



1 July 2010

www.lawsociety.org.nz

ID 2513/10

Private and Confidential

Mr Vince Siemer
27 Clansman Terrace
Gulf Harbour
WHANGAPAROA 0930

~~Dr Duncan Webb
Lane Neave
P O Box 13149
CHRISTCHURCH 8141~~

Dear Parties

**RE: COMPLAINT BY MR VINCE SIEMER/AGAINST DR DUNCAN
WEBB (LANE NEAVE)**

Please find enclosed the Notice of Decision from Standards Committee (3) in respect
of the above matter.

Yours faithfully


Malcolm Ellis
Complaints and Standards Officer

Canterbury-Westland Branch
PO Box 565, Christchurch Mail Centre, Christchurch 8140, New Zealand
1st Floor, 307 Durham Street, Christchurch

Tel +64 3 366 9184 Fax +64 3 366 9977 Email canterbury-westland@lawsociety.org.nz



**CANTERBURY/WESTLAND BRANCH NZLS LAWYERS STANDARDS
COMMITTEE 3**

IN THE MATTER OF

**of Part 7 of the Lawyers and
Conveyancers Act 2006**

And

IN THE MATTER OF

**of Complaint ID2513/10 dated 22 March
2010 made by Mr Vincent Siemer
against Dr Duncan Webb**

**Notice of Decision by Standards Committee 3 concerning complaint 2513/10
Decision to take no further action pursuant to sections 138(1)(f) and 138(2) of
the Lawyers and Conveyancers Act 2006**

The Complaint

1. The Standards Committee has received a complaint dated 16 March 2010 made by Mr Vincent Siemer against Dr Duncan Webb.
2. The complaint alleges that
 - (a) Dr Duncan Webb held himself out to be a lawyer in contravention of section 21 of the Lawyers and Conveyancers Act 2006 ("the Act"), in that he held himself out as a partner of Lane Neave in a letter dated 11 March 2010 (a copy of which is annexed to his complaint) when Mr Siemer's investigations indicate that Dr Webb did not hold a practising certificate until 16 March 2010.
 - (b) Breached his duty of independence and acted in contravention of Rule 13.5 of the Conduct and Client Care Rules by acting for the Legal Complaints Review Officer ("LCRO") in litigation, when he formerly held the office of LCRO.

Section 21 Breach

Decision

3. The Standards Committee has considered the first complaint, and has decided to take no action on it, because it does not consider it has jurisdiction to investigate an allegation that a person who, not being a lawyer or an incorporated law firm, describes himself as a lawyer.
4. Under section 132 of the Act, a person may complain to the appropriate complaints service about the conduct of a "*practitioner or former practitioner; or an incorporated firm or former incorporated firm; or of a person who is not a practitioner but who is an employee or former employee of a practitioner or an incorporated firm;*"
5. A lawyer is defined under the Act to mean a "*person who holds a current practising certificate as a barrister or as a barrister and solicitor*". The conduct in question relates to an allegation that Dr Webb held himself out as a lawyer when he did not hold a current practising certificate. We note that there is no allegation that Dr Webb, as an employee of Lane Neave, held himself out as a lawyer. Furthermore, Mr Siemer himself, in his letter of 16 March 2010, acknowledges that there may be no jurisdiction to review Dr Webb's conduct if he was not a holder of a practising certificate at the relevant time.
6. In the circumstances, the Standards Committee does not consider that it has jurisdiction to investigate whether a non-lawyer has held himself or herself out as a lawyer. That is a matter which the New Zealand Law Society may choose to investigate and to determine whether it is appropriate to prosecute if it has evidence of a breach of section 21. The Standards Committee will write to NZLS referring the complainant's allegations to it.
7. For these reasons, the Standards Committee resolved on 29th June 2010 to decline to investigate the matter further for want of jurisdiction.

Breach of Duty of Independence

8. The Standards Committee has considered:
 - (a) Mr Siemer's complaint to the Society dated 16 March 2010 (which refers to "*litigation as demonstrated by annexure A*", but which does not appear to attach such an annexure);

- (b) Dr Webb's response dated 15 April 2010 enclosing a Memorandum filed in the judicial review proceedings which is the subject of Mr Siemer's complaint, along with a number of pages from a website www.kiwisfirst.com, which include criticisms of Dr Webb's performance as Legal Complaints Review Officer;
- (c) Mr Siemer's response dated 8 May 2010;
- (d) Dr Webb's reply dated 25 May 2010.

Discussion

9. Mr Siemer's letter of 8 May 2010 relies on Rule 13.5.3 of the Lawyers: Conduct and Client Care Rules 2008 applying. This rule provides that "*a lawyer must not act in a proceeding if the conduct or advice of the lawyer or of another member of the lawyer's practice is in issue in the matter before the court. This rule does not apply where the lawyer is acting for himself or herself, or for the member of the practice whose actions are in issue.*"
10. Mr Siemer explains that the rule applies because the judicial review proceedings concern the decision made by "*the Legal Complaints Review Officer (the practitioner) vis-à-vis his subordinate Ms Bouchier (ie another member of the lawyer's office)*".
11. In stating this, Mr Siemer appears to misapply the provisions of Rule 13.5.3. He confuses the role of a LCRO with that of a legal practitioner by suggesting that Ms Bouchier, the Deputy LCRO whose decision is the subject of review proceedings, must be considered as a "*member of the lawyer's practice*". The Committee understands Ms Bouchier was appointed as a Deputy LCRO (pursuant to Schedule 3 to the Act) and, pursuant to the provisions of clause 3, may exercise and perform all the powers, duties and functions of the LCRO under the Act.
12. Neither the LCRO nor the Deputy LCRO can be lawyers while they are appointed to be LCRO's (see section 190(1) of the Act). Therefore, in making decisions as a LCRO, neither the LCRO nor the Deputy LCRO is a member of a lawyer's practice or giving advice as a lawyer. Thus the prohibition in Rule 13.5.3 is irrelevant to actions of the LCRO.
13. More relevant is Rule 13.5.1 which provides that "*a lawyer must not act in a proceeding if the lawyer may be required to give evidence of a contentious nature (whether in person or by affidavit) in the matter*". In this regard Mr

Siemer says it is *"not at all clear whether or not the practitioner will be asked to give evidence."* However, Dr Webb makes it clear that he was not involved as LCRO in the matter which is before the High Court and considers there is *"no risk that any of my conduct, advice, or actions will be under scrutiny. There is no risk that I will be required to give evidence;"*

14. The Standards Committee observes that the applicant has, in any event, signalled that he will file an application to the Court to disqualify Dr Webb from acting for the first and second respondent, by 9 April 2010. The Standards Committee considers that if circumstances arise to contradict Dr Webb's assertion that there is no risk he will be required to give evidence, then that matter is more appropriately dealt with by the Court.
15. Finally, the Standards Committee observes that, in the absence of a good cause to refuse to act for the first and second respondent, a lawyer has a professional obligation to accept instructions, so that a client can have counsel of his or her choice.
16. In the absence of a real risk that Dr Webb would be required to give evidence, the Standards Committee considers that the first and second respondent in the proceedings are entitled to have counsel of their choice.

Decision

17. The Standards Committee, at its meeting on 29 June 2010, resolved pursuant to section 138(2) of the Act take no further action in respect of the complaint because, in all the circumstances, it is not necessary or appropriate to do so.

Entitlement to Review by Legal Complaints Review Officer (LCRO)

All parties to whom this notice is directed are entitled to apply to the LCRO for a review of this decision. On review, the LCRO may:

- (a) Direct the Standards Committee to reconsider the whole or any part of the complaint; or
- (b) Confirm, modify or averse the decision of the Standards Committee; and
- (c) Exercise any of the powers that could have been exercised by the Standards Committee in relation to the complaint.

Any application for a review of this decision by the Legal Complaints Review Officer must be made within 30 working days after the date of this decision. The contact details for the LCRO are 0800 367 6838, Private Bag 92020, Victoria Street West, Auckland 1142 or <http://www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us>. Appeals must be on the prescribed form and accompanied by the prescribed fee (\$30-00 inclusive of GST). The prescribed form and fee can be found on the LCRO website or by contacting the LCRO.

To: Mr Vincent Siemer

Dr Duncan Webb

1 July 2010



23 August 2010

Private and Confidential

Mr Vincent Siemer
27 Clansman Terrace
Gulf Harbour
Whangaparaoa 0930

Dear Mr Siemer

File 2513: Complaint against Dr Duncan Webb

I refer to the decision of the Canterbury-Westland Standards Committee No. 3 concerning your complaint that Dr Webb held himself out as a partner of Lane Neave before he was issued with a practising certificate. As you will know this aspect of your complaint was referred to the Society as the Committee did not have jurisdiction to consider same.

The Society has carefully considered this matter and is of the view that nothing seriously objectionable has occurred and that no further action is warranted.

The file will now be closed.

Yours faithfully

Mary Ollivier
General Manager Regulatory (acting)