of the Property. The Contract became unconditional from the vendor's perspective on the issue of Court approval. It was not open to the vendor to sell the Property to anyone else.

[86] The respondent's evidence is that the applicant had gone unconditional on finance even before the applicant had arranged any finance. The Contract was therefore unconditional from the purchaser's perspective.

[87] The applicant's comment is either not credible or reflects a fundamental ignorance of property transaction concepts. If it was the latter, this was not due to any fault on the part of the respondent.

[88] In that regard, it is unclear what the applicant meant by "go unconditional" on 16 March 2020. The contract was already unconditional. I presume he meant to refer to settlement of the purchase.

(e) Was there anything inappropriate about the respondent's discussion with the bank?

[89] The applicant's second ground of review again reflects either ignorance about bank financing processes or an unreasonable view of his own, and the respondent's, position.

[90] The implication of the applicant's comment is that he considered he had the right to instruct the respondent to give an unqualified solicitor's certificate to the bank or an expectation that he would do so. This is not so. Acting with objectivity and independence, the respondent had identified issues either precluding him giving a certificate or requiring him to qualify it. I am satisfied that this was in full compliance with the respondent's legal and ethical obligations.

(f) Was the fee charged by the Firm to the Trust fair and reasonable having regard to the interests of both parties?

[91] I consider the NZLS was correct to have initially identified the complaint as in part a fees complaint.

[92] It appears that the Committee decided it was unnecessary to deal separately with this aspect of the complaint because of the respondent's advice that the Firm had not sought to pursue recovery of its unpaid invoice and had "written off" the time.

[93] Writing off "the time" and writing off an unpaid debt for tax purposes are two different things. It would have been open to the Firm to change its mind and pursue recovery of the unpaid invoice from the Trust.

[94] By the time of its response to the review application, however, the respondent's advice was that the Firm had "issued a credit note on 17 March 2021". This is a commercial decision that was open to the Firm to make.

[95] Section 161 of the Act nevertheless applies. Under s 161(2), "where a Standards Committee makes a final determination on a [fees complaint], it must certify

the amount that is found by it to be due to or from the practitioner… in respect of the bill and under the determination".

[96] Under section 161(3), "the certificate of the Standards Committee or, as the case may be, the decision of the Legal Complaints Review Officer on a review of the determination is final and conclusive as to the amount due".

[97] Strictly speaking, the LCRO need only issue a decision. The LCRO nevertheless has all the powers of a standards committee and these include the power to issue a certificate. A certificate issued under section 161(2) is of evidential convenience in a debt recovery action.

[98] The reference in section 161(2) to "…the amount… found … to be due…" is properly interpreted as the amount determined by the committee or the LCRO to be a fair and reasonable fee, for the purposes of r 9 of the Rules, at the time the invoice was issued. It does not encompass other amounts that might be payable by a client (such as default interest or costs) and does not refer to the amount owing or payable or legally recoverable at the time of issue of the certificate or decision.

[99] I have reviewed the Firm's invoice dated 31 March 2020. The narration of the legal work done is comprehensive and informative. I consider the fee charged to be demonstrably fair and reasonable to the Trust. The issuing of an invoice for that figure indicates that the Firm considered it to be fair and reasonable to the Firm.

[100] Accordingly, I find that the fee charged by the Firm to the Trust was fair and reasonable to both parties for the purposes of r 9 of the Rules and that the amount due to the respondent on behalf of the Firm in respect of the invoice dated 31 March 2020 and under this decision is $3,620.00. A certificate under 161(2) of the Act will accompany this decision accordingly.

(g) Does the applicant have any basis for a claim to compensation?

[101] The applicant, on behalf of the Trust, has no basis for a claim for compensation under the Act. Any stress he may have suffered, and any costs the Trust may have incurred, have been a consequence of his own decisions and actions.

(h) What is the appropriate outcome of the application for review?

[102] The application for review is dismissed for reasons traversed above; that is, not because the original complaint was necessarily made in bad faith but because there is no evidence of any breach by the respondent of any relevant professional or ethical

obligation owed to the applicant as trustee of the Trust. The respondent has done nothing wrong. Further, the fee charged was fair and reasonable.

Decision

[103] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the decision of the Standards Committee to take no action on the complaint under s 138(1)(c) of the Act is reversed.

[104] Pursuant to s 138(2) of the Act, I determine that no further action be taken on the complaint because, having regard to all the circumstances, further action is both unnecessary and inappropriate.

Publication

[105] Section 206(1) of the Act requires that every review must be conducted in private. Section 213(1) of the Act requires a Review Officer to report the outcome of the review, with reasons for any orders made, to each person listed at the foot of this decision.

[106] Pursuant to s 206(4) of the Act, a Review Officer may direct such publication of his or her decision as the Review Officer considers necessary or desirable in the public interest. "Public interest" engages issues such as consumer protection, public confidence in legal services and the interests and privacy of individuals.

[107] Having had regard to the issues raised by this review, I have concluded that it is desirable in the public interest that this decision be published in a form that does not identify the parties or others involved in the matter and otherwise in accordance with the LCRO Publication Guidelines.

DATED this 13th day of DECEMBER 2023

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FR Goldsmith
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 TC as the Applicant.
Mr GS as the Respondent.

[Area] Standards Committee [X]
Mr DP as an interested party
New Zealand Law Society.