

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

BETWEEN

MR UR

Applicant

AND

MS OH

Respondent

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

Decision on Jurisdiction

Introduction

[1] On [2012] the Auckland Standards Committee (Standards Committee) issued two determinations declining to take any further action on complaints by the Applicant against two lawyers. One was the above Respondent. On [2013] the Applicant filed an application for review of each of those determinations.

[2] Counsel for the Respondent contends that the Standards Committee decision was made available to the Applicant via email on [2012] (that is, the same day that the decision was made), and further contends that the Applicant's application for review was not lodged within the 30 working day timeframe required under s 198 of the Lawyers and Conveyancers Act 2006 (the Act).

[3] The Applicant does not deny that he was sent the Committee's decision by email on [2012]. However, he disputes the counting of the days, referring to the Law Society web page stating that it was closed for days over Christmas.

[4] [The Applicant adds that the Respondent had breached deadlines set by the Committee when she sought extensions that stretched the process [over a certain timeframe]. These are not matters that can be taken into account, since the Legal Complaints Review Officer is independent of the NZLS and its Standards Committees].

[5] As a matter of jurisdiction this office has no discretion to accept review applications that are outside of the statutory time limit. Section 198 of the Act requires an application for Review to be lodged "within 30 working days after a copy or notice of the determination..." is "served on, given to, or otherwise brought to the attention of, the applicant for review." A preliminary question of jurisdiction arises in respect of the review application, namely whether the review application has been filed within the statutory time period.

[6] In this case there is no dispute that the Standards Committee decision was made available to the Applicant via email on [2012] (that is, on the same day the decision was made). The first question is whether the email from the Law Society dated [2012] meets the service or notice requirements set out by section 198 of the Act as amended. In this day and age I have no doubt that communication by way of email is now a well established means of communication, and that by this means the Applicant received notice of the determination made by the Committee sufficient to satisfy s 198.

[7] The next question is whether the review application was filed within 30 working days of [2012].

[8] "Working day" is not defined in the Act. It is therefore necessary to refer to the Interpretation Act 1999, whereby section 29 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

- (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:

[9] Applying the above, the 30 days that can be counted after the Committee's decision [2012] means that a review application ought to have been filed no later than [x January 2013]. The application was in fact lodged with this office on [xx January 2013]. By my calculations it was filed two days after the latest date for filing.

[10] In these circumstances I do not need to consider the amendment to s 198 which creates a 'deeming' provision where the actual date of delivery of a decision cannot be ascertained with any degree of certainty. That is not the case here. I conclude that the review application is out of time, and is therefore outside the jurisdiction of this office to consider it.

DATED this 2nd day of April 2013

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:

Mr UR as the Applicant
Ms OH as the Respondent
Counsel for the Respondent
The Auckland Standards Committee
The New Zealand Law Society