

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the South Island Standards Committee of the New Zealand Law Society

**BETWEEN**

**MR RATTRAY**  
of Wellington  
Applicant

**AND**

**MR DENBIGH**  
of South Island  
Respondent

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

**DECISION**

[1] Mr Rattray complained to the New Zealand Law Society in respect of the conduct of Mr Denbigh. The matter was considered by the South Island Standards Committee which determined on 19 November 2009 to take no further action on the complaint. Mr Rattray sought a review of that decision by an application made on 7 December 2009. Mr Rattray did not pay the \$30 fee required for the making of an application for review. He stated that he is bankrupt and does not have the required funds.

[2] 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).

[3] 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)”.

[4] 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.

[5] 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.

[6] 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 in this matter and accordingly I have no jurisdiction to conduct a review.

**DATED** this 16<sup>th</sup> day of December 2009

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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 Rattray as Applicant
- Mr Denbigh as Respondent
- XX as a related party
- The South Island Standards Committee
- The New Zealand Law Society