



---

LEGAL COMPLAINTS REVIEW OFFICER

---

19 March 2014

Christopher Scaife  
139 Mackenzie Avenue  
Woolston  
Christchurch

Simon Stammers-Smith  
c/- Cruikshank Pryde  
PO Box 220  
Queenstown 9348

Dear Mr Scaife and Mr Stammers-Smith,

**LCRO 075/2013 Christopher Scaife v Simon Stammers-Smith**

I enclose a copy of the final decision of the Legal Complaints Review Officer in this matter.

Yours sincerely,

Philippa Geere-Watson  
Case Manager  
For LEGAL COMPLAINTS REVIEW OFFICER  
philippa.geere-watson@justice.govt.nz

DDI: 09 356 5657  
Fax: 09 356 5664

CC:

Stephanie Griève  
Duncan Cotterill Lawyers  
P O Box 5  
Christchurch 8140

Otago Standards Committee  
Private Bag 1901  
Dunedin 9054

New Zealand Law Society  
DX SP20202  
Wellington



**CONCERNING**

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

**AND**

**CONCERNING**

a determination of Otago Standards Committee

**BETWEEN**

**Mr C SCAIFE**

Applicant

**AND**

**Mr S STAMERS-SMITH**

Respondent

**Application for review**

[1] Mr Scaife has applied for a review of the decision of the Otago Standards Committee. On 16 July 2012, Mr Scaife submitted a complaint to the Lawyers Complaints Service (LCS) of the New Zealand Law Society. Mr Scaife complained that:

- a) Mr Stammers-Smith did not submit the most recent will of Mr Scaife's deceased mother for probate, instead submitting an earlier will;
- b) Mr Stammers-Smith did not ask two executors of the estate to renounce their position as executors, or if he did ask them to do so, has not communicated their reply to Mr Scaife;
- c) Mr Stammers-Smith did not remove mention of Mr Scaife's father's earlier legacy from the application for probate, or include an undertaking from all the executors to disclose what estate assets they were administering; and
- d) Mr Stammers-Smith had been advising the executors on how they could conceal what Mr Scaife described as fraudulent activities and evade taxes.

[2] The Committee did not uphold any of the complaints and determined to take no further action.





### **Background to complaint**

[3] The background to this complaint has been extensively set out in the Standards Committee determination.

[4] In short, Mr Scaife's mother died leaving a will that the estate lawyer, Mr Stammers-Smith, had doubts would be admitted into probate. He proposed instead that Mr Scaife and his brother, Mr Marc Scaife, apply for letters of administration and subsequently, when an earlier will was located, that the same two family members apply for probate, with the other two named executors renouncing probate as they lived in Australia. However, that was not agreed to by Mr Scaife's sister who was one of the siblings living in Australia.

[5] Mr Scaife alleged that his siblings had taken advantage of a power of attorney granted by their mother to transfer assets to themselves prior to her death, and required as a precondition to any grant of probate or letters of administration, that the assets to be administered as part of the estate be identified and include the assets transferred to them or debts due by them to the estate.

[6] These issues had not been resolved at the time of Mr Scaife's complaint in July 2012. His complaints were:

- That Mr Stammers-Smith had refused to lodge an application for probate of what purported to be Mrs Scaife's last will.
- That instead he had suggested that probate of the older will be applied for, which included all of his siblings as executors and that Mr Stammers-Smith had refused to ask them to renounce probate.
- That he had declined to remove a note written on the earlier will about a legacy left by his father; and
- That Mr Stammers-Smith had a conflict of interest because he was advising his siblings with regard to the probate issues as well as other advice relating to alleged fraudulent activities.

### **The Standards Committee determination**

[7] The Standards Committee identified the following issues:<sup>1</sup>

---

<sup>1</sup> Standards Committee determination dated 22 February 2013 [36].





- a) Whether Mr Stammers-Smith should have submitted the later will for probate;
- b) Whether Mr Stammers-Smith should have submitted an application to submit the earlier will probate;
- c) Whether Mr Stammers-Smith asked Mr Scaife's siblings to renounce their position as executors;
- d) In preparing an application for probate of the 1987 will, whether Mr Stammers-Smith had due regard to Mr Scaife's instructions regarding Mr Scaife's father's legacy and a requested undertaking from the executors;
- e) Whether Mr Stammers-Smith has had due regard to the allegations raised by Mr Scaife concerning alleged fraudulent activities by Mr Scaife's siblings, including alleged missing assets from Mr Scaife's mother's estate;
- f) Whether Mr Stammers-Smith has concealed alleged fraudulent activities by Mr Scaife's siblings;
- g) Whether Mr Stammers-Smith has conflicting duties in breach of Rule 6.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 ("the Rules");
- h) Whether Mr Stammers-Smith's actions have "escalated costs and fostered acrimonious contention"; and
- i) Whether any of Mr Stammers-Smith's conduct (including that outlined above) falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

[8] In respect of each issue the Committee determined that Mr Stammers-Smith had endeavoured to resolve the issues between Mr Scaife and his siblings and had acted competently and diligently in accordance with the standards of a reasonably competent lawyer. It declined therefore to take any further action in respect of the complaints.

#### **Application for review**

[9] Mr Scaife has applied for a review of that determination.<sup>2</sup> The reasons given by Mr Scaife were that "I have been given the run-around and if it happens again I am going to talk to my MP and may go public". Mr Scaife enclosed 81 pages of documentation with his application. He sought the Committee's determination to be held to be invalid, that Mr Stammers-Smith be held accountable, and that Mr Scaife's siblings "return assets".

---

<sup>2</sup> Application for review filed 11 March 2013.





[10] Duncan Cotterill, acting on behalf of Cruickshank Pryde, advised the Legal Complaints Review Officer (LCRO) in its letter of 3 April 2013 that it did not consider that Mr Scaife's application raised any new issues that had not been dealt with by the Committee and that the LCRO should confirm the Committee's decision.

### **Analysis and review**

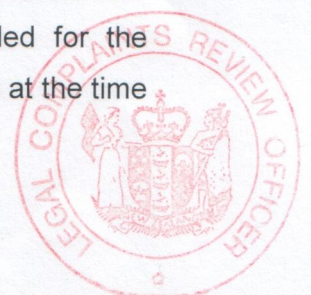
[11] As a preliminary point, it is noted that in his application to the LCRO Mr Scaife sought an order that his siblings return assets that he believes they have inappropriately taken from their mother whilst exercising their power as Attorneys. This Office advised Mr Scaife that it has no power to investigate the conduct of his siblings or to order the return of any assets. The appropriate route is for Mr Scaife to consider putting the matter before the Court, and Mr Scaife has acknowledged this in his letter of 1 November 2013.

*Should Mr Stammers-Smith have submitted the 1998 will of Mr Scaife's deceased mother for probate, instead of submitting the 1987 will?*

[12] There were aspects of the 1998 will that failed to comply with the requirements for a legal will. After reading all of the documents provided to the LCRO by the parties, it is clear that Mr Stammers-Smith made concerted efforts to check the validity of the 1998 will:

- a) He liaised with the estates partner in his firm.
- b) He attempted to locate the two witnesses of Mrs Scaife's signature. Unfortunately one witness could not be located and the other witness could not recall the witnessing of the signature some eleven years earlier; and
- c) Advice was sought from the specialist technical adviser of the High Court, Mr John Earles. The advice from Mr Earles, in August 2012, was that it may be possible to obtain probate of the 1998 will, but that there were evidential obstacles relating to the execution of that will.

[13] As an alternative to the 1998 will, the 1987 will was provided to Mr Stammers-Smith and he considered that the beneficiaries of this will, and their share under it, was exactly the same as under the 1998 will, except that under the earlier will all four beneficiaries were appointed as trustees, whereas the later will provided for the trustees to be such of the four beneficiaries who were living in New Zealand at the time of Mrs Scaife's death.





[14] Mr Stammers-Smith decided to see if the trustees would agree to apply for probate of the 1987 will as a way of progressing the estate administration. In light of the uncertainty surrounding the validity of the 1998 will, it is my view that Mr Stammers-Smith's decision not to submit the 1998 will was reasonable and there was no lack of care or competence on his part. In particular:

- a) There was a real likelihood that the 1998 will could have been declared invalid; and
- b) Mr Scaife and his siblings did not agree on the submission of the 1998 will. Mr Stammers-Smith advised Mr Scaife of the need for he and his siblings to reach a consensus on how the distribution of assets was to be made (as outlined in his letter to Mr Scaife dated 18 June 2012).

[15] Mr Stammers-Smith exercised his professional judgement in determining to promote the idea of applying for probate of the 1987 will. Lawyers are required to exercise their skill and judgement on a regular basis. An error of judgement or even getting it wrong will not inevitably lead to a finding of unsatisfactory conduct against a lawyer. In *Saif Ali & another v Sydney Mitchell & Co (a firm) & others*<sup>3</sup> Lord Salmon said:

The barrister is under no duty to be right; he is only under a duty to exercise reasonable care and competence. Lawyers are often faced with finely balanced problems. Diametrically opposed views may and not infrequently are taken by barristers and indeed by Judges, each of whom has exercised reasonable, and sometimes far more than reasonable, care and competence. The fact that one of them turns out to be wrong certainly does not mean that he has been negligent.

[16] Mr Stammers-Smith was engaged to act on behalf of the estate. The issues arising meant that he was called upon to make a judgement as to the best way forward. He made recommendations based on that judgement. Whether it was right or wrong is immaterial – his conduct did not amount to unsatisfactory conduct and I sense that Mr Scaife's view of Mr Stammers-Smith is coloured by his view that Mr Stammers-Smith has become aligned with his siblings with whom he is in dispute. There is no indication that this is the case.

---

<sup>3</sup> *Saif Ali & another v Sydney Mitchell & Co (a firm) & others* [1980] AC 198 at 231.





[17] A number of emails sent by Mr Scaife to Mr Stammers-Smith, instructing him to submit the 1998 will indicate that Mr Scaife did not appear to understand that Mr Stammers-Smith was acting on behalf of the estate. Mr Stammers-Smith was therefore unable to act solely on the requests of Mr Scaife with regard to the wills.

*Mr Stammers-Smith did not ask two executors of the estate to renounce their position as executors, or if he did ask them to do so, has not communicated their reply to Mr Scaife.*

[18] In an email dated 12 April 2011, Mr Bell of Corcoran French representing Mr Scaife noted that if administration was to be applied for, Mr Scaife wanted, amongst other things, for he and his sibling Marc Scaife to apply for letters of administration and that their other two siblings, Marguerite (Marie) and Robin, should renounce their right to apply.

[19] Mr Stammers-Smith was not necessarily obliged to propose this to the other named trustees. However, he sent a letter by email to Marc Scaife in which he raised the suggestion made by Mr Bell.

[20] Mr Stammers-Smith was advised by Marie Scaife by email dated 29 June 2011 that she did not agree to renounce her role as co-executor and that she also understood this to be the position of her brother Robin.

[21] On 22 August 2011, Mr Stammers-Smith sent an email to Mr Bell advising that Marguerite (Marie) Scaife and Robin Scaife preferred that all four siblings would apply for administration, rather than just Mr Scaife and his brother Marc.

[22] It is clear that Mr Stammers-Smith did ask two executors to renounce their position and that he subsequently communicated their refusal to do so to Mr Scaife's lawyer, Mr Bell. Consequently, even if Mr Stammers-Smith had an obligation to act on Mr Scaife's instructions (which he did not), he did seek and receive a response from Mr Scaife's Australian siblings. Mr Scaife's complaint on this point is not upheld.

*Mr Stammers-Smith did not remove mention of Mr Scaife's father's earlier legacy from the application for probate (the handwritten note).*





[23] The 1987 will had a handwritten note on it, made subsequently by Mrs Scaife. This note referred to her husband's will. Advice was sought from the registrar of the High Court in Invercargill, Mr Earles, on 27 October 2011 noting that the handwritten note appeared not to be relevant to the terms of the will and enquiring whether an explanatory affidavit was required in relation to the note.

[24] The advice received from Mr Earles was that the affidavit in support of the application for probate should include an explanation of the note, but that the note would not form part of the will. Mr Stammers-Smith acted in accordance with this advice. A lawyer should not in any circumstances make any addition, amendment, alteration or deletion of anything that is written on a will, and it would be quite wrong for Mr Stammers-Smith to have done as Mr Scaife wanted him to do. Accordingly the Standards Committee was correct not to uphold this complaint.

*When he applied for probate, Mr Stammers-Smith did not include an undertaking from all the executors to disclose what estate assets they were administering.*

[25] Mr Scaife had repeatedly advised Mr Stammers-Smith of his belief that his three siblings had dishonestly taken assets from their mother's estate and were refusing to account for them.

[26] Mr Stammers-Smith provided Mr Scaife's siblings with copies of emails in which he asked for a full and accurate record of the assets of the estate.

[27] In light of the longstanding dispute between the four siblings with regard to the distribution of the estate, Mr Stammers-Smith believed that it was prudent to first obtain probate and then, in administering the estate, identify and deal with the assets of the estate which would include any debts due by the beneficiaries to the estate. Mr Stammers-Smith advised Mr Scaife that if the four siblings were unable to reach agreement on the distribution of the estate, the matter could be decided by the Court at a later time.

[28] An application for probate includes the following statement to the Court:

...If the court requires me/us to, I/we will file in the court and verify by affidavit:





- (a) an accurate inventory of the deceased's estate; and
- (b) an account of the deceased's estate that:
  - (i) is accurate; and
  - (ii) states the dates and details of all receipts and disbursements;  
and
  - (iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

[29] It seems to me that this reflects what Mr Scaife was requiring and once probate was granted, the executors would have a legal responsibility to account for all estate assets prior to distribution. If Mr Scaife did not agree with the assets that were accounted for, he would have remedies through the Court requiring the executors to account for all of the estate assets.

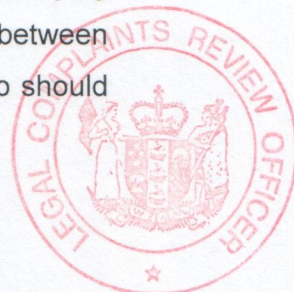
[30] It was not appropriate for anything else to be included in the application for probate, and it is unlikely that any departure from the prescribed forms would have been accepted by the registrar. Accordingly the Standards Committee was correct not to uphold this complaint.

*Mr Stammers-Smith advised the executors on how they could conceal what Mr Scaife described as the "fraudulent activities" of his siblings and thereby evade taxes.*

[31] No evidence has been produced to support the suggestion that Mr Stammers-Smith in any way advised Mr Scaife's three siblings to conceal any debts that they owed to the estate, or of how to do the same. For this reason the Standards Committee was correct not to uphold this complaint.

### **Conclusion**

[32] Mr Scaife has made a number of complaints about the conduct of Mr Stammers-Smith in relation to his attempts to apply for probate in relation to the deceased estate of Mrs Scaife'. It is apparent that during the period which Mr Stammers-Smith was trying to properly apply for probate, there was a significant and acrimonious dispute between Mr Scaife and his three siblings about how this process should occur and who should be involved in it.





[33] Mr Scaife was obviously very keen that the 1998 will formed the basis of the application for probate, as it took into account any debts owing to the estate by the beneficiaries. He strongly believed that his three siblings had misappropriated money from the estate, it was in his interest for that money to be acknowledged and taken into account when the estate was distributed.

[34] It may very well be that Mr Scaife was misinformed in any event, as any debts due to the estate would constitute assets to be recovered whether or not they were specifically referred to. I am unsure whether or not Mr Scaife sought advice on this issue, but it is clear that Mr Scaife should seek good legal advice on the issues that are arising in this matter.

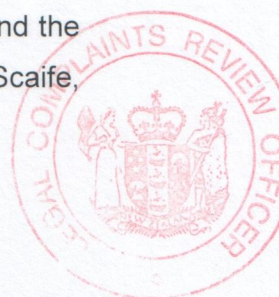
[35] In this regard, I note that Mr Scaife advises that he is unable to obtain legal representation in Dunedin as a result of the Standards Committee determination. Any complaints that he may have in that regard should be referred to the LCS, and he may consider requesting that the matter be dealt with in a different centre. Mr Scaife is of course able to consult a lawyer in another centre himself as communications are such that personal attendance at a lawyer's office is not always required.

[36] Unfortunately, the 1998 will was deficient in a number of aspects and specialist advice was taken on whether these deficiencies could be addressed in a way that would allow the will to be the basis of probate.

[37] When it became apparent that there was an earlier will that could perhaps be the basis of the application for probate, the disagreements between Mr Scaife and his siblings continued.

[38] It was against this background that Mr Stammers-Smith tried to progress the administration of the deceased estate. It is my view that Mr Stammers-Smith demonstrated professionalism in dealing with Mr Scaife at times when Mr Scaife failed to understand the nature of Mr Stammers-Smith's instructions and the obligations that these placed upon him.

[39] The Committee carefully considered all aspects of Mr Scaife's complaint and the significant amount of information provided to it by the parties, in particular by Mr Scaife,





before it reached its decision. The Committee concluded that none of Mr Scaife's complaints were upheld.

[40] After full consideration of all information provided to me, and with regard to the professional framework within Mr Stammers-Smith must work, I agree with the findings of the Committee.

### **Decision**

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

**DATED** this day 19<sup>th</sup> day of March 2014



  
\_\_\_\_\_  
O W J 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 Scaife as the Applicant  
Mr Stammers-Smith as the Respondent  
Ms Grieve as counsel for the Respondent and as a related person or entity  
The Otago Standards Committee  
The New Zealand Law Society