

LCRO 219/2014

CONCERNING

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

AND

CONCERNING

a determination of the Standards Committee

BETWEEN

QA

Applicant

AND

IZ, CP and NF

Respondents

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

DECISION

Introduction

[1] Mr QA seeks a review of a Standards Committee determination dated 5 September 2014.

Background

[2] The Committee's determination was emailed and sent by post to Mr QA on 5 September 2014.

[3] Information about seeking a review was included at the end of the determination.

[4] On Tuesday 14 October 2014, Mr QA contacted the registry of the Legal Complaints Review Officer (LCRO). Following Mr QA's enquiry an email was sent to Mr QA enclosing an application form and advising him that the last day for filing an application for review was Friday 17 October 2014.

[5] On 15 October 2014, Mr QA deposited the application fee for review into the Ministry of Justice account. On 17 October 2014, Mr QA forwarded, by email, an application for review to the LCRO. The email was sent at 5.01 p.m.

[6] By letter dated 23 October 2014 Mr IZ wrote to the LCRO challenging the jurisdiction of the LCRO to review the Standards Committee decision. He submits that the review application was filed out of time.

Relevant principles

[7] Section 198 of the Lawyers and Conveyancers Act 2006 (the Act) provides:

Applications for review

Every application for a review under section 193 must—

- (a) be in the prescribed form; and
- (b) be lodged with the Legal Complaints Review Officer within 30 working days after a copy or notice of the determination, requirement, or order made, or the direction given, or the performance or exercise of the function or power, by the Standards Committee (or by any person on its behalf or with its authority) is served on, given to, or otherwise brought to the attention of, the applicant for review (which, in the absence of proof to the contrary, is presumed to have occurred on the fifth working day after it is made, given, or performed or exercised); and
- (c) be accompanied by the prescribed fee (if any).

[8] In previous decisions of this Office it has been emphasised that the LCRO has no jurisdiction to extend the time limit for the filing of review applications.¹

Challenge to jurisdiction

[9] Mr IZ refers to the decision of *KO*² to support his view that Mr QA must have lodged his application on or before 17 October 2014 to comply with s 198 of the Act. He submits that the application was date stamped as being received by the Tribunals Unit on Monday 20 October 2014 and on that basis the application for review is out of time.

Application for Review

[10] Mr QA states that there are two main issues:-

¹ *JL v RP* LCRO 249/2011 and *KX v WA* LCRO 84/2012.

² *KO* LCRO 112/09.

- 1) When was the letter of notice served, handed over or otherwise brought to the attention of Mr QA?
- 2) Was the application and fee received and lodged by the LCRO within the statutory period.

[11] Mr QA raises a number of other submissions which I have considered. Those submissions in large part address matters relating to argument as to the registry hours of the LCRO office, and discussion as to the definition of a working day. I do not consider it necessary to address all matters raised in this brief decision.

When was the determination served on Mr QA?

[12] Mr QA states that the respondents have not provided any evidence to show when the notice was brought to Mr QA's attention. He denies being made aware of the decision on 5 September 2014.

[13] The onus does not rest with the respondents to establish when Mr QA received notice of the determination.

[14] Mr QA states that the email enclosing the Standards Committee decision was not drawn to his attention on 5 September 2014. He contends that emailing to a private address during working hours would almost ensure an applicant was not made aware of the determination until some time after the decision had been sent.

[15] Whilst it is not possible to draw conclusion as to the frequency with which email correspondence is checked (many would argue that it is commonplace for emails to be checked several times a day), the email was dispatched to Mr QA on 5 September 2014, but the time for satisfying filing requirements runs from the first working day after the email was sent.

[16] As the email had been sent on Friday 5 September 2014, time for response ran from the following Monday. Mr QA's email address was a personal email address and not a business email account. Mr QA would have had the weekend to access his emails. It could reasonably be inferred that the email would have been drawn to Mr QA's attention by Monday 8 September 2014.

[17] Under the original wording of s 198, the 30 working day period began on the day the Standards Committee determination was made. The effect of this was that the time period for filing a review application had already started to run before the applicant was aware the determination had been issued and provided with a copy.

[18] Section 198 was amended by the Lawyers and Conveyancers Amendment Bill 2010.

[19] When the Lawyers and Conveyancers Amendment Bill was first introduced the general policy statement set out the explanation for the amendment to s 198:³

(a) New section 198(b) ensures that those applications must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the attention of the applicant for review.

(b) New section 198(b) also ensures that, in the absence of proof to the contrary, a copy or notice of that kind is presumed to have been brought to the attention of the applicant for review on the fifth working-day after the decision or action.

(c) By contrast under section 198(b), the 30-working-day period for lodging those applications starts when the decision or action is made or taken. The period for lodging those applications thus starts to run before the relevant decisions or actions are brought to the attention of possible applicants for review.

[20] It is clear that the reasoning for the amendment was to clarify that the 30 working day period runs from the day after the determination is served on, given to or otherwise brought to the attention of the applicant. This is to ensure there is sufficient time for applicants to lodge a review.

[21] The second part of s 198(b) (the presumption of service) need only be addressed if it is not clear when the applicant was provided with a copy of the determination.

[22] The Standards Committee issued its determination on 5 September 2014; the determination was served on Mr QA by email on that day. There is no dispute that the email was sent on that day.

Was the application and fee lodged within the statutory period?

[23] Section 198(b) of the Act states the application must “be lodged with the Legal Complaints Review Officer within 30 working days...”.

[24] There is no definition of “working days” provided in the Act. The definition is provided by s 29 of the Interpretation Act 1999

[25] Mr QA needed to lodge his application for review by Friday 17 October 2014. The email was sent by Mr QA at 5.01 p.m.

³ Lawyers and Conveyancers Amendment Bill 2010 (120-1), cl 10.1.

[26] The application was date-stamped as received by the registry on Monday 20 October 2014. Mr QA says that he was advised by a member of the registry staff that whilst the application was processed on the Monday, the date for receipt of the application would be recorded as the preceding Friday. The member of staff did make it clear that this was subject to any decision the LCRO would make as to jurisdiction.

[27] The advice provided to Mr QA was incorrect.

[28] The jurisdiction of a Tribunal cannot be extended by the conduct or omission of its staff.⁴

[29] Documents which are received after the closing time of the Registry, are processed on the working day following. The opening hours for the office of the LCRO are generally recognised to be between the normal working hours of 9:00 a.m. and 5:00 p.m.⁵ In this case the review application was lodged with this Office on Monday 20 October 2014 when the staff were in a position to receive it.

[30] Section 198(b) clearly states that every application for review **must** be **lodged with** (emphasis added) the Legal Complaints Review Officer within 30 working days.

[31] Section 198 (b) makes clear that it is the responsibility of a party seeking to file a review, to file their application within 30 days of receiving notice of the determination. This is not a case where there is any uncertainty as to when the determination was served on Mr QA. The starting point under s 198 is the requirement for parties to file their review within 30 days of receipt of the determination, allowance for additional time, applies to those cases where there is uncertainty as to the exact time that the proceedings have been served or brought to the attention of the applicant. There is no uncertainty here.

[32] There are two critical elements to s 198. Firstly, the section ensures that applicants have adequate time to file an application for review. Secondly, the section imposes obligation on an applicant to file their application promptly. This is intended to ensure that the statutory objective of having complaints dealt with expeditiously is achieved.

⁴ *Customs Appeal Authority No 29/208* (1999) 1 NZCC 51, 128 (CAA).

⁵ *KX v WA LCRO* 84/2012.

[33] The provisions of s 198 of the Act are stated in mandatory terms and there is no statutory discretion to ameliorate their harshness. I accept this may be a harsh result, but the obligation to comply with procedural requirements clearly lies with the applicant.

Conclusion

[34] For the above reasons I decline to consider the application for review on the basis that I have no jurisdiction to do so because the formalities prescribed by s 198 of the Act were not complied with.

DATED this 31st day of March 2015

R Maidment
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:

QA as the Applicant
IZ as the Respondent
CP as the Respondent
NF as the Respondent
Standards Committee
The New Zealand Law Society