LCRO 57/2015

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the National Standards Committee
BETWEEN	**Mr JR** Applicant
AND	**Mr ST** Respondent

DECISION

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

Introduction

[1] Mr JR has applied for a review of a decision by the National Standards Committee to take no further action in respect of his complaint concerning the conduct of Mr ST who, like Mr JR, is a lawyer practising in Auckland.

[2] The complaint concerned a costs memorandum filed by Mr ST in a High Court proceeding in which Mr JR was not in any way involved.

Background

[3] Mr ST had represented parties against whom third party discovery had been sought in the proceeding.

[4] That application was largely unsuccessful and Mr ST sought indemnity costs for his clients.

[5] His memorandum on that account was flawed for reasons including that:

(a) He incorrectly enumerated a High Court Rule by referring to an earlier version of the rule.

(b) In the process of seeking costs he had not kept to timetabling directions dictated by the court.

(c) He made a misguided attempt to recover GST.

(d) The materials and argument he put before the Court in support of the application were in several respects deficient.

(e) When referring to the Judge in his memorandum he variously and incorrectly spelt the Judge's surname.

[6] Each of those shortcomings was the subject of robust comment and criticism by the Judge when he delivered his costs judgment. The misspelling of the Judge's name was described as "insulting".[1]

[7] However, having expressed his concerns and displeasure, the Judge proceeded conventionally to consider and award costs (including a significant uplift under rule 14.3) and that disposed of the matter at no apparent disadvantage to Mr ST's clients as there does not appear to have been a viable case for indemnity costs.

[8] Mr ST advised the Committee that he had written to the Judge with an apology and that had been acknowledged.

[9] Mr JR had not in any way been involved in the proceeding and there is no evidence that the costs judgment held any consequences for him. It had come to his attention by chance when he was looking through recent judgments of the High Court.

The complaint

[10] Mr JR lodged a complaint with the New Zealand Law Society Complaints Service (NZLS) on 31 October 2014. The substance of the complaint was that:

(a) In misspelling the Judge's name Mr ST had failed to exercise due care and skill and shown disrespect amounting to serious misconduct.

(b) By seeking indemnity costs in terms involving the citation of the wrong rule Mr ST had acted unprofessionally and unhelpfully to all concerned.

[1] *X v Y* [Year] NZHC [case no.] at [5].

(c) The invoices referred to in the costs judgment and apparently rendered by Mr ST had obviously been deficient.

(d) That Mr ST had sought pointlessly to recover GST incurred by his clients demonstrated a significant deficiency in his understanding of the law which fortunately had been corrected by the Judge.

(e) The same could be said of an endeavour to recover pre-litigation and otherwise irrelevant costs.

(f) Mr ST had "very cavalierly treated his responsibilities to the court" and should be disciplined.

The National Standards Committee decision

[11] The National Standards Committee delivered its decision on 16 February 2015.

[12] The Committee decided, 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.

[13] In reaching that decision the Committee concluded that:

(a) The shortcomings and errors in the costs memorandum were not of sufficient seriousness to engage the disciplinary processes under the Act.

(b) Costs had in any event been recovered.

(c) The errors had not adversely affected Mr JR who had no connection with the proceeding.

(d) In the exercise of its discretion and for those reasons the Committee considered that the conduct complained of did not raise any disciplinary issues needing to be taken further.

(e) Mr ST had been openly and publicly criticised in the judgment.

(f) Mr ST had apologised to the Judge and that apology had been acknowledged by the Judge.

(g) The Judge's admonitions had sufficiently dealt with the matter.

[14] The Committee concurrently considered whether the complaint was vexatious in terms of s 138(1)(c) of the Act as one having no realistic prospects of success and serving only to cause distress, inconvenience or annoyance.

[15] The Committee found that the complaint was vexatious because:

(a) For the reasons already summarised it had little or no real prospect of success and concerned trivial and/or frivolous matters.

(b) It had had the effect of distressing, inconveniencing, annoying and/or vexing Mr ST.

(c) It arose in the context of a series of disputes between Mr JR and Mr ST involving the complaints process and the courts.

(d) The costs judgment had been critical of counsel for the plaintiff too, but the complaint was made against Mr ST alone.

(e) Mr JR was not a person immediately affected by the conduct complained of.

(f) Those circumstances, combined with the subject matter of the complaint, led it to the conclusion that it was not made in good faith and in fact was vexatious.

[16] For all of these reasons the Committee decided in its discretion pursuant to s138(2) of the Act to take no further action on the complaint as, having regard to all the circumstances of the case, further action was unnecessary or inappropriate.

[17] The Committee particularly noted that those circumstances included:

(a) That the concerns canvassed by the High Court did not appear to be of sufficient seriousness to warrant further disciplinary action under the Act.

(b) Mr ST's errors had been adequately addressed both in the judgment and by his subsequent apology to the Judge.

(c) Mr JR was not a person immediately affected by Mr ST's conduct.

[18] Addressing the matters set out in [15] above, the Committee decided in the exercise of its s 138(1) of the Act discretion to take no further action on the complaint, finding in doing so that in terms of s 138(1)(e) of the Act, Mr JR did not have sufficient personal interest in its subject matter.

Application for review

Original application

[19] Mr JR filed an application for review on 30 March 2015. The outcome sought is that the complaint be remitted to a different Standards Committee for reconsideration or that the Legal Complaints Review Officer (LCRO) exercise its jurisdiction to deal with the whole matter itself.

[20] Mr JR submits that the Committee:

(a) Was mistaken in its conclusion that the complaint was trivial, without merit and/or had no reasonable prospect of success as it involved a practitioner in default in serious High Court litigation in a number of undisputed ways, including disrespecting a sitting judge.

(b) By focusing on Mr JR's conduct, committed an error of law.

(c) Was wrong to conclude with no evidence that the complaint had the effect of distressing, inconveniencing, and/or vexing Mr ST.

(d) Failed to take into account the relevant considerations of the evidence and/or submissions tendered and/or otherwise failed to address the substance of the complaint.

Elaboration of application

[21] Mr JR elaborated upon the above in an email of 28 April 2016. In summary, he then submitted that:

(a) A complaint could not be trifling where a lawyer had not competently pursued litigation, and if another practitioner was struck off "for saying naughty words" about another Judge then surely there must be some sanction for disrespecting one.

(b) Previous supposed acrimony between him and Mr ST had wrongly been taken into account because it was irrelevant, in issue was what Mr ST had done.

(c) Rehearsed his previous complaint that when it wrote of personal consequences, such as distress, for Mr ST the Committee had made a finding without evidence.

(d) The Committee seems to have been able to focus on my alleged motives, the respondent's made up suffering and in the process lost sight of what it was actually asked to rule upon. Through [sic] there is a statutory right to complain, s 132 … and a legal entitlement to have the complaint considered[2] … what the Committee has actually done is failed to fulfil various statutory processes that impliedly require it to dispose of the grounds of complaint …

[22] Mr ST was invited to comment on the review application but elected not do so. However, he had responded to the initial complaint and I now turn to that response.

Mr ST's response

[23] In his earlier 12 November 2014 response, Mr ST had submitted that:

(a) The complaint should be recognised as part of a long running series, raised in the main by Mr JR, that had followed from cross-complaints filed in December 2012.

(b) Mr JR had no connection with the matter at hand.

(c) The misspellings of the Judge's last name possibly arose as a result of auto-correct intervention but he accepted that his oversight in checking was the proximate cause.

(d) He had made a written apology to the Judge who had acknowledged that.

(e) The incident should be considered closed.

(f) No rules or principles against what he might have offended had been identified in the complaint.

(g) It was not appropriate for the disciplinary process to be invoked by a non-party to litigation where neither the Judge nor any counsel or party concerned had chosen either to complain or to seek an award of costs to mark the Court's displeasure.

(h) Complaints to the Law Society were serious as they affected the subject of a lawyer's standing and, if serious enough, ability to practise.

(i) The complaint had failed to inform the Complaints Service and him of the "cause or causes of action" relied upon.

[2] Mr JR relied upon *High Court Decision*

(j) The complaint was an unedifying and vexatious misuse of the complaints procedure from counsel "who by his own admission has more than [X] matters presently before the LCRO, much less the complaints Committees".[3]

Mr JR's response

[24] Mr JR responded to Mr ST in a 24 November 2014 email saying that:

(a) Any complaints that he had ever made against Mr ST were made because he believed he had committed unsatisfactory conduct and/or misconduct and he further believed it to be his duty to the profession to hold him accountable to the full extent of the law.

(b) Speaking of himself, no other lawyer:[4]

> … in the history of this small country has ever held his fellow colleagues to such due account and that is something I am very proud of, for helping civilise the profession.

(c) The rules[5] were not a code but "I would have thought failing to address a High Court Judge by his correct name might be considered disrespectful and in breach of… rule 13.2.1".[6]

(d) Chapters 2, 3, and 13 of the rules dealing with upholding the rule of law, acting competently, and protecting court processes could be relevant; in any event.

(e) Mr ST had been given clear particulars of the conduct in question.

(f) … whenever a judicial officer criticises Counsel then there is a clear proper basis for a Law Society intervention. That is my sole motivation in bringing this to the Lawyers Complaints Service's attention, to ensure that all lawyers who ever upset any member of the esteemed judiciary are sanctioned appropriately. … I regularly read litigation judgments. I happened to come across this decision and when reading the learned judge's critical comments of Mr ST it triggered my belief that I must take action …[7]

Review on the papers

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[3] *JR v ST* [High Court Judgment]
[4] Email JR to Complaints Service (24 November 2016) at 1.
[5] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[6] Above n 4, at 1.
[7] At 1–2.

[25] The parties agreed to the review being dealt with on the papers. This review has been undertaken on the papers pursuant to s 206(2) of the Act, which allows a LCRO to conduct the review on the basis of all the information available.

[26] I confirm that I have carefully read all of the material that the parties provided to both the Legal Complaints Service and this Office, and on the basis of the material I consider that the review can be adequately determined in the absence of the parties.

The role of the LCRO on review

[27] The nature and scope of a review have been discussed by the High Court, which said of the process of review under the Act:[8]

> … 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.

[28] More recently, the High Court has described a review by this Office in the following way:[9]

> 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.

[29] 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

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[8] *Deliu v Hong* [2012] NZHC 158, [2012] NZAR 209 at [39]-[41].
[9] *Deliu v Connell* [2016] NZHC 361, [2016] NZAR 475 at [2].

(b) Provide an independent opinion based on those materials.

Applicable statutory provisions and rules

[30] In his original complaint Mr JR characterised Mr ST's misspelling of the Judge's name as "serious misconduct". Misconduct' in relation to a lawyer is defined in s 7 of the Act in these terms:

> (1) In this Act, **misconduct**, in relation to a lawyer or an incorporated law firm,—
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> (a) means conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct—
>
> (i) that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; or
>
> (ii) that consists of a wilful or reckless contravention of any provision of this Act or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm or of any other Act relating to the provision of regulated services; …
>
> …

[31] Mr JR has also referred to rule 13.2.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) which says "A lawyer must treat others involved in court processes with respect".

[32] Mr JR has additionally alluded to chapters 2 and 3 of the the Rules[10] in terms that drew attention to rule 2 "A lawyer is obliged to uphold the rule of law and to facilitate the administration of justice" and to rule 2.1 "The overriding duty of a lawyer is as an officer of the court".

[33] As well he wrote so as to draw in rule 3:

> In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

The subject matter of the complaint

[10] Above n 4.

[34] The costs judgment was critical of both counsel:[11]

> [5] [Text redacted]
>
> [6] [Text redacted]

[35] Referring to Mr ST's citation of a now non-existent rule he said:

> [17] First, I note that there is no r XXX in the current High Court Rules.
>
> [18] In the High Court Rules 1985, r XXX dealt with orders for particular discovery against non-parties. This rule is no longer in place. The operative rules are now the High Court Rules 2008. …

[36] Elsewhere in the judgment the Judge was critical of, or at least demonstrated that he was troubled by:

(a) What might be described as sloppy or misguided submissions by both counsel.

(b) As regards Mr ST, a pointless endeavour to recover items of GST.

(c) In the pursuit of indemnity costs, the proffering by him of inadequate, unsatisfactorily explained or simply irrelevant costs material in support.

[37] I note that Mr ST's clients were awarded uplifted costs and Mr ST's written apology to the Judge was acknowledged.

[38] There is no suggestion that the Judge saw fit to refer his judgment to the Law Society or that Mr ST's clients have made any complaint, nor indeed counsel or any of the other parties on the opposing sides of the litigation.

Analysis

Initial observations

[39] The following is apparent from, or material to, the evidence before me. Leaving aside for the moment Mr JR's views and beliefs about the role he assumes in order to help civilise the legal profession, he has no personal interest in the subject matter of his complaint, being neither a party involved in, nor a person affected by, the costs judgment and the submissions that preceded the same. The High Court Judge,

[11] Above n 1.

who had heard the interlocutory matters that led to the costs judgment, did not see fit to refer his costs judgment to the Law Society.

Misconduct

[40] The relevant definition of 'misconduct' is set out at [30] above.

[41] The shortcomings of Mr ST's performance as counsel on the costs application are spelt out at [34] – [36] above.

[42] Self-evidently, those shortcomings were not such as fellow lawyers in good standing could be expected to characterise as so egregious as to have been disgraceful or dishonourable nor were they open to characterisation as involving wilful or reckless contravention of any of the obligations identified in s 7 of the Act.

[43] Findings of those kinds are so serious that they can lead to the conclusion that a lawyer is not a fit and proper person to be in legal practice. Viewed objectively, and thus with a reasonable sense of proportion, this case falls well and truly short of the possibility of being in the s 7 category.

Unsatisfactory conduct – relevant rules

[44] Mr JR pointed to rule 13.2.1 which says "A lawyer must treat others involved in court processes with respect".

[45] This provision, broad in scope, imposes obligation on counsel to treat all engaged in the court process, and the court process itself, with courtesy. To the extent that the objective is to protect other litigants, their counsel or solicitors and witnesses, that provision has no relevance here. The focus of allegation that Mr ST was discourteous, is directed towards his engagement with the Judge. That is more directly addressed by rule 13.2.

Rule 13.2

[46] That rule says "A lawyer must not act in a way that undermines the processes of the court or the dignity of the judiciary".

[47] Whilst Mr ST's failure to correctly spell the Judge's name clearly irritated the presiding Judge, the suggestion that an error of that significance has potential to

undermine the dignity of the judiciary is to dramatically elevate the consequence of the error.

[48] "Undermine" means to injure by secret or insidious means … [to] weaken … imperceptibly or insidiously …. It connotes such as sabotaging, impairing and subverting.[12]

[49] Mr ST's conduct was not in that category. His conduct was plainly not intended to undermine the Court or the dignity of its judiciary nor did it serve to do so. The shortcomings in his performance on the occasion in question reflected on, and so affected, him alone.

Rule 2

[50] This rule, echoing s 4(a) of the Act, says "A lawyer is obliged to uphold the rule of law and to facilitate the administration of justice".

[51] Mr ST's less than optimum performance on this occasion did not, in any terms, even approach conduct of a kind that might be characterised as amounting to a failure to uphold the law, nor did it operate to impede the administration of justice, which was duly done.

Rule 2.1

[52] This rule says "The overriding duty of a lawyer is as an officer of the court".

[53] It is generally understood that officers of the court, as lawyers, have an overarching obligation to promote justice and the effective operation of the judicial system within which they practise.

[54] But it is not the case that the conduct rules which impose obligation on a practitioner to promote the effective operation of the justice system are intended to shackle practitioners with such an oppressive burden, that any error made before the Court is seen to provide a proper or sensible basis for disciplinary intervention.

Rules 13 & 13.1

[55] That understanding is formally embedded in rule 13:

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[12] Shorter Oxford English Dictionary (5th ed, Oxford University Press, Oxford, 2003).

> The overriding duty of a lawyer acting in litigation is to the court concerned. Subject to this, the lawyer has a duty to act in the best interests of his or her client without regard for the personal interests of the lawyer.

[56] And the Court related obligation is expanded upon by r 13.1 "A lawyer has an absolute duty of honesty to the court and must not mislead or deceive the court".

[57] There is no evidence at all of any intent on the part of Mr ST to mislead or deceive the Court; ineptitude does not equate dishonesty or deceit.

Rule 3

[58] This rule says:

> In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care.

[59] Mr ST's shortfalls in advancing his client's case, were sufficient to earn him criticism and rebuke from the Bench that was reported publicly in the form of some bluntly critical judicial observations and admonitions delivered in a costs judgment.

[60] In my view that was a sufficient penalty for Mr ST to suffer in the circumstances; one imposed by he who was best placed to identify and measure the shortcomings, namely the Judge who had responsibility for the handling and disposition of the matter.

[61] This is not to suggest that it is the role of the Court to assume responsibility for managing lawyers' professional conduct issues, but rather to acknowledge that inevitably on occasions, a Judge will intervene when the Judge considers that the lawyer is failing to meet his or her obligations as an officer of the court. This direct and immediate intervention frequently resolves the issue in satisfactory fashion, without need for further response.

Proximity to the complaint

[62] This review has engaged head on, a consideration of the circumstances in which it is appropriate for a complaint to be dismissed on grounds that a complainant has insufficient personal interest in the complaint.

[63] Mr JR argues that suggestion that he has insufficient interest in the complaint is fully answered by considering the obligations he has as a practitioner, to monitor professional conduct for the betterment of the profession.

[64] In practice the vast majority of complaints that fall to be considered by the Complaints Service, are those where a party has complained about their lawyer, or a practitioner has made complaint about a colleague in circumstances where the respective practitioners have had disagreement about a matter in which they have both been directly engaged.

[65] In this case, Mr JR had no connection with the proceedings. Mr ST questions Mr JR's motives in bringing this complaint. He suggests that Mr JR's motivations were personal rather than professional, the two practitioners having a history of being involved in earlier complaints that had been before the Complaints Service.

[66] Mr ST argues that Mr JR is abusing the complaints process for his own purposes and to support this proposition, highlights the number of complaints that Mr JR has made, noting that Mr JR had talked of having around 100 reviews before the LCRO and countless others before Committees.

[67] This is allegation that Mr JR is a serial complainer.

[68] Mr JR rejects suggestion that his approach to the pursuing of professional complaints is improper. He lays claim to a degree of uniqueness, noting that no other lawyer in the history of the country has ever held his fellow colleagues to such account. As a consequence of this endeavour, he has, says Mr JR, helped to civilise the profession.

[69] I am uncertain as to precisely what Mr JR is suggesting when he talks of his efforts having helped to "civilise" the profession. It carries suggestion of a profession that has become unruly and inattentive to a commitment to the maintaining of proper professional standards. It is a suggestion that presents at odds with a profession whose conduct is the subject of regulation under a comprehensive statutory regime, supported by a complaints process that has strong focus on consumer protection and a process that is designed in a way such as to allow easy access to the complaints process, for parties who wish to pursue a complaint against a lawyer.

[70] It is not the primary focus of this review to address Mr JR's broader motivations, but one of the issues to be considered on review, is Mr JR's contention that the Committee was wrong to conclude that he had insufficient interest in the complaint.

[71] It is trite but necessary to emphasise that Mr JR's argument that he has a professional responsibility to draw concerns about a practitioner's conduct to the attention of the Complaints Service, irrespective of whether he has a direct involvement in the subject matter of the complaint, must be tempered by the obvious imperative, that before pursuing a complaint, the party advancing the complaint should be properly satisfied that the conduct complained about merits a disciplinary inquiry.

[72] Serious consequences follow for a practitioner when a complaint is filed. The very fact that a complaint has been lodged, can often place the practitioner in a position of some discomfort. The practitioner's most valuable asset, their professional reputation, is immediately being put at issue. For many practitioners, this is an unpleasant and uncomfortable place to be.

[73] Even in those situations where the practitioner has complete confidence that they have nothing to be concerned about, and that any inquiry will vindicate their position, the process can nevertheless be discomforting, and demanding of their time and energy, and on occasions carry a financial cost in that they may have need to spend considerable time responding to the complaint.

[74] This is not to place undue emphasis on the adverse consequence for practitioners arising from their obligation to respond to professional complaint. It is a necessary corollary of the privilege they enjoy from membership of a profession, that they have a continuing responsibility to meet the obligations of their profession, and a responsibility to deal with the consequences of failing to do so. I simply note that the consequences for a practitioner of having to deal with a conduct complaint can be considerable.

[75] That being said, the consumer protection objectives which underpin the disciplinary regime are of primary importance.[13]

[76] It could be expected that practitioners would have an appreciation of the need to ensure that a complaint should only be pursued when there are proper grounds to do so, and an acute awareness that a complaint should never be prompted by self interest or ulterior motive.

[77] Mr JR emphasised that his objective in pursuing complaints, was to enhance the profession.

[78] It is the merit of his applications that is the important issue, not the number.

[13] For case authority reinforcing the protective purpose of the disciplinary system, see *Bolton v Law Society* [1994] 2 All ER 486, [1994] 1 WLR 512.

[79] I do however have reservations about the approach adopted by Mr JR in the complaint that forms the subject of this review.

[80] The complaint is prompted by Mr JR reading a court judgment in which the presiding Judge had made comments critical of counsel.

[81] The comments are considered by Mr JR to be of sufficient consequence to merit the initiating of a complaint.

[82] It is Mr JR who makes this decision. It is his judgement, and his judgement alone that informs the decision. It is a decision that is not influenced by the parties most directly affected, the litigants.

[83] But it is not the case that every error identified by a Judge must merit a disciplinary inquiry.

[84] It is neverthless the case that a finding of unsatisfactory conduct may be reached, on the basis of an entirely unintentional (and minor) contravention of one of the rules or regulations.[14]

[85] It is not uncommon for Judges on occasions, to make criticisms of counsel. It is inevitable on occasions that counsel will make mistakes in the course of conducting litigation, and it is the presiding Judge who is well placed to assess the significance of error or errors made.

[86] If a Judge considers counsel's performance to be so significantly below par as to merit a consideration as to whether the disciplinary process should be engaged, a Judge may direct that a copy of his or her judgment be provided to the Law Society. That then puts the decision as to whether a disciplinary inquiry should be commenced, in the hands of the Society.

[87] Mr ST's failure to spell the Judge's name correctly was evidence of a failure to sufficiently check his documentation, but on being alerted to the error, he promptly apologised to the Judge. That was an appropriate response. It would, in my view, be an unfortunate state of affairs if matters of this import were regarded as appropriate grist to the mill of the complaints process.

[88] Apology sincerely offered and promptly provided, will frequently satisfactorily resolve a Judge's concerns of discourteous conduct.

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[14] Duncan Webb, Kathryn Dalziel and Kerry Cook, *Ethics,Professional Responsibility and the Lawyer* (3rd ed,LexisNexis Wellington,2016), at [4.3.7].

[89] I take a similar view to Mr ST's error in citing the appropriate High Court rule. A failure to cite a correct rule, is not an error that would commonly prompt a need for a disciplinary response.

[90] This is not to condone practitioners making errors before the court, and practitioners are expected to have a proper familiarity with the rules which underpin the working of the courts, but rather to recognise that on occasions practitioners will make mistakes. Not every mistake demands a disciplinary response.

[91] The Judge was critical of the approach adopted by Mr ST, but the errors made carried no consequence for his client, and were errors, once remarked on and addressed by the Judge, which required no further response.

[92] In my view, no broader issues of public interest were engaged, and argument that the consumer protection objectives were met by the filing of complaint, must be balanced by the fact that the consumers most directly affected, Mr ST's clients, were not detrimentally affected by Mr ST's mistakes, nor did they consider it necessary to raise complaint. If it is contended that this attentive approach to the monitoring of lawyers' conduct, results in the standards of the profession being elevated, (it being argument that Mr ST will have learnt from his mistakes and will not make them again) it can fairly be argued that the manner in which the Judge addressed the concerns, properly met any desired educative outcomes.

[93] In my view, Mr JR overstated the position when he concluded that the issues raised in the Court judgment properly demanded a disciplinary inquiry.

[94] Having examined the whole case afresh, and with Mr JR's grounds for review particularly in mind and a proper attention to the obligation I have to bring a robust and independent approach to the review, I have formed the opinion that the review should be dismissed.

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

Decision

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

DATED this 2nd day of December 2016

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 JR as the Applicant
Mr ST as the Respondent
PB as a Related Party
National Standards Committee
The New Zealand Law Society