

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

[2023] NZLCRO 129

Ref: LCRO 186/2022

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the [Area] Standards Committee

**BETWEEN**

**DV**

Applicant

**AND**

**AW**

Respondent

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

**Introduction**

[1] Mr AW complained about the conduct of Dr FN (Dr FN) and [redacted], Mr DV (Mr DV), when acting for him and his company, Company A Limited (A Ltd).

[2] The Committee opened separate complaint files for each of Dr FN and Mr DV, but, as the complaints were identical, processed them together and issued a single decision in which it made findings of unsatisfactory conduct against both Dr FN and Mr DV.

[3] Mr DV has applied for a review of that decision. Dr FN has not.

**Background**

[4] [A Ltd] was the owner of a development site in [address]. It obtained a resource consent to carry out a mixed commercial and residential development of the site.

Funding for the development was provided by Company B Limited (B Ltd) and secured by a mortgage over the property.

[5] Company C Limited (C Ltd) held interests in B Ltd, and a member (or members) of the CC family were directors of both companies.

[6] [C Ltd] expressed interest in developing the site.

[7] In December 2015, [A Ltd] refinanced the [B Ltd] loan through Company D Limited (D Ltd).

[8] In May 2017, [B Ltd] purchased the [D Ltd] security. [A Ltd] defaulted in its obligations under the loan and [B Ltd] issued a Property Law Act notice, being the initial step towards exercising the mortgagee's power of sale.

[9] Mr AW consulted Dr FN as to what options there were to halt the sale. Dr FN advised that there were possible grounds to obtain an injunction.

[10] Mr AW took independent advice from lawyers who had acted for him in the past.<sup>1</sup> Neither lawyer agreed there were grounds to pursue an injunction and Mr AW decided not to proceed.

[11] On 18 October 2017, [B Ltd] exercised its power of sale and sold the property to [C Ltd].

[12] Mr AW was convinced that [C Ltd] and [B Ltd] had colluded to enable [C Ltd] to ultimately purchase the property.

[13] Dr FN advised Mr AW that there were grounds to issue proceedings against [B Ltd] based on alleged breaches of fiduciary duties and other potential causes of action.

#### *The Letter of Engagement*

[14] Dr FN issued a Letter of Engagement to [A Ltd] on 28 September 2017. The work to be undertaken at that stage was to issue proceedings to halt the mortgagee sale and to "prepare and file, on an urgent basis...".

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<sup>1</sup> Mr UG and Mr XL.

[15] It recorded that Dr FN would be the “partner”<sup>2</sup> responsible for the matter. Other lawyers to be involved in the proceedings were Mr DV and Mr FB KC.<sup>3</sup>

[16] The letter of engagement included an estimate of fees of \$100,000 to obtain an injunction to halt the sale process. It requested the full amount of the estimate to be paid at that stage.

[17] Mr AW consulted Mr UG, Mr XL and Mr PR KC, all of whom had acted for him previously. Mr AW says that none of them thought there were grounds to apply for an injunction.<sup>4</sup>

[18] Mr AW then decided against pursuing an injunction, and the letter of engagement became otiose.

[19] Following Mr AW’s decision not to continue with injunction proceedings, Dr FN sent Mr AW a letter headed “Litigation, Scope, Timing and Estimate”.<sup>5</sup> In this document, Dr FN provided a preliminary view that there was a potential cause of action against [B Ltd] for breach of a fiduciary duty. He referred to the possibility of other causes of action.

### *Fees*

[20] In the same letter, Dr FN proposed a conditional fee arrangement in which he advised that the firm was “prepared to put an amount of [its] normal fees (relating to the present tasks) at risk provided that ... a premium arrangement” could be agreed.

[21] He suggested that if the fee proposal was acceptable to Mr AW in principle, that they “meet to discuss and agree the basis on which the premium [was] to be calculated.”

[22] Following those meetings, Dr FN sent a further letter headed in the same manner, to Mr AW, expressed to be an update on the ‘engagement letter ... provided.’ The letter included the terms of the conditional fee arrangement.<sup>6</sup>

[23] The conditional fee arrangement proposed by Dr FN, required an initial payment of \$15,000. Thereafter, fees in excess of that amount would be due and payable within seven days of a successful event occurring. The term ‘successful event’ was defined.

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<sup>2</sup> [Law firm E Limited] is an incorporated law firm. Dr FN was the sole director.

<sup>3</sup> Mr FB is not a member of [Law firm E Limited].

<sup>4</sup> Letter of complaint to Lawyers Complaints Service (1 September 2020) at [16].

<sup>5</sup> Letter Dr FN to Mr AW (3 November 2017).

<sup>6</sup> Letter Dr FN to Mr AW (14 November 2017).

[24] This arrangement was to operate for the 'first stage' of the instructions. There was no mention of what constituted the first, or subsequent, stages.

[25] Mr FB's fees were separate from fees invoiced by [E Ltd].

*Report and advice to Mr AW*

[26] On 21 December 2017, Mr DV sent an "update on proceedings" to Mr AW in which he summarised and reported on progress to date. He advised that he and Dr FN had reviewed the email and text communications provided to them by Mr AW and had formed the view that 'there [was] an arguable case that the [CC]s acquired the land by means which were unlawful'.

[27] Mr DV advised Mr AW of possible causes of action, being:

- (a) Oppressive conduct.
- (b) Breach of fiduciary obligations.
- (c) Misleading or deceptive conduct.
- (d) Defects in the mortgagee sale process.

[28] Mr DV then advised Mr AW of the next steps to be taken, being:

- (a) Gathering and reviewing evidence.
- (b) Review of case law.
- (c) Drafting the statement of claim and key supporting affidavit.
- (d) Timing.
- (e) Funding.

[29] Mr DV concluded his letter in the following terms:<sup>7</sup>

This is a complex matter with a number of potential causes of action to consider and a substantial amount of evidentiary material to review. The timeframe also incorporates the Christmas period which inevitably lengthens it. Should opportunities arise to complete the preparation of the claim in a shorter period then we would seek to do so.

We expect to continue to work closely with you over the coming months and to keep you apprised of progress on a regular basis.

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<sup>7</sup> Letter Mr DV to AW (21 December 2017).

[30] Dr FN subsequently reported to Mr AW on 6 September 2018, advising that the Notice of Proceedings and Statement of Claim had been filed and sent to a process server for service. With that email, Dr FN sent an invoice for the initial payment of \$15,000 plus GST and disbursements as provided for in the letter of 14 November. Mr AW paid this invoice.

[31] On 18 February 2019, Dr FN sent Mr AW a second invoice covering the period from 1 September 2018 to the end of January 2019. The amount invoiced was \$38,000 plus GST and disbursements, a total of \$43,700.

[32] Mr AW did not expect to receive that invoice, as he understood that after payment of the initial invoice for \$15,000, further fees would be 'at risk' as proposed by Dr FN.

[33] Nevertheless, Mr AW paid the invoice.

[34] Dr FN reported regularly to Mr AW throughout 2019. In early 2020, Mr AW asked Mr UG<sup>8</sup> and Mr XL<sup>9</sup> for an overview of the litigation. Another barrister, Mr NQ, was also consulted.

[35] A date for a two-week trial commencing on 22 June 2020 had been set. Dr FN advised that neither he nor Mr DV could conduct the trial due to a lack of experience. He advised that Mr FB's fee would be in the region of \$150,000 to \$200,000. Mr AW was again surprised, as he was under the impression that the conditional fee arrangement with [E Ltd] was to cover all of the work required through to, and including, the trial.

[36] Mr AW was not able to meet those potential costs and terminated his instructions on 15 May 2020.

[37] At that stage, supporting affidavits had not been drafted and timetabling orders by the Court had not been complied with. There had been limited, if any, preparation for the trial.

[38] Mr XL applied to the Court for an adjournment. The adjournment was declined and Mr XL agreed to continue to act for Mr AW. However, the proceedings were settled prior to the trial. By that stage, [E Ltd] had issued further invoices:

2 June 2020 – \$36,190 plus GST and disbursements

2 July 2020 – \$57,744 plus GST

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<sup>8</sup> Mr UG had acted as Mr AW's commercial solicitor for some time.

<sup>9</sup> Mr XL is a barrister who had also acted for Mr AW on other matters.

21 August 2020 – \$15,150 plus GST

[39] These invoices were not paid.

[40] The total of all invoices issued by [E Ltd] was \$166,788.36.

[41] Mr DV became closely involved with endeavouring to obtain payment of the outstanding invoices and asserted a lien over files. He sought undertakings from Mr UG to ensure payment of the outstanding invoices, which Mr UG declined to give.

[42] During this time, Dr FN contacted Mr AW directly by phone and by letter with regard to the outstanding fees.

[43] Mr XL lodged the complaint on behalf of Mr AW with the Lawyers Complaints Service on 1 September 2020.

### **Mr AW's complaints**

[44] The Standards Committee summarised Mr AW's complaints as being:<sup>10</sup>

- [E Ltd] advised that there was a good arguable case when there is no evidence to support the proposed causes of action;
- [E Ltd] was paid for the "first stage" and more, yet the affidavits were never done;
- The conditional fees agreement (and the fees charged) were unreasonable;
- [E Ltd] was asked for an estimate and all that was received was a conditional fees agreement for the first stage; and
- [E Ltd] continued to communicate with Mr AW once the retainer had been terminated.

### **The Standards Committee determination**

[45] The Standards Committee identified the issues to be addressed and dealt with each by reference to the relevant Conduct and Client Care Rules.<sup>11</sup>

#### *Rule 3*

[46] The Committee noted that Dr FN and Mr DV accepted that they did not file briefs of evidence on time and failed to meet the timetabling orders set by the High Court. The

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<sup>10</sup> Standards Committee determination (14 October 2022) at [21].

<sup>11</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Committee determined that these failures amounted to a breach of r 3 which requires a lawyer to act with competency and timeliness.

#### *Rule 4.2.3*

[47] This rule provides that a lawyer must not terminate a retainer on the grounds that “the client has failed to make arrangements satisfactory to the lawyer for payment of the lawyer’s costs...”. The Committee noted that [E Ltd] had not terminated the retainer<sup>12</sup> and consequently this rule had not been breached.

#### *Rule 9*

[48] Rule 9 provides that a lawyer’s fees must be fair and reasonable. The Committee commissioned a report from Mr MN who concluded that the fees charged were not fair and reasonable. Dr FN and Mr DV accepted Mr MN’s findings and this resulted in a finding that Dr FN and Mr DV were in breach of r 9.

#### *Rule 9.2*

[49] The Committee was “not satisfied that the conditional fee agreement [was] unfair or unreasonable after having regard to the interests of Mr AW, and the interests of Dr FN and Mr DV”.<sup>13</sup>

[50] The Committee determined that there had been no breach of r 9.2.

#### *Rule 9.8*

[51] The Committee determined that the fee agreement with Mr AW complied with the requirements of ss 333–335 of the Lawyers and Conveyancers Act 2006 and consequently there had been no breach of this rule.

#### *Rule 9.9*

[52] The Committee had determined that the fees charged by [E Ltd] were not fair and reasonable. This resulted in a finding of a breach of r 9.9.

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<sup>12</sup> Mr AW terminated the retainer.

<sup>13</sup> Standards Committee determination, above n 10, at [42].

*Rule 9.10*

[53] The conditional fee agreement entered into by [E Ltd] did not include the terms on which either party could terminate the arrangement or set out circumstances which would require Mr AW to pay the costs of another party. The Committee determined that this constituted a breach of rr 9.10(d) and (f).

*Rule 10.2*

[54] The Committee noted that Dr FN had contacted Mr AW directly after the retainer had been terminated. These communications were related to the payment of outstanding costs. The Committee determined that these breaches of the rule did not require an adverse finding against either Dr FN or Mr DV.

*Summary*

[55] The Committee determined that:<sup>14</sup>

... there have been breaches of the following Rules: Rules 3, 9, 9.9 and 9.10(d) and (f), and that these breaches amount to unsatisfactory conduct on the part of Dr FN and Mr DV pursuant to sections 12 and 152(2)(b) of the Act.

*Orders*

[56] Having found breaches of the Rules referred to, the Committee imposed the following orders:<sup>15</sup>

- 156(1)(b) – Dr FN and Mr DV are both censured;
- 156(1)(e) – Dr FN and Mr DV are ordered to reduce the total fees charged to Mr AW to \$89,000.00 plus GST;
- 156(1)(i) – Dr FN and Mr DV are ordered to pay a fine to the New Zealand Law Society in the amount of \$3,000.00 each; and
- 156(1)(n) – Dr FN and Mr DV are ordered to pay costs to the New Zealand Law Society in the amount of \$2,500.00 each.

*Publication*

[57] The Committee directed “such publication of a summary of the facts, outcome, and orders of the matter as the New Zealand Law Society deems appropriate, but not any details that might lead to the identification of any party involved.”<sup>16</sup>

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<sup>14</sup> At [55].

<sup>15</sup> At [56].

<sup>16</sup> At [58].



### **Mr DV's application for review**

[58] Mr DV's reasons for his application are focused. He says that the legal services provided to Mr AW were provided by [Law firm E Limited]. Dr FN is the sole director and shareholder of the firm, and Mr DV was, at all times, an employee.

[59] He says that, as a result, the party complained about, should be [Law firm E Limited].

[60] Alternatively, he says that Dr FN was the person responsible for the advice provided to Mr AW, and that he was only engaged in a limited manner, at the direction of, and supervised by, Dr FN.

[61] He submits that the Committee was wrong to treat him and Dr FN in the same manner, and make the same findings against him.

[62] His reason for applying, are encapsulated in this sentence from the reasons given in support of his application:-

All of the breaches of Rules which were found by the Standards Committee to have occurred, being rules 3, 9, 9.9, and 9.10(d) and (f) were matters for which Dr FN as principal had responsibility and exercised authority and were not matters for which Mr DV as an employee could or did control.

### **Mr AW's response**

[63] Mr XL responded on behalf of Mr AW. He advised that Mr AW supported the Committee's determination, but did not wish to incur further costs by actively participating in the review.

### **Nature and scope of review**

[64] The High Court has described a review by this Office in the following way:<sup>17</sup>

A review by the LCRO is neither a judicial review nor an appeal. Those seeking a review of a Committee determination are entitled to a review based on the LCRO's own opinion rather than on deference to the view of the Committee. A review by the LCRO is informal, inquisitorial and robust. It involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination.

[65] This review has been conducted in accordance with that description.

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<sup>17</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

## Review

[66] Mr DV's reasons in support of his application for review of the Standards Committee determination are that the subject of the complaint should have been [Law firm E Limited]. He says that Dr FN was the sole director of the company and he had no decision-making authority.

[67] Mr DV submits that all breaches of the rules were matters for which Dr FN, as the principal, had responsibility and exercised control over.

[68] This submission echoes the submission of Dr FN to the Committee where he says:<sup>18</sup>

5. The Notices of Hearing (dated 18 March 2022) for both complaints are also identical except to the extent that in one complaint (20980) the subject of the hearing relates to purported breaches of the client care rules by Dr FN and in the other (20981) the subject of the hearing relates to purported breaches of the same client care rules, for the same reasons, by Mr DV.
6. Whilst the Standards Committee's approach may be necessary, in the present and unusual circumstance of two identical complaints having been made, it is respectfully submitted that the subject of the hearing of both complaints should in fact be limited to [Law firm E Limited] and Dr FN for the following reasons:
  - a. Mr DV is only an employee of [Law firm E Limited] and he has no decision-making authority as director/principal or otherwise. That authority resides solely with Dr FN.
  - b. As sole director of [Law firm E Limited], Dr FN has responsibility for all of the matters that are the subject of complaint including (without limitation) for the following:
    - i. Ensuring the requirements of the Court are met in terms of filing evidence and meeting timetable orders;
    - ii. The terms of the [Law firm E Limited] letter of engagement (signed by Dr FN);
    - iii. The terms of the [Law firm E Limited] conditional fee agreement (signed by Dr FN); and
    - iv. Determining all amounts charged by [Law firm E Limited].
7. These submissions have consequently been prepared on the basis that [Law firm E Limited] and Dr FN are the proper subjects of the Standards Committee's consideration of both complaints. However, to the extent that Mr DV may have some independent responsibility in respect of any of the purported breaches (which is denied), these submissions relate to Mr DV as well.

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<sup>18</sup> Dr FN submissions (22 April 2022).

[69] Section 132(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 provides that complaints may be made against an incorporated company. However, it is not often that a complaint can be properly taken against an incorporated law firm as inevitably, the conduct complained about is the conduct of individuals within the firm.

[70] Another factor to be taken into account when addressing this submission is that it is not readily apparent from any of the communications from either Dr FN or Mr DV that the legal services provided were being provided by a limited liability firm.

[71] The firm's letterhead refers only to 'E Ltd'. The only indication that the addressee of the letters was dealing with an incorporated firm is that Dr FN included the word 'Director' after his name when signing off emails. Letters were signed off with the word 'Sincerely FN'. Mr DV's correspondence was signed off as '[E Ltd]'.

[72] Section 25 of the Companies Act 1995 requires that "a company must ensure that its name is clearly stated in every written communication sent by or on behalf of the company".

[73] The letter of engagement provided to Mr AW states:-

Dr FN will be the partner responsible for this matter.

A company does not have partners.

[74] I acknowledge that both the standard terms of engagement and the information for clients attached to the letter of engagement are those of [Law firm E Limited] but notwithstanding, I expect that as far as Mr AW and the lawyers who engaged with Dr FN and Mr DV were concerned, they were engaging with them personally.

[75] For these reasons, I do not accept that the complaint should have been brought against [Law firm E Limited].

#### *The services provided to Mr AW*

#### *Dr FN*

[76] Mr AW was introduced to Dr FN by the real estate agent engaged by [A Ltd] to sell the apartments which were to be built. The agent was a friend of Dr FN.

[77] Mr AW met with Dr FN in September 2017 following which<sup>19</sup> Dr FN sent Mr AW a letter headed 'Preliminary memorandum of advice' in which he advised Mr AW that he

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<sup>19</sup> On 3 October 2017.

considered there were grounds to sue [B Ltd]. The memorandum gave an overview of the potential for a claim against [B Ltd] for breaches of fiduciary duty and listed five other potential causes of action. Dr FN advised:

Whilst we have not presently had time to complete our review of other causes of action that may also be available to you in the circumstances, we consider it worthwhile to complete this research including particularly in respect of the following:

1. The tort of causing loss by unlawful means;
2. The tort of deceit;
3. Other legal obligations arising in respect of the provision by you of confidential project information to [B Ltd] and breach of those legal obligations by [B Ltd];
4. Breach of the Fair Trading Act 1986; and
5. Breach of financial markets regulatory statutory obligations.

[78] Dr FN authored the letter headed “Litigation, Scope, Timing” referred to in paragraph [19] above. This letter included the suggested terms of the conditional fee arrangement.

[79] Dr FN reported to Mr AW on 27 June 2019 on the status of the litigation and the steps to follow.

[80] The three invoices dated 6 September 2018, 18 February 2019 and 2 June 2020 were all sent by Dr FN.

[81] It was Dr FN who communicated directly with Mr AW about the unpaid fees.

*Mr DV*

[82] All correspondence from Dr FN to Mr AW was copied to Mr DV. This indicates that although Dr FN was the lead person, Mr DV was involved as the file progressed.

[83] The update on proceedings sent by Mr DV to Mr AW on 21 December 2017, shows that he was closely involved with the research and development of the causes of action and the steps to be taken to progress the file. This letter was a comprehensive report which could not have been prepared without Mr DV being closely involved with the file.

[84] Mr DV prepared the interrogatories for at least three of the potential witnesses.<sup>20</sup>

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<sup>20</sup> Draft interrogatories were sent by Mr DV to Mr AW on 14 October 2019.

[85] In an email to Mr AW dated 30 August 2019, Dr FN advised that he and Mr DV were looking forward to meeting with Mr AW on the following Monday.

[86] Mr FB's invoices contained frequent references to Mr DV's involvement with the proceedings.

[87] Finally, Mr DV became the person directly involved in the legal processes to recover outstanding fees and communications with Mr AW's then professional advisers. He also sent the two invoices dated 2 July and 21 August 2020.

## **Conclusion**

[88] The conclusions I draw from the material available are:

- Dr FN provided the initial advice and developed the basis for the claim against [B Ltd].
- Mr DV became involved with the litigation at an early stage and continued to be involved throughout. As such, he must bear equal responsibility for the lack of progress and the lack of preparation for trial.
- Dr FN authored the terms of engagement and the conditional fee agreement.
- Dr FN rendered the first three invoices.
- Mr DV rendered the last two invoices.

## **Decision**

[89] The Standards Committee determined that Mr DV had breached r 3 of the Conduct and Client Care Rules. This rule provides:

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

[90] In general terms, Mr DV did not comply with the duty of care to Mr AW by allowing the state of unpreparedness for trial to develop.

[91] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, I confirm the finding of unsatisfactory conduct by the Committee by reason of the breach of r 3.

[92] Mr MN assessed that the total fees rendered by [E Ltd] were more than fair and reasonable.

[93] Dr FN's submissions<sup>21</sup> in response to the Notice of Hearing were made on behalf of 'Mr DV (if required).

[94] At [28] of his submissions, he says:-

Although not all of the reasons for the Costs Assessor's findings are accepted, [Law firm E Limited] and Dr FN do not object to the Costs Assessor's findings.

The Standards Committee proceeded on the basis that this was acceptance by both Dr FN and Mr DV.<sup>22</sup>

[95] [E Ltd] rendered five invoices. Two of these were fees invoiced by Mr DV.

[96] Accordingly, pursuant to s 211(1)(a) of the Act I confirm the determination of the Committee that Mr DV is in breach of r 9.

[97] Dr FN proposed the conditional fee agreement. The findings of breaches of rr 9.9 and 9.10(d) and (f) relate to the agreement. Consequently, I reverse the findings of the Committee that Mr DV has breached those rules.

[98] Notwithstanding that the Committee determined to take no further action on the breach of r 10.2, I modify the determination to remove any suggestion that Mr DV has breached the rule, as it was Dr FN who made direct contact with Mr AW after Mr AW had terminated the retainer.

[99] Having confirmed the Committee's finding that Mr DV has breached rr 3 and 9 of the Conduct and Client Care Rules, I confirm the finding of unsatisfactory conduct against Mr DV as that term is defined in s 12(c) of the Lawyers and Conveyancers Act 2006.

[100] Other than as modified by this decision, I confirm the determination of the Committee in all other respects.

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<sup>21</sup> Dr FN submission, above n 18, at [28].

<sup>22</sup> Standards Committee determination at [38]

## Orders

### *Censure*

[101] The Court of Appeal has commented on the nature of a censure or reprimand in *New Zealand Law Society v B*.<sup>23</sup> It said:

[39] ... Both words envisage a disciplinary tribunal, here a Standards Committee, making a formal or official statement rebuking a practitioner for his or her unsatisfactory conduct. A censure or reprimand, however expressed, is likely to be of particular significance in this context because it will be taken into account in the event of a further complaint against the practitioner in respect of his or her ongoing conduct. We therefore do not see any distinction between a harsh or soft rebuke: a rebuke of a professional person will inevitably be taken seriously.

[102] Clearly, a censure is reserved for serious breaches. Mr DV's breaches do not reach that level.

[103] Pursuant to s 211(1)(a) of the Act, the censure order against Mr DV is reversed.

### *Fees*

[104] The Committee ordered Mr DV and Dr FN to reduce the total fees charged to Mr AW to \$89,000.

[105] These fees are payable to [E Ltd]. Mr DV does not have the ability to comply with this order.

[106] Pursuant to s 211(1)(a) of the Act, the order against Mr DV is reversed.

### *Fine*

[107] The Committee imposed a fine of \$3,000 on Mr DV. The maximum fine that a Committee can impose is \$15,000.<sup>24</sup> The breach of r 3 as confirmed in this decision, goes to the heart of Mr AW's complaints. It is appropriate, therefore, that the fine of \$3,000 remains.

[108] Pursuant to s 211(1)(a) of the Act, the fine of \$3,000 is confirmed.

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<sup>23</sup> *New Zealand Law Society v B* [2013] NZCA 156.

<sup>24</sup> Section 156(1)(i) Lawyers and Conveyancers Act 2006.

### **Costs**

[109] The Committee was engaged in a consideration of the complaints against both Mr DV and Dr FN. There is no reason to differentiate between costs to be paid by Mr DV and Dr FN.

[110] Pursuant to s 211(1)(a) of the Act, the order for payment of costs in the sum of \$2,500 is confirmed.

### **Costs on review**

[111] The Costs Orders Guidelines issued by this Office provide that where a finding of unsatisfactory conduct is made or upheld against a practitioner, costs orders will usually be made against the practitioner in favour of the New Zealand Law Society.

[112] The finding of a breach of r 3 has been confirmed on review. Other findings have been reversed.

[113] This review has been factually complex and included a hearing in person.

[114] Pursuant to s 210(1) of the Act, Mr DV is ordered to pay the sum of \$1,000 towards the costs of this review, being less than one half of the amount specified in the Guidelines.

### ***Enforcement of costs order***

[115] Pursuant to s 215 of the Act, I confirm that the order for costs made by me may be enforced in the civil jurisdiction of the District Court.

### **Publication**

[116] Section 206(1) of the Lawyers and Conveyancers Act 2006 provides that every review must be conducted in private. Section 206(4) provides that the Legal Complaints Review Officer may direct publication as he or she considers necessary in the public interest.

[117] Pursuant to 206(4) of the Act, I direct that this decision be published in an anonymised format by this Office.

**DATED** this 30<sup>TH</sup> day of OCTOBER 2023



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**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 DV as the Applicant  
Mr AW as the Respondent  
Mr XL as the Respondent's Representative  
Dr FN as a related person  
[Area] Standards Committee  
New Zealand Law Society