



4 July 2011

PRIVATE AND CONFIDENTIAL

Ms Grace Haden
23 Wapiti Avenue
Epsom
Auckland 1051

and

Ms Vivienne Holm
61b John Sim Drive
Broadmeadows
Wellington 6035

Dear Ms Haden and Ms Holm

FILE 4192: Grace Haden / Vivienne Holm

We advise that Standards Committee 3 at its last meeting considered the complaint pursuant to Part 7 of the Lawyers and Conveyancers Act 2006 ("the Act") and decided that no further action would be taken in respect thereof. The reasons for the Committee's decision are as follows:

- [1] Ms Haden complained about the following alleged conduct of Vivienne Holm, with reference to the Rules of Professional Conduct of Barristers and Solicitors (since amended):
- i. Failure to ensure that legal processes are used for their proper purposes only and that their use is not likely to cause unnecessary embarrassment, distress or inconvenience to another person's reputation interests or occupation (RPCBS Rule 7.04);
 - ii. Attacking a person's reputation without good cause (RPCBS Rule 8.04);
 - iii. Providing regulated services without a practising certificate (Section 21 of the Lawyers and Conveyancers Act 2006);
 - iv. Failure to conduct dealings with others, including self represented persons, with integrity, respect and courtesy (LCCC Rule 12).
- [2] Ms Haden complained about the conduct of Vivienne Holm in the context of her dispute about the Animal Welfare Institute of New Zealand (AWINZ), its establishment, ongoing existence, activities and other matters. She had previously complained about five other lawyers involved in AWINZ and in defamation proceedings brought by AWINZ against Ms Haden. In reviewing her own response to the explanations offered by various lawyers about whom she had previously complained, Ms Haden noted that Vivienne Holm had been involved in the matter and she complained about Ms Holm's involvement and conduct as outlined above. She alleged in particular that Ms Holm was not (or was no longer) employed by Brookfields and did not have a practising certificate entitling her to provide legal advice. Ms Haden also alleged that Ms Holm had behaved in an intimidatory fashion which had directly led to "*five years abuse of the Courts and misrepresentation to the Court*".

Auckland Office

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Level 5, WHK Tower, 51-53 Shortland Street, Auckland

- [3] Vivienne Holm is currently practising as an in-house lawyer at the Ministry of Environment. The actions complained of related to conduct that took place between March and August 2006. In particular, Ms Haden's claims related to emails and phone calls in mid 2006; she alleged that Ms Holm was in collusion with Ms Holm's former husband Mr Wright in issuing a threatening letter and in sending discourteous emails.
- [4] In response to the complaint, Vivienne Holm requested the Standards Committee to consider referring the matter to a Standards Committee located in Wellington. She asked the Committee to do so as she believed Mrs Haden was a vexatious litigant who would put her to unnecessary financial cost. Ms Holm stated that as a single mother working full time she could not afford to travel to Auckland for any attendances whatsoever in this matter. Ms Holm had been advised by the Auckland Complaints Service that the matter had been allocated to Standards Committee 3 as it dealt with the same background and fact situation that was already covered in Mrs Haden's six other complaints. She was further advised that there was no mechanism in the Lawyers and Conveyancers Act for matters to be allocated from one Committee to another. No hearings in person take place unless at the specific request of the Committee. Nevertheless Ms Holm requested that the Committee direct that the complaint against her be dealt with by the Wellington branch of the New Zealand Law Society. Ms Holm did not respond to any other aspects of the complaint.
- [5] Mrs Haden complained that Vivienne Holm played a pivotal role in initiating the defamation proceedings against Mrs Haden by giving legal advice to Wyn Hoadley and Neil Wells when she was not entitled to do so. Mrs Haden said Vivienne Holm was a lawyer at Brookfields but did not hold a practising certificate at the time she advised Mr Wells and Wyn Hoadley. Ms Haden said that Ms Holm should not have given any legal advice.
- [6] In 2006 Vivienne Holm worked at Brookfields as a law clerk. She did not have a practising certificate until 15 August 2006 when she became an employed solicitor at that firm. At that time she was married to Mr Nick Wright, about whom Mrs Haden has also complained, and came into contact with Mrs Haden because she knew Neil Wells.
- [7] Mrs Haden said Mrs Holm contacted her by telephone on 2 June 2006 and bullied her about giving up her name AWINZ (a rival organisation which had been established by Ms Haden) then emailed Ms Haden stating that she was going to complain about her to the registrar of private investigators for unprofessional conduct.
- [8] In a brief telephone conversation by way of explanation of her conduct in this matter, Ms Holm said that she contacted Mrs Haden directly without realising that the contact telephone number obtained from the internet would reach Mrs Haden directly. She assumed it would be an office answer phone and proposed to leave a message. She agreed it was thoughtless of her to have contacted Mrs Haden at home at a late hour and she apologised to Mrs Haden by email the following day. Ms Holm also said that the reason she contacted Ms Haden had nothing to do with provision of legal services to Mr Wells; she had merely researched the question of internet defamation in her capacity as a law clerk to Brookfields solicitors.
- [9] Ms Holm disputed the correctness of the allegations, and noted further that a practising certificate was not required for initial drafting of documents such as she had carried out. She did not agree that her actions had been in any way intimidating. Other than this and her objections to the matter being heard by Standards Committee 3, Ms Holm did not make any further explanation in response to the complaint.
- [10] Mrs Haden had requested a copy of a response from Mrs Holm, but no response was available to provide to Mrs Haden.

Applicable legislation

- [11] This complaint is in respect of conduct that occurred prior to 1 August 2008. On 1 August 2008 the Lawyers and Conveyancers Act 2006 (the LCAAct) came into force.

[12] The pre-1 August 2008 conduct falls under the transitional provisions in section 351(1) of the LCA Act. This means the relevant standards of conduct are those set out in ss. 106 and 112 of the Law Practitioners Act 1982, being conduct such that disciplinary proceedings could have been commenced under that Act. Disciplinary proceedings for negligent or incompetent conduct could only be justified if that conduct had been of such a degree or so frequent as to reflect on the practitioner's fitness to practise.

The Committee's deliberations

[13] The Committee noted that Ms Holm had been employed by Brookfields as a law clerk at the time in question and that the preliminary advice and research she had carried out under supervision was appropriate and permissible work to be undertaken prior to her obtaining a practising certificate. The Committee did not consider that Ms Holm's role had been pivotal to the defamation proceedings and accepted her explanation about the circumstances of her phone call to Ms Haden.

Outcome

[14] The Committee considered Ms Holm's conduct and resolved that it had no jurisdiction pursuant to Section 351(1) of the Act to consider the complaint as the allegations against Ms Holm did not reach the required threshold for consideration of complaints under the Law Practitioners Act 1982.

The date of this letter is deemed to be the date of the decision.

Entitlement to Review by Legal Complaints Review Officer (LCRO):

The complainant, the person in respect of whom the complaint related and the NZ Law Society are entitled pursuant to section 193 of the Act to apply to the LCRO to have this decision of the Committee reviewed within 30 working days after the date of this letter. Any application for review must be directed to the LCRO's office, be on the prescribed form and accompanied by the prescribed fee of \$30.67. 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 reverse 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 this complaint.

The LCRO's contact details are set out below:

Website: <http://www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us>

Email: lcro@justice.govt.nz

Phone number: 0800 367 6838

Postal Address:

Legal Complaints Review Officer
Private Bag 92020
Victoria Street West
Auckland 1142

Physical Address:

Legal Complaints Review Officer
Tribunals Unit - Level 10
Auckland District Court Building
69 Albert Street
Auckland 1010

This notification is provided pursuant to section 139 of the Act.

Yours sincerely

A handwritten signature in black ink that reads "Kristin Percy". The signature is written in a cursive style with a long vertical line extending downwards from the end of the name.

Kristin Percy

Legal Standards Solicitor
New Zealand Law Society
DDI: 09 304 1018
E-mail: kristin.percy@lawsociety.org.nz

cc: The Chief Executive Officer
NZ Law Society
DX SP20202
Wellington