

CONCERNING

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

AND

CONCERNING

a determination of the Auckland Standards Committee 2 of the New Zealand Law Society

BETWEEN

Mr Machynlleth
of Canterbury

Applicant

AND

Mr Scarborough and Mr Malvern
of Christchurch

Respondent

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

DECISION

[1] Mr Machynlleth complained to the New Zealand Law Society in respect of the conduct of Mr Scarborough and Mr Malvern. On 16 November 2009 the Canterbury Westland Standards Committee 1 issued decisions in respect of each practitioner. Both of those decisions resolved that no further action was necessary or appropriate and the complaints were dismissed. Mr Machynlleth has sought a review of those decisions. It is convenient to deal with both of those applications together. This decision is concerned with the question of whether or not I have jurisdiction to consider this matter in light of the fact that it was filed late.

[2] Mr Machynlleth's application for review was received by this office on 7 January 2010. 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).

[3] Mr Machynlleth's application was filed over the Christmas period. Section 29 of the Interpretation Act 1999 provides:

Working day means 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

(d) If 1 January falls on a Friday, the following Monday; and

(e) If 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday:

[4] 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, namely 16 November 2009. This means that the 30 working day time limited expired on 6 January 2010, the day before the application was received by this office.

[5] Mr Machynlleth states that the delay was due to the postal system and that he sent his application on 30 December from Christchurch. I also observe that there is an email exchange with the registry of this office in which Mr Machynlleth was informed that the last date for filing would be 8 January 2010. I observe however that that message (of 23 December 2009) clearly notes that this was on the basis that the decision had been made on 18 November 2009 (in fact it was made on 16 November 2009). This error seems to have had its origin in an exchange between Mr Machynlleth and the Law Society of 21 December 2009 when Mr Machynlleth erroneously states that he has 30 working days from 18 November 2009. It appears therefore that this error is that of Mr Machynlleth.

[6] The provisions of s 198 are clear in that the application "be lodged with the Legal Complaints Review Officer within 30 working days". The cases are clear in showing that where the applicable rules set out the manner in which an application for appeal or review is to be brought those rules must be complied with: *Inglis Enterprises Ltd v Race Relations Conciliator* (1994) 7 PRNZ 404; *Dawson v Chief Executive Officer of the Ministry of Social Development* [2007] NZCA 94; *Cullen v Police* (1999) 14 PRNZ 315.

[7] The Act sets out in s 198 the basis upon which my powers to conduct a review are triggered. There is no provision in that section (or elsewhere) for time to be extended. I acknowledge that this may be a harsh result and there may be numerous instances where for one reason or another a party to complaint may have been unable to make an application within the required period or where the applicant has suffered through the delay of a third party (such as the postal system). However the responsibility for making a timely application rests with the applicant and an out of time application is fatal to the review.

[8] I am reinforced in this conclusion by the fact that similar conclusions have been reached in other jurisdictions. Thus in *Inglis Enterprises Ltd v Race Relations Conciliator* (1994) 7 PRNZ 404 it was held that the High Court had no jurisdiction to extend time for the making of an appeal where the empowering statute set clear time limits. Some guidance can also be taken from *Commerce Commission v Roche Products (New Zealand) Ltd* [2003] 2 NZLR 519. In that case the Court of Appeal strictly applied time limits applicable to the bringing of penalty proceedings under the Commerce Act 1986 refusing to recognise any power to extend time in respect of a statutorily imposed limitation period.

[9] Similarly applications for review under s135 of the Accident Insurance Act 1998 (since amended and renamed the Injury Prevention Rehabilitation and Compensation Act 2001) were subject to a strict 3-month time limit prior to the 2001 amendments. The courts repeatedly upheld the strictness of that time limited and rejected the existence of any power to extend time (see for example *Zehnder v ARCIC* 12/7/95, Judge Middleton, DC New Plymouth 73/95).

[10] I note further that had the legislature intended to give me a power to extend the time for accepting an application for review it could have done so by the addition of words to that effect. Such words are found in other comparable legislation. See for example s 66 of the Legal Services Act 2000 and s 135(3) of the Injury Prevention Rehabilitation and Compensation Act in 2001.

Decision

The application for review is declined on the basis that I have no jurisdiction to consider it.

DATED this 26th day of February 2010

Duncan Webb

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 Machynlleth as Applicant
Mr Scarborough and Mr Malvern as Respondents
XX as a related party
The Canterbury Westland Standards Committee 1
The New Zealand Law Society