

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

[2022] NZLCRO 036

Ref: LCRO 196/2021

**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**

**DB**

Applicant

**AND**

**HP and  
JK**

Respondents

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

**DECISION**

**Introduction**

[1] Mr DB has applied for a review of a decision by the [Area] Standards Committee X to take no further action in respect of his complaint concerning the conduct of the respondents, Mr HP and Mr JK.

**Background**

[2] In 1997, Mr DB instructed Mr JK to set up a family trust.

[3] Mr DB, Mr JK and Ms SA (Mr DB's then partner) were appointed trustees.

[4] Subsequent to the establishment of the trust, the trust purchased and sold several properties. At the time Mr DB filed his complaint, the trust was the owner of two residential properties.

[5] Mr DB and Ms SA separated in 2017. Determining entitlements to an interest in trust property has become at issue in attempts by Mr DB and Ms SA to settle relationship property issues.

[6] Mr HP took over Mr JK's practice some years prior to Mr DB filing his complaint.

[7] In early 2019, Mr DB made request of Mr HP to provide him with a copy of the trust deed, and information concerning various matters relating to the trust.

[8] Mr HP provided Mr DB with a copy of the deed of trust creating the [X Family] trust in early 2019. The trust deed was dated 26 September 1997.

#### **The complaint and the Standards Committee decision**

[9] Mr DB lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 22 March 2021. Complaint was made against both Mr JK and Mr HP. The substance of his complaint was that:

- (a) the trust he had established in September 1997 was established as the [DB Family] Trust; and
- (b) correspondence he had received over 20 years from various organisations had consistently referred to the trust as the [DB Family] Trust; and
- (c) on making request of Mr HP to provide him with a copy of the trust deed, he observed that the trust was described as the "[X FAMILY] TRUST" which did not reflect the name of the trust that he had established; and
- (d) it had come to his attention that Mr JK had appointed himself as settlor of the trust, and had "positioned himself along with Ms SA on all the titles of the trust(s) properties"; and
- (e) records held by Mr HP did not accurately record that the DB Family Trust had been the owner of an additional three properties.

[10] Following receipt of the complaint, the Complaints Service made request of Mr DB for further information.

[11] Subsequent to providing that information, Mr DB forwarded a number of emails to the Complaints Service in which he referenced further information he considered relevant to his complaint.

[12] It is important that a complainant be given every opportunity to supply the Complaints Service with all information relevant to their complaint but it can be reasonably expected of complainants that in most cases, they would be able to provide that information to the Complaints Service in the early stages of filing their complaint.

[13] The Complaints Service was considerate and courteous to Mr DB in allowing him opportunity to provide additional information as the investigation proceeded, but an unfortunate consequence of information being “drip fed” in this fashion, is that it frequently allows opportunity for the scope of the complaint to be expanded well beyond the parameters of the initial complaint filed.

[14] Complaint by Mr DB, that he had not been provided with a correct copy of a trust deed and other information requested, had escalated during the progressing of the investigation into the complaint to include serious allegation that the lawyers had, at best, acted negligently, at worst, deceptively and dishonestly.

[15] The extent to which this process appears to have led to some confusion on Mr DB’s part, particularly to the extent that his continuing dialogue with the Complaints Service appears to have encouraged him in the view that the scope of the Committee’s inquiry was more far reaching than what it could be, is well illustrated by Mr DB’s email to the Complaints Service of 24 August 2021 in which he makes request of the Complaints Service to advise him as to what “further national and/or international investigations are now being conducted concerning my queries into the “trust deed and lawyers” potential involvement in this issue”.

[16] In further correspondence to the Complaints Service of 31 August 2021, Mr DB advises that his complaint “concerned the poor conduct of lawyers JK, HP and latterly Mr MG who represents his client, my ex-partner in a current relationship property settlement against me...”.

[17] Mr DB’s apparent expectation that the Standards Committee would address the conduct of the lawyer, who was acting for his former partner in relationship property proceedings, reflects the extent to which the articulation of Mr DB’s complaint had become somewhat unfocused.

[18] The Standards Committee managed the complaint through its Early Resolution process.

[19] That procedure involves a Standards Committee conducting an initial assessment of a complaint and forming a preliminary view as to outcome.

[20] If the Committee's preliminary view is that it will take no further action on the complaint, a Legal Standards Officer (LSO) will make contact with the respondent lawyer and inform the lawyer of the Committee's preliminary view.

[21] On 22 October 2021, a LSO telephoned Mr HP and informed him that the Committee had reached a preliminary view that it would take no further action on Mr DB's complaint. He was advised that the Committee did not require a response from him. Mr HP confirmed that he would provide any information to the Committee if it required him to do so.

[22] The Standards Committee identified the substance of Mr DB's complaint as being complaint that the trust deed that had been provided to him by Mr HP was "not the correct trust deed for his family trust and/or the trust as established does not reflect his instructions at the time".

[23] The Standards Committee delivered its decision on 1 November 2021.

[24] The Committee determined pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 (the Act) that no further action on the complaint was necessary or appropriate, and that the Committee had no jurisdiction to consider complaints that related to conduct prior to 1 August 2002.

[25] The Committee noted that it had considered all the information provided and that all matters had been taken into account in reaching its view. The Committee cautioned that, to the extent its decision may not have addressed every issue raised by the complaint, this was not to be taken as a reflection that all matters raised had not been considered.

### **Application for review**

[26] Mr DB filed an application for review on 29 November 2021. His application in large part traverses the issues raised in the course of advancing his complaint to the Standards Committee.

[27] These can be summarised as concerns that:

- (a) The trust set up by Mr JK in 1997 was intended to protect assets from risk of a property relationship claim; and

- (b) the name of the trust established was not accurately reflected in a copy of a trust deed he had been provided with; and
- (c) Mr JK had placed his name on title deeds to various properties owned by the trust without having authority to do so; and
- (d) he had not been advised when Mr HP had purchased Mr JK's practice; and
- (e) the trust established did not adequately protect the property it was designed to protect; and
- (f) the trust deed provided contained a number of irregularities; and
- (g) he had been provided with a fraudulent deed; and
- (h) he had not been provided with documents relating to his trust.

[28] Mr HP, on behalf of both himself and Mr JK, provided a response to Mr DB's application on 30 November 2021.

[29] Mr HP submitted that:

- (a) he and Mr JK agreed with the Committee's findings; and
- (b) at the time of taking over Mr JK's practice "some years ago", he had inherited a deeds envelope in the name of "[X Family] Trust" which included a deed of trust dated 26 September 1997; and
- (c) on receipt of an authority from Mr DB, the deed was sent to Mr DB's lawyer on 5 September 2019; and
- (d) the deed provided to Mr DB was the deed recovered from the deeds packet held; and
- (e) to the extent that Mr DB appeared to be suggesting that there was another trust deed in existence and that the deed held by his office had been altered "fraudulently or otherwise", Mr DB's allegations could be perceived as defamatory; and
- (f) Mr DB had provided no evidence to support his allegations; and

- (g) to the extent that Mr DB's complaint engaged conduct that occurred in 1997, the Committee was correct to conclude it had no jurisdiction to consider any complaint against Mr JK; and
- (h) the only trust deed document which he had held was the deed which Mr DB had both seen and been provided with.

### **Review on the papers**

[30] Section 206(2) of the Act allows a Legal Complaints Review Officer (LCRO) to conduct a review on the basis of all information available if the LCRO considers that the review can be adequately determined in the absence of the parties.

[31] 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**

[32] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:<sup>1</sup>

... 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 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.

[33] More recently, the High Court has described a review by this Office in the following way:<sup>2</sup>

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<sup>1</sup> *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]–[41].

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

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.

[34] 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:

- (a) Consider all of the available material afresh, including the Committee's decision; and
- (b) Provide an independent opinion based on those materials.

## **Discussion**

### *Complaint against Mr JK*

[35] At the core of Mr DB's complaint, is allegation that instructions he provided to Mr JK in 1997 to set up a trust, that would ensure that various assets were protected for his children, were not adequately implemented.

[36] Mr DB's concerns as to the adequacy of the trust were brought to the forefront following the breakdown of a relationship of some years duration, and steps then being taken by his former partner to commence proceedings under the Property (Relationships) Act 1976 in the Family Court.

[37] Question as to whether Mr DB's partner could claim an interest in property owned by the trust became a contestable issue.

[38] Mr DB had concerns not only that the original trust had not been drafted in accordance with instructions, but concerns that the trust deed may have been tampered with, or that there was a trust deed in existence which was being concealed from him.

[39] To the extent that these allegations engaged Mr JK (and it has to be said that his conduct would be far more central to the concerns raised by Mr DB as Mr JK had taken the instructions and been responsible for drafting the deed) the conduct under examination took place in or around September 1997.

[40] As the Standards Committee correctly noted, s 351 of the Act provides that a complaint about a lawyer cannot be considered where the conduct complained about occurred more than six years before the Act came into force.

[41] The Act came into force on 1 August 2008.

[42] A Standards Committee has no jurisdiction to consider any complaints about a lawyer's conduct, in circumstances where the conduct related to steps taken or advice given by a lawyer prior to 1 August 2002.

[43] The Standards Committee was correct to conclude that it had no jurisdiction to consider the complaints made against Mr JK.

[44] The LCRO is similarly bound.

[45] Standards Committees and the LCRO are creatures of statute.

[46] Neither a Standards Committee nor the LCRO can confer jurisdiction when there is no authority to do so.

[47] The Standards Committee decision in respect to the complaints advanced against Mr JK are confirmed.

#### *Complaints against Mr HP*

[48] It is difficult to precisely identify the nature of the complaint that is made against Mr HP.

[49] As noted, Mr HP had purchased Mr JK's business some years prior to Mr DB filing his complaints.

[50] Consistent with conventional practice, Mr HP had, as part of the purchase agreement, retained the deeds/ documents that had been acquired by Mr JK in the course of his practice. This would comprise part of the goodwill of the practice. Former clients of Mr JK in the course of following up on matters relating to deeds that had been retained by Mr HP, may at some point have wished to avail themselves of Mr HP's services.

[51] But if there were errors or omissions in the trust deed that had been prepared by Mr JK (and there can be no consideration of, let alone finding, on that issue), that was not Mr HP's problem. He could not, as a matter of professional conduct, be held responsible for any errors that may have been made by Mr JK.

[52] How then, is Mr HP captured by Mr DB's complaint? What actions or steps were taken (or not taken) by Mr HP that could provide foundation for Mr DB to advance allegation that Mr HP had breached duties or obligations owed to him?



[53] Regrettably, Mr DB's criticisms of Mr HP appear to be founded on quite unsupported allegation that Mr HP, in ways that are made not entirely clear, was complicit in endeavouring to conceal information from Mr DB (failing to provide him with a correct copy of the trust deed or failing to provide him with information that would have been expected to have been found in the deeds packet), and generally evasive in responding to requests for information.

[54] In correspondence to the Complaints Service of 9 May 2021, Mr DB makes demand of Mr HP that he:

- (a) Produce a minute book for the trust; and
- (b) Provide a history of the trust; and
- (c) Be questioned as to the nature of advice he had provided.

[55] If Mr HP fails to comply with the demands made of him, Mr DB says that Mr HP should be "the subject of further Discovery, leading to the full weight of the law and forensic investigation".

[56] These demands are premised on assumption that Mr HP has the information requested.

[57] Mr HP explains that all the documentation he held relating to Mr DB's trust had been provided to him.

[58] There is no evidence to support contention that Mr HP was refusing to disclose any documents and there is no plausible explanation provided as to why Mr HP would not pass on all the documents he held.

[59] I describe Mr DB's articulation of his complaints against Mr HP as regrettable, because the allegations, in the manner they are couched, are suggestive of serious offences having occurred.

[60] The allegations are not supported by a shred of credible evidence.

[61] The accusations take on a flavour of unfortunate irony when measured against the evidence of the steps that Mr HP took to assist Mr DB.

[62] It is clear from an examination of the exchanges between Mr HP and Mr DB, that Mr HP made courteous and genuine attempts to assist Mr DB understand the consequences and implications of the deed that had been entered into in 1997.

[63] It is understandable that Mr HP would be concerned that Mr DB's complaints about a deed that had been prepared by Mr JK, had evolved into allegation that he had engaged in improper conduct. It was Mr HP's view that the allegations made by Mr DB could be perceived as defamatory.

[64] I agree with the Standards Committee's finding that there were no grounds to take further action against Mr HP.

[65] I see no grounds which could persuade me to depart from the Committee's decision.

*Anonymised publication*

[66] Pursuant to s 206(4) of the Act, I direct that this decision be published so as to be accessible to the wider profession in a form anonymising the parties and bereft of anything as might lead to their identification.

**Decision**

Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

**DATED** this 28<sup>TH</sup> day of APRIL 2022

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**R Maidment**  
**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 DB as the Applicant  
Mr HP and Mr JK as the Respondents  
[Area] Standards Committee X  
New Zealand Law Society