

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 of the New Zealand Law Society

IN THE MATTER OF

KO
of Wellington
Applicant

DECISION ON JURISDICTION

[1] Mr KO sought a review of a decision of the Wellington Standards Committee 2 in which acted on its own motion in resolving to prosecute Mr KO by laying a charge before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. The charge related to acts or omissions which occurred [overseas] and adverse findings had been made against Mr KO by the [overseas disciplinary body].

[2] I note that there is a matter which must be addressed before considering any substantive arguments on the merits of the decision of the Standards Committee. That is whether the application to this office was made in time. A statutory time limit of 30 working days from the date after the determination is made is imposed for the making of an application for review by s 198 of the Lawyers and Conveyancers Act 2006.

[3] The 30 working day time limit for the making of applications is imposed by s 198 of the Lawyers and Conveyancers which provides that every application must:

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).

[4] Submissions on this issue were invited. The Standards Committee (through its convenor) expressed the view that the application was received out of time and that

there was no discretion to extend time and therefore no jurisdiction to consider the matter existed.

[5] This office accepts applications by post and does not require applications to be lodged in person. The power to regulate the way in which applications are made is drawn from s 206(5) which empowers the Legal Complaints Review Officer to regulate his or her procedure in such manner as he or she thinks fit.

[6] The decision of the Standards Committee was made on 17 June 2009. Mr KO sent an application for review from Wellington to this office (which is situated in Auckland) at 1 48 p.m. on the 28th of July 2008. That package was placed in the PO Box of the office at 12 20 a.m. on the morning of 30 July. These details are drawn from the tracking records of the NZ Post “track and trace” system. The application was received and processed by the registry of this office on 30 July.

[7] This set of facts requires me to decide when the application was “lodged” in light of the fact that postal application is accepted. The term lodged is better suited to filing in-person in which case there can be little doubt as to timing. If an applicant uses the postal system the onus must be on him or her to ensure that it arrives within the prescribed time limits. An application will be lodged when, in the normal course of events, a member of the registry of the office has received it. In this case there is no suggestion that there has been any administrative oversight or failure by this office (such as failing to clear the mail) so I do not consider that matter further.

[8] Mr KO provided a letter from NZ Post which confirmed that the application was provided to their agent in Auckland early on the morning of 29 July 2009. That does not take matters much further.

[9] Mr KO argued (on the basis of the details of the track and trace system) that the application was put in the PO Box of this office at 6:51 am on the 29th and that the application was “lodged” at that point. This cannot be the case as the final activity shown on the track and trace details is that at 12 20 a.m. on the 30th. Mr KO suggested that this final entry related to when the PO Box was cleared by this office. There is no evidence (and it is not tenable to suggest) that the PO Box of this office was cleared at 12 20 a.m. on 30 July. In any event had the application been in the PO Box at 6 51 a.m. on the 29th it would have been duly cleared and noted as made on that date.

[10] Mr KO also argued that provided that the application was received in the post-box within the calendar day it was not material that it arrived when the registry of this office was closed. While decision on that point may not be strictly necessary (given my

conclusion that the application was received in the PO Box at 12 20 a.m. on the 30th and received by the registry later that day), it appears to have little merit. Where an application must be made or document served on a tribunal on a particular day it follows it must be done when that tribunal is open. It is generally recognised that this is between the hours of 9 a.m. and 5 p.m. on a working day. This is supported by *AEL Group Ltd v Kensington Swan Lawyers* 31/7/08, Associate Judge Christiansen, HC Christchurch CIV-2008-409-1225. His honour there found that service on a law firm after 5 p.m. on a business day would not be effective (though in the circumstances service by facsimile prior to 5pm was effective).

[11] I observe that while Mr KO did not send his application until the 28th of July he did send it from a main centre using a method which had a target (though not guaranteed) delivery of the next working day. It is also the case that NZ Post or its agents received the application in Auckland early on the morning of 29 July 2009 but failed to lodge it in the PO Box until the morning of the 30th. The PO Box was cleared at some time on the 30th and the application was noted as received on the 30th.

[12] I consider that the application was made when the PO Box was cleared and a member of the Legal Complaints Review Officer registry noted the application as received. It was at this moment that the application came into the custody of the Office and ceased being under the control of NZ Post at their premises. That occurred on the 30th of July. As such the application was made out of time. I observe that even had I considered it to have been received when it was put in the office's PO Box that did not occur until the 30th of July in any event and would also be out of time.

[13] The Act sets out in s 198 the basis upon which my powers to conduct a review are triggered. It is clear that clear in that the application must "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 strictly 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.

[14] There is no provision in s 198 (or elsewhere) for time to be extended. I acknowledge that this may be a harsh result and there may be instances where for one reason or another a party to complaint may have been unable to make an application within the required period. A similar strict approach which does not recognise the existence of any discretion in respect of time limits has been taken by other tribunals with a similar review function: *Inglis Enterprises Ltd v Race Relations Conciliator* (1994)

7 PRNZ 404; *Zehnder v ARCIC* 12/7/95, Judge Middleton, DC New Plymouth 73/95. 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.

[15] On this basis I conclude that the application having been made outside of time I have no jurisdiction to receive and consider it and the application is therefore dismissed.

Decision

[16] The application for review is declined for lack of jurisdiction.

DATED this 4th day of September 2009

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:

KO as Applicant
The Wellington Standards Committee 2
The New Zealand Law Society