

**CONCERNING**

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the Wellington Standards Committee 2.

**BETWEEN**

**KX**

Applicant

**AND**

**WA**

Respondent

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

**APPLICATION FOR REVIEW OF STANDARDS COMMITTEE DECISION**

[1] On 5 March 2012 the Standards Committee issued a decision in respect of a complaint made by the Applicant against the Practitioner. The Committee declined to uphold the complaint pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] The Applicant filed an application to have that decision reviewed. His review application was received by this office on 19 April 2012.

[3] I am required to address the issue of whether the application for review can be considered as a matter a jurisdiction, on the basis that it was filed after the expiry of the statutory time frame for a review application to be made.

[4] Section 198 of the Lawyers and Conveyancers Act 2006 provides that:

Every application for a review under section 193 must -

- (a) be in the prescribed form; and
- (b) be lodged with the Legal Complaints Review Officer within 30 working days after the determination, requirement, or order is made, or the

direction is given, or the function or power is performed or exercised, by the Standards Committee (or by any person on its behalf or with its authority); and

(c) be accompanied by the prescribed fee (if any).

[5] The decision of the Standards Committee was made when it was despatched to the parties and the role of the Committee was at an end. Information about the time frame for seeking a review was included at the end of the decision, as is required. It is stated in the following terms:

“Any application for a review of this decision by the LCRO 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 92535, Wellesley Street, Auckland 1141 or [www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us](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 (\$30.67 inclusive of GST).”

[6] There is no definition of “working days” provided in the Act. That definition is provided by section 29 of the Interpretation Act 1999. In that Act the definition of “working day” is as follows:-

..... a day of the week other than-

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday

[7] By the above calculation the Applicant ought to have lodged his review application with the LCRO by 18 April 2012.

[8] It appears that the Applicant faxed his review application very late on the 18 April, at around 11:20 p.m. The electronic deposit, having apparently been made after 10:00 p.m., was recorded as having been made on 19 April. The LCRO Registry was closed for the purpose of any document being lodged with, and received by, the LCRO.

[9] For the avoidance of doubt, the statutory requirement is for a review application to be “lodged with the Legal Complaints Review Officer within 30 working days after the determination...”, together with the fee. (Underlining added). There can be no lodgement of documents after the closing time of the Registry, which is generally recognised to be between the normal working hours of 9:00 a.m. and 5:00 p.m. This is

supported by *AEL Group Ltd v Kensington Swan Lawyers* 31/7/08, Associate Judge Christiansen, HC Christchurch CIV-2008-409-1225. There the Court found that service on a law firm after 5:00 p.m. on a business day would not be effective (although in the circumstances considered by the Court service by facsimile prior to 5:00 p.m. was effective.) In this case the review application was lodged with this office the following day, when staff were in a position to receive and date stamp it, this being 19 April.

[10] The provisions of s 198 of the Act are stated in mandatory terms and there is no statutory discretion to ameliorate their harshness. I accept this may be a harsh result and there may be reasons why an application was not made within the requisite time. However, the obligation to comply with the procedural requirements in making an application clearly lies with the Applicant. This position is reiterated by previous decisions of this Office that the LCRO has no discretion to extend the timeframe.

[11] For the above reasons I decline to consider the application for review on the basis that I have no jurisdiction to do so because the formalities prescribed by s 198 of the Lawyers and Conveyancers Act were not complied with.

**DATED** this 30<sup>th</sup> day of April 2012

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Hanneke Bouchier  
**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:

KX as the Applicant  
WA as the Respondent  
The Wellington Standards Committee 2  
The New Zealand Law Society