

LCRO 156/2012

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of [Area] Standards Committee

**BETWEEN**

**MR BS**

Applicant

**AND**

**MR YL**

Respondent

**DECISION AS TO JURISDICTION**

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

**Introduction**

[1] Mr BS has lodged an application for review of the [Area] Standards Committee determination concerning his complaint against Mr YL.

[2] Prior to lodging his application, Mr BS spoke to the LCRO Jurisdiction Manager about the application and was advised that he could provide the supporting reasons for his application subsequently to filing the application itself.

[3] The application was received at this Office on 11 July 2012 which was the 30<sup>th</sup> working day after the Standards Committee determination.

[4] In his review application, Mr BS noted that “as discussed by telephone I will be sending through this information [the supporting reasons] within seven days”.

[5] Mr BS provided his supporting reasons on 23 July 2012.

**Mr YL's submissions**

[6] Mr YL submits that the application for review has not been lodged in the prescribed form within the prescribed period and that therefore the LCRO lacks jurisdiction to consider this review.

[7] He submits that "the Applicant's purported application was incomplete as it lacks a fundamental feature (reasons). Therefore no application in the prescribed form was received within the prescribed period. The completion of the application by provision of reasons fell outside the prescribed lodgement period and was therefore incapable of remedying the defective application. In support of his submission he cites previous decisions of this Office<sup>1</sup>. He also submits that the extension granted to Mr BS by the Jurisdiction Manager was invalid and in support of this submission refers to *Customs Appeal Authority number 29/98*<sup>2</sup>.

**No conflict**

[8] Prior to filing his application for review, Mr BS spoke to the Jurisdiction Manager who advised that he could provide his supporting reasons one week after the application form was received at this Office. That decision was an administrative decision made without reference to myself. Consequently I am not conflicted in considering this matter.

**Decision**

[9] The form for applications to review Standards Committee determinations is prescribed by the Lawyers and Conveyancers Act (Legal Complaints Review Officer) Form and Fee Regulations 2008.

[10] Part 7 of the form makes provision for an Applicant to include reasons supporting the application including why the Applicant is requesting a review of the matter together with an explanation of any matters that the Applicant thinks the LCRO should consider.

[11] Mr YL submits that because the reasons were not provided by Mr BS with his application, the application was not filed in the prescribed form within the period for filing, and therefore there is no jurisdiction to consider the application further.

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<sup>1</sup> *Client D v Lawyer T* LCRO 36/2009 and *K X v W A* LCRO 84/2012.

[12] In the previous LCRO decisions cited by Mr YL, the applications were held to be out of time and therefore unable to be considered. In *Client D v Lawyer T*, the Applicant faxed a request for review to this Office which was not on the prescribed form and did not include any contact details. The completed prescribed form was received in this Office outside the 30 working day period. The LCRO noted at [8] of his decision that “*the reasons for using a prescribed form are to ensure that essential information for the progressing of the review are obtained*” and at [20] that “*it should also be observed that my jurisdiction is a summary one and that it is an express statutory purpose that complaints against lawyers be processed and resolved expeditiously (section 120(2)(b)). The absence of a power to extend the time to make an application for review ensures that there is finality to the complaints process*”.

[13] At paragraph 8.4 of his submissions Mr YL notes that “the latter comment is directed at the absence of a power to extend lodgement time. He submits that “it reinforces how fundamentally the requirement of the prescribed form/provision of all essential information serves the policy of the Act; and that delays such as those engendered by the Applicant’s failure to give reasons works directly against the promptness required by the Act”.

[14] The fact that reasons were provided subsequently to the application itself did not prevent the review application from being processed and progressed. Upon receipt of a review application, the first steps are to advise the Respondent and to seek the Standards Committee file. In the initial letter from this Office to Mr YL he was advised that upon receipt of Mr BS’s reasons, they would be forwarded to him for comment. That has now been done. Mr YL has not been prejudiced by this process and whilst prejudice is not the thrust of his argument, it is an important consideration.

[15] In considering Mr YL’s submission that a failure to provide the reasons in the application is fatal, it is important to consider the nature of a review. Section 203 of the Lawyers and Conveyancers Act 2006 provides that the LCRO may review all or any of the aspects of any inquiry carried out by or on behalf of a Standards Committee and this includes the final determination. In *Deliu v Hong*<sup>3</sup> Winkelmann J stated at [41]:

*In my view the power of review is much broader than an appeal. It gives the review officer discretion as to the approach to be taken on any particular review as to the extent of the investigations necessary to conduct that review, and*

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<sup>2</sup> (1999) 1 NZCC 51, 128.

<sup>3</sup> [2012] NZHC 158.

*therefore clearly contemplates the review officer reaching his or her own view on the evidence before her.*

[16] The primary definition of “review” given by the concise Oxford English Dictionary (revised 11<sup>th</sup> edition) is “a formal assessment of something with the intention of instituting change if necessary”. The broad powers of supervision or oversight given to this Office fully justify the use of that term rather than something more restrictive such as “appeal”.

[17] In addition, the function of this Office has been described as having an “ombudsmen-like role”.<sup>4</sup>

[18] When the role of the LCRO is considered in the light of these comments, it will be apparent that there does not need to be any specific reasons provided by an Applicant before being able to seek a review, contrary to the submissions of Mr YL. Whilst the form provides an opportunity for an Applicant to indicate which aspects of the determination he or she is unhappy with, a failure to provide reasons is not fatal.

[19] Clearly, if an Applicant does wish to provide specific reasons these need to be communicated to the Respondent to enable him or her to reply to these. Mr BS has provided his reasons and Mr YL has had the opportunity to respond.

[20] If there is any reinforcement required for this decision I refer to section 200 of the Lawyers and Conveyancers Act 2006 which provides that reviews must be conducted with as little formality and technicality as is permitted by:

- a) the requirements of the Act;
- b) a proper consideration of the review; and
- c) the rules of natural justice.

The rules of natural justice have been met by providing Mr YL with the opportunity to respond to Mr BS’s reasons.

## **Conclusion**

[21] For the reasons noted above, the provision of reasons by Mr BS outside of the review period is not fatal to his review application and the application by Mr YL that this Office should therefore decline jurisdiction is declined.

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<sup>4</sup> Duncan Webb *Ethics, Professional Responsibility and the Lawyer* (2<sup>nd</sup>, LexusNexis, 2006) at 158.

**DATED** this 10<sup>th</sup> day of September 2012

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**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:

BS as the Applicant  
YL the Respondent  
[Area] Standards Committee  
The New Zealand Law Society