

LCRO 287/2014

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

YM

Applicant

AND

EB

Respondent

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

DECISION

Introduction

[1] Ms YM seeks a review of a Standards Committee determination dated 22 October 2014.

Background

[2] The Committee's determination was sent by post to Ms YM on 22 October 2014 and also emailed on 23 October 2014.

[3] Ms YM attended the registry on Monday 8 December 2014 to hand deliver her application for review of the determination. Ms YM was advised that her application had not been accepted as it had been filed outside of the statutory timeframe.

[4] By email dated 12 December 2014, Ms YM advised that she had been overseas from 24 September to 11 November 2014 and provided a copy of her travel itinerary. She stated that she was unable to check her emails regularly as she did not have WIFI access all of the time she was overseas.

Relevant principles

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

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).

[6] 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.¹

Application for Review

[7] Ms YM argues that an extension should be granted for the filing of her application on grounds that:

- She was overseas from 24 September until 11 November 2014 and she did not check her emails regularly as she did not have a WIFI connection all the time she was overseas.
- On returning from overseas, she had a court hearing on 17 and 18 November 2014, had her car stolen and also got sick.
- She did not open her post until 5 December 2014.

[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.

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

[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 198:²

(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. This is to ensure there is sufficient time for applicants to lodge a review.

[12] 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.

[13] The Standards Committee made its determination on 22 October 2014, the determination was served on Ms YM by post on 22 October 2014 and by email on 23 October 2014. Under s 198(b) Ms YM would have 30 working days after the date that the determination was **served on** her to lodge her application for review.

[14] Ms YM does not dispute that the determination was emailed to her on the 23rd of October 2014, or that the determination was also despatched by post.

[15] Even using the later date of 23 October 2014 when the determination was emailed, Ms YM needed to lodge her application for review by Friday 5 December 2014. Ms YM cannot extend the 30 working day timeframe by not reading the email or opening her post.

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

[16] She does not contend that she was unable to retrieve her emails when overseas, rather she states that she had difficulty on occasions accessing a WIFI connection. Nor does she attend promptly to opening her mail on return from overseas.

[17] I am satisfied that the determination was served on Ms YM on the 23rd of October 2014.

[18] 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.

Conclusion

[19] 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:

YM as the Applicant
EB as the Respondent
The Standards Committee
The New Zealand Law Society