

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

[2023] NZLCRO 081

Ref: LCRO 42/2022

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of [Area]  
Standards Committee [X]

**BETWEEN**

**QA**

Applicant

**AND**

**PATRICK KENNELLY**

Respondent

**DECISION AS TO PUBLICATION**

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

[1] On 19 April 2023,<sup>1</sup> I issued a decision (the ‘findings’ decision) confirming the determination by the Standards Committee, in which the Committee had made two findings of unsatisfactory conduct against Mr Kennelly and imposed orders. On review, the fine imposed by the Standards Committee was increased to \$14,000.

[2] At paragraph [129] of the findings decision, I invited the parties to make submissions within one month of the date of the decision<sup>2</sup> as to whether the decision should be published, including identifying Mr Kennelly as the lawyer complained about.

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<sup>1</sup> The decision was initially issued on 14 April. Paragraph [19] of that decision included an email sent by GA’s stepson to Mr QA and others, which was wrongly attributed to Mr Kennelly. An amended decision was issued on 19 April with the email in question removed.

<sup>2</sup> The month expired on 19 May 2023.

### Mr Kennelly's response

[3] On 18 May 2023, Mr Kennelly responded by email which consisted of 11 bullet points, all of which, bar one, related to the error referred to in footnote 1 below. The one point which directly addressed the question as to whether the decision should be published, reads:

*It is not appropriate to Publish. And if I must seek an order to do so I will.*<sup>3</sup>

[4] In the same email, Mr Kennelly advised that he intended to apply for judicial review of the findings decision, and sought confirmation that the decision would not be published until the High Court had heard the proceedings.

[5] Following receipt of Mr Kennelly's email, I issued a Minute dated 23 May 2023, which is set out in full here:

#### MINUTE

[1] On 19 April 2023, I issued a decision on review of a determination by [Area] Standards Committee [X].

[2] In [129] I called for submissions on publication within one month of 19 April.

[3] On 18 May, Mr Kennelly provided submissions, in which he advised that he would be 'judicially reviewing both decisions' and requested confirmation that there would be no publication 'until the High Court has heard the Judicial Review proceedings'.

[4] As there is no time limit within which Judicial Review proceedings must be lodged, I am not prepared to give the confirmation requested by Mr Kennelly.

[5] In lieu thereof, I confirm that I will defer making any decision as to publication for a further period of six weeks from the date of this Minute. If Judicial Review proceedings have not been filed and served within that time, I will proceed to issue the decision as to publication.

[6] On 3 July, the case manager reminded Mr Kennelly that the date set for filing and serving proceedings expired on the following day. Mr Kennelly responded:

*Thank you for your reminder. I won't be doing anything despite having good grounds on advice as Mr Vaughan wants to publish.*

### Mr QA's response

[7] Mr QA seeks publication of the decision. Much of what Mr QA submits cannot be referred to in this decision, but the essence of his request is summed up in these paragraphs:

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<sup>3</sup> The second sentence does not seem to correctly reflect Mr Kennelly's meaning.

As noted in point [31] of the decision, one of my goals is to do my utmost to improve future outcomes for other vulnerable clients who may find themselves in a similar situation to that of my father. Accordingly, I am requesting publication of this order.<sup>4</sup>

... It seems fair to describe Mr Kennelly as a serial offender and I believe it has reached a point where it is in the public interest to publish the decision. The hope is that future potential clients, particularly if being referred by another law firm, can make informed choices.

### **The applicable law and principles**

[8] Section 206(1) of the Lawyers and Conveyancers Act 2006 provides that “every review conducted by the Legal Complaints Review Officer under this Act must be conducted in private.”

[9] Whilst it is the common practice of this Office to publish decisions on its website, unless otherwise ordered, no identifying details of the parties or events which could lead to the identification of the parties, or any other person referred to in the decision will be published.

[10] Section 206(4) of the Act provides as follows:

The Legal Complaints Review Officer may, subject to sub section (3), direct such publication of his or her decisions as he or she considers necessary or desirable in the public interest.

[11] Public interest is the predominant factor in determining whether there should be publication or not. In this instance, the issue is whether Mr Kennelly’s name should be published.

[12] In addition to the statutory direction as to public interest, the other factors to be taken into account when considering whether to publish the name of a practitioner are set out in the Legal Complaints Review Officer Publication Guidelines.<sup>5</sup> These are:

- (a) the extent to which publication would provide protection to the public including consumers of legal and conveyancing services;
- (b) the extent to which publication will enhance public confidence in the provision of legal and conveyancing services;
- (c) the impact of publication on the interests and privacy of-
  - (i) the complainant;
  - (ii) the practitioner;

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<sup>4</sup> QA submission on publication order (3 May 2023) at [14]–[15].

<sup>5</sup> These Guidelines are drawn from judgments of the High Court and decisions of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal.

- (iii) any other person;
- (d) the seriousness of any professional breaches; and
- (e) whether the practitioner has previously been found to have breached professional standards.

## Discussion

[13] In his response to Mr QA's application for review, Mr Kennelly made a number of comments that give rise to concern, many of which are referred to in the findings decision. Of particular concern is Mr Kennelly's comment:<sup>6</sup>

*... it was not unusual for me to work with [law firm] and in particular YN in relation to matters where independent advice was to be given on a document that they were to prepare.*

[14] Ms YN has passed away but it is important that all practitioners are aware of this decision if it is proposed to refer others to Mr Kennelly for independent advice. Mr Kennelly's view of what amounts to 'independent advice' (referred to and discussed in the findings decision) gives cause for concern and may have significant consequences for other parties to the transaction on which advice is sought.

[15] For this reason, there is a high need for members of the profession to be aware of this decision and the name of the lawyer involved.

[16] Another factor which gives me concern, is that GA was an elderly and vulnerable person who needed to fully understand the consequences of the arrangement that he was entering into. It was not simply a matter of ensuring that the Deed provided for his signature recorded what the lawyer for the other party advised Mr Kennelly was required.<sup>7</sup>

[17] The need for independent advice arises frequently in circumstances where couples are entering into relationship property agreements. It is entirely unsatisfactory for the lawyer giving independent advice to merely explain the content of an agreement prepared by the lawyer for the other party.

[18] Another factor applicable to this decision is the impact that publication would have on Mr Kennelly's interests and privacy. Mr Kennelly has not made any submission directed to this factor and his abbreviated response to my request for submissions would indicate that he does not care much about the possibility of publication, other than the statement that the decision should not be published.

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<sup>6</sup> Kennelly response to application for review (27 April 2022) at [24].

<sup>7</sup> A gift of \$130,000 to enable Mr and Mrs M to secure finance to purchase a home.

[19] Finally, the factor referred to in paragraph [4(e)] of the Publication Guidelines issued by this Office is whether the practitioner has previously been found to have breached professional standards.

[20] I am aware that there have been a number of occasions previously where Mr Kennelly has been found to have breached professional standards. There is no record of Standards Committee determinations that can be referred to, but the record of decisions issued by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal indicates that Mr Kennelly has been before the Tribunal six times between 2017 and today.

### **Decision**

[21] For the reasons discussed above, I direct that the findings decision, dated 19 April 2023, be published including Mr Kennelly's name, but with all other names and identifying details of other persons anonymised.

**DATED** this 1<sup>ST</sup> day of AUGUST 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 QA as the Applicant  
Mr Kennelly as the Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society