

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 3 of the New Zealand Law Society

BETWEEN

Mr Stroud

Applicant

AND

Mr Gateshead

Respondent

DECISION

[1] Mr Stroud complained to the New Zealand Law Society in respect of the conduct of Mr Gateshead. The matter was considered by the Auckland Standards Committee 3 of the Society which determined on 7 October 2009 to take no further action on the complaint. Mr Stroud sought a review of that decision. The issue for determination is whether I have jurisdiction to consider the matter or whether the application was not properly made and therefore cannot be considered.

[2] Mr Stroud sent an email on 19 November with an application form attached. The original application form was received the next day although no filing fee was attached. After an exchange of correspondence, the filing fee was received on 4 December 2009.

[3] Section 198 of the Lawyers and Conveyancers Act 2006 provides that every application for review 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).

[4] The Lawyers and Conveyancers Act (Legal Complaints Review Officer) Form and Fee Regulations 2008 set out the prescribed form and fee for applications. Regulation 4 states that the fee required to accompany an application for review is \$30. Section 198(c) is clear in stating that an application must be “be accompanied by the prescribed fee (if any)”.

[5] The last day for making an application for review in this matter was 19 November 2009.

[6] The failure to pay a prescribed fee for the bringing of an appeal or other application that a decision be reviewed will be fatal to an application. This will be the case even where the fee is subsequently paid. In *Cahayag v Removal Review Authority* [1998] 2 NZLR 72; [1998] NZAR 145 a notice of appeal was faxed to the Removal Review Authority along with a faxed copy of a cheque for the prescribed fee. The covering note of the fax stated “Appeal and submissions re: above. Originals being couriered”. The Authority declined jurisdiction to hear the appeal on the basis that the prescribed fee had not been paid. On judicial review and a subsequent appeal the Court of Appeal concluded that the Authority had been correct in declining jurisdiction on the basis that the faxed cheque did not amount to the application being accompanied by the prescribed fee.

[7] This view is confirmed by the case of *Customs Appeal Authority No 29/98* (1999) 1 NZCC 51,128. In that case a party wished to appeal from an assessment of customs duty. A 20-day time limit applied. The appropriate notice of appeal was filed in time but it was not accompanied by the prescribed fee. The appellant was notified of this defect and the fee was provided some days later. When the fee was paid the time for appeal had expired. The notice of the decision of Customs had indicated the time for appeal from the decision but had not noted the requirement that a fee be paid (which is similar to the notification by the Standards Committee of its decision in this case). Following the rule in *Cahayag* Judge Barber considered that the appeal had not been properly brought and the Authority had no jurisdiction to hear the matter. It is of note that his honour considered that this conclusion was not affected by the fact that the registrar had indicated that a late fee would be accepted.

[8] The Jurisdiction of the Legal Complaints Review Officer is entirely statutory and I have only the powers conferred by the Lawyers and Conveyancers Act 2006. While the Act gives broad powers to determine the appropriate procedures for review (for example in s 200 and s 206(3)) such discretion does not extend to the question of whether jurisdiction to hear the review exists. The prescribed fee had not been paid

prior to the expiration for the period in which an application could properly be made.
Accordingly I have no jurisdiction to conduct a review.

DATED this 24th day of December 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:

Mr Stroud as Applicant
Mr Gateshead as Respondent
Gateshead XXr as a related party
The Auckland Standards Committee 3
The New Zealand Law Society