

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

[2022] NZLCRO 007

Ref: LCRO 4/2021

**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**

**RQ**

Applicant

**AND**

**WJ**

Respondent

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

**Introduction/background**

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

[2] Mr WJ was a member of [City] Standards Committee [Y] which had determined to take no further action on Mr RQ's complaint about Mr DB.

[3] That Committee had proceeded with its consideration of Mr RQ's complaint without realising that Mr DB's response to the complaint had not been forwarded to Mr RQ. Instead, the legal services officer had sent Mr RQ a copy of a letter from Mr VM, about whom Mr RQ had also complained.

[4] Both Mr RQ, and the Committee, proceeded on the basis that Mr VM's response was a response on behalf of both himself and Mr DB.

[5] Mr RQ says:<sup>1</sup>

On 24 June 2019, I wrote a letter to the Board of the New Zealand Law Society. The intention of the letter was to prompt an investigation into the competence or independence of [City] Standards Committee [Y]. Particularly, I wanted to ascertain how such a glaring defect of process remained undetected even until sometime after the Committee rendered its final decision.

On 19 July 2019, FG responded on behalf of the Board. He suggested that my letter of complaint should be opened as a formal complaint against certain members of the [City] Standards Committee [Y] and that it should be considered by a Standards Committee. This complaint against Mr WJ is written in fulfilment of that suggestion.

### **Mr RQ's complaints**

[6] Following receipt of Mr FG's letter, Mr RQ lodged a complaint about Mr WJ.

[7] Mr RQ's complaint is that none of the members of the Committee, which included Mr WJ, "had paid sufficient attention to the correspondence to notice that I had replied to Mr VM's letter instead of to Mr DB's letter".<sup>2</sup>

### **The Standards Committee determination**

[8] In its determination, the Committee made the following comments:<sup>3</sup>

[16] Although, Mr RQ stated that this complaint is not intended to re-litigate either File 17934 or File 17931, that is what he is doing. The Standards Committee considers the current complaint amounts to a repetition of allegations that had previously been raised by Mr RQ.

...

[22] ...Mr RQ is complaining about Mr WJ in his role as a member of the Committee. The Standards Committee notes that when acting in this capacity, Mr WJ is not engaged in acting for a client. Nor does he give legal advice, prepare legal documents or perform work that is connected with or in anticipation of actual proceedings.

[23] The performance by Mr WJ of his functions in this role are not functions that can be classified as the performance of regulated services or connected to the provision of regulated services.

...

[25] In the view of the Standards Committee, there is no suggestion that the conduct of Mr WJ would fail the fit and proper person test.<sup>4</sup>

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<sup>1</sup> RQ complaint (1 September 2020) at [23]–[24].

<sup>2</sup> Ibid, at [13].

<sup>3</sup> Standards Committee determination (20 November 2020) at [16], [22], [23] & [25].

<sup>4</sup> A finding that a lawyer fails the fit and proper person test amounts to misconduct as defined in s 7 of the Lawyers and Conveyancers Act 2006.

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

[9] Mr RQ provides background information giving rise to his complaint. He recounts the detail of his communications with Mr FG, NZLS [officer], in which Mr FG required Mr RQ to submit a complaint for consideration by the Lawyers Complaints Service, and makes submissions as to why this decision was wrong. He includes an opinion from a [city] law firm advising the manner in which Mr RQ's complaint should be dealt with by the Complaints Service, but advising that the primary remedy is to proceed to this review, and if Mr RQ remains dissatisfied with this review decision, he has the potential remedy of judicial review.

### **Review**

#### *Mr RQ's complaint to the New Zealand Law Society Board*

[10] Mr RQ takes issue with Mr FG's response to his letter of 24 June 2019, in which Mr FG advised that Mr RQ's complaints could only be addressed by way of a formal complaint to the Lawyers Complaints Service.

[11] Mr RQ is aware of earlier decisions<sup>5</sup> in which I formed the view that complaints about the Complaints Service and members of Standards Committees should be referred to the Board of the New Zealand Law Society. As noted above, Mr RQ has received legal advice in this regard supporting that view.

[12] However, in each case, I was unaware of the High Court judgment<sup>6</sup> in which Allan J held that all complaints about a lawyer must be put before a Standards Committee. His Honour said:<sup>7</sup>

[51] The difficulty for the Society is that the Legislature has chosen to prescribe, in fine detail, the procedure to be adopted when complaints are processed. It is plain beyond any doubt, in my opinion, that Parliament intended that every complaint, however weak or misconceived, must be referred to a Standards Committee for consideration and determination. The role of the Complaints Service is plainly administrative in my view.

[13] The process to be followed with regard to Mr RQ's complaints about Mr WJ is therefore governed by this judgment and all complaints must be referred to a Standards Committee. However, there is no reason why the New Zealand Law Society Board could not independently review Mr RQ's complaints to consider whether or not the person

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<sup>5</sup> *TF v VB LCRO 326/2012* (10 March 2015), *ZA v YB LCRO 39/2016* (15 February 2017).

<sup>6</sup> *Deliu v Lawyers Complaints Service of the New Zealand Law Society* [2012] NZHC 2582.

<sup>7</sup> At [51].

complained about should remain a member of the Standards Committee. That, of course, stands for all members of a Standards Committee, including lay persons.

[14] In his reply to Mr RQ,<sup>8</sup> Mr FG responded to Mr RQ's complaint about the error that had occurred. Mr FG refers to regulation 21 of the Standards Committee's Regulations,<sup>9</sup> which sets out the circumstances in which a member of a Standards Committee may be removed and advised that "we do not consider any of those grounds ... have been made out in relation to what you have set out".

[15] Consequently, Mr RQ's complaint about Mr WJ had been addressed, and a decision made that it was in order for Mr WJ to remain a member of the Committee.

### **Mr RQ's complaint to the Lawyers Complaints Service**

[16] The role of this Office is to carry out a review of Standards Committee determinations.

[17] The High Court has described a review by this Office in the following way:<sup>10</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.

[18] This review concerns only the Committee's determination to take no further action on Mr RQ's complaints about Mr WJ. It does not address the procedural matters referred to in the previous section of this decision.

[19] As a member of the Standards Committee, Mr WJ was not providing regulated services as that term is defined in the Lawyers and Conveyancers Act 2006.<sup>11</sup> Neither was he providing services incidental to the provision of regulated services.<sup>12</sup>

[20] A lawyer may only be disciplined for conduct unrelated to the provision of regulated services if that conduct amounts to conduct which "would justify a finding that

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<sup>8</sup> Letter FG to RQ (19 July 2019).

<sup>9</sup> Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008.

<sup>10</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

<sup>11</sup> At s 6.

<sup>12</sup> The definition of 'regulated services' in s 6 of the Lawyers and Conveyancers Act 2006 includes work that is 'incidental' to legal work.

the lawyer ... is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer ....<sup>13</sup>

[21] It has been stated that this presents a “relatively high threshold”<sup>14</sup> and for conduct to amount to misconduct, the conduct complained of must have been “reprehensible, inexcusable, disgraceful, deplorable or dishonourable”.<sup>15</sup> Mr WJ’s failure to observe the error made by the legal standards officer does not begin to approach this standard of conduct. At best, it can be described as an oversight and one that was made by all members of the Committee.

[22] Other grounds on which the Committee could have determined to take no further action on Mr RQ’s complaints are suggested by Justice Allan himself, where he says:<sup>16</sup>

[47] In my view, that power is amply wide enough to enable a Standards Committee to take no action on a complaint, if it concludes that it does not fall within the ambit of the Act’s complaint procedures. In those circumstances, it would be a vexatious complaint. Moreover, the discretion contained in s 138(2) to take no further action in any case where, following investigations it would be “unnecessary or inappropriate” to do so, provides a further basis upon which the Standards Committee could conclude that it ought to do nothing further about a complaint that falls outside the statutory scheme.

[48] That conclusion appears to me to be required by the language employed by the Legislature.

[23] His Honour here suggests, that this is the appropriate and “required” action when a Committee considers a complaint about a Committee member fulfilling his or her statutory function as a member of the Committee.

### *Jurisdiction*

[24] The outcomes sought by Mr RQ from this review are:<sup>17</sup>

- a. The LCRO, the NZLS executive committee or the LCS to investigate my allegations against Mr WJ;
- b. The LCRO to issue a declaration as to how complaints against Standards Committee members should be handled in the case where their incompetence has contributed to a miscarriage of natural justice;
- c. Mr WJ removed from [City] Standards Committee [Y];

<sup>13</sup> Section 7(1)(b)(ii), Lawyers and Conveyancers Act 2006.

<sup>14</sup> Duncan Webb, Kathryn Dalziel and Kerry Cook *Ethics, Professional Responsibility and the Lawyer* (3rd ed, LexisNexis, Wellington, 2016) at p109.

<sup>15</sup> *Auckland District Law Society v Ford* [2001] NZAR 598 (NZLPDT) at [5].

<sup>16</sup> Above n 6, at [47]–[48].

<sup>17</sup> Application for review, Part 8.

- d. Investigate the LCS as a whole, its purpose seems more to protect lawyers interest at the expense of the complainant.

[25] The function of this Office insofar as it relates to the administration of the Complaints Service, is set out in s 192(c) of the Act. It does not extend to the outcomes sought by Mr RQ.

### **Decision**

[26] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006, the determination of the Standards Committee to take no further action on Mr RQ's complaints is confirmed.

**DATED** this 9<sup>TH</sup> day of FEBRUARY 2022

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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 RQ as the Applicant  
Mr WJ as the Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society