

CONCERNING

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

AND

CONCERNING

a determination of the Wellington Standards Committee 1

BETWEEN

MR DY

of Hamilton

Applicant

AND

MR WB

of Wellington

Respondent

THE NAMES AND IDENTIFYING DETAILS OF THE PARTIES IN THIS DECISION HAVE BEEN CHANGED.

DECISION

Application for review

[1] On 13 December 2010 the Wellington Standards Committee 1 issued its decision in respect of a complaint by the applicant against the respondent. Its decision was to take no further action in respect of the complaint pursuant to s138(2) of the Lawyers and Conveyancers Act 2006.

[2] At the end of that decision, information was provided as to the entitlement of the parties to apply for a review of that decision by this Office.

[3] Included in that information was the following statement:

ENTITLEMENT TO REVIEW BY LEGAL COMPLAINTS REVIEW OFFICER
(LCRO):

All parties to whom this notice is addressed are entitled to apply to the LCRO for a review of this decision. On review, the LCRO may:

- (i) Direct the Standards Committee to reconsider the whole or any part of the complaint; or
- (ii) Confirm, modify or reverse the decision of the Standards Committee;

(iii) Exercise any of the powers that could have been exercised by the Standards Committee in relation to this complaint.

Any application for a review of this decision by the LCRO must be made within 30 working days after the date of this decision. An application for review must be on the prescribed form and accompanied by the prescribed fee of \$30.67.

The LCRO may be contacted by email: lcro@justice.govt.nz; Telephone: 0800 367 6838; Post: Private Bag 92020, Victoria Street West, Auckland 1142. web: www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us

[4] On 31 December 2010, the Applicant sent an email to the Wellington Branch of the Complaints Service advising that he wished to apply for a review of the decision.

[5] On 10 January 2011, the Complaints Service responded to the applicant's email in the following terms:-

Dear Mr [DY]

Thank you for your email.

Any application for a review of the decision made by a Wellington Standards Committee needs to be made with the Legal Complaints Review Officer (LCRO) and must be made within 30 working days after the date of the decision. As the Office of the LCRO was closed from 25 December 2010 and re-opened on 5 January, the period (25 December 2010 to 4 January 2011) do not count as working days. Your application needs to be made by Thursday 3 February 2011. A form can be requested from the LCRO.

[6] Section 198 of the Lawyers and Conveyancers Act provides as follows:-

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 the determination, requirement, or order as 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 for with its authority); and
- (c) be accompanied by the prescribed fee (if any).

[7] There is no definition of “working days” provided in the Lawyers and Conveyancers Act. That definition is provided by section 29 of the Interpretation Act 1999. In that Act the definition of “working day” is as follows:-

..... a day of the week other than-

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and

(d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday

[8] The decision was issued on 13 December 2010. Day 1 was therefore 14 December 2010. As noted in the email from the Complaints Service, the period from and including 25 December 2010 to 4 January 2011 was excluded. Attached to this decision, is a calendar provided by the Respondent on which the excluded days are counted. This shows that the 30th working day was 2 February 2011.

[9] On 3 February 2011 a telephone conversation took place between the Applicant and a staff member of this Office, following which an email was sent to the Applicant which contained the following statement:-

From the information you have given, a completed application form and this payment must be received by 5.00 p.m. today.

[10] This office would not of course had the email from the Wellington Standards Committee at that stage as the application had not been received and there is no indication of what information had been provided.

[11] In any event, the statement provided by the Complaints Service, and again by this Office, was incorrect.

[12] Previous decisions of this Office have discussed this matter and firmly established firmly that this Office has no discretion to extend the date by which applications for review must be filed, regardless of the circumstances.

[13] The most helpful of these is *D v T* LCRO 36/09 in which the LCRO discusses whether the conduct of this Office can have any bearing on whether or not the application was properly made. At paragraph 16¹ of that decision the LCRO makes the following comment:-

In any event there would be considerable obstacles to an argument that the jurisdiction of this office to receive an application out of time was in any way enlarged by some failure to explain on the part of staff of the Office.

As Judge Barber observed in *Customs Appeal Authority No.29/98 (1999) 1 NZCC 51, 128*, the jurisdiction of a Tribunal cannot be extended by the conduct or omissions of its staff.

[14] Other comments made by the LCRO in that decision are also relevant. In particular, the LCRO considered whether there was any discretionary power in the LCRO to extend the time for filing. At paragraphs [15] and [16] the LCRO makes the following comments:-

[15] The jurisdiction of the Legal Complaints Review Officer is entirely statutory and I have only the power conferred by that Act. 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.

[16] The Act sets out in s 198 the basis upon which my powers to conduct a review are triggered. There is no provision in that section (or elsewhere) for time to be extended. I acknowledge that this may be a harsh result.

[15] This is such a case. Information provided to the Applicant led him to believe that the last day for filing was 3 February. That was incorrect. It is also unfortunate that this file was progressed through to the scheduling of a hearing and it was not until the day before the hearing that the Respondent formally raised the issue of jurisdiction based on the filing date. It is acknowledged however that the Respondent had raised the matter some time earlier in a less forceful manner.

[16] Whatever the circumstances, the fact that the application has been filed out of time proves to be fatal, although other remedies exist through the Court which it is open to the Applicant to explore. Indeed, given the restrictions imposed on the Standards Committee and this Office by virtue of the fact that the events took place prior to the commencement of the Lawyers and Conveyancers Act on 1 August 2008, it is unlikely that the decision of this Office would have been of any assistance to the Applicant.

[17] Before concluding this decision, it is also pertinent to note the reference by the LCRO in paragraphs [17] and [18] in *D v T* to decisions made in other jurisdictions. These include decisions by the Race Relations Conciliator and by the Courts, including the Court of Appeal in "*Commerce Commission v Roche Products (New Zealand) Ltd [2003] 2 NZLR 519*". In that case, the Court of Appeal strictly applied time limits applicable to the bringing of penalty proceedings under the Commerce Act 1986 and refused to recognise any power to extend time in respect of a statutorily imposed limitation period. These are seen as confirming that if, for whatever reason, an application filed in this Office is filed after 30 working days have expired, it can not in any circumstances be accepted. To do otherwise would render any decision made by the LCRO subject to challenge.

Result

[18] In the light of the foregoing comments, I conclude that I have no jurisdiction to conduct a review in this matter.

¹ The paragraphs in this decision are incorrectly numbered but I will refer to them as numbered

DATED this 12th day of July 2011

Owen 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:

Mr DY as the Applicant
Mr WB as the Respondent
The Wellington Standards Committee 1
The New Zealand Law Society

in the decision. In some instances there are two paragraphs with the same numbers.