

LCRO 245/2015

**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**

**TK**

Applicant

**AND**

**GC**

Respondent

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

**DECISION**

**Introduction**

[1] Mr TK seeks a review of a Standards Committee determination dated 23 September 2015.

**Background**

[2] The Committee's determination was sent by post to Mr TK on 23 September 2015.

[3] The application for review of the Committee's determination was received on 13 November 2015.

**Relevant principles**

[4] 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).

[5] In previous decisions of this Office it has been emphasised that the Legal Complaints Review Officer (LCRO) has no jurisdiction to extend the time-limit for the filing of review applications.<sup>1</sup>

### **Application for Review**

[6] Mr TK submits that his application for review should be accepted on grounds that:

- He had to temporarily move out of his home due to repair work being carried out.
- He did not receive the determination until 2 October 2015 when he visited his home and collected the mail.
- Although by Mr TK's calculation the application is one day late the LCRO should take the above submissions into account and accept the application.

[7] Ms IW, Mr TK's partner has provided an affidavit supporting that Mr TK did not receive the decision until 2 October 2015.

[8] 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.

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

[10] When the Lawyers and Conveyancers Amendment Bill was first introduced the general policy statement set out the explanation for the amendment to s 198:<sup>2</sup>

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

<sup>2</sup> Lawyers and Conveyancers Amendment Bill 2010 (120-1), cl 10.1.

(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.

[11] 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.

[12] 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.

[13] 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, where the determination has not been served on or given to the applicant.

[14] The Standards Committee made its determination on 23 September 2015 and this was forwarded to Mr TK by post on the same day. Under s 198(b) Mr TK had 30 working days after the date that the determination was **served on** him to lodge his application for review. Even giving Mr TK the benefit of the additional five working days, Mr TK needed to lodge the application by 12 November 2015. The application was received on 13 November 2015.

[15] It is not disputed that the determination was served on Mr TK. There is clear evidence that the determination was sent to the address provided by Mr TK and Mr TK has confirmed receipt. If Mr TK had temporarily moved out of that address it was his responsibility to arrange for any post to be re-directed.

[16] 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 that this may be a harsh result and there may be reasons why an application was not made within the requisite

time. However, the obligation to comply with the procedural requirements in making an application clearly lies with the Applicant.

**Conclusion**

[17] 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 5<sup>th</sup> day of April 2016

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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:

TK as the Applicant  
GC as the Respondent  
OS as a Related Person  
The Standards Committee  
The New Zealand Law Society