LEGAL COMPLAINTS REVIEW OFFICER
ĀPIHA AROTAKE AMUAMU Ā-TURE

[2024] NZLCRO 001

Ref: LCRO 136/2023

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	**QT** Applicant
AND	**MZ** Respondent

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

Introduction

[1] The applicant (Mrs QT) has applied for a review of a decision by the [Area] Standards Committee [X] (the Committee) to take no further action in respect of her complaint concerning the conduct of the respondent, Ms MZ, a [City 1] barrister.

Background

[2] Mrs QT, her husband, Mr VN (VN), and her sister-in-law, Ms TL (TL), were three trustees (Trustees) of a trust (the Trust) that owned a residential property (the Property).

[3] The Trustees were in disagreement with each other about certain aspects of the management of the Property and TL wished for the Trust to purchase her claimed beneficial interest in the Property.

[4] On 10 October 2022, the Trustees had a meeting to seek to attempt to resolve their differences. The meeting was facilitated by a Mr LG. Mr LG has been variously

described as an "independent trustee", a "meeting facilitator" and an "advisor" to the parties. It is suggested in later correspondence that he may in fact have been formally a fourth trustee of the Trust.[1]

[5] The meeting has been variously described as a meeting, a "facilitated meeting", a "without prejudice meeting", an "informal mediation", an "informally convened mediation" and a "mediation". There is no evidence that it was a mediation governed by a mediation agreement. I will call it a meeting.

[6] During the meeting, a timeline with some notes was written on a whiteboard. The whiteboard was photographed.

[7] One of the issues discussed at the meeting was TL's request to be able to use the Property for an agreed time during the Christmas-New Year holiday period.

[8] TL later instructed the respondent to advise her about the formal documentation and implementation of what TL instructed the respondent she believed to have been the agreed outcomes of the meeting.

[9] VN and QT prepared a "Memo" dated 25 October 2022. The memo was stated to be "private and confidential to the Trustees only" as well as "without prejudice". Its subject was "[VN and QT] In Reply to [TL's] Requests Re: [the Property] For The Pending Christmas Period."

[10] On 31 October 2022, the respondent wrote to VN and QT, with a copy to Mr LG. In her letter, she:

(a) recorded her instructions from TL;

(b) stated her understanding that an "informally convened mediation" had occurred;

(c) recorded what she had been instructed by TL to have been agreed in principle;

(d) stated TL's request for the agreement in principle to be recorded in writing, including provision for TL's claimed beneficial interest in the property to be purchased on terms to be agreed;

(e) referred to the "Memo" and requested a copy of any tenancy agreement and property management agreement;

[1] The respondent's email to Mr PY of 25 January 2023.

(f) stated a deadline for either an agreement or a counter-proposal;

(g) recorded her instructions to issue proceedings for removal of the trustees and the appointment of a receiver of the Trust if agreement was not reached;

(h) suggested that VN and QT take independent legal advice on their role as trustees.

[11] On 7 November 2022 at 9.49am, the respondent wrote to VN and QT again by email, copied to Mr LG, reiterating the deadline for a response to her 31 October letter and her instructions to apply to remove VN and QT as trustees and have a receiver appointed to the Trust. She again recommended that VN and QT speak to a solicitor without delay and queried the role of Mr LG at the meeting, as he had since been described as an "adviser".

[12] At 3.23pm that day, VN sent the respondent a long email, which was copied to QT, to Mr PY, a lawyer, and to Ms CU, who I understand to be VN and QT's daughter, but not to Mr LG. In this email, he relevantly (paraphrased):

(a) stated that it was sent as an interim reply on a "Without Prejudice Basis" on behalf of "the Majority Trustees";

(b) made various comments about the allegedly confidential and privileged nature of the discussions at the 10 October meeting and about the alleged unlawful use or misuse of information from that meeting;

(c) advised that a formal response would be made through Mr PY and his firm as legal advisers;

(d) stated that Mr LG "was acting both as the Independent Trustee and the Meeting Facilitator" and in those capacities was "very much an advisor to all involved".

[13] The respondent responded by email at 4.18pm. This email was copied to the same recipients as VN's email. She:

(a) again recommended that VN take independent legal advice;

(b) stated that an agreement made at mediation is enforceable and is not subject to "without prejudice privilege";

(c) responded to VN's "Majority Trustees" description by stating that if there is more than one trustee, the trustees must act unanimously, stating that the trust deed did not provide for majority decision-making and referring VN to ss 38 and 23 of the Trusts Act 2019.

[14] At 6.18pm that day, VN sent the respondent another email, copied to the same recipients, in which he relevantly:

(a) referred to "your client's consistent threats and insistent false claims";

(b) stated that no agreement had been made at the meeting;

(c) referred to TL's responsibilities as a trustee;

(d) referred to the respondent's responsibilities under a "Code of Practice".

(e) asserted that the respondent had not "treat[ed] your opponent with dignity and respect".

[15] At 8.14pm, the respondent by email acknowledged receipt of VN's email with the note "Noted, not accepted".

[16] At 11.03 pm that day, VN emailed the respondent (without copying anyone else) stating:

> That you do not accept the substance of my just sent email does not alter the facts nor the truth contained therein. The core basis of the assault and false claims made by [TL] against her two fellow trustees does command our need to respond which we will.
>
> As indicated in my prior mail (sic), we will respond as soon as it is practical possible (sic).

[17] The respondent responded early the next morning by email just to VN: "Noted".

[18] On 30 November 2022, the respondent sent an email to Mr PY stating: "Do you have any instructions on this? I am being pushed to proceed."

[19] On 9 December 2022, Mr PY wrote by letter to the respondent recording his clients' intention to purchase TL's interest in the Property, stating that funding and ownership options were being explored, stating an aim of being in a position to enter into an agreement in the first quarter of 2023, attaching a copy of a tenancy agreement (entered into between VN as "Property Manager & Trustee" and CU as tenant), advising that financial accounts were in progress and informing the respondent that the Property could not be made available to TL over the holiday period.

[20] Also on 9 December 2022, the respondent sent an email to Mr PY in which she relevantly:

(a) asked to see the agreement appointing VN as property manager of the Property;

(b) commented that "the tenancy agreement is highly irregular and is signed by one trustee only. As such I need to question its validity".

(c) recorded her doubt that TL would accept the other Trustees' position on the Christmas break and that she might be instructed to take steps if TL did not get some time in the Property over the holiday period;

(d) stated that TL "has been excluded for some time and this was promised to her at the 'mediation'".

[21] It appears that Mr PY replied to that email by a further letter, probably on 12 December 2022.[2] The respondent replied to it by email on 12 December 2022 in the following terms:

> My instructions are to file the application for removal of your clients as trustees. Your letter is neither an offer capable of acceptance, nor is it an agreement (conditional or otherwise). From my client's perspective therefore it is simply further delay.
>
> The sad reality is that your clients have excluded mine from a property in which she (via the trust) is a part owner. The so-called Tenancy Agreement is a sham entered into between your client ostensibly as property manager, when he has no authority to enter into such an agreement. He is now relying upon this 'agreement' to further exclude my client once again. In the circumstances, she is left with no alternative but to seek the assistance of the court.
>
> My suggestion to you, if your client wishes to avoid expensive court proceedings is that he provides an agreement in writing, capable of acceptance, on or before my return to the office on 16 January 2023. That agreement might be conditional on finance, but at least it would show some good faith. At this point my client has absolutely no confidence that an agreement will be reached between the parties.
>
> Happy to discuss.

[22] On 17 January 2023, the respondent emailed Mr PY again in the following terms:

> I have not heard from you since our last correspondence on this matter. I am instructed to file an application for removal of all parties as trustees of the Trust. In the meantime, the **attached** is intended to afford your clients a final opportunity to agree matters and avoid legal proceedings**.**

[2] The letter or email has not been disclosed.

> If the terms of this deed are agreed, a new trustee can be appointed without delay, and we can proceed to the orderly wind down of the Trust.[3]
>
> The offer contained in this email is made on an open basis and will be adduced in evidence. The offer is open to acceptance until **5 pm on 24 January 2023.**

[23] Mr PY replied by email later that day in the following terms:

> Our clients' intention remains to purchase your client's interest in the property. Our clients have made progress with their bank and children (as indicated in our letter of 9 December 2022) and expect to be in a position to make an offer next week.
>
> I expect to be back in contact next week with an offer for your client's consideration.

[24] At some point during the following week, Mr PY emailed the respondent again.[4] The respondent emailed Mr PY in reply on 25 January 2023 in the following terms:

> My instructions have not changed. My client has been waiting for your client to formalise an offer since October last year and at this stage we do not know what it will be based on and whether it will be acceptable. Also, there is the issue of the so-called "tenancy" agreement and rental which needs to be resolved.
>
> If your client is genuine in what you are say below (sic), I would like to see the deed I provided to you signed. It can be held by you in escrow, subject to an undertaking which says you will provide it to me in the event that the offer is not made by the end of next week, or is not based on fair market value (your client will need to be able to demonstrate this). If the offer is made and is fair, then the deed may not need to be implemented. If the offer is not made, or is not based on any fair market consideration, then we are left either with a court removal process or an agreed removal process. What I have provided is intended to give your client an opportunity to buy, but also to put an independent person in place to deal with the process of sale and winding up. That proposition remains in the best interest of all. Further, our respective clients need to deal with LG wishing to retire. Contrary to what LG says he remains a trustee until this is dealt with formally.
>
> I ask that you confirm your instructions on whether the deed can be signed and held by you until the end of next week. Otherwise, I must act in accordance with my instructions. I have commenced drafting the proceedings and will be filed this week (sic). Costs will be in issue.
>
> Happy to discuss.

[25] On 3 February 2023, Mr PY wrote to the respondent tabling a spreadsheet recording a proposed starting valuation figure for the Property and proposed financial adjustments, as well as a balance sheet for the Trust taken from [Company].[5]

[26] On 8 February 2023, the respondent wrote a 4-page letter to Mr PY setting out TL's position regarding numerous aspects of the proposals made in Mr PY's letter.

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[3] The deed referred to has not been disclosed.
[4] The email has not been disclosed.
[5] These documents have not been disclosed.

Issues traversed included the basis for financial adjustments for shares, real estate agency fees, marketing costs, a beneficiary current account balance, property management fees, occupation rent, which party was to purchase, the basis for valuation, an appropriate process for winding up the Trust and selection of appropriate professional advisers to assist in an agreed process.

[27] I have no information as to whether and, if so, how resolution of the disputes between the Trustees was progressed from that point.

[28] The materials available to me include a significant volume of prior correspondence and documentation between the Trustees, and between the applicant and VN and their advisers and other third parties, going back to at least 2016 relating to the letting of the Property and the disputes between the Trustees. None of this material is relevant to the complaint against the respondent.

The complaint

[29] The applicant lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 23 January 2023. The substance of the complaint was that:

(a) the respondent had been aggressive, used bullying tactics, intimidation and threats;

(b) the respondent's correspondence included various "lies";

(c) the respondent's correspondence had caused "exponential deterioration in the relationship between the Trustees";

(d) the respondent had been untruthful, unreasonable, disrespectful, unprofessional and her conduct had been unacceptable and disgraceful.

[30] The outcomes the applicant sought were an apology from the respondent and "a financial contribution to the large legal costs she has caused us".

[31] The respondent was invited to respond to the complaint. She responded by letter, in summary, that:

(a) she had not had any direct communications with the applicant;

(b) she had written to the applicant and VN on 31 October 2022;

(c) both the photo of the whiteboard and the 25 October memo were communications exchanged between the Trustees and could be referred to in correspondence;

(d) the applicant and VN were not legally represented and the respondent's letter asked them to have their solicitor contact the respondent about how they were to document the agreement reached;

(e) the letter included a timeframe for response because TL was concerned about delay and wished to occupy the Property over the Christmas period;

(f) the letter reflected the respondent's instructions from TL about the agreement reached at "mediation";

(g) the respondent then received a series of emails from VN marked "without prejudice" not all of which had been attached to the complaint and the essence of which were that the Trustees had not reached agreement and therefore that the respondent was "… abusing information that was 'without prejudice' and was in breach of my ethical obligations";

(h) she had had subsequent correspondence with lawyers representing VN and the applicant;

(i) the dispute between the Trustees was ongoing;

(j) every step she had taken was on instructions from TL;

(k) any legal costs incurred had been incurred because the applicant and VN were in dispute with TL;

(l) the alleged "lies" reflected the respondent's instructions and were not matters she was required to investigate;

(m) she had not been discourteous and had not bullied anyone.

The Standards Committee decision

[32] The Standards Committee delivered its decision on 13 September 2023. It decided, pursuant to s 138(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act), to take no action on the complaint. That section empowers a standards committee to take no action if it considers a complaint to be frivolous, vexatious or not made in good faith.

[33] In reaching that decision the Committee determined, in summary, that:

(a) provisions of the Lawyers and Conveyancers Act 2006 (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) that were of potential application were rr 6, 10 and 10.1.

(b) the complaint was partly that the respondent had been "generally dishonest or incompetent";

(c) the complaint was partly that the respondent had "bullied and harassed" the applicant and VN;

(d) the applicant had never been a client of the respondent;

(e) the complaint was against the respondent as TL's lawyer;

(f) lawyers owe their duties primarily to their own client and not to any other person;

(g) the respondent's primary duty was to protect and promote TL's interests to the exclusion of the interests of others, including the applicant;

(h) the respondent had corresponded with the applicant and VN in the fulfilment of that duty;

(i) the respondent was entitled to rely on TL's instructions when preparing her correspondence;

(j) although the applicant might disagree with some of the assertions made in the respondent's correspondence, disagreements about factual and legal matters lie at the heart of all disputes;

(k) in communicating TL's position and putting a timeframe for a response, the respondent was doing nothing more than acting on her instructions from TL;

(l) the respondent had no personal involvement in the matter;

(m) the respondent did not act dishonestly or incompetently;

(n) the Committee had difficulty understanding the allegation of bullying and harassment and could find no evidence in the materials to support it;

(o) the respondent had at all times communicated in a professional manner and with respect and courtesy;

(p) the Committee was satisfied that the respondent had not breached any of her obligations under the applicable Rules and that the applicant's allegations (and the materials) did not disclose any concerns about her conduct.

Application for review

[34] The applicant filed an application for review on 1 October 2023. She identified what she considered to be six specific errors in the Committee's decision. The outcomes she sought were compensation for the cost of the facilitated meeting and an apology from the respondent.

[35] The applicant submitted firstly that the Committee was wrong to find that the differences between the parties "had not been resolved" at the 10 October 2022 meeting facilitated by Mr LG. The applicant referred to "the White Board Meeting Agreement", which she said recorded a "pathway" to "full resolution". She asserted that TL's action in instructing the respondent was "… a complete breach of [TL's] personal responsibility as a trustee to honour the spirit and intent of that agreement".

[36] Secondly, the applicant submitted that the respondent was wrong to assert that she was seeking to "… progress the resolution of [TL's] dispute with her fellow trustees". The applicant stated that the respondent sought to "destroy" the previously agreed "pathway". She asserted that "in terms of the method and approach instigated by [TL] and activated by [the respondent], VN had "… not been treated with either dignity or respect - rather he has been set upon by [the respondent] in response to her instructions from [TL]."

[37] The applicant developed this argument into an assertion that the respondent's 31 October 2022 letter was a "legal assault and threat" that had caused anxiety, sleep disturbances, stress and heart disturbances for both the applicant and VN.

[38] The applicant asserted further that the respondent "… was acting prematurely in not properly assessing the integrity of [TL's] information…" and that this constituted not giving due respect to the applicant, VN, the Trust's accountant and Mr LG.

[39] Next, the applicant stated that "…the crux of my complaint is centred upon [the respondent's] three lies". These "lies" were stated to be, in summary:

(a) her description of the tenancy agreement as a “sham”;

(b) her statement that TL had been “promised” the use of the Property at the meeting;

(c) her statement that VN had “no authority” to enter into a tenancy agreement.

[40] The applicant argued that TL knew that such statements were “complete falsehoods” and therefore that these were “known lies” by the respondent.

[41] Fourthly, the applicant submitted that the Committee was wrong to find that "at the time of [the respondent’s] correspondence with you and your husband, you were not represented by your own lawyer.” She stated that she and VN had in fact sought advice from Mr PY at that time and that, as a consequence of that advice, she had engaged Mr LG as a “Professional Accounting Specialist and Corporate Consultant to assist us in seeking to broker a solution…”.

[42] I note in passing that this appears to confirm that Mr LG was not a mediator and that the respondent’s subsequently stated understanding that he was a trustee of the Trust was mistaken. Nothing turns on this, however.

[43] The rest of the applicant’s argument on this ground appears to be a re-hash of her previous argument that TL’s act in engaging the respondent was a breach of the White Board Meeting Agreement.

[44] The fifth specific error identified by the applicant was the Committee’s interpretation of the complaint as being partly that the respondent had been “… generally dishonest or incompetent”. The applicant stated that she had not suggested the respondent was incompetent. Nor had she suggested that the respondent was “generally dishonest” but only that the respondent had made “three core false claims against us”, which the applicant again described as “lies”.

[45] Lastly, the applicant recorded her disagreement with the Committee’s findings that she and VN had not been “bullied” and that they had been treated with professional courtesy and respect. She asserted that the respondent had “sent eleven threats between 31/10/22 and 8/2/23”. She referred to these as a “barrage” and stated that she and VN “…both felt intimidated and threatened by the content, tone and frequency of [the respondent’s] letters and subsequent string of e-mails…”. She stated that they were “intimidating and threatening”.

[46] The applicant requested that the review be undertaken "… with due regard and respect to [VN's] position as a disabled person (under the UN Convention of the Rights of the Disabled), given that he has been disrespected and has suffered significant adverse medical responses due to the stresses placed on him".

[47] Paragraphs [35] to [46] above represent my summary of the substance of the applicant's main submissions. They are not intended to be a comprehensive record of those submissions, which are lengthy, detailed and robustly expressed.

[48] The respondent was invited to comment on the review application. She was content to rely on her response to the complaint.

Review on the papers

[49] This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a Legal Complaints Review Officer (Review Officer) to conduct the review on the basis of all information available if the Review Officer considers that the review can be adequately determined in the absence of the parties. The parties were given opportunity comment on this proposed course of action and neither of them objected.

[50] 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

[51] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[6]

> … 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

[6] *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.

[52] More recently, the High Court has described a review by this Office in the following way:[7]

> 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.

[53] Given those directions, the approach on this review, based on my own view of the fairness of the substance and process of the Committee's determination, has been to consider all of the available material afresh, including the Committee's decision, and provide an independent opinion based on those materials.

[54] I wish to emphasise that much of the material before me relates to the matters in dispute between the Trustees. It is not my function to make any comment about the rights or wrongs of any of those disputed matters. They provide the background to the complaint but do not form part of the complaint. It is clear to me that the applicant has been unable to make that distinction and similarly unable to distinguish between TL, as the person with whom she is in dispute, and the respondent as TL's lawyer.

Issues

[55] The issues for consideration in this review are as follows:

(a) What professional duties did the respondent owe, either to her client or to the applicants or otherwise, in the circumstances?

(b) Is there any evidence of breach by the respondent of any of those duties?

(c) Was it reasonable for the Committee to decide to take no action on the grounds that complaint was frivolous, vexatious or not made in good faith?

(d) What is the appropriate outcome of the review?

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

Discussion

(a) What professional duties did the respondent owe, either to her client or to the applicants or otherwise, in the circumstances?

[56] The Committee was correct to focus its analysis on the duties the respondent owed to her client, TL. Rule 6 of the Rules provides that:

> In acting for a client, a lawyer must, within the bounds of the law and of these rules, protect and promote the interests of the client to the exclusion of the interests of third parties.

[57] The Committee also correctly identified r 10 of the Rules as being applicable. Rule 10 provides that "a lawyer must promote and maintain professional standards". This is a duty of general application, in the sense that it is owed at all times in connection with the provision of legal services and is owed both to the lawyer's client and to other parties.

[58] Rule 10.1 of the Rules is also of general application. It provides that "a lawyer must, when acting in a professional capacity, treat all persons with respect and courtesy."

[59] In the context of this complaint, r 10.3 is also relevant. It provides that "a lawyer must not engage in conduct that amounts to 1 or more of the following:

(a) bullying;

(b) …

(c) harassment; ….

(b) Is there any evidence of breach by the respondent of any of those duties?

[60] The Committee was correct to find (in my words) that the respondent corresponded initially with the applicant and VN and then with their lawyer, Mr PY, in the fulfilment of her duty to TL under r 6 of the Rules and, in doing so, was entitled to rely on the instructions she received from TL.

[61] In particular, the respondent had no personal knowledge of any of the matters in dispute between the Trustees and no personal knowledge of the circumstances, details or outcomes of the 10 October 2022 meeting. The respondent was entitled to record TL's understanding of the meeting outcomes and her professional duty was to seek to implement them in accordance with TL's instructions.

[62] The respondent was also entitled and, if instructed to do so, bound to record TL's position as a trustee and/or a beneficiary in relation to any or all of the numerous allegations of breach of trust made by the parties against each other. Such allegations (regardless of how they were expressed) were the legal context in which TL sought to achieve her desired personal outcome of realising what she considered to be her beneficial "share" of the Trust's asset value.

[63] Like the Committee, I can identify nothing professionally inappropriate or, for that matter, legally surprising about any of the issues raised by the respondent in her correspondence or about any of the positions adopted or advocated by the respondent on TL's behalf in that correspondence.

[64] Nor can I identify anything untoward in the manner in which the respondent expressed herself in her correspondence. All of that correspondence apart from the initial letter of 31 October 2022, the first email on 7 November 2022 and two brief email acknowledgements was with the applicant's lawyer Mr PY (once the respondent was aware that he had been instructed), not with the applicant or VN. The correspondence was robust, direct, dispassionate and professionally expressed.

[65] The applicant and VN may well have felt challenged by the negotiating position being advanced by TL through the respondent's correspondence with their lawyer. This does not make the correspondence in any way unprofessional.

[66] Any sense of insecurity, anxiety, or other emotional response to the respondent's correspondence was a function of the dynamics of family and Trustee relationship, the Trust structure and consequent disputes between the applicant and VN on one side and TL on the other.

[67] The applicant and VN may well have considered TL's negotiating position to have been unreasonable, aggressive, ungrateful, disrespectful, confrontational or any number of other negative adjectives. That is a matter between them. I expect that TL may have had a similar number of critical things to say about the applicant's and VN's attempts to control the conduct of the Trust's affairs. Again, that is a matter between them.

[68] Be that as it may, it is objectively untenable to give credence to the applicant's assertions of the respondent's correspondence being aggressive, bullying, intimidatory, threatening or otherwise unprofessional. This simply was not so. In a hearing on the papers, I nevertheless feel constrained to accept that the applicant honestly believed it to be so.

[69] The applicant's assertions about the respondent's "lies" are in a different category. The applicant is entitled to question the integrity of her sister-in-law, TL, based on their differing accounts of factual events. She is not entitled to question the integrity of TL's lawyer for merely recording in correspondence TL's version of such events. To do so only calls into question the applicant's own judgement.

[70] The respondent sent one letter to the applicant and VN, namely the letter of 31 October 2022, and the short email of 9.49am on 7 November 2022. There is nothing discourteous or disrespectful in either piece of correspondence. After that, she sent a three-word email and a one-word email to VN; in both cases acknowledging his email correspondence. There is no basis for suggesting that these were discourteous.

[71] All other correspondence was with Mr PY. There is nothing in the materials to suggest that Mr PY considered the communications to be disrespectful or discourteous and no objective reason to speculate that he would do so.

[72] The applicant may well have good reason to consider TL's stance towards her and VN disrespectful. Again, that is matter between them. It has nothing to do with the respondent.

[73] The allegation of bullying is similarly unfounded. The applicant seeks to equate her own sense of being challenged in the negotiation process with TL, conducted through her own lawyer, with being bullied by TL's lawyer. That does not follow.

[74] Avoiding any form of a "bullying" dynamic is precisely why people engaged in this type of dispute communicate with each other through their lawyers. The lawyers can, as here, conduct the negotiation or dispute resolution process in a dispassionate and professional manner.

[75] I find there is no evidence of a breach by the respondent of any duties either owed to the applicant or owed generally in her professional capacity.

[76] I turn now to the applicant's specific objections to the Committee's decision raised on review.

[77] The evidence confirms that the Committee was correct to find that the differences between the parties "had not been resolved" at the 10 October 2022 meeting. The applicant's position in this respect is contradicted by VN's own correspondence in which he insisted that no agreement was reached.

[78] The applicant clearly held a different view from her husband about the outcome of the meeting and the implications of the notes on the photographed whiteboard. It

seems that the applicant and TL both believed progress had been made. The applicant's "pathway" was TL's "agreement in principle". This is a long way short of resolution of the issues in dispute.

[79] To the extent there might be any substance in the applicant's assertion of the agreed "pathway" being "destroyed", her complaint can only be against those present at the meeting, not against the respondent.

[80] At the risk of repetition, expressing one party's negotiating position in a dispute does not constitute failing to treat the other party with dignity or respect, or "setting upon" the other party or a "legal assault and threat". The respondent's role was to set out the legal steps she had been instructed by TL to take, no doubt on her advice, if legally binding agreement was not reached. This is a lawyer's job.

[81] It is not the role of a lawyer assisting in a commercial negotiation to "assess the integrity" of her client's information. The client's integrity is a matter for the client.

[82] The respondent's letter to the applicant and VN on 31 October 2022 would have been inappropriate and a breach of the Rules if the respondent had been aware on that date that the applicant and VN were legally represented in relation to the dispute.

[83] The applicant's evidence is that she had consulted Mr PY and, as a result, engaged Mr LG to assist her. She does not suggest that she had engaged Mr PY himself to assist her at that time or, if she had, that the respondent was made aware of that fact.

[84] I find there is no evidence that the respondent communicated directly with the applicant knowing that she was legally represented in relation to the dispute. On the contrary, it was the respondent who was suggesting or recommending to VN and the applicant (on three occasions) that they take legal advice.

[85] I agree with the applicant that at no stage did she assert that the respondent was incompetent. Nor did she suggest that the respondent was generally dishonest. It is to the applicant's credit that she sought to correct the Committee's misunderstanding of her complaint in these respects.

[86] The applicant and VN may well have "felt intimidated and threatened" by the steps either taken or contemplated by TL, as recorded in the respondent's correspondence (which, apart from the initial letter of 31 October 2022 and email of 9.49am on 7 November 2022, was with Mr PY). This does not make the correspondence objectively intimidating or threatening. I find that no "threats" were made by the respondent.

[87] I agree with the Committee's findings that the applicant and VN were not "bullied" by the respondent and that the respondent did treat them with respect and courtesy.

[88] I also find that there is no evidence of harassment, if the complaint is properly interpreted as including such an allegation.

[89] Lastly, the applicant sought compensation for the cost of the facilitated meeting on 10 October 2022. The respondent had nothing to do with the meeting. She was not engaged by TL until after the meeting. The costs of the meeting were presumably the cost of Mr LG's attendance. He had been engaged by the applicant (assuming he was not a Trustee).

[90] If there is a possible connection between the costs of the meeting and the applicant's complaint about the respondent's later conduct, it is difficult to fathom.

(c) Was it reasonable for the Committee to decide to take no action on the grounds that the complaint was frivolous, vexatious or not made in good faith?

[91] More generally, I agree with the Committee's findings and conclusions as I have paraphrased them in paragraph [33] above, except for subparagraph (b); as discussed earlier, the applicant did not complain that the respondent had been incompetent or generally dishonest.

[92] On my reading also, there does not appear to be any allegation of harassment in the complaint, at least using that term. VN stated in one of his emails, however, that "we are not in a position to be harassed and harangued". In her submissions on review, the applicant described the respondent's correspondence with Mr PY as a "barrage", which might carry that implication, as might her allegation of "… aggression, intimidation and relentless threats…".

[93] In any event, I consider it was reasonable and proper for the Committee to decide to take no action on the complaint under s 138(1)(c) of the Act. Where I differ slightly from the Committee is that the Committee did not specify which of the grounds set out in that section it considered to be applicable.

[94] "Frivolous, vexatious or not made in good faith" are alternatives, although a complaint can be about any two of them or conceivably all three of them, depending on the circumstances. There can also be considerable overlap between a vexatious complaint and a complaint not made in good faith.

[95] I doubt that the Committee could have considered the complaint to be frivolous. It was anything but frivolous. If the same allegations had been made other than in a confidential, regulated complaints process, they could well be regarded as slanderous.

[96] On review, I come to my own view about the applicability of the other grounds.

(d) What is the appropriate outcome of the review?

[97] Under s 205(1) of the Act, a Review Officer has the power to strike out an application for review if satisfied that it:

(a) discloses no reasonable cause of action; or

(b) is likely to cause prejudice or delay; or

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of process.

[98] The focus of the section is on the review application. Consideration of sufficient grounds for a review application, however, necessarily incorporates consideration of sufficient grounds for the complaint. This is because an application for review is an application for the complaint to be reconsidered afresh, or "from the beginning".

[99] "Vexatious" has a dictionary meaning and a legal meaning. They are different. The difference relates to the relevance of the complainant's purpose or intention.

[100] The dictionary meaning is to make a complaint without sufficient grounds for the purpose of causing annoyance. The legal meaning, in short, is to make a complaint without sufficient grounds that has the effect of causing annoyance.

[101] As stated in *P v H*:[8]

> [9] In *Dyson v Attorney-General* [1911] 1 KB 410, 418 (CA), Fletcher Moulton LJ was considering the power of the Court to strike out an action as vexatious and observed that:
>
> > The Court has a right to stop an action at this stage if it is wantonly brought without the shadow of an excuse, so that to permit the action to go through its ordinary stages up to trial would be to allow the defendant to be vexed under the form of legal process when there could not at any stage be any doubt that the action was baseless.

[8] *P v H* LCRO 2/2009 (20 March 2009).

> Importantly his honour did not consider that the action must be brought with the intention of "vexing" or annoying the defendant. However where a claim is baseless the effect of it is simply to cause inconvenience to the defendant. It is the fact that it is clearly baseless and therefore has the sole effect of annoying the defendant that makes it vexatious. The intention[s] of the plaintiff (or in this jurisdiction the complainant) are therefore not relevant to this question. Where a complaint is brought which is in fact wholly groundless it may be vexatious even though the complainant mistakenly thinks it has merit.
>
> [10] I note also that in s 138(1)(c) the word vexatious can properly be read along with the accompanying phrases of "frivolous" and "not made in good faith". Although the sentence uses the disjunctive "or" between the concepts, there is considerable overlap in these terms: *Cameron v Masters* [1998] NZFLR 11. …
>
> [11] … Where proceedings are brought for a collateral purpose this will weigh in favour of them being found to be vexatious: L v W (No 3) [2003] NZFLR 961 per Heath J at para 55 (upheld on appeal [2004] NZFLR 429).

[102] I have found that there were not sufficient grounds for the complaint to be made. There were in fact no such grounds. Although the applicant's purpose is not determinative, in general terms it does appear to have been to cause annoyance to the respondent.

[103] I adopt the same approach as was expressed in *P v H*. Where a claim is factually baseless, as here, the effect of it is simply to cause inconvenience to the respondent. It is the fact that it is clearly baseless and therefore has the sole effect of annoying the respondent that makes it vexatious.

[104] Importantly, as also stated in *P v H,* a complaint may be vexatious even though the complainant mistakenly thinks it has merit. The applicant is very articulate and has expressed herself in forthright and unequivocal terms. She clearly believes her complaint has merit. This does not save it from being vexatious.

[105] In addition, the applicant has made very clear that "the crux of the complaint" is the three alleged "lies". As I stated at the outset, the applicant has been unable to distinguish between TL, the person with knowledge of any relevant facts, and the respondent, her lawyer, who has no knowledge of any relevant facts.

[106] The respondent properly pointed out to the applicant and VN, in the context of their various references to "majority trustees", the basic legal principle that trustee decisions must be unanimous.

[107] Whether or not VN has been lawfully appointed as property manager by the Trustees, the legal effect of the tenancy agreement with CU, whether or not the Property

has been let at an undervalue, whether or not this constitutes a breach of trust, what TL was or was not "promised" at the meeting, whether or not agreement was reached on anything at all at the meeting and whether or not the Trustees collectively have made any valid or binding decisions are all factual and legal issues to be determined, if need be, by a Court.

[108] Those are matters in dispute between the Trustees, not between the applicant and the respondent.

[109] The complaint is plainly an expression of the applicant's antagonism towards TL improperly misdirected against her lawyer, the respondent, and an attempt to argue factual and legal issues in the wrong forum. As such, I find that it is also an abuse of the complaints and review processes.

Decision

[110] Pursuant to s 205(1)(c) and (d) of the Lawyers and Conveyancers Act 2006, the application for review of the decision of the Standards Committee is hereby struck out as being both vexatious and an abuse of process.

Publication

[111] 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 of the persons listed at the foot of this decision.

[112] 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.

[113] 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.

[114] The applicant is permitted to disclose a copy of this decision to Mr VN. The respondent is permitted to disclose a copy of this decision to her insurer for the purposes of meeting any material disclosure or reporting obligation she may have.

DATED this 08TH day of January 2024

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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:

Mrs QT as the Applicant
Ms MZ as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society