

CONCERNING

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

AND

CONCERNING

a determination of the National Standards Committee

BETWEEN

UE

of Auckland

AND

OV

of Auckland

Decision as to jurisdiction

Background

[1] On 20 September 2011 the National Standards Committee issued its determination in respect of a complaint by OV about UE in which it determined to take no further action in respect of the complaint. It sought submissions from the parties as to whether costs should be awarded against UE pursuant to s 157(2) of the Lawyers and Conveyancers Act 2006 (the Act) and if so, in what sum.

[2] On 22 September 2011 UE lodged an Application for Review of that determination.

[3] On 28 October OV lodged an Application for Review of the same determination.

[4] On 14 November the National Standards Committee issued its determination as to costs.

[5] On 20 December UE lodged an Application for Review of that determination.

[6] This Office has determined to deal with all three review applications concurrently.

[7] In accordance with a Minute dated 7 August 2012, a hearing took place with UE on 27 November, which OV attended for part of the time.

[8] As directed by me, UE provided his initial submissions on 13 November. OV provided his submissions in reply dated 22 January 2013, and UE has provided further submissions dated 4 February 2013.

[9] In accordance with [11](f) of the Minute dated 7 August, I now need to consider how this review is to proceed. However, in his submissions, UE has raised issues as to jurisdiction which I have determined to address at this stage.

Jurisdiction

[10] UE has challenged the jurisdiction of this Office to continue with OV's application for review on two grounds:-

1. OV did not include a copy of the Standards Committee decision with his application; and
2. Once the Complaints Service declined to accept OV's complaint as a valid complaint it was *functus officio* and could not then reconsider its decision and later accept the complaint.

OV's failure to include a copy of the determination

[11] UE submits that because OV did not include a copy of the Standards Committee determination with his application, the application is therefore invalid and should be rejected. He makes the following points:-

1. LCRO Form 01/11-1 requires the Standards Committee determination to be included and there must be a reason for that;
2. The LCRO Guidelines refer to the requirement to include a copy of the determination.
3. The LCRO website also indicates a copy of the Standards Committee determination is required to accompany the application.
4. The Lawyers and Conveyancers Act (Legal Complaints Review Officer) Form and Fee Regulations 2008 require every application to be made in the format set out in the Schedule.

5. The High Court decision in *Dorbu v NZLS*¹ establishes that there is a strict requirement to comply; failing which, rights will be lost due to lack of jurisdiction.
6. LCRO decisions establish that where procedural requirements are not complied with, review rights are lost.
7. Logic dictates that a copy of the decision is required by the reviewing body.

[12] Section 198 of the Act provides that every application for review must be in the prescribed form. It also requires the application to be lodged within a specified time frame. This Office has determined on a number of occasions that there is no discretion to vary the time limits within which an application must be made.²

[13] Similarly, there is no discretion to accept an application for review which is not on the prescribed form, or which is not accompanied by the prescribed fee.

[14] In this instance, OV's application was on the prescribed form and he paid the prescribed fee.

[15] UE's objection is that he did not include a copy of the Standards Committee determination with his application. This does not offend the requirement to make application on the prescribed form, but rather, relates to compliance with directions on the form and provision of accompanying documentation.

[16] Regulation 3(2) of the Lawyers and Conveyancers Act (Legal Complaints Review Officer) Form and Fee Regulations 2008 provides that the "form set out in the Schedule may be varied as the circumstances of a particular case require." This indicates to me that there is a discretion for this Office to vary the requirements and content of the form.

[17] In *D v T*³ the LCRO noted at [8] that "[t]he reasons for using a prescribed form are to ensure that essential information for the progressing of the review is obtained." In this instance, a copy of the determination had already been provided by UE with his review application. It was superfluous therefore to insist upon another copy being provided and whether or not a copy was provided did not affect progress of the review. This Office had all of the information necessary to enable that to occur.

¹ [2011] NZAR 174.

² See for example *D v T* LCRO 36/2009; *Machynlleth v Melvern & Scarborough* LCRO 10/2010.

³ *Ibid.*

[18] In addition, although it can be argued that s 200 of the Act applies to the conduct of a review once underway, the policy of this section is that reviews are to be conducted with as little formality and technicality as possible. It would be extremely technical to reject an application for review on the grounds submitted by UE and any discretion which resides in the LCRO should be exercised with that policy in mind.

[19] Accordingly, in exercise of the discretion provided to vary the form in accordance with Regulation 3(2) and recognising the principles of the Act that reviews are to proceed with as little technicality as possible, I therefore determine that the requirement to provide a copy of the determination in this instance is not fatal to OV's application.

[20] At the review hearing, I commented that in any event, as UE's application for review is already before me, any issue that OV wished to raise could be addressed in the process of considering UE's application. That view is based inter alia on the comments of Winkelmann J in *Deliu v Hong & LCRO*⁴ and s 203 of the Act. This comment was made by me in response to UE's suggestion that if I found that OV's application for review was invalid, then he might consider withdrawing his applications, thereby terminating the review process.

[21] Once an application for review is made, the statutory obligation rests with this Office to conduct a review. An application to withdraw the review may not necessarily be accepted, particularly if there are issues which have been raised by the other party, or which the LCRO himself or herself identifies, which are required to be addressed.

[22] I indicated to UE that if I intended to proceed on that basis, then I would give notice to the parties and request submissions on the issue. That is not necessary as I have determined that OV's application is valid. However, it is appropriate that I draw to the attention of the parties and to other review applicants, that consent is required to withdraw an application for review, and that consent will not necessarily be granted if the Review Officer considers that there are issues to be addressed, notwithstanding that those issues are not issues raised by the applicant.

The jurisdiction of the Standards Committee

[23] The Complaints Service initially declined to accept OV's complaint and advised him of the reasons for this by letter dated 8 October 2010. After further representations by OV, the complaint was accepted.

⁴ [2012] NZHC 158.

[24] A copy of OV's letter dated 8 October 2010 was provided to this Office by the Law Society pursuant to s 124(g) of the Lawyers and Conveyancers Act. The purpose of this requirement is largely to enable this Office to provide advice to the Law Society pursuant to s 192(c) as to the manner in which complaints are received and dealt with under the Act.

[25] UE argues that by responding in this way, the Complaints Service "thereby usurped any Standards Committee from jurisdiction over the complaint by instead referring the matter to this Office" (i.e. the LCRO).

[26] Section 192(a) of the Act establishes that one of the functions of this Office is to exercise the powers of review provided by the Act.

[27] Section 193 enables persons specified in ss 194 -197 of the Act to apply for a review.

[28] Section 195(1) provides that a person may apply under s 193 for a review of a "determination, requirement, order made, or direction given, by a Standards Committee".

[29] The decision to decline to accept the complaint in the first instance was not made by a Standards Committee or with the authority of a Standards Committee. It was not therefore a decision which is reviewable by this Office.

[30] On further submissions from OV the Complaints Service reconsidered its position and accepted the complaint, which resulted in the determination which is now subject to this review.

[31] I cannot see any logic in the submission that the letter from the Complaints Service somehow constituted a decision of a Standards Committee and that therefore the Complaints Service had usurped the authority of the Standards Committee, thereby rendering the latter determination of the Standards Committee invalid. To accept that contention, would mean that any administrative decision of the Complaints Service constitutes a determination of a Standards Committee. That cannot be.

[32] This Office has no authority to issue any direction or Order to the Complaints Service as to how matters are dealt with, or to affect or alter any procedural decision made by the Service.

[33] In the meantime, I have before me the determination of the Standards Committee and the Act requires me to conduct a review of that determination.

Summary

[34] In summary, I do not accept either challenge to my jurisdiction to continue with this review and the review is to proceed.

[35] Before issuing further directions, however, I have sought information from the parties as to the status of UE's application to the Court in respect of his complaint about OV. Once that information is received I will issue further directions.

[36] I do note, however, that the Minute of 7 August 2012 required the parties to make submissions on all issues raised in the review applications. Having heard from UE, and receiving submissions from both parties in accordance with the Minute, I do not consider that any further hearing or submissions are necessary.

DATED this 18th day of March 2013

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:

UE as the Applicant
OV as the Respondent
The National Standards Committee
The New Zealand Law Society