

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

[2022] NZLCRO 053

Ref: LCRO 157/2020

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 [X]

BETWEEN

SA

Applicant

AND

RB

Respondent

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

Introduction

[1] Mr SA has applied for a review of the determination by [Area] Standards Committee [X] to take no further action on his complaints about Mr RB.

Background

[2] Mr SA¹ has three siblings: BA, CA and DA.

¹ Hereafter in this decision Mr SA will be referred to as "S". The nomenclature, "Mr SA", will be applied to S's father.

[3] Mr SA and TA were the parents of the four children. The family lawyer, Mr FG, was, at that time, a trustee of the SA Family Trust² and the surviving trustee of the TA Family Trust. Mrs TA had died in July 2014.

[4] Mr SA died on 26 February 2018.

[5] The two Family Trusts owned the cross-leased property at [Property Address 1] which had been occupied by Mr and Mrs SA. S owns the other cross-lease property at [Property Address 2].

[6] Shortly after Mrs TA's death, Mr SA moved into an apartment at [Retirement Village].

[7] Mr FG held a written authority from Mr SA directing that he wanted [Property Address 1] sold.³ However, disagreement between the four children resulted in Mr SA's wishes not being carried out and the property remained unsold.

[8] In March 2015, Mr RB met DA by chance, who agreed that issues between the SA family needed to be resolved.

[9] Mr RB advises that he subsequently met with DA and BA and the scope of the work that he was to carry out was discussed. That required meeting with all affected parties and drafting an agreement to record any resolution.

[10] Mr RB says:

BA put it to DA at the meeting in terms which were both plain and blunt: "Who is to pay for this?" to which DA responded: "Dad will".

[11] Mr RB issued his invoice on 31 August 2016, addressed to:

SA & SA Family,
c/o BA,
[ADDRESS REDACTED]

[12] BA did not pass a copy of the invoice to the others and paid the bill himself. S did not see the invoice until September 2018.⁴

² Mr SA was the other trustee.

³ This information is derived from a memorandum prepared by Mr KC relating to meetings on 21 May 2015 and 21 June 2015.

⁴ This was sent to S by his niece.

[13] The family subsequently reached agreement, recorded in a Deed prepared by Ms LJ, and executed on 15 November 2018. In that Deed, the parties⁵ agreed to pay “\$15,000 to BA by way of refund of the amount he has paid to RB.”⁶

[14] Further background facts are included in *LCRO 158/2020*.

S’s complaints

[15] S lodged his complaint on behalf of himself, Mr SA, the SA Family Trust and the TA Family Trust.⁷ His primary complaint is:⁸

Mr RB has highly improperly invoiced my father’s Trust, my mother’s Trust, my mother and my father personally and me personally, for work done when Mr RB has never been engaged or acted for any of the above. ...

[16] His further complaints are:

- (i) Mr RB had his email and postal address but did not send a copy of the invoice to him directly.
- (ii) “Mr RB was involved in advising my brother BA to get my father to change his solicitor that had represented my father for over 30 years”.⁹
- (iii) Not ensuring that CA initialled the last page of the variation to the Deed.
- (iv) Insisting that S and his brother DA consulted independent lawyers.
- (v) Colluding with Mr KC to have his father change solicitors, thereby committing ‘elder abuse’.

[17] However, he subsequently advised the Committee that his entire complaint is that Mr RB addressed his invoice to him and others without their knowledge.¹⁰ The Standards Committee, and this review, have proceeded on that basis.

[18] The outcome sought by S was to have Mr RB return the sum of \$15,000 to [Law Firm B] to be credited to his father’s estate, and to reissue his invoice to “those parties who engaged him”.

⁵ Mr FG was a party to the Deed.

⁶ Deed of Family Arrangement (15 November 2018) at [2c].

⁷ In discussion with the complainant, the Lawyers Complaints Service processed the complaint as being made by the complainant in his personal capacity. That has not affected how the complaint has been processed, as s 132(1) of the Lawyers and Conveyancers Act 2006 provides that any person may complain about the conduct of a lawyer.

⁸ S’s addendum to complaint at p 1.

⁹ At p 2.

¹⁰ Email from S to Lawyers Complaints Service (21 May 2020).

The Standards Committee determination

[19] S's objections are based on a matter of principle, in that he and others were included as being liable for the invoice without being consulted and not receiving a copy of the invoice until some years later.

[20] The Standards Committee focused on the fact that Mr RB's invoice had been paid and agreement reached between the siblings as to who should meet the cost.

[21] The Committee determined to take no further action on the complaints.

The application for review

[22] S's application for review and Mr RB's responses traverse the material supplied to the Standards Committee.

Process

[23] The review progressed by way of a hearing by audio-visual means on 12 May 2022. In attendance were S, Mr KC and Mr RB.¹¹

Nature and scope of review

[24] The High Court has described a review by this Office in the following way:¹²

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.

This review has been conducted in accordance with those comments.

Review

[25] It is apparent from the material supplied that there had been disagreement between the siblings over the years about a number of matters.

[26] Mr RB had acted for BA prior to becoming involved in the disputes between the SA family which would create a perception that he was aligned with BA and CA.

¹¹ S has also applied for a review of the Standards Committee determination of his complaints about Mr RB arising out of the same circumstances. All three parties agreed for the hearing to address both reviews at the same time.

¹² *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

However, it was DA who instigated the involvement of Mr RB following a chance meeting near their respective business premises.

[27] Mr RB could be criticised for putting himself in a situation where he considered that he was acting for all siblings, thereby being conflicted. Nevertheless, he urged S and DA to take independent advice, which ultimately, they did.¹³

[28] RB continued to act for BA and CA which, in itself, amounts to a conflict of interests, although neither BA or CA have taken issue with it.

[29] S's primary complaint is that the invoice was addressed to SA and SA Family. The principle he raises can not be questioned – no person can become liable to pay debts at the direction of the person incurring those debts.

[30] However, in this instance, it is not a matter which should attract a disciplinary response. There has been no harm done. Mr RB did not pursue S or others for payment of the invoice. The invoice was paid by BA, and the question of liability for payment was one of the matters addressed by the Deed in which the parties agreed that BA should be reimbursed, and payments to each sibling were calculated so that S did not incur any part of the cost.

[31] This approach follows earlier decisions of this Office, with authority from the Courts. By way of example, I refer to *Client J v Lawyer A*¹⁴ where the Review Officer said:

...not every professional lapse is sufficiently serious to require disciplinary intervention (*Perera v Medical Practitioners Disciplinary Tribunal* District Court, Whangarei 94/02 at para 42). It must be established not only that the conduct departs from acceptable professional standards but also that the departure is of such a degree as to warrant sanction.

[32] S says that his 'entire complaint' is about the invoice being addressed to his father and himself as a member of the SA family. That has been addressed in this review. The Committee's determination to take no further action on S's 'entire' complaint is confirmed. There is no need to discuss other complaints¹⁵ raised by S in support of his complaint.

¹³ One of S's complaints is that Mr RB insisted they consulted independent solicitors.

¹⁴ *LCRO 31/2009* (30 April 2009) at [35].

¹⁵ Breaches of rr 3.4, 3.5 and 9.6 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Decision

[33] For the reasons set out above, the determination of the Standards Committee to take no further action on Mr SA's complaints is confirmed.

Publication

[34] Pursuant to s 206(4) of the Lawyers and Conveyancers Act 2006, I direct that this decision be published in anonymised format.

DATED this 27TH day of MAY 2022

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 SA as the Applicant
Mr RB as the Respondent
[Area] Standards Committee [X]
New Zealand Law Society