

CONCERNING

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

AND

CONCERNING

a determination of the [City] and Standards Committee

BETWEEN

MR ZC

Applicant

AND

MS DM

Respondent

Decision on Jurisdiction

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

Introduction

[1] On 23 July 2013 the Auckland Standards Committee 4 issued a determination that there had been unsatisfactory conduct on the part of Mr ZC (the Applicant) pursuant to s 152(2)(b) of the Lawyers and Conveyancers Act 2006 (the Act). The Standards Committee ordered the Applicant to pay a fine of \$1,500 to the New Zealand Law Society and costs of \$500.

[2] On 3 September 2013 the Applicant filed an application for review of the determination by fax which was transmitted at 5.46 pm. The original application together with the filing fee was received on 6 September 2013.

[3] Section 198 of Act provides that every application for review under s 193 must:

- (a) be in the prescribed form;

- (b) be lodged with the Legal Complaints Review Officer within 30 working days after a copy or notice of the determination... 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).

[4] As a matter of jurisdiction this Office has no discretion to accept review applications that are outside of the statutory time limit. A preliminary question of jurisdiction arises in respect of the review application, namely whether the review application has been filed within the statutory time period.

[5] The Applicant does not deny that he was sent the Committee's decision by email on 23 July 2013. However, he disputes that the email was brought to his attention on 23 July 2013 and states he did not become aware of the email until 24 July 2013. The Applicant contends that his review application was filed within the statutory time limit.

[6] There is no dispute that the Standards Committee decision was made available to the Applicant via email on 23 July 2013 (that is, on the same day the decision was made). The Applicant confirmed this in his affidavit to this Office. The first question is whether the email from the Law Society dated 23 July 2013 meets the service or notice requirements set out by s 198 of the Act as amended. In this day and age I have no doubt that communication by way of email is a well established means of communication, and that by this means the Committee's decision was "served on, given to, or otherwise brought to the attention of, the applicant for review." It is my view that on 23 July 2013 the Applicant received sufficient notice of the determination made by the Committee to satisfy s 198.

[7] The next question is whether the review application was filed within 30 working days of 23 July 2013. The Applicant asserts that the existence and content of the email were not brought to his attention on 23 July 2013, but that he became aware of the existence and content of the email on 24 July. He therefore submits that the calculation should be as from 24 July 2013 and that counting should start on 25 July 2013.

[8] The Applicant misinterprets the reference in the section to "brought to the attention of". Section 198 of the Act does not require the Standards Committee to

serve a copy of the determination and bring it to the attention of the Applicant, these are alternative methods of providing the Applicant with notice of the determination.

[9] The actual date on which the decision was made available to the Applicant is known and in these circumstances I do not need to consider the amendment to s 198 which creates a 'deeming' provision where the actual date of delivery of a decision cannot be ascertained with any degree of certainty. That is not the case here.

[10] Having concluded that the decision was brought to the Applicant's attention by 23 July 2013, the counting of days commences from that date and so the first day to be counted is 24 July 2013. Applying the above, the 30 days that can be counted means that a review application ought to have been filed no later than 3 September 2013.

[11] The Applicant sent an incomplete application to this office by fax on 3 September 2013 at 5.46 p.m. This was outside normal working hours and therefore received on the following working day being 4 September 2013, by which time it was already a day late. (This Office has previously taken the view that an application must be received within the normal working hours of this Office.)

[12] But that is not the only factor that is fatal to the review application. The additional difficulty is that the application was not complete as no filing fee was paid. The filing fee was only received on 6 September 2013. By my calculation it was filed three days after the latest date for filing.

[13] The Applicant further submits that the payment of the prescribed fee does not fall within the s 198 (b) time limit and that payment "can be satisfied otherwise than in terms of time limitations"¹ imposed by the section.

[14] The failure to pay a prescribed fee for the bringing of an appeal or other application that a decision be reviewed will be fatal to an application.² Section 198 (c) states that the application for review 'must be accompanied by the prescribed fee'.

[15] The jurisdiction of the Legal Complaints Review Officer is entirely statutory and I have only the powers conferred by the Act. While the Act gives broad powers to determine the appropriate procedures for review (for example ss 200 and 206(3)) such discretion does not extend to the question of whether the jurisdiction to hear the review exists. This is an approach consistently taken by this Office.

¹ Letter from Applicant to LCRO (3 September 2013).

² *Cahayag v Removal Review Authority* [1998] 2 NZLR 72 (CA), [1998] NZAR 145.

[16] The prescribed fee had not been paid prior to the expiration for the period in which an application could be properly made. I therefore conclude that the review application is out of time, and is therefore outside the jurisdiction of this Office to consider it.

DATED this 30th day of January 2014

Hanneke Bouchier

Legal Complaints Review Officer

Copies of this decision are to be provided to:

Mr ZC as the Applicant
[City] Standards Committee
The New Zealand Law Society