

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

[2021] NZLCRO 020

Ref: LCRO 43/2019

CONCERNING

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

AND

CONCERNING

a determination of [Area] Standards Committee [X]

BETWEEN

KD

Applicant

AND

MX

Respondent

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

Introduction

[1] Mr KD has applied for a Review of the determination by [Area] Standards Committee [X] to take no further action on his complaints about Mrs MX.

Background

[2] Mr KD and Ms QY were the parents of two young children and lived together in [country].

[3] In about July/August 2017, Ms QY left the relationship and travelled to New Zealand with the children. They lived with Ms QY's parents in [city 1].

[4] The older child was enrolled at [School 1] – the younger child was enrolled at a pre-school in [suburb].

[5] Mr KD and Ms QY commenced litigation in the Family Court relating to their relationship and children, much of which was unresolved at the time the events giving rise to Mr KD's complaints, occurred.

Mr KD's emails

[6] On 2 July 2018, Mr KD sent emails to the children's schools. Both emails were, in the main, identical. Set out below are portions of those emails:

- The reason I am writing this email to you is that I would like to re-establish my involvement in education at your school. I have attempted to do this through his mother but unfortunately, she has not been supportive or encouraging of my relationship with
- ... as his birth father, I am’s natural guardian and share parental care and responsibility for him together with his mother. ... there are no Parenting orders or Protection Orders in place that varies my guardianship of, ...
- I would like you to keep me updated on’s education at your school, this includes but is not limited to the following:
 - Include me in the parental emailing lists
 - Include me as an emergency contact/Next of Kin
 - Email me details of school events, newsletters, field trips, progress reports, etc.
 - Notify me of significant occurrences e.g. if he hurts [him]self, adjustment issues, etc.
 - Parent volunteer opportunities.
 - Any other matters a parent should know of his/her child's time at your school.
- I would also like to periodically contact you or his teacher to have a chat about his progress and time at your school. If I were in [city 1] I will be doing this in person but this will be done via telephone or email in most instances.
- ... all I want is to be kept informed of his time at your school and be involved again.
- I only want what is best for and this includes having his father play a big part in his upbringing and development.

Mrs MX's emails

[7] On the following day (3 July 2018), Mrs MX sent emails to the schools, and it is the contents of this correspondence which give rise to Mr KD's complaints.

[8] After introducing herself as the lawyer acting for Ms QY, Mrs MX said:¹

1. The Father had applied for the return of the children to [country] under the Hague Convention. My client Mother opposed the application on the basis that the Father consented to the children remaining in New Zealand. ...
2. That evidence was put before the Court. However the Court had a narrow legal issue to determine and did indeed order the return of the children. However what is important for your purposes is that the Court decision on the Hague Convention proceedings is currently being appealed to the [city 1] High Court. ... A copy of the Notice of Appeal is enclosed for your information.
...
4. Counsel in the High Court matter have been in negotiations about the matter and agreed to certain Orders (which for confidential reasons cannot be given to you). However on the basis of those consent orders, the matter has been allocated a Hearing date in the [city 1] High Court on 17 October 2018, a copy of which is also enclosed.
...
6. Also in terms of the consent orders as agreed between the lawyers, a Lawyer is being appointed to represent the children, who no doubt will be in touch with your school in due course.
7. Please note my client has produced medical evidence to the Court in support of her allegations of physical violence against one of the children and is therefore opposed to contact pending further order of Court.
...
9. In my view the father is being psychologically abusive because of the mind games he is playing with my client and the children.
10. I am therefore concerned about the Father's intentions and the pressure he is placing on the children. The children have been upset because he turned up at my client's door this past weekend (despite being asked to stay away). He would not leave, leaving my client no option but to call the Police. The Father has been served with a Trespass Notice. A Protection Order application against the Father is being commenced. The child is traumatised and hence has not been at school.
11. Please note that there are no Parenting Orders in place mainly because of various discussions between the lawyers at this stage.
12. Whilst I understand the Father has his guardianship rights, the child's safety is of primary concern. My client has produced medical evidence in support of her allegations of physical violence by the Father against the child, which is to be used in a Protection Order application. There are also serious criminal investigations underway against the Father, by the police in [country]. The NZ police are aware of this.
13. I accordingly seek your co-operation in ensuring that the Father does not remove the child from school.

¹ Mrs MX, email to [School 2] (3 July 2018).

14. I also seek that any communication with the child's Mother, my client, is kept strictly in confidence and not to be disclosed to KD.

[9] The emails to the schools were identical, save for the email to [School1] which commenced:²

I am a local Family Court lawyer. By way of bona fides please note that I have a long history of association with your school.

I now represent Ms QY, the Mother of the abovenamed child,, who is currently enrolled at your school.

Mr KD's complaints

[10] At the time of making his complaints, Mr KD did not have copies of Mrs MX's emails. However, it is apparent that he became aware of the content of the emails in some detail. He was also in possession of subsequent correspondence between the schools and Mrs MX.

[11] In his complaint to the Lawyers Complaints Service, Mr KD said:³

13. I am not privy to the mentioned attachment sent by Ms MX to the schools.

14. Ms MX is aware of my role as their legal guardian and my entitlements.

15. As an officer of the court, Ms MX, has an obligation to promote justice and effective operation of the judicial system.

16. In my opinion, she has used her authority as an officer of the court to seek an outcome in a manner that is untoward.

17. In my opinion, this action by Ms MX is conduct that is misleading and unbecoming of an officer of the court.

...

19. ... Mrs MX under instructions from my wife, has subsequently made application for an interim Parenting Order and a Protection Order ...

20. These applications were made without notice to me however the court has declined to make any orders and I have been put on notice.

...

22. These emails sent to my children's school has damaged my reputation.

[12] The outcomes requested by Mr KD were:

23. ... that the New Zealand Law Society investigate the actions of Ms MX in relation to her conduct with my children's schools.

² Mrs MX, email to [School 1] (3 July 2018).

³ Mr KD, letter to Lawyers Complaints Service (27 July 2019).

24. If Ms MX is found to be guilty of misleading and/or unbecoming conduct, I request that disciplinary action be taken against her.
25. I also request that a formal apology be made to me and the schools involved.

Mrs MX's response

[13] Mrs MX rejected the allegation that she had acted inappropriately by emailing the schools. She says that she always acted on her client's instructions, who had the "current day-to-day care of the children".

[14] In her response to the complaint Mrs MX said:

8. ... the very nature of the serious investigations against Mr KD is what led the family to leave [country] urgently They did so with the express consent and assistance of Mr KD.
9. There was a domestic violence incident in about November 2017.... My client feared for the safety of herself and her children and did not wish to return to [country].
- ...
13. It was only when Mr KD perceived Ms QY to be hindering his contact with the children (which is denied by Ms QY), that he changed his mind and sought to insist upon the children returning to [country]
- ...
20. Therefore Ms QY's position and concerns at the relevant time, had to be conveyed to the children's school.
- ...
24. An Order Preventing Removal was granted by Family Court Judge [Judge B] on 21/11/2017. ... The father has the ability to remove the children and has expressed an intention to do so.
- ...
27. It is Ms QY's instructions and evidence (before Family Court) that Mr KD has continued to harass her, follow her and intimidate her, and that the children are resisting contact with their father; hence part of the reasons why Ms QY filed new urgent without notice applications on 20 July 2018.
- ...
29. On one ... occasion when Ms QY was confronted at her front door, and the children were present, my client instructs that Mr KD was not interested in greeting the child. Therefore it is Ms QY's instructions that Mr KD is simply seeking to undermine her when portraying her as not allowing him contact, and that his references to contact are not at all child-focused.
- ...

34. ... [Ms QY] instructed me to write to the children's schools, as she had a genuine fear about their removal [by] Mr KD as has happened in the past.
- ...
36. ... I reject the allegation at paragraph 12 of Mr KD's complaint that I allegedly requested the children's schools to limit his involvement in his children's affairs (in any general or permanent way).
37. Ms QY has sworn an affidavit or affidavits about her various serious concerns and fears around Mr KD, and in particular, her fear about the children being removed from school without her consent, ...
38. ... However, by the time of my letter, Mr KD had in fact returned and harassed my client. My client instructed me of her fear of Mr KD turning up at the children's school (which evidence is documented at Court), without her knowledge or consent.
- ...
42. I deny that I have abused my "authority" as "an officer of the court"
43. I deny that my conduct is misleading in any way.
- ...
45. My instructions are that it is Mr KD's conduct which has caused much distress to the children (as also referred to by the children's lawyer), and which has impacted on the children being allowed to freely attend school since then.
- ...
54. I submit that Mr KD has damaged his own reputation as appears on public internet sites...
- ...
57. It is my respectful submission that Mr KD is seeking to undermine the New Zealand Court proceedings, and is seeking to undermine Ms QY's ability to proceed with her Family Court matters. In particular, he is undermining her Domestic Violence matter by seeking to exert psychological pressure on her by bringing this complaint against me, and seeking to discredit me, as part of his denigrating campaign against her.

The Standards Committee determination

[15] The Standards Committee identified the issue to be addressed as being:⁴

- That Mrs MX acted inappropriately when she contacted Mr KD's children's schools to encourage them to limit Mr KD's involvement with his children's affairs.

[16] Both parties provided comprehensive submissions.

⁴ Standards Committee determination (25 March 2019) at [13].

[17] The Committee expressed some concern about one aspect of the emails. It said:⁵

... The Standards Committee considered that Mrs MX had, in fact, sought to encourage the schools to limit Mr KD's ability, pursuant to section 16(3) of the COCA, to exercise his rights as a guardian. ...

[18] The Committee's view was that there was no legal basis for Mrs MX's request and that she was endeavouring to have the schools limit Mr KD's rights to collect his children from the school which, as the children's' father, he was entitled to do.

Addressing the issue

[19] The Committee took note of the fact that Mrs MX defended her conduct on the grounds that she was at all times acting in accordance with Ms QY's instructions and that she had an overriding duty to do so.

[20] In its determination the Committee said:⁶

40. The Standards Committee considered that Mrs MX had, in fact, sought to encourage the schools to limit Mr KD's ability, pursuant to section 16(3) of the COCA, to exercise his rights as a guardian. ...

...

42. The Standards Committee readily accepted that the 3 July 2018 letters were courteous in tone. It was also satisfied that, in sending the 3 July 2018 letters, Mrs MX [was] seeking to advance her client's interests and was at all times acting in accordance with her client's instructions.

43. ... There was [no] legal basis for Mrs MX's request.

44. ... Mrs MX ought to have refused Ms QY's instructions to request the cooperation of the schools in preventing any attempt by Mr KD to uplift the children. ... The Standards Committee considered that, by sending the 3 July 2018 letters when they contained an unlawful request, Mrs MX had overstepped, and breached her professional obligations under Rules 2, 2.1 and 6 of the RCCC. It followed that Mrs MX had acted in a manner which could fairly be said to amount to unsatisfactory conduct in terms of section 12(c) of the Act.

[21] The Committee then went on to consider mitigating factors to be taken into account:⁷

45. ... It is significant that the schools had advised Mrs MX, in clear terms, that they were unable to prevent Mr KD from collecting the children from school. Upon receipt of that correspondence, Mrs MX took no further steps in terms of seeking to persuade either school to limit Mr KD's rights as a guardian.

⁵ At [40].

⁶ At [40]–[44].

⁷ At [45]–[51].

This suggests that Mrs MX may have realised, at that point, that her request of the schools was unreasonable.

46. There is also the question of whether any prejudice was suffered by Mr KD as a result of Mrs MX's actions.
47. ... Ms QY appears to have held a genuine fear that Mr KD might attempt to remove the children from New Zealand. Ms QY's anxiety in this regard was compounded by the fact that she had not, as at the date the letters were sent, received confirmation that the children's [nationality] passports had been lodged with the [city2] Family Court. It appears that Mrs MX was genuinely concerned to assist her client and that this letter might [have been helpful].
48. ... It is not suggested that the urgency of the instructions justifies the breaches by Mrs MX of her professional obligations. ...
49. The Standards Committee considered that Mr KD was completely justified in making the present complaint. Mr KD has expressed in clear terms his keenly-felt concerns about the actions of Mrs MX. At the same time, however, it is clear that the investigation of Mr KD's complaint will have been a learning opportunity for Mrs MX.
50. The Standards Committee was hopeful that, following Mr KD's complaint, Mrs MX will take greater care in future when writing to schools in the context of a parenting dispute. Consequently, the Standards Committee was satisfied that there is no need to take steps to protect the public from Mrs MX's conduct. It considered that, in the circumstances, no meaningful purpose would be achieved by making an adverse finding against Mrs MX.
...
51. Against that background, the Standards Committee was satisfied that this was a case where it would be appropriate to exercise its discretion, as alluded to above, to take no further action notwithstanding that there does appear to have been a breach by Mrs MX of her professional obligations. Accordingly, the Standards Committee determined, pursuant to section 152(2)(c) of the Act, to take no further action on the complaint.

Mr KD's application for Review

Failure to provide copies of the letters

[22] Mr KD advises that the Standards Committee did not provide him with copies of the emails sent by Mrs MX to the schools. He says that he "was not able to provide comments specifically addressing the contents of [the] letters".⁸

⁸ Application for review, supporting reasons at [3].

Mitigating and aggravating factors

[23] Mr KD “[s]ubmits that the Standards Committee erred in allocating an inappropriate amount of weight on mitigating factors and overlooked other key aggravating factors”.⁹

[24] He says:¹⁰

9. The Standards Committee determined that Ms MX had taken no further action after being told by the schools that they cannot comply with her unlawful request and this mitigated her actions. This is a mischaracterisation.
10. Ms MX had no option but to adhere with the schools’ response as they had highlighted to her their legal obligations.
11. No amount of persuasion by Ms MX or her client would have varied the schools’ decision to comply with legal mandates.
12. In my emails to the schools the day prior, I had highlighted in very clear terms, my rights of guardianship and the schools were aware of their obligations.
13. I submit that minimal mitigating weight should ... have been given to Ms MX’s non-action after she received the school’s responses.

Prejudice and reputation

[25] Mr KD disputes the determination by the Committee that he had suffered no real prejudice as a result of Mrs MX’s actions. He considers that the Committee had failed to take into account that his reputation at the schools was detrimentally affected by the content of the letters.

[26] Mr KD disputes the assertion in Mrs MX’s letters that there was medical evidence that Mr KD had physically abused his child. He provides copies of medical notes which had been put before the Court when Ms QY had applied for a protection order, which, he says, do not support Mrs MX’s assertions. He also disputes allegations of psychological abuse which he says were misleading and not substantiated.

[27] He says the reason that there were no parenting orders in place was because he was disputing the jurisdiction of the New Zealand courts, not because negotiations were taking place between lawyers, as asserted by Mrs MX.

[28] Mr KD advises that the criminal investigations referred to by Mrs MX in her letters had been resolved by the time the letters were sent.

⁹ At [8].

¹⁰ At [9]–[13].

[29] Taken together, he considers that the letters “damaged [his] reputation” as a parent / guardian immensely and were “highly prejudicial in intent”.

[30] On this aspect of his complaint, Mr KD concludes:¹¹

I also submit that there were other points mentioned in Ms MX’s letters which contributed to the overall level of prejudice and resistance I experienced from the schools in my desire to re-establish my involvement in my children’s affairs. This cannot be merely calculated by the obligations to my guardianship rights.

...

Pressure from client

[31] Mr KD says that “... as a family law practitioner with over 20 years of experience in New Zealand, Ms MX’s actions cannot be merely brushed with an excuse that she was under pressure”.¹²

[32] He provides several reasons why Ms QY’s concerns were unjustified, one of which being that there was a border alert in place that would have prevented any unlawful removal of the children from New Zealand. He says that “Ms QY’s fear that [he] would uplift [the children] from school and take them overseas is not within reason”.¹³

[33] Mr KD disputes that any pressure from Ms QY was “within reason and could have been easily managed by [Ms MX]”.¹⁴

Urgency

[34] Mr KD submits that the matter could not be considered to be urgent and that the Standards Committee gave minimal consideration to the following factors:¹⁵

- a. Ms MX’s 20 year experience as a family law practitioner in New Zealand.
- b. Ms QY’s failure to respond to my desire to re-establish my involvement in the children’s affairs.
- c. The children did not attend their schools and it was not possible for them to be uplifted from their schools and taken overseas.
- d. The accessibility of information in relation to the surrender of the children’s [nationality] passports available to both Ms MX and Ms QY.
- e. The active Border Alert in place linked to the children’s names and dates of birth.

¹¹ At [14].

¹² At [17].

¹³ At [22].

¹⁴ At [24].

¹⁵ At [27].

[35] Finally, Mr KD refers to previous disciplinary matters concerning Mrs MX.¹⁶

Outcomes sought

[36] The outcomes sought by Mr KD are:¹⁷

33. ... disciplinary sanctions be imposed on Ms MX.
34. ... Ms MX submits a collective apology to the schools and I, not only for the unlawful submission, but also to repair the damage she has caused to my reputation.
35. ... Ms MX be censured for her actions.

Mrs MX's response

[37] Mrs MX does not agree that inappropriate weight has been given to the mitigating factors referred to by the Committee. She says she did not write further to the schools because proceedings were under way to protect Ms QY's position.

[38] Mrs MX provided an affidavit sworn by Ms QY in conjunction with the court proceedings which corroborate statements made by Mrs MX in her emails to the schools.

[39] Mrs MX agrees with the Standards Committee when it noted that Mr KD had not suffered any real or measurable prejudice. She says her "writing to the children's schools was not meant to undermine Mr KD's general guardianship rights but arose out of concerns for the paramountcy of children's safety on the day in question".¹⁸

[40] Mrs MX denies there was any damage to Mr KD's reputation with the schools as he had not had any long-term association with the schools and was not part of the local community.

[41] She refers to the fact that it was unknown whether Mr KD had complied with an order of the Court requiring him to lodge the children's [nationality] passports with the Court. She says the matter was urgent because Mr KD had previously removed the children from Ms QY's care when in [country], and there was a possibility this could occur again.

[42] Finally, Mrs MX provides submissions opposing publication of her name.

¹⁶ These have no relevance to the decision arrived at in this matter.

¹⁷ At [33]–[35].

¹⁸ Mrs MX, submissions (23 March 2019) at [14].

Further submissions on behalf of Mrs MX

[43] Mrs MX subsequently instructed Mr FR ([law firm]) to represent her in this Review. In the covering letter to this Office with Mrs MX's further submissions, he says:¹⁹

We represent Ms MX in this matter and now attach her reply to submissions and request for reversal of adverse conduct determination.

[44] In these submissions, Mrs MX provides further detail about the conduct and outcome of various proceedings between Ms QY and Mr KD. These provide background to the circumstances which led to her sending the emails to the schools.

Review*The Standards Committee determination*

[45] Both Mrs MX and Mr FR are under the impression that the Committee made a finding of unsatisfactory conduct against Mrs MX.²⁰ Mrs MX belatedly sought leave to file out of time, an application for Review of the Committee's decision.

[46] Paragraph 51 of the Committee's determination reads:

Against that background, the Standards Committee was satisfied that this was a case where it would be appropriate to exercise its discretion, as alluded to above, to take no further action notwithstanding that there does appear to have been a breach by Mrs MX of her professional obligations. Accordingly, the Standards Committee determined, pursuant to section 152(2)(c) of the Act, to take no further action on the complaint.

[47] Section 152(2)(c) of the Lawyers and Conveyancers Act 2006 provides:

(2) The determinations that the Standards Committee may make are as follows:

...

(c) a determination that the Standards Committee take no further action with regard to the complaint or matter or any issue involved in the complaint or matter.

[48] The Committee did not make a finding of unsatisfactory conduct against Mrs MX.

¹⁹ Mr FR, letter to LCRO (2 August 2019).

²⁰ See Mrs MX, submission (22 April 2019) at [43]; [law firm], letter to LCRO (2 August 2019).

Process

[49] By letter dated 5 November 2018, the Standards Committee required Mrs MX to provide full copies of the letters sent by her to the schools. These were provided by her, together with the accompanying correspondence between her and the principals of the schools. Mrs MX also provided a copy of the Notice of Appeal to the High Court of the Order made by [Judge A] that the children be returned to [country].

[50] A careful examination of the Standards Committee file confirms Mr KD's advice that the Committee did not forward copies of the letters to him. He says:²¹

As a result, I was not able to provide comments specifically addressing the contents of her letters

[51] That oversight on the part of the Committee has been rectified and Mr KD has now had the opportunity to refer to the detail of the letters. In the circumstances, I have completed this Review rather than returning the file to the Committee with a direction that it reconsider its determination after giving Mr KD the opportunity to comment on the content of the letters. To do so, would further prolong completion of this matter.

The letters

[52] The contents of the letters must now be carefully considered:

- (a) In the letter to [School 1], Mrs MX refers to her "long history of association with the school". The effect of this would be to add more weight to Mrs MX's letter and to provide herself with some measure of authority.
- (b) On page 1 of the letters, Mrs MX informs the school principals about the Hague Convention proceedings and the grounds for Ms QY's opposition.
- (c) With her emails, Mrs MX included a copy of the Notice of Appeal, by which her client was appealing the order of the Court that the children be returned to [country].
- (d) Mrs MX advised the schools that the existing court orders had "a narrow legal issue to determine", a comment which served only to promote the grounds put forward in the Notice of Appeal. The impression given in the letters is that the Court was wrong to make the Order. It was inappropriate for Mrs MX to be promoting her client's grounds for Appeal in this correspondence.

²¹ Application for review, supporting reasons at [3].

- (e) Mrs MX provided a copy of the Fixture Notice for the Appeal. The relevance of this has to be questioned but can only serve to imply that the outcome of the appeal would be available in the near future and that the status quo needed to be preserved in the meantime, and Mr KD should not be permitted to uplift the children from school.
- (f) Mrs MX advised the schools that the children were “lawfully” in Ms QY’s care pending determination by the High Court. It is exaggerating the words of the Judge, to say that the children were lawfully in Ms QY’s care. The inference to be drawn from Mrs MX’s statement, is that Mr KD would be acting illegally if he attended at the school to collect the children.
- (g) Mrs MX advised the schools that a lawyer had been appointed to act for the children, who would “no doubt” be in touch with the school “in due course”. The inference to draw from this comment is that the lawyer for the children would be supporting Ms QY’s requests. It was inappropriate for Mrs MX to be suggesting what the lawyer for the children would be requesting.
- (h) In paragraph 8 of the letter, Mrs MX speculates that Mr KD has misled the schools by not “giving them the full picture”. She further speculates that Mr KD is “being psychologically abusive because of the mind games he is playing with” Ms QY and the children. It is inappropriate and unprofessional for Mrs MX to “speculate” in this manner about Mr KD’s conduct, relying on information from her client. Her comments constituted a slur on Mr KD’s character and were potentially defamatory.

[53] Overall, Mrs MX’s communications with the schools were inappropriate.

Conduct and Client Care Rules

[54] The Standards Committee concluded that Mrs MX’s conduct breached rr 2, 2.1 and 6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules). I confirm that view, and endorse the reasons of the Committee in [41]–[44] of its determination.

[55] I have also formed the view that r 2.3 has some relevance. This Rule provides:

A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person’s reputation, interests, or occupation.

[56] It could be argued that Mrs MX was not “using the law or legal processes” by writing to the schools. In *Keene v Legal Complaints Review Officer* Goddard J observed:²²

The Rules are concerned with the ethical obligations of lawyers. It is important ... to focus on substance rather than form.

[57] Similarly, in *Wilson v Legal Complaints Review Officer*, Hinton J said:²³

This Court has said on several occasions that the Rules are to be applied as specifically as possible. In my view, they are also to be applied as sensibly and fairly as possible. These are practice rules, not a legislative code.

[58] Mrs MX was writing as Ms QY’s lawyer. She specifically referred to the legal issues between Ms QY and Mr KD. These comments readily fall within the concept of “using the law”. There is no doubt that Mrs MX’s letters have caused embarrassment and distress to Mr KD.

[59] Ms QY had her remedies elsewhere and was in the course of exercising those remedies. In response to Ms QY’s concerns, Mrs MX may have been better to advise her of her legal remedies, and leave Ms QY to approach the school herself. In this regard, the Standards Committee said:²⁴

... Mrs MX ought to have refused Ms QY’s instructions to request the cooperation of the schools in preventing any attempt by Mr KD to uplift the children. Mrs MX could simply have explained to Ms QY that it was not possible for her, as a lawyer with professional obligations, to seek to encourage any party to take any action which might restrict Mr KD’s guardianship rights. ...

Mitigating factors

[60] The Committee expressed the view that Mrs MX had breached rr 2, 2.1 and 6 of the Rules, and then proceeded to examine various mitigating factors. These included:

- (i) Mrs MX took no further steps to try and persuade the schools to limit Mr KD’s rights as guardian of the children after the schools advised her they were unable to prevent him from collecting the children from school;
- (ii) the content of the letters did not damage Mr KD’s relationship with the schools as a parent;

²² [2019] NZCA 559 at [71].

²³ [2016] NZHC 2288 at [43].

²⁴ At [44].

- (iii) Mrs MX was genuinely concerned to assist her client who held a genuine fear that Mr KD may attempt to remove the children from New Zealand; and
- (iv) the urgency of the situation meant she may have not given the letters adequate consideration.

[61] Having taken these factors into account, the Committee exercised its discretion to take no further action on Mr KD's complaints.

[62] It said:²⁵

The Standards Committee was hopeful that, following Mr KD's complaint, Mrs MX will take greater care in future when writing to schools in the context of a parenting dispute. Consequently, the Standards Committee was satisfied that there is no need to take steps to protect the public from Mrs MX's conduct. It considered that, in the circumstances, no meaningful purpose would be achieved by making an adverse finding against Mrs MX. The Standards Committee expressed the hope that Mr KD will take some comfort in the knowledge that his complaint has been heard and that, as a result of its investigation, Mrs MX has been reminded in clear terms that, in the absence of a parenting order, it is not acceptable to encourage any party to take any step which might limit the exercise by a parent of their guardianship rights. The present decision has a clear educative value for Mrs MX for her future dealings.

[63] It must be questioned whether the expression of a hope that Mrs MX would treat the investigation of Mr KD's complaint as an "educative" process was an appropriate response.

[64] Treating the mitigating factors identified by the Committee as the reason to take no further actions on Mr KD's complaint, ignores the fact that the letters should not have been sent.

[65] Mrs MX was not a novice lawyer. She was admitted to the bar in New Zealand in 1998 and was employed as a solicitor by several law firms from whom she would have received guidance, and gained experience. At the time of these events, Mrs MX had been a principal of her own firm, both abroad and in New Zealand, for some 27 years. Her website advises that she works mainly as a Family Law barrister.

[66] The letters sent to the schools did not include an examination of legal issues. No education was required to appreciate that it was entirely inappropriate to be sending letters of this nature, casting aspersions on Mr KD's character and speculating about his psychological condition, based on Ms QY's advice and instructions.

²⁵ At [50].

[67] The Committee expressed its hope that Mrs MX would “take greater care ... when writing to schools in the context of a parenting dispute”. This is a situation which may never arise again for Mrs MX. What is required is for Mrs MX to exercise caution before engaging in similar correspondence in any situation.

[68] I find it difficult to accept that a lawyer with Mrs MX’s degree of experience needed to be reminded of the need to take care in this type of situation. I consider that the need for caution needs to be reinforced by a finding that may cause Mrs MX to reflect on in the future before engaging in such correspondence.

Conclusion

[69] Mrs MX’s conduct would be regarded by lawyers of good standing to be unprofessional. Her conduct also breached rr 2, 2.1, 2.3 and 6 of the Rules.

[70] Mrs MX’s conduct is unsatisfactory conduct pursuant to ss 12(b) and 12(c) of the Lawyers and Conveyancers Act 2006.

Orders

[71] Pursuant to s 156(1)(b) of the Lawyers and Conveyancers Act 2006, Mrs MX is censured for her conduct in this matter.

In *Otago Standards Committee v Copland*, the Lawyers and Conveyancers Disciplinary Tribunal said:²⁶

... A censure is more than mere words. It is a record that will remain with you on your file and remind you and others that such behaviour will not be tolerated or go unmarked.

Although a censure by a Standards Committee, or this Office, may not be regarded as seriously as a censure from the Lawyers and Conveyancers Disciplinary Tribunal, or the courts, it is nevertheless an expression of disapproval of a lawyer’s conduct.

[72] Pursuant to s 156(1)(b) of the Act, Mrs MX is ordered to apologise to Mr KD. The form of the apology is to be approved by me, and when finalised, to be sent to this Office for forwarding to Mr KD. The draft of the apology is to be submitted no later than two weeks from the date of this decision.

²⁶ [2019] NZLCDT 29 at [17].

Costs

[73] The Costs Orders Guidelines of this Office provide that where a finding of unsatisfactory conduct is made against a practitioner, costs orders will usually be made against the practitioner.

[74] Pursuant to the s 210(3) of the Act, Mrs MX is ordered to pay the sum of \$1,200 to the New Zealand Law Society by no later than 1 month from the date of this decision.

[75] Pursuant to s 215 of the Act, the costs order made in this decision may be enforced in the civil jurisdiction of the District Court.

Publication

[76] Pursuant to s 206(4) of the Act, the following Orders as to publication are made:

- (a) the apology (only) ordered by this decision to be tendered to Mr KD, may be sent by him to the schools.
- (b) this decision is to remain confidential between the parties, and not disseminated to any other person.
- (c) this decision will be published in anonymised format on the website of this Office for the purpose of reminding the profession of its professional obligations when communicating with others.

DATED this 19TH day of FEBRUARY 2021

O Vaughan
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr KD as the Applicant
Mrs MX as the Respondent
Mr FR as the Representative for the Respondent
[Area] Standards Committee [X]
New Zealand Law Society