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ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND SECOND RESPONDENT.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CIV-2020-404-2497
[2021] NZHC 2080**

UNDER	the Judicial Review Procedure Act 2016, Lawyers and Conveyancers Act 2006, High Court Rules 2016, Fair Trading Act 1986 and New Zealand Bill of Rights Act 1990
IN THE MATTER OF	a judicial review
BETWEEN	DFT Applicant
AND	THE NEW ZEALAND LAW SOCIETY First Respondent
	RMC Second Respondent

Hearing: 27 April 2021 (further submissions filed 4 May 2021)

Appearances: Applicant in person
P N Collins for first respondent
No appearance for second respondent (abiding)

Judgment: 11 August 2021

**JUDGMENT OF TOOGOOD J
[Strike out application]**

*This judgment was delivered by me on 11 August 2021 at 3.30pm, pursuant to
r 11.5 of the High Court Rules*

Registrar/Deputy Registrar

Solicitors: New Zealand Law Society, Wellington
Copy to: The applicant and second respondent

[1] DFT is engaged in proceedings in the Family Court under the Care of Children Act 2004 (the COCA) to which her former partner and the father of her two children, NDJ, is a party. The children are aged about nine and seven. A legal practitioner, RMC, was appointed lawyer for the children in accordance with the procedure described in a practice note issued by the Principal Family Court Judge in 2015 (the 2015 practice note).¹ The practice note has since been superseded by a practice note dated 19 June 2020 (the 2020 practice note).²

[2] This proceeding concerns complaints made by DFT to the New Zealand Law Society (NZLS) about the conduct of RMC in her capacity as lawyer for the children. NZLS exercises statutory responsibility for the administration of a disciplinary regime for the New Zealand legal profession. Being dissatisfied with NZLS's response to her complaints, DFT brings this proceeding, which the Court has treated as an application for judicial review under the Judicial Review Procedure Act 2016.

[3] NZLS applies to strike out the proceeding in its entirety. RMC abides the decision of the Court.

[4] To understand the nature of the issues arising in the strike-out application, it is necessary to understand the role of the NZLS in the enforcement of the obligations imposed upon lawyers through disciplinary proceedings. It is also necessary to understand the special provisions of the Family Court's practice note.

Disciplinary process under the Lawyers and Conveyancers Act 2006

[5] Under pt 7 of the Lawyers and Conveyancers Act 2006 (the LCA), NZLS is required to establish and maintain the lawyers' complaints service. At the first tier in the disciplinary regime for the legal profession in New Zealand, Standards Committees are responsible for investigating complaints and undertaking own motion inquiries about lawyers, incorporated law firms or the employees of either.

¹ The relevant terms of the 2015 practice note are consistent with the corresponding terms of the 2020 practice note.

² Family Court Practice Note *Lawyer for the Child Selection, Appointment and Other Matters* [2020] NZFC 3346.

[6] The complaints regime provided for under the LCA is:

132 Complaints about practitioners, incorporated firms, and their employees

- (1) Any person may complain to the appropriate complaints service about—
- (a) the conduct—
 - (i) of a practitioner or former practitioner; or
 - ...
 - (b) the standard of the service provided, in relation to the delivery of regulated services,—
 - (i) by a practitioner or former practitioner; or
 - ...
 - (c) the alleged failure of a practitioner or former practitioner or an incorporated firm or former incorporated firm, or an employee or former employee of a practitioner or an incorporated firm, to comply, within a specified time or a reasonable time, with any order or final determination made under this Act by a Standards Committee or the Legal Complaints Review Officer.

...

135 Appropriate complaints service

- (1) If the complaint relates to a lawyer or former lawyer or an incorporated law firm or former incorporated law firm, or an employee or former employee of a lawyer or incorporated law firm, the appropriate complaints service, for the purposes of sections 132 and 134, is the complaints service established under section 121(1) by the New Zealand Law Society and the complaint must be referred by that service to a Lawyers Standards Committee.

...

137 Action on receipt of complaint

- (1) A Standards Committee, on receiving a complaint, may—
- (a) inquire into the complaint; or
 - (b) give a direction under section 143; or
 - (c) decide, in accordance with section 138, to take no action on the complaint.

- (2) A Standards Committee that receives a complaint must, as soon as practicable, advise the complainant and the person to whom the complaint relates of the procedure that the Standards Committee proposes to adopt under subsection (1).

Complaints about lawyers for children

The 2020 Family Court practice note

[7] Although RMC was appointed to act in the proceeding under the 2015 practice note, the 2020 practice note now governs her conduct in her continuing role as lawyer for the children. The 2020 practice note is a detailed, 10-page document that covers the matters listed at para 2.1 as follows:

- (a) Legislative provisions for the separate representation of children
- (b) Process for appointment in any specific case
- (c) Review procedures under the Oranga Tamariki Act 1989 – Children’s and Young People’s Well-being Act 1989
- (d) Reports of lawyer for child
- (e) Process and criteria for appointment to the lawyer for child list
- (f) Obligation to disclose
- (g) Continuing legal education, professional supervision and mentoring
- (h) Review of lawyers on lawyer for child list
- (i) Remuneration
- (j) Complaints
- (k) Removal or suspension from lawyer for child list.

[8] It is an important feature of the protocol for the selection, appointment and monitoring of the conduct of lawyers for children that appointment to the list of lawyers for children in any of the proceedings identified in the practice note is a judicial appointment by a Family Court judge as chair of an appointment panel. The panel consists also of a manager or a Family Court co-ordinator, two nominees from the Family Law Section of NZLS and a psychologist and cultural adviser where possible. The process for appointment to the list is robust and requires investigation of the detailed criteria for appointment set out in the practice note. Paragraph 9.9 of

the practice note says that a lawyer appointed to the list of lawyers for children should have:

- (a) a current practising certificate;
- (b) the ability to exercise sound judgment and identify central issues;
- (c) a minimum of five years practice in the Family Court;
- (d) proven experience in running defended cases in the Family Court;
- (e) a sound knowledge of relevant legislation;
- (f) an understanding of, and an ability to relate to and listen to, children of all ages;
- (g) good people skills and an ability to relate to and listen to adults;
- (h) knowledge of the impact of drug and alcohol abuse issues, the dynamics of family violence, child development, disabilities and mental health;
- (i) understanding of tikanga Māori;
- (j) sensitivity and awareness of different world views including gender, ethnicity, sexuality, cultural and religious issues for families;
- (k) relevant qualifications, training and attendance at courses relevant to the role (including continuing professional development);
- (l) personal qualities compatible with assisting negotiations in suitable cases and working co-operatively with other professionals;
- (m) independence and strong advocacy;

- (n) knowledge, understanding, and compliance with the Family Law Section Best Practice Guidelines; and
- (o) a regulatory history compatible with the lawyer’s suitability to act in the role of lawyer for the child.

[9] In short, lawyers for the child or children are not appointed unless they are suitably qualified and experienced. The practice note also requires lawyers on the list to undertake professional supervision appropriate to the nature and extent of their lawyer for child practice.³ There are also obligations to undertake active lawyer for the child practice and to attend continuing professional development programmes. Lawyers newly appointed to the list must be mentored by a senior lawyer for children for 12 months from when they receive their first appointment.

[10] Lawyers whose names are listed are required to submit to a review at intervals of not more than three years. Complaints that raise “a substantial issue which the judge considers is not able to be addressed in terms of the procedure describing consideration of a complaint by a judge” are addressed by a panel convened for the purpose of considering whether the lawyer should be removed or suspended from the lawyer for child list.

[11] Special provisions apply to complaints about the conduct of lawyers who are appointed to be lawyers for children under the Family Court practice note:

14 COMPLAINTS

- 14.1 Any complaints about the lawyer are to be made in writing to the Family Court registry where the proceedings are held.
- 14.2 If the proceedings have not been concluded the complaint is made to the presiding judge. If the proceedings have been concluded the complaint is made to the liaison judge responsible for the court where the proceedings were filed.
- 14.3 The lawyer who is the subject of the complaint will be sent a copy of the complaint to allow them to provide a written response for the judge to consider. The judge handling the complaint shall make a direction about any additional party who is to receive a copy of the complaint.

³ 2020 practice note, above n 2, at 11.1.

- 14.4 The judge considering the complaint shall:
- (a) make such directions from time to time as the circumstances require;
 - (b) make such enquiries as he or she thinks fit;
 - (c) ensure disclosure is made to the lawyer complained about of all relevant material;
 - (d) set a timetable for the lawyer to respond to the complaint and for the complainant to respond to the lawyers reply;
 - (e) observe the rules of natural justice; and
 - (f) determine whether the complaint has substance or not.
- 14.5 If the judge determines the complaint does not have substance, he or she shall dismiss it.
- 14.6 If the complaint has substance, the judge may require the lawyer to do any or all of the following:
- (a) formally apologise in writing to the complainant;
 - (b) undertake further training;
 - (c) complete up to six assignments under the supervision of a named experienced lawyer for child;
 - (d) have a named experienced lawyer for child as mentor for a period of up to 12 months.
- 14.7 The judge may also, at his or her discretion, refer the complaint to the Law Society.
- 14.8 If the complaint raises a substantial issue which the judge considers is not able to be addressed as set out above, he or she shall refer the complaint to the panel.
- 14.9 The lawyer who is the subject of the complaint shall be notified of the outcome of the complaint by the registrar of the court or the panel as appropriate. The judge handling the complaint shall make a direction about any other party who is to be notified of the outcome of the complaint.
- 14.10 Nothing in this practice note limits the court's jurisdiction to do whatever it considers appropriate in the circumstances or otherwise limits the right of the Law Society or other statutory authority to consider any complaint about a lawyer.

The approach of the Standards Committees

[12] Section 138(1)(f) of the LCA provides that a Standards Committee may, in its discretion, decide to take no action, or no further action, on a complaint if, in the opinion of the Standards Committee:

... there is in all the circumstances an adequate remedy or right of appeal other than the right to petition the House of Representatives or to make a complaint to an Ombudsman that it would be reasonable for the person aggrieved to exercise.

[13] Without unreasonably limiting the exercise of their power and duties, Standards Committees acting under s 138(1)(f) of the LCA commonly take the view that complaints about lawyers for children that concern the conduct of the lawyer in proceedings before the Family Court should first be dealt with by a Family Court judge in accordance with the practice note. The NZLS acknowledges that the Family Court's procedures as described in the practice note do not purport to limit or deprive the NZLS of its statutory role and jurisdiction to consider a complaint about a lawyer for children. The Family Court procedure, however, is established specifically to ensure that complaints about the conduct of a court-appointed lawyer in highly sensitive and contentious matters before the Family Court that involve the interests and protection of children are dealt with by the specialist Family Court judges in the first instance.

[14] In the event that evidence of serious professional irresponsibility by a lawyer for a child is provided to a Family Court judge considering a complaint under the practice note, the matter could be referred to a Standards Committee and the full range of professional disciplinary action and sanctions could follow. As para 14.7 of the practice note states, the judge addressing the complaint in terms of the practice note may, "at his or her discretion, refer the complaint to the Law Society".

DFT's complaints about RMC

First complaint – 4 June 2019

[15] DFT lodged a complaint with NZLS dated 4 June 2019 alleging that RMC:

- (a) knowingly filed false and misleading reports to the Family Court;

- (b) refused to meet with DFT and the children and withheld information from DFT;
- (c) did not act “as an impartial party to represent the children’s best interest”;
- (d) knowingly permitted breaches of court orders by DFT’s former partner; and
- (e) enabled the father to breach court orders.

[16] On 15 July 2019, Central Standards Committee 2 decided to take no further action, relying on s 138(1)(f) of the LCA, on the grounds that the Family Court was the appropriate forum for the complaint to be addressed. The Committee said that if the Family Court, as part of its investigation, concluded that RMC had not provided a proper service, then the matter could be brought to the attention of the Lawyers Complaints Service by a Family Court judge.

[17] DFT exercised her right to have the Committee’s decision reviewed by the legal complaints review officer (LCRO), as she was entitled to do under s 193 of the LCA. In a decision dated 20 September 2019, the review application was struck out on the ground that it disclosed no reasonable cause of action. The LCRO held that the application for review disclosed no reasonable grounds of complaint against RMC such that, on an objective view, the grounds might arguably justify reconsideration of a Standards Committee’s decision. The LCRO held that DFT had not been able to point to any error on the part of the Committee and that the content of the complaint was best dealt with by the Family Court, which had ultimate control over the proceedings before it. The LCRO concluded that the Committee’s decision to take no further action on the complaint was “entirely correct”.

[18] The NZLS provided a copy of the LCRO’s decision to the court services manager of the Family Court, who referred the complaint to RMC for a response. On 8 August 2019, DFT provided her own information to the Court and RMC filed a further response on 25 September 2019. In her complaint, DFT sought a full

investigation and said that RMC should be struck off as a lawyer if found guilty of misconduct. She sought damages for emotional distress and financial hardship incurred as a result of what she alleged was RMC's unethical and illegal conduct.

[19] Acting under the 2015 practice note, Judge Skellern reviewed DFT's complaint and, for the reasons described by the Judge in her detailed report of 4 December 2019, concluded she could find no wrongdoing by RMC and noted that although she had made an error in terms of describing criminal charges to which DFT had pleaded guilty, the error had been corrected. The Judge found that RMC had conducted herself in accordance with her statutory responsibilities as lawyer for the children and noted that the volume of correspondence forwarded to the lawyer by DFT had been difficult for the lawyer to manage. Judge Skellern said that RMC had taken steps to try to ensure on-going contact between the children and their mother and was satisfied that RMC had acted and continued to act in what she believes are the best interests of her clients. The Judge noted that the Court had no power to disbar RMC or make any orders for damages to her.

Second complaint – 17 September 2019

[20] Undeterred by her lack of success with the Standards Committee that dealt with her first complaint, DFT made a second complaint on 17 September 2019. The complaint repeats DFT's criticisms of RMC's conduct in allegedly concealing relevant information detrimental to her former partner's case, ignoring relevant features of a psychologist's report and concealing evidence of her former partner's alleged "perjury, abuse and contravention of court orders". She claims that RMC had filed "copious amounts of misleading information to the Court" requesting strict supervision of DFT on occasions when she was having contact with her children.

[21] Unsurprisingly, Central Standards Committee 2, again in the exercise of its role under pt 7 of the LCA, noted that since the appointment of lawyer for the children had been made by the Family Court, that appointment could be reviewed only by the Court. The Committee formally decided pursuant to s 138(1)(f) of the LCA to take no further action and forwarded the complaint to the Administrative Family Court Judge in Auckland.

Third complaint – 7 November 2020

[22] Before the Standards Committee had ruled on the second complaint, DFT filed a further complaint, dated 7 November 2020, referring to her own “[r]elentless attempts to have [RMC] recuse herself from proceedings”. She again alleged that the lawyer for child had assisted her former partner to breach court orders or had concealed his breaches and she sought RMC’s striking off and an award of costs and damages.

[23] Central Standards Committee 1 similarly decided under s 138(1)(f) and 138(2) of the LCA that no further action should be taken and the Committee referred its decision to the Family Court on 17 December 2020. DFT applied to the LCRO for a review, the application being dismissed in a decision dated 11 January 2021. The approach taken by the LCRO was fair, balanced and comprehensive. He noted the power provided to him under s 205(1) of the LCA to strike out an application for review if it was an abuse of process, enabling a review officer to strike out applications that plainly lack merit in order to focus the limited resources of the office to cases where review is worthwhile. Referring to the Court of Appeal judgment in *Moeva v Department of Labour*,⁴ the LCRO noted that the ability to strike out claims as an abuse of process is necessary for the maintenance of public confidence in the administration of justice. The LCRO was satisfied that DFT was attempting to litigate a matter for which there was a purpose-built process available through the Family Court’s practice note and he struck out the application.

Analysis of amended statement of claim

[24] At the hearing DFT was granted leave to file an amended statement of claim. The amended statement of claim is, in substance, DFT’s submissions, and is not a statement of claim complying with r 5.17(1) of the High Court Rules 2016. The amended statement of claim contains generalised allegations relating to DFT’s complaints against the NZLS, RMC and judges of the Family Court.

⁴ *Moeva v Department of Labour* [1980] 1 NZLR 464 (CA) at 481. See also *Johnson v Gore Wood & Co* [2000] UKHL 65; [2002] 2 AC 1.

[25] Paragraphs 1 to 6 of the amended statement of claim are of an introductory nature and address the document's purpose to disclose to the Court and the NZLS the reason for this matter "to be addressed and remedied in the interests of justice and the children embroiled in family court proceedings". DFT also refers to two Human Rights Review Tribunal decisions as a basis for her damages remedy.⁵ Both Tribunal decisions address claims related to the Privacy Act 1993, unrelated to DFT's claim.

[26] Paragraphs 7 to 19 refer to DFT's correspondence with the Minister for Justice and statements on the NZLS website, and also refer to sections of the Lawyers and Conveyancers Act 2006, with a focus on the fundamental obligations of lawyers and the requirement that a lawyer be a fit and proper person. Also referred to are sections of the Fair Trading Act 1986 that relate to obligations on those providing goods or services.

[27] Paragraphs 20 to 47 re-argue the perceived failings of RMC in her capacity as lawyer for DFT's children. Paragraph 47 contains DFT's central allegation for the purposes of the judicial review proceeding that:

The New Zealand Law Society has repeatedly failed in their legal obligation to uphold their responsibility to regulate ALL lawyers in New Zealand, this is seen by their refusal to regulate [RMC]'s conduct on numerous occasions.

[28] Paragraphs 48 to 78 are in response to the submissions filed by NZLS in support of its strike-out application, but they take the form of a commentary and a statement of DFT's opinions rather than a pleading and do not assist to identify an arguable case for judicial review.

[29] Paragraphs 79 to 95 contain general complaints about District Court judges and the perceived failure of the Family Court to appropriately address her complaints against RMC. They are not relevant to the question of whether NZLS made reviewable decisions.

[30] In paragraphs 96 to 109, DFT refers to NZLS's treatment of her complaints made against various practitioners who had become involved in DFT's litigation. She

⁵ *Geary v Accident Compensation Corporation* [2013] NZHRRT 34; *Hammond v Credit Union Baywide* [2015] NZHRRT 6.

notes that NZLS's decisions in relation to her complaints "have become "alarmingly predictable" in that no further action will be taken. DFT also quotes the outcomes of the LCRO reviews she sought.

[31] Paragraphs 110 to 111 refer to settlement offers made to NZLS and include DFT's claim to a remedy of \$3,000,000 in damages and costs.

[32] Paragraphs 112 to 117 set out the legislation and case law on which DFT relies.

The relief sought

[33] DFT seeks the following from this Court:

- (a) an order that RMC be disbarred immediately;
- (b) \$3,000,000 in damages from the NZLS;
- (c) an acknowledgement by the Court of "the serious miscarriage of justice, abuse, and obstruction of court process and plethora of unlawful conduct by [RMC]";
- (d) an order that RMC repay all fees she has received on this matter.

She requests that this Court "harshly deal" with RMC.

The nature of judicial review

[34] The Supreme Court has said:⁶

Judicial review is a supervisory jurisdiction which enables the courts to ensure that public powers are exercised lawfully. In principle, all exercises of public power are reviewable, whether the relevant power is derived from statute, the prerogative or any other source. The courts acknowledge limits, however. These limits are reflected primarily in the notions that the case must involve the exercise of a public power, that even if the court has jurisdiction, the

⁶ *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 per Elias CJ at [1]. See also Lord Bingham's statement in *Chief Constable for North Wales v Evans* [1982] 1 WLR 1155 at 1174, [1982] 3 All ER 141 at 155 (HL): "[j]udicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made".

exercise of power must be one that is appropriate for review and that relief is, in any event, discretionary.

[35] The Court's jurisdiction, therefore, is not concerned with the merits of any decision made by the Family Court regarding DFT's concerns about the welfare of her children; her former partner's conduct, including alleged breaches of orders of the Family Court; or the merits of the criticisms of RMC's conduct made by DFT, both to the Family Court and to the Standards Committees which have dealt with her complaints. Judicial review is concerned with whether, in addressing DFT's complaints to it under the LCA, NZLS has breached any statutory duty or acted unfairly towards DFT regarding her complaint, including acting in breach of the principles of natural justice.

Grounds for strike-out of a pleading

[36] Rule 15.1 of the High Court Rules 2016 says:

15.1 Dismissing or staying all or part of proceeding

- (1) The court may strike out all or part of a pleading if it—
 - (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of the process of the court.
- (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
- (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.
- (4) This rule does not affect the court's inherent jurisdiction.

[37] These criteria apply equally to an application to strike out a judicial review proceeding.⁷

⁷ *Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA) at 63.

[38] The grounds of the strike-out application by NZLS are that the proceeding:

- (a) does not disclose any reasonably arguable cause of action and is an abuse of process;
- (b) does not identify any reviewable errors by the NZLS in relation to the handling of any complaints made to it by DFT;
- (c) seeks to usurp the authority of the Family Court to deal with complaints about lawyers for children in accordance with the current practice note; and
- (d) is vexatious and frivolous.

[39] The two relevant principles for the consideration of strike-out applications that relate to the proposition that no reasonably arguable cause of action is disclosed are:⁸

- (a) the cause of action must be clearly untenable and the Court should not strike out a proceeding unless it is certain it cannot succeed; and
- (b) the strike-out jurisdiction is to be exercised sparingly and only in clear cases.

Does DFT have a reasonably arguable case?

[40] Paragraph 14.10 of the 2020 practice note makes it clear that the rights of NZLS to consider any complaint about a lawyer are not limited by the terms of the practice note. Nevertheless, the decision of NZLS in general to defer to the Family Court to address, in the first instance at least, complaints about lawyers for children is wholly justified, in my view. Bearing in mind the circumstances in which complaints are made, and the careful attention paid by the Family Court to the particular needs of the parties, including the children, it is desirable that the conduct of lawyers for

⁸ *Attorney-General v Prince and Gardiner* [1998] 1 NZLR 262 (CA) at [267]; *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].

children in that environment is reviewed by experienced judges in a way that reflects the special jurisdiction.

[41] The existence of a complaints procedure in the Family Court means that complainants have what NZLS regards as an appropriate first instance remedy in the Family Court under the practice note. Moreover, a complaint about a lawyer for child in which the complainant is seeking the removal of that lawyer from the case must, in any event, be dealt with by the Family Court because the lawyer's appointment will have been made by that Court under s 7 of the COCA.

[42] It is at least arguable that a decision by a Standards Committee to exercise its discretion under s 138(1)(f) of the LCA to take no further action is reviewable. But it is likely to be only in rare circumstances that this Court would overturn such a decision in judicial review proceedings. The reasons why that is so are demonstrated by what has occurred in this case.

[43] I am satisfied that there is no reasonably arguable case that NZLS – through either a Standards Committee or the LCRO – has made any error that is susceptible to review by this Court.

Is DFT's proceeding procedurally improper, vexatious or an abuse of the process of the Court?

[44] I agree with the submission on behalf of NZLS that the review proceeding is procedurally improper in that it is an attempt to re-litigate complaints made by DFT to the Family Court about the substantive issues over the care of her children being addressed within the Court's specialist jurisdiction and about RMC's conduct. It is also procedurally improper because NZLS has acted strictly in accordance with the statutory provisions which include the express power to decline to act on the grounds that there is an adequate remedy or right of appeal that it would be reasonable for DFT to exercise. A vexatious proceeding is one that contains an element of impropriety. Here, DFT is attempting to bring proceedings in a different form to obtain a result that

she failed to achieve in her representations to the Family Court.⁹ In that regard, DFT's proceeding in this Court is also an abuse of the Court's process.

[45] I accept Mr Collins' submissions that the judges of the Family Court or, in serious cases, the panel convened under para 15 of the practice note are best placed to consider complaints about the conduct or professional failings of a lawyer appointed to assist the Court by representing the interests of children. Under the practice note, the panel may order the removal of the lawyer from the list of approved lawyers for child, something a Standards Committee could not do other than indirectly through a disciplinary prosecution leading to the lawyer's suspension or striking off. It is far more appropriate that questions of the lawyer's competence and allegations of misconduct should be addressed in the context of procedures set up by the Family Court within its specialist jurisdiction. Section 138(1)(f) of the LCA has been relied on appropriately by the Standards Committees. It is clear that DFT's proposed arguments in this Court have no prospect of success.

Result

[46] For the reasons given, I direct that this proceeding be struck out in its entirety.

Other matters raised by DFT

[47] On 4 May 2021, DFT filed an application calling on the Court to address yet another series of complaints made by her to a District Court Judge, alleging bias and other impropriety in the Judge's consideration of a fourth complaint against RMC. Judge Mahon rejected the complaint for reasons he gave in writing on 3 May 2021. Since NZLS has not been involved in that matter, the issues DFT raises are irrelevant to the matters currently before this Court and I decline to address them.

[48] DFT also filed an application asking the Court to provide:

... an Excel spreadsheet of the referring of complaints from the Family Court back to the New Zealand Law Society outlining:

⁹ *Registered Securities Ltd (in liq) v Yates* (1991) 5 PRNZ 68 (HC) at 70.

- a) Family court case numbers
- b) Courts referred by
- c) Solicitors name
- d) Type of complaint
- e) Date
- f) Outcome

[49] She also seeks an order requiring the NZLS to produce “any evidence of this confidential internal complaint system EVER being implemented or effective”.

[50] DFT also seeks orders which she asserts are founded on s 189 of the Evidence Act 2006, an offence provision that relates to the making of false statements; it is wholly irrelevant to this proceeding.

DFT not to file further proceedings in this Court without the leave of a judge

[51] These ancillary applications are further evidence of DFT’s time-wasting and irrational approaches to this Court to assist her in a matter which is squarely before the Family Court. Accordingly, in the exercise of the Court’s inherent jurisdiction to prevent abuse of its processes, I direct that the Registrar shall not receive for filing any further applications by DFT to this Court for relief regarding her litigation before the Family Court under the Care of Children Act 2004, whether by way of appeal, judicial review or otherwise, without the leave of a Judge.

Costs

[52] As the successful party, NZLS is entitled to costs. Costs shall be determined on a category 2B basis.

[53] If costs cannot be agreed, NZLS shall have until 31 August 2021 to file and serve a memorandum of no more than three pages seeking costs. DFT shall have 15 working days from service of the memorandum on behalf of NZLS to file and serve a memorandum of no more than three pages in response. NZLS may file a brief reply

memorandum only by leave of the Court. Costs shall be determined on the papers unless the Court directs otherwise.

Toogood J