

CONCERNING

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

AND

CONCERNING

a determination of the Auckland Standards Committee 2

BETWEEN

Mr OI
(BAH LIMITED -- MR WX)
of Auckland
Applicant

AND

CAZ
(MR WZ)
of Auckland
Respondent

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

Jurisdiction Decision concerning Review of a Standards Committee Resolution

[1] On 10 November 2011 the Lawyers Complaints Service informed Mr OI, a complainant, that the Committee had resolved that its enquiry into his complaint (made on behalf of his company) would be deferred pending the outcome of civil proceedings that had meanwhile been filed in relation to substantially the same matters arising in the complaint. The complaint is against law practitioner Mr WZ of CAZ.

[2] Mr OI, through his legal representative, BAH (per Mr WX) objected to the Standards Committee deferring the matter, and when he was unable to persuade the Standards Committee to continue with its investigations, he sought a review of the Standards Committee's resolution with this Office. Mr OI objected to the Standards Committee's resolution, and sought to have it reviewed.

[3] On 25 November 2011 the parties were informed that it was my preliminary view that this was not a reviewable matter. Both Mr WZ and Mr WX then made submissions to this Office in relation to the issue of reviewability.

[4] Mr WX considers that the Standards Committee resolution is reviewable. With reference to section 194(1) of the Act, he submitted that the section was drafted widely enough to allow applications for review of any determination, requirement order or direction made by a Committee, and that there was nothing express or implied by the section or the Act to limit the kinds of requirements or directions of a Committee that could be the subject of review. He considers that a resolution of a Committee is a determination and/or a requirement and/or order and/or a direction.

[5] Mr WX further argued that the review power of the LCRO is not limited only to final determinations of Standards Committees, there being no mention of 'final determinations' in section 194 of the Act, only to 'any determination'.

[6] He acknowledged the power of a Committee to regulate its own procedures (with reference to section 142 of the Act) but pointed to the absurd result if a Standards Committee's resolution to defer an enquiry for, say, ten years could not be reviewed.

[7] Mr WX referred to LCRO powers contained in section 209 (to redirect a Standards Committee to reconsider and determine, either generally or in respect of any specified matters, the whole or any part of the complaint, matter, or decision to which any application for review relates) and section 211 (to confirm, modify or reverse any decision of a Standards Committee, including any determination, requirement, order or direction given, by a Standards Committee.)

[8] Mr WX also referred to the Committee's obligation to comply with the rules of natural justice, contending that the Committee's resolution to defer its enquiry was inconsistent with that obligation.

[9] Opposing the review application is Mr C (representing Mr WZ) who holds the view that such review powers as are held by the LCRO do not go so far as reviewing a Standards Committee resolution.

Considerations

[10] If jurisdiction to review this matter exists it is pursuant to s 194(1) of the Act which deals with applications for review in respect of complaints which states:

[11] The right to apply for a review is set out in ss 194 to 197 of the Lawyers and Conveyancers Act (the Act). The only applicable section here is s 194(1) which deals with applications in relation to complaints and states:

194(1) This section applies to any determination, requirement, or order made, or direction given, by a Standards Committee (or by any person on its behalf or with its authority)

(a) in relation to a complaint (including a decision to take no action or no further action on a complaint); or

(b) on a matter arising from a complaint.

[12] It is clear that not every step taken by a Standards Committee is reviewable. Rather the action must fall within one of the categories set out in s 194(1).

[13] All of the words found in s 194 which trigger the power to review are used in relation to the exercise of particular powers. In particular a right to review exists in respect of the following:

- a. A determination under s 152;
- b. A requirement under ss 141 or 147;
- c. An order made under s 156; and
- d. A direction given pursuant to ss 142 or 143.

Has there been a “determination”?

[14] I am of the view that a determination for the purposes of the power of review of this Office is a determination of the merits of the complaint. I reach this conclusion on the grounds that the Act uses the word “determination” in respect of complaints in a number of places in a quite specific way. On every occasion it is used it appears to refer to the disposal of the complaint. Nowhere is it used in a way that might suggest that it refers to some preliminary or quasi-interlocutory decision of the Committee.

[15] I also observe that 194(1)(a) explicitly provides that a decision to take no action on a complaint (under s 138) is reviewable, but this is not extended to deferral of any enquiry. I further note that Standards Committees are empowered to govern their own proceedings.

[16] In the context of the consideration of a dispute or complaint the natural and ordinary meaning of the word “determination” refers to the conclusive disposition of the complaint. See for example the Oxford English Reference Dictionary which provides as a definition “the conclusion of a dispute by the decision of an arbitrator” and “a judicial

decision or sentence". The natural meaning of determination relates to some final decision on the matter in hand in a way which is inconsistent with the appointment of an investigator being a "determination".

[17] An interpretation of "determination" that construes it as a final disposition of a complaint is consistent with the use of the word throughout the Act. Section 152 empowers the Standards Committee to make a number of specified "determinations" (in particular it may determine that there has been unsatisfactory conduct, that the complaint be considered by the Disciplinary Tribunal, or that the Standards Committee take no further action). Section 158 requires that notice of that determination be given to the parties.

[18] In light of this I conclude that the power to review a 'determination' conferred by s 194 is the power to review the determinations made under s 152 of the Act, and cannot apply where there has been no determination such as the present case.

Has there been a reviewable "requirement"?

[19] Section 194 provides that a "requirement" of a Standards Committee is reviewable. There are a number of sections in the Act under which a Standards Committee may require an agent of the Committee to take certain steps and require lawyers and third parties to produce information or documents or provide explanations.

[20] However, in this case I cannot see that any part of the Committee's resolution amounts to a 'requirement', and must conclude that there is no reviewable requirement.

Has there been a reviewable order?

[21] Section 156 of the Act sets out the orders that the Standards Committee may make and it appears to be the making of those orders that is intended to be reviewable.

[22] However, I cannot see that the Committee's resolution in this case can be seen as an order of any kind.

Has there been a reviewable direction?

[23] A Standards Committee has power to issue directions. A direction which is in the nature of a final resolution, e.g. a direction by the Committee to publish its decisions under s 142, is likely to be one that is properly the subject of the power of review.

[24] Other directions can also be made by the Standards Committee such as those pursuant to s 153(1) (a hearing is to be on the papers unless the Standards Committee otherwise “directs”) and s 143 (a Standards Committee may “direct” that negotiation or mediation occur s 143). However, taking into account the nature of a review and the preliminary nature of those decisions it appears unlikely that such directions are able to be the subject of a review prior to a determination

[25] In the present case the resolution of the Committee to defer its enquiry is clearly not a determination (which is the final disposition of the matter by the Committee).

Concluding comments

[26] Having concluded that the Committee’s resolution to defer its enquiry is not subject to review by this Office, it is not necessary for me to comment further. However, pursuant to the LCRO’s overview function set out in section 192 of the Lawyers and Conveyancers Act 2006, which includes providing advice to the New Zealand Law Society...

... on any issue that the Legal Complaints Review Officer identifies in the course of carrying out reviews (being an issue that relates to the manner in which complaints are received and dealt with under this Act or any Rules made under this Act....

I intend to forward to the New Zealand Law Society some guiding comments that may assist Committees in relation to the exercise of its powers in circumstances such as arose in this case.

Decision

The application for review is declined on the basis that there is no jurisdiction to consider it.

DATED this 23rd day of July 2012

Hanneke Bouchier
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 OI as the Applicant

Mr WX as Representative of the Applicant

Mr WZ as the Respondent

Mr C as Representative of the Respondent

The Auckland Standards Committee 2

The New Zealand Law Society