

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

[2022] NZLCRO 023

Ref: LCRO 53/2021

**CONCERNING**

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

**AND**

**CONCERNING**

a determination by [Area] Standards Committee [X]

**BETWEEN**

**ST on behalf of the Executors of the Estate of KK**

Applicant

**AND**

**QM, WP, RS and DJ of ABC LAW LIMITED**

Respondents

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

**Introduction**

[1] Mr ST,<sup>1</sup> on behalf of the executors of the estate of KK, has applied for a review of the determination by [Area] Standards Committee [X] to take no further action on their complaints.

**Background**

[2] Mr FQ was a bachelor and had no children or family members, other than his sister, who resided in [City B]. He relied heavily on Mr BF, a former partner of ABC,<sup>2</sup> and members of the firm, to invest his funds, pay personal accounts, and generally attend to matters which would normally have been attended to by himself or family members.

---

<sup>1</sup> Mr ST is a partner in [Law firm A].

<sup>2</sup> I use the name [ABC] in the same manner as Mr YC, to mean the firm in its various forms of incorporation and partnership ... and where applicable, its antecedent name; [redacted].

[3] I include here the background section of the Standards Committee determination:<sup>3</sup>

1. Mr FQ died on 14 January 2014.
2. His sister, Mrs KK, was a 50% residuary beneficiary of the estate, with the remaining 50% going to charitable purposes as his trustees saw fit.
3. Mrs KK died on 27 May 2014.
4. The trustees and executors of Mr FQ's estate are currently Mr QM and Mr WP, directors of [ABC] Law (the executors).
5. Mr FQ was a long standing and loyal client of [ABC] Law during his lifetime. He had a strong personal relationship with Mr BF, who was a Partner of the firm during the time at which much of the relevant events arose.
6. The trustees and executors of Mrs KK estate are her daughter, Ms LP, and her solicitor, Mr NV (the complainants).
7. The estate of Mr FQ, at his date of death, was comprised of the following:
  - a. Assets: \$902,141.26
  - b. Liabilities: \$17,233.53
8. Under the terms of Mr FQ's will, there were specific legacies to be paid of \$5,000 each to three different parties. In addition to this, the executors made a donation of \$5,000 to the [City A] District Council for the purchase and planting of a number of [trees].
9. Of the net assets, \$387,102.81 comprised investments in [ABC] Law's nominee company, a number of which were in default at the time of Mr FQ's death. The balance of the estate was held in cash.

### Complaints and concerns

[4] Mr ST set out his clients' concerns and complaints in a letter to the Lawyers Complaints Service on 7 October 2019:<sup>4</sup>

[5] "The \$5,000 donation paid to the [City A] District Council should not have been paid as an expense of the estate as it was neither a specific bequest provided for in the will or a debt payable by the estate."<sup>5</sup>

[6] "[ABC] Law's invoice 78972 dated 18 February 2014 states in the narration that it is for "*all attendances from 16 July 2013 to the date of death*" being a period of six months. The invoice is for the sum of \$9,880.00 plus GST; however, the attendances

---

<sup>3</sup> Standards Committee determination (9 March 2021) at [1]–[9].

<sup>4</sup> Letter, Mr ST to Lawyers Complaints Service (LCS) (7 October 2019).

<sup>5</sup> At [10.0].

recorded in [ABC] Law's MTTR for tax invoice referenced 78927 from 16 July 2013 to the date of Mr FQ's death on 14 January 2014 ... only total \$2,227.50".<sup>6</sup>

[7] "... time recorded in respect of attendances subsequent to Mr FQ's death have been included in an invoice which the narration states is for attendances up to Mr FQ's death".<sup>7</sup>

[8] "The internal [ABC] Law memo dated 31 January 2014 prepared by Mr DJ confirms that unbilled time dating back to 30 June 1993 (being some twenty years prior to Mr FQ's death) has been included in invoice 78972".<sup>8</sup>

[9] Time was written off when an earlier invoice was rendered "but that time was reprised after Mr FQ's death and billed in invoice 78927".<sup>9</sup>

[10] "A statement from [ABC] Law to Mr FQ dated 26 April 2012 shows fees of \$4,975.00 plus GST being charged to Mr FQ which is not consistent with an arrangement to charge no or only minimal fees during Mr FQ's lifetime...".<sup>10</sup>

[11] Mr ST submits that the respondents have breached the following Conduct and Client Care Rules:<sup>11</sup>

- (a) Rule 3.4 – requirement to provide letter of engagement.
- (b) Rule 9.6 – obligation to render final accounts.
- (c) Rule 11.1 – lawyer must not engage in misleading or deceptive conduct.

[12] "A significant proportion of the residuary estate comprised investments in the various [ABC] Lawyers Nominee Company Limited mortgages, six of which were in default at the time of Mr FQ's death. ...".<sup>12</sup> Investors incurred a loss on their investments when the securities were sold.

[13] Investment authorities for investments were dated after Mr FQ's funds had been invested.

---

<sup>6</sup> At [11.1].

<sup>7</sup> At [11.2].

<sup>8</sup> At [11.3].

<sup>9</sup> At [11.4].

<sup>10</sup> At [11.6].

<sup>11</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

<sup>12</sup> Above n 4, at [14.0].

## The practitioners' response

[14] Mr QM responded on behalf of the respondents. He advised:

- Mr BF retired as a trustee of Mr FQ's estate on 4 May 2017 and was replaced by Mr WP. This was after the events complained of had occurred.
- Work for Mr FQ commenced in 1993 and was, in the main, conducted by Mr DJ and Mr RS, employees of the firm.
- Invoice no. 78927 was rendered soon after Mr FQ's death and therefore complied with the requirement to provide an invoice soon after the work had been completed.
- As Mr BF and Mr QM were executors of Mr FQ's will, they were aware of the work that had been carried out for Mr FQ.
- Mr QM provided further evidence of the "gentleman's agreement"<sup>13</sup> reached with Mr FQ in the form of a diary note made by Mr RS.
- Mr QM advised that Mr FQ was not interested in receiving reams of paper.
- The engagement between Mr FQ and [ABC] predated the commencement of the Lawyers and Conveyancers Act,<sup>14</sup> and there was no requirement to provide terms of engagement.
- Mr FQ was aware of the mortgages in default and the firm had "operated under close consultation with the New Zealand Law Society Inspectorate Office".
- "... The directors of the nominee company at all times gave due regard to the contributors representing a majority in value of the mortgage and a majority of the number of investors in a given mortgage. At all times mortgages have been repaid and settled only with the concurrence of the majority of both numbers and value of the contributors to any given mortgage."<sup>15</sup>

---

<sup>13</sup> Mr QM advised that the 'gentleman's agreement' referred to an agreement between Mr FQ and the firm that no fees would be charged to Mr FQ during his lifetime, but would be invoiced after his death and deducted from funds held by his Estate.

<sup>14</sup> On 1 August 2008.

<sup>15</sup> Mr QM, letter to LCS, at [12.0].

- All issues raised by Mr ST had been assessed and reported on satisfactorily by the Inspectorate.

### **The Standards Committee determination**

[15] The issues identified by the Committee<sup>16</sup> were:

1. The administration of the nominee company. Investment authorities and actions taken with regard to the mortgages in default.
2. The payment of \$5,000 to the [City A] District Council for trees.
3. The invoice for \$11,362 taken by deduction as fees owing for attendances prior to date of death.

### **Mr YC's<sup>17</sup> report<sup>18</sup>**

[16] The Committee appointed Mr YC pursuant to s 144 of the Lawyers and Conveyancers Act 2006 to investigate the issues identified by the Committee.

#### *The mortgages*

[17] Mr YC viewed authorities for nine of the mortgages in which Mr FQ's funds had been invested. He said:<sup>19</sup>

... I did not test exactly, but the dating of these authority forms was proximate to the date of the advance. In many instances the moneys being advanced were not freshly introduced by Mr FQ but were 're-cycled', i.e they were advanced after having been released from another loan that had been redeemed (repaid).

[18] Whilst the authority for investment in the advance to [Company D] could not be located, Mr YC had "a degree of comfort that [he had] checked [ABC]'s loan files several times ... and would be surprised if [he] had not checked the authorities for the [Company D] loan".

[19] Mr YC "saw considerable evidence that [ABC] ha[d] communicated with the investors in these loans as they progressed the process of recovery and realisation, as they were required to do under the relevant nominee company rules".

---

<sup>16</sup> Standards Committee determination, above n 3 at [10].

<sup>17</sup> NZLS Inspector, Financial Assurance.

<sup>18</sup> Report dated 8 May 2020.

<sup>19</sup> Ibid at p 2.

[20] As the executors of Mr FQ's estate were members of the firm, the letters to investors were placed on the estate file.

[21] Mr YC's view is that "the loan investments outstanding at the death of Mr FQ were appropriately authorised by Mr FQ (or in one instance his attorney), and that the realisation process and payment of interest was also appropriately handled by [ABC]".

*The payment to [City A] District Council*

[22] The [City A] District Council had issued an invoice to the estate dated 14 January 2013.<sup>20</sup> Mr YC considered that this payment should not have been treated as a debt but should have been paid from the half share of the residue of the estate which Mr FQ had directed to be applied for charitable purposes.

*Fees*

[23] Mr YC considered that the issues relating to fees was "the most mercurial of the three items of concern". He formed the view that the gentleman's agreement was credible, given the close relationship between (particularly Mr BF) and Mr FQ.

[24] Mr YC suggested that "the Committee consider whether the Trust Account Rules 1996 5(8) and its successor Regulation 12(8)" required [ABC] to report on a regular basis to Mr FQ.<sup>21</sup> He also referred to the fact that no Letter of Engagement had been sent to Mr FQ when the Lawyers and Conveyancers Act came into force.<sup>22</sup>

**The Standards Committee determination**

*The nominee company investments*

[25] The Committee accepted that it was more likely than not, that Mr YC had inspected the loan files for the advance to [Company D], and accepted his view that he "would be surprised if [he] had not checked the authorities for the ... loans".

[26] The Committee did not consider further action with regard to the nominee company investments was warranted because:<sup>23</sup>

- a. The form signed by Mr BF was effective. Mr BF was a trusted and long-standing advisor to Mr FQ, who had regularly invested funds with [ABC] Law.

---

<sup>20</sup> Mr YC considered the year on the invoice may have been wrong, and should have been 2014.

<sup>21</sup> Report, above n 18, at p 5.

<sup>22</sup> On 1 August 2008.

<sup>23</sup> Standards Committee determination, above n 3, at [17](a)-(d).

There was nothing untoward in [ABC] Law's actions in accepting the form executed by Mr BF.

- b. The forms were executed proximate to the date of the loans and there is no evidence of the gap in these timeframes being in any way material to Mr FQ's investment strategies. As set out previously, he regularly invested (and re-invested) with [ABC] Law's nominee company. There is no correlation between this and any loss suffered in any of the investments.
- c. [ABC] Law at all times complied with its obligations to investors, and in particular, its reporting requirements. There is no guarantee of the security in any capital investment, and this fact would have been known to Mr FQ.
- d. [ABC] Law's nominee company has been thoroughly audited by the Law Society inspectorate on numerous occasions, and no issues of non-compliance or concerning activity have arisen previously.

### *The trees*

[27] The Committee determined to take no further action on this issue because the respondents had offered to pay the applicants the sum of \$2,500 to compensate Mrs KK's estate for the amount it would otherwise have received.

### *Fees*

[28] The Committee determined that the 'gentleman's agreement' between Mr FQ and the firm established "special circumstances"<sup>24</sup> to enable invoices which were for less than \$2,000 and/or issued more than two years prior to the date of the complaint to be considered. The Committee determined that the fees rendered were fair and reasonable.

[29] The Committee formed the view that "it was more likely than not that Mr FQ had expressly entered into an agreement that attendances during his lifetime could be charged by [ABC] Law after his death and was aware of this arrangement".<sup>25</sup> The Committee did comment, however, that "it was not best practice for [ABC] Law not to have recorded the arrangement in writing and provided the same to Mr FQ, along with regular updates on unpaid fees accruing".<sup>26</sup>

[30] Having addressed the three issues identified for consideration, the Committee determined to take no further action on Mr ST's complaints.

---

<sup>24</sup> Regulation 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 provides that a Standards Committee may deal with complaints about bills of costs rendered more than 2 years prior to the date of the complaint, or for less than \$2,000, if there are 'special circumstances' enabling it to do so.

<sup>25</sup> Standards Committee determination, above n 3, at [27](b).

<sup>26</sup> At [28].

### The application for review

[31] Mr ST applied for a review of the Committee's determination and provided six supporting reasons:<sup>27</sup>

1. "The Standards Committee finding that it is possible in principle to have a "singular and ongoing retainer" for a period of twelve years from 2002 up until the date of Mr. FQ's death on 14 January 2014 which circumvents the requirement to comply with the provisions of Rule 3.4 and 3.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 is wrong."<sup>28</sup>
2. The determination that there was a "singular and ongoing retainer" from 2002 until Mr FQ's death in January 2014, is wrong, because work undertaken after 1 August 2008 was different in nature from work undertaken prior to that date. In this regard, Mr ST refers to the various different matters attended to by the firm after that date. He also points to a gap in attendances by the firm between 6 August 2008 and February 2009 and argues that, when recommencing work for Mr FQ in 2009, the firm should have complied with the rules.<sup>29</sup>
3. Mr ST points to instances where the purported gentleman's agreement was not adhered to.<sup>30</sup>
4. [ABC] had included time in invoice 78972 which had been written off.
5. Mr ST provides a judgment of the High Court,<sup>31</sup> in which the Court held that failure to comply with the rules is negligence. The rules are for the protection of contributors and it is not for a practitioner to decide that the rules not be complied with.
6. The offer made by [ABC] to pay Mrs KK's estate the sum of \$2,500 to compensate for the payment to the council, was made on the basis that the complainants accepted the payment in full and final settlement of the complaint. This was not acceptable to Mr ST's clients.

[32] The outcome of the review sought by Mr ST's clients are:

---

<sup>27</sup> Application for review (22 April 2021) at Part 7 supporting reasons.

<sup>28</sup> At [1.1].

<sup>29</sup> Rules 3.4 and 3.5.

<sup>30</sup> Deduction of fees on the sale of Mr FQ's house in April 2012 and other [ABC] fees in the sum of \$4,975.

<sup>31</sup> *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514 (HC).



- (a) A finding of unsatisfactory conduct.
- (b) A refund of the appropriate portion of the fees charged by [ABC].
- (c) Payment of the sum of \$2,500 for the trees.
- (d) A contribution towards the applicant's legal costs.

### **The practitioners' response**

[33] [Law firm B] (Ms HB/Ms ZW) responded on behalf of the practitioners.<sup>32</sup> They initially argued that the failure to provide supporting reasons with the application form resulted in the application not being compliant with the regulations, and that consequently the application for review should not be accepted.

[34] That submission was subsequently withdrawn.

[35] [Law firm B]'s primary submission is that there is no need for a review, as the applicants have not identified any unfairness in the substance and process of the Committee's decision.

[36] In support of this submission, they refer to the judgment in *Deliu v Connell* where the Court said a review "involves the LCRO coming to his or her own view of the fairness of the substance and process of a Committee's determination".<sup>33</sup>

[37] [Law firm B] submit that this is confirmed by the Court of Appeal in *Keene v Legal Complaints Review Officer* where it was said that the primary obligation of the LCRO is to "exercise their own judgment about the appropriate determination to make in respect of a complaint, having regard to all relevant circumstances".<sup>34</sup>

[38] [Law firm B] then comment in detail on the reasons provided in support of the application.

### *Single ongoing retainer*

[39] "[ABC] Law considers that the Committee was correct to find that the fees charged to Mr FQ's estate after his death were properly charged under a "*singular and ongoing retainer*"<sup>35</sup> and provide reasons to support this view. They say:

---

<sup>32</sup> Letter [Law firm B] to LCRO (18 June 2021).

<sup>33</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

<sup>34</sup> *Keene v Legal Complaints Review Officer* [2019] NZCA 559 at [26].

<sup>35</sup> Above n 32 at [27].

[40] “The Agreement, the instructions given by Mr FQ and the communication between Mr FQ and [ABC] Law as to fees and billing must be viewed in the context of a decades long engagement and friendship between Mr FQ and Mr BF/[ABC] Law.”<sup>36</sup>

[41] “Fundamentally, the Committee was required to exercise its discretion to assess Mr FQ’s knowledge and intention in 2002 without the benefit of Mr FQ’s evidence. [ABC] Law considers that the Committee followed the correct process and reached the right conclusion in this regard.”<sup>37</sup>

[42] “[ABC] Law considers that to apply [the requirements of rr 3.4 and 3.5] to the arrangement would be artificial and inconsistent with Mr FQ’s instructions”.<sup>38</sup> In support of this, [Law firm B] refer to the fact that “Mr FQ insisted that he was not interested in receiving these documents and insisted that the ongoing retainer continue as it always had”.<sup>39</sup> The firm had honoured Mr FQ’s instructions.<sup>40</sup>

[43] [Law firm B] provide the Letter of Engagement issued by the firm with regard to the sale of Mr FQ’s house.

*Obligations with regard to solicitor nominee companies*

[44] [Law firm B] refer to comments made by Mr YC in his report relied on by the Committee. They say:<sup>41</sup>

... the Committee acknowledged the absence of [documentary evidence] in reaching its finding. However, on the basis of its own review of the available evidence and Mr YC’s investigation into the matter, the Committee determined that it has sufficient grounds to determine that these documents most likely did exist, and that [ABC] Law complied with its obligations at all times.

The documents referred to are the authority to invest in the [Company D] loan, and evidence of providing information to Mr FQ.

[45] [Law firm B] submit:<sup>42</sup>

Given the historic nature of these loans, this is the correct approach and finding by the Committee. In the context of this complaint, it would have been unreasonable for the Committee to find that [ABC] Law was in breach of its obligations purely because of the absence of a select few historic documents. The Committee was entitled and correct to find that the obligations were complied with in the context of the evidence available.

---

<sup>36</sup> At [27.2].

<sup>37</sup> At [28].

<sup>38</sup> At [31].

<sup>39</sup> At [31.2].

<sup>40</sup> At [31.3].

<sup>41</sup> At [37].

<sup>42</sup> At [38].

*Repayment of \$2,500 by the executors of Mr FQ's estate*

[46] [Law firm B] refers to a letter from [ABC] to the Complaints Service dated 9 October 2020 in which it stated that it was willing to make payment of the sum of \$2,500 to Mrs KK's estate. That remains the case.

[47] As an aside, [Law firm B] note that this issue is outside the jurisdiction of this Office, as it relates to conduct of the practitioners in their capacity as executors of Mr FQ's estate.

*Allegation that fees were 'written off' after Mr FQ's death*

[48] [Law firm B] advise that [ABC] do not consider this was an issue before the Committee, and consequently is not an issue that can be addressed in this review.

[49] In any event [ABC] consider that "this is common practice in most law firms" and, in addition, the Committee had determined that the fees were fair and reasonable.

**Scope of review**

[50] The High Court has described a review by this Office in the following way:<sup>43</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.

[51] [Law firm B] submit that a review is unnecessary "as the Applicant does not identify any unfairness in the "substance and process of a Committee's determination."

[52] However, [Law firm B] also refer to the Court of Appeal judgment in *Keene v Legal Complaints Review Officer*<sup>44</sup> where the Court said that the primary obligation of a Review Officer is to:

exercise their own judgment about the appropriate determination to make in respect of a complaint, having regard to all the relevant circumstances.

[53] It is inherent in the obligation to make an 'appropriate determination', that the 'substance' of the determination will be 'fair'.

---

<sup>43</sup> *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

<sup>44</sup> [2019] NZCA 559 at [26].

[54] In addition, s 199 of the Lawyers and Conveyancers Act 2006 requires that the LCRO must, on receiving an application for review made in accordance with the Act, conduct that review.

[55] This review must therefore be carried out and has been completed on the papers, which includes the Standards Committee file.

## **Review**

### *Events prior to 1 August 2008*

[56] A number of the matters raised by the applicants relate to events prior to 1 August 2008. That was the date on which the Lawyers and Conveyancers Act 2006 came into force.

[57] Section 351(1) of the Act provides:

#### **351 Complaints about conduct before commencement of section**

- (1) If a lawyer or former lawyer or employee or former employee of a lawyer is alleged to have been guilty, before the commencement of this section, of conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982, a complaint about that conduct may be made, after the commencement of this section, to the complaints service established under section 121(1) by the New Zealand Law Society.

[58] I include here an extensive quotation from one of the earliest decisions of this Office:<sup>45</sup>

[8] This review concerns conduct which occurred prior to 1 August 2008 and as such the applicable rules are those in force at that time. In particular, s 352 of the Lawyers and Conveyancers Act 2006 states that penalties may only be imposed in respect of conduct which could have been imposed for that conduct at the time the conduct occurred. The relevant standards are set out in ss 106 and 112 of the Law Practitioners Act 1982. Those sections provide that disciplinary sanction may be imposed where a practitioner is found guilty of misconduct in his professional capacity, or conduct unbecoming a barrister or a solicitor (the provisions relating to negligence and to criminal convictions are not relevant here). Further guidance can be obtained from the Rules of Professional Conduct for Barristers and Solicitors which were the applicable rules at the time in question.

[9] The threshold for disciplinary intervention under the Law Practitioners Act 1982 is therefore relatively high. Misconduct is generally considered to be conduct:

of sufficient gravity to be termed 'reprehensible' (or 'inexcusable', 'disgraceful' or 'deplorable' or 'dishonourable') or if the default can be said to arise from negligence such negligence must be either

---

<sup>45</sup> *AB v CD* LCRO 38/2009 (28 April 2009).

reprehensible or be of such a degree or so frequent as to reflect on his fitness to practise.

(*Atkinson v Auckland District Law Society* NZLPDT, 15 August 1990; *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105). Conduct unbecoming is perhaps a slightly lower threshold. The test will be whether the conduct is acceptable according to the standards of "competent, ethical, and responsible practitioners" (*B v Medical Council* [2005] 3 NZLR 810 per Elias J at p 811).

This restriction must be borne in mind when addressing the issues raised in this review.

*Non-compliance with nominee company rules*<sup>46</sup>

[59] Listed below are a number of instances where the nominee company rules were not complied with:

- (a) A regular practice of advancing funds before the specific authority required was received. For example:
  - (i) Advance to [Company E] – \$2,700 advanced on 13 February 2007. Letters and particulars sent 14 February 2007.
  - (ii) [Company F] – \$52,500 advanced 26 September 2006. Letter and particulars sent 4 October 2006.
  - (iii) [Company G] – funds advanced 5 May 2007. Authority dated 9 May 2007.
  - (iv) Advance to [Company H] 5 August 2008. Authority dated 14 August 2008.
- (b) No specific authority investment information provided – letters to clients do not generally refer to this being included.
- (c) The investment authorities provided do not include the borrower's address and occupation, together with valuation evidence as required by Appendix F of the 1996 regulations and schedules 3 and 4 of the 2008 regulations.

[60] Rule 7 of the 1996 rules and regulation 8 of the 2008 regulations both require that investments may only be made if the relevant information is provided before any investment is made. Both the 1996 rules and the 2008 regulations are couched in

---

<sup>46</sup> Solicitors Nominee Companies and Contributory Mortgages Rules 1996 and the Lawyers and Conveyancers Act (Lawyers: Nominee Company) Rules 2008.

mandatory terms. In addition, both sets of rules require the specific authorities to be signed by the investor.

[61] The Committee has adopted Mr YC's view that if the authority was obtained at a date "proximate" to the advance being made then this is adequate compliance with the requirements.

[62] In *AP v ZG*,<sup>47</sup> I rejected that approach:-

[64] I consider that Standards Committees should insist on strict compliance with the Rules. The history of lawyers' nominee companies has been troubled and the Rules have been developed in a prescriptive manner to protect contributors as much as possible. I do not consider that there is any room for the exercise of a discretion in determining whether or not the Rules have been breached. A discretion can clearly be exercised when determining penalty, but breaches should otherwise result in a finding of unsatisfactory conduct (in the present regime) in the majority of cases.

[63] I remain of that view, but necessarily must take into account the dates on which the breaches occurred.<sup>48</sup>

[64] That view is reinforced by the Lawyers and Conveyancers Disciplinary Tribunal in *Auckland Standards Committee 2 v Burcher et ors*<sup>49</sup> where the Tribunal had this to say about shortcomings in the administration of the firm's nominee company:

Other breaches are more serious: authorities to invest signed up to four months after the investment was made, re advances to a different entity without proper information to the client or due diligence concerning the borrower (although in most cases these were known to the firm as existing clients). The nature of the default action was not fully discussed with investors, although it is accepted that the practitioners were doing their very best to recover funds for their clients.

[65] It is clear that the Tribunal also views administrative lapses seriously.

*The advance to [Company D]*

[66] It is said that no specific authority can be located for this advance, but a letter dated 30 May 2007 has been provided by Mr ST.<sup>50</sup> This letter refers to funds having "now been reinvested". It is apparent therefore that the funds had been invested prior to the required information being sent to Mr FQ.

---

<sup>47</sup> *AP v ZG* LCRO 278/2012 (14 March 2014).

<sup>48</sup> See [56]–[58].

<sup>49</sup> [2015] NZLDT 47 at [25]

<sup>50</sup> Letter of complaint, Mr ST to LCS (7 October 2019) at annexure N.

[67] Both [ABC] and [Law firm B] refer to investments as being “recycled” investments, being funds generated by repayment of one loan and advanced on a new loan.

[68] The submission made in this regard seems to be that there was a lesser, or no, need to have approval for the new investment because funds had already been invested through the firm’s nominee company.

[69] If my understanding of that submission is correct, then it is not accepted. The rules require that a specific authority is required for each new advance, regardless of where the funds have come from.

[70] In addition, the particulars provided refer to the advance being for development purposes. From the copy valuation provided, it would seem that the intention of the borrower was to subdivide the property into 46 residential lots. Rule 8 of the 1996 rules and reg 9 of the 2008 regulations, specifically prohibit funds being advanced for development purposes, where the specific requirements of those rules have not been complied with. I can not find any evidence of compliance with the conditions imposed by those rules.

[71] Incidental to the matters referred to above, I note that the power of attorney granted to Mr BF on 26 June 2001 was only operable if Mr FQ became mentally incapable. There is no indication that Mr FQ was in that state when the authorities were signed by Mr BF. No certificate of non-revocation has been attached either.

### *Conclusion*

[72] In his submissions in support of the complaint, Mr ST has referred to a judgment by the full bench of the High Court in *Complaints Committee of the Canterbury District Law Society v W*,<sup>51</sup> where their Honours state:

[50] Rule 7 was not complied with. In our view this was negligence. The rules set out what is required. The rules are for the protection of the contributors and it is not for the practitioner to decide that the rules need not be complied with. In failing to comply with the rules the practitioner did not act with the care reasonably expected of a practitioner in these circumstances. That does not necessarily mean that the charge is established. The negligence must be of such a degree as to tend to bring the profession into disrepute. ...

[73] I can not support the principle that a lawyer has a discretion whether or not it is necessary to strictly comply with the regulations. Regardless of whether or not Mr FQ

---

<sup>51</sup> Above n 31.

had said he did not want to receive the information, the lawyers were obliged to comply with the requirements.

### *Mortgages in default*

[74] As noted by Mr ST, six out of the ten mortgages in which Mr FQ's funds had been invested, were in default at the date of his death. These defaults resulted in losses on capital and interest for Mr FQ's estate. In *AP v ZG*, I referred to the duty of a lawyer putting an investment proposal before a contributor.<sup>52</sup> In that decision I said:

[54] I am quite satisfied that in putting a lending proposal before contributors, a lawyer cannot disclaim all responsibility for ensuring the proposal is sound. I agree that contributors must carry some responsibility for their own decisions. However, I consider that the Practitioner had a duty to at least provide the contributors with sufficient information to enable them to make an informed decision and in this regard, I do not think he met his obligations.

[75] There is no evidence before me as to what investigations were made by the [ABC] partners before investing Mr FQ's funds but the fact that six of the mortgages were in default at the time of his death leads to an inference that the degree of information sought from borrowers as to their ability to meet their obligations, may have been somewhat lacking.

### *Terms of engagement*

[76] [ABC] did not provide Mr FQ with any terms of engagement required by rr 3.4 and 3.5 of the Conduct and Client Care Rules for ongoing attendances after 1 August 2008. Mr QM submits that there was a single and ongoing retainer which commenced in 1993, and that a letter of engagement was not required when the Lawyers and Conveyancers Act 2006 came into force in 1 August 2008.

[77] This not an issue which requires to be definitively addressed. It suffices to say, that it is surprising that the unusual arrangement with Mr FQ was not recorded by [ABC], either before, or after, the Act came into force. The failure to report, and issue invoices, on a regular basis, adds to the impression that there was an unacceptable lack of attention paid to the firm's duties to keep Mr FQ properly and fully advised.

[78] It is noted that a letter of engagement was prepared when the firm acted on the sale of Mr FQ's property.<sup>53</sup> The letter of engagement was addressed to Mr FQ care of [ABC] Law, Box XXX, [City A] for the attention of Mr BF. Mr BF had retired from the

---

<sup>52</sup> Above n 47.

<sup>53</sup> Dated 19 March 2012.



partnership in 1995 but continued as a consultant.<sup>54</sup> The letter was presumably sent to him as Mr FQ's attorney. I refer again to the observation that the power of attorney was operable only if Mr FQ had become mentally incompetent. In addition, sending the letter to Mr BF c/- the firm does seem to be a somewhat artificial attempt to comply with the rules. I note also, the letter is unsigned.

### *Reporting*

[79] The "gentleman's agreement" arrangement for payment of fees is unusual but that does not justify non-compliance with the requirement to report to a client at intervals of no more than 12 months. Regulation 12(7) of the Trust Account Regulations<sup>55</sup> provides:

#### **12 Receipt and payment of trust money**

- (7) Each practice must provide to each client for whom trust money is held a complete and understandable statement of all trust money handled for the client, all transactions in the client's account, and the balance of the client's account,—
- (a) in respect of ongoing investment transactions, at intervals of not more than 12 months; and
  - (b) in respect of all transactions that are not completed within 12 months, at intervals of not more than 12 months; and
  - (c) in respect of all other transactions, promptly after or prior to the completion of the transaction.

[80] Rule 5.8 of the Solicitors Trust Account Rules 1996 provided the same requirement.

[81] There is no evidence that reporting as required was complied with. Mr FQ had invested significant sums of money through the firm's nominee company and there would have been regular payments of interest being made, as well as funds being paid out for Mr FQ's personal needs. Funds were also being moved within Mr FQ's investment portfolio.

[82] Notwithstanding the arrangement, [ABC] was obliged to report to Mr FQ at no less than 12 monthly intervals. There is no evidence that these requirements were complied with.

---

<sup>54</sup> It is not known if Mr BF was still a consultant to the firm at the time.

<sup>55</sup> Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

### *Overview*

[83] The relationship between Mr FQ and the members of [ABC] Limited was somewhat unique. Mr FQ had been a client of the firm and its predecessor firm for some 60 years and had developed a close friendship with Mr BF, and subsequently, other members of the firm. Mr FQ relied on, and entrusted, the firm to attend to many matters which would otherwise have been attended to by himself, or members of his family, personally. Mr FQ also invested a significant sum of money through the firm's nominee company.

[84] Mr FQ's trust, and a desire not to be troubled with "paperwork", does not relieve the lawyers from strict compliance with the various rules and regulations. It should be recognised that these requirements protect the lawyer from subsequent challenges as much as to provide the client with required information.

### **Summary**

[85] In the above discussion, I have identified a number of instances where relevant rules and regulations were not complied with. This would usually result in adverse findings against the lawyers responsible. However, there are unusual features involved with this complaint that mitigate against that:

1. Mr FQ is deceased, and it would seem that he had no concerns, although the applicants would disagree with that.
2. The residuary beneficiary of one half of his estate is also dead.
3. The complainants (as executors of Mrs KK's estate) are not clients of [ABC].
4. There is some difficulty in attributing specific breaches to each of the individual respondents.
5. Mr BF was responsible for a number of the matters discussed and has passed away.

6. The applicants suggested at an early stage<sup>56</sup> that the complaint should be directed at [ABC] Limited.
7. There is a greater threshold of non-compliance required in respect of events occurring prior to 1 August 2008.

### **A proposed resolution**

[86] Section 192(b) of the Act requires this Office “to promote, in appropriate cases, the resolution, by negotiation, conciliation, or mediation, of complaints; ...”. I propose therefore that an appropriate manner in which to resolve this review is:

1. There be no adverse finding against any of the respondents.
2. The respondents, and [ABC] Law Ltd, acknowledge that it was reasonable for the applicants to ask that the matters raised by them be investigated.
3. [ABC] makes the following payments:
  - (a) The sum of \$2,500 to the estate of Mrs KK for its share of the payment made for trees.
  - (b) The sum of \$5,681 to the estate of Mrs KK, being one half of invoice 78927 less office expenses of \$9.
  - (c) The sum of \$3,000 to the applicants as a contribution towards their costs in making their complaint.
  - (d) The sum of \$1,200 to the New Zealand Law Society for the costs of this review.

[87] If this proposal is accepted, I propose that the terms of the settlement be recorded pursuant to s 201(5)(a) of the Act, and be declared to be a final determination of the issues involved.

[88] The parties are requested to advise by no later than two weeks from the date of this decision as to whether or not this proposal is accepted. If so, the terms will be recorded and payments made within two weeks of the date of the record being received.

---

<sup>56</sup> Letter, Mr ST to LCS (23 December 2019) at [1.0].

[89] If the proposal is not accepted, the review will proceed and a decision issued in due course.

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

---

**O Vaughan**  
**Legal Complaints Review Officer**

Copies of this interim decision are to be provided to:

Mr ST as the Applicant obo the Executors of the Estate of KK  
Messrs QM, WP, RS and DJ as the Respondents  
Ms HB and Ms ZW as the Representatives for the Respondents  
Mr PX and Ms GA as Related Persons  
[Area] Standards Committee [X]  
New Zealand Law Society

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

[2022] NZLCRO 023

Ref: LCRO 53/2021

**CONCERNING**

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

**AND**

**CONCERNING**

a determination by [Area] Standards Committee [X]

**BETWEEN**

**ST on behalf of the Executors of the Estate of KK**

Applicant

**AND**

**QM, WP, RS and DJ of ABC LAW LIMITED**

Respondents

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

**Addendum to Interim Decision**

[1] On 9 March 2022, I issued an interim decision on Mr ST's application for review of the determination by [Area] Standards Committee [X] to take no further action on the complaints made by Mr ST on behalf of the executors of the Estate of KK, against the respondents.

[2] Section 192(b) of the Lawyers and Conveyancers Act 2006 requires this Office "to promote, in appropriate cases, the resolution, by negotiation, conciliation, or mediation of complaints ...".

[3] In [86] of the interim decision, I set forth a proposal to resolve the matters which had given rise to the complaints by the applicants.

[4] Both the applicants<sup>1</sup> and the respondents<sup>2</sup>, have confirmed acceptance of this proposal.

[5] In accordance with [87] of the interim decision, and pursuant to s 201(5)(a) of the Act, the terms of the settlement, are now recorded:

- (a) There is no adverse finding against any of the respondents.
- (b) The respondents, and ABC Law Ltd<sup>3</sup>, acknowledge that it was reasonable for the applicants to ask that the matters raised by them be investigated.
- (c) ABC Law Ltd makes the following payments to the applicants:
  - (i) the sum of \$2,500 to the estate of Mrs KK for its share of the payment made for the trees;
  - (ii) the sum of \$5,681 to the estate of Mrs KK, being one half of invoice 78927 less office expenses of \$9;
  - (iii) the sum of \$3,000 to the applicants as contribution towards their costs in making their complaint;
  - (iv) the sum of \$1,200 to the New Zealand Law Society for the costs of this review.

[6] The acknowledgement, and payments, referred to in [5] above, are to be made within two weeks of the date of this addendum. Other than the payment to the New Zealand Law Society, these may be directed to Mr ST, unless otherwise advised by Mr ST's clients.

[7] Pursuant to s 201(5)(b) of the Act, I declare the terms of settlement set out in [5] above to be a full and final determination of the issues involved in the matter to which the review relates.

## **Publication**

[8] As the interim decision, and now this addendum, refers to a number of somewhat unique, but important matters, and emphasises the need for parties to

---

<sup>1</sup> Email, ST to LCRO (22 March 2022).

<sup>2</sup> Email, ZW (Law firm B) to LCRO (22 March 2022).

<sup>3</sup> RSM Ltd is the law firm of which the respondents are directors.

explore settlement of matters raised on review, I request the parties to confirm that they have no objection to this decision being published **in anonymised format**.

**DATED** this 23<sup>RD</sup> day of MARCH 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 ST as the Applicant obo the Executors of the Estate of KK  
Messrs QM, WP, RS and DJ as the Respondents  
Ms HB and Ms ZW as the Representatives for the Respondents  
Mr PX and Ms GA as Related Persons  
[Area] Standards Committee [X]  
New Zealand Law Society