

LCRO 50/2015

**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**

**AP**

Applicant

**AND**

**ZB**

Respondent

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

**DECISION**

**Introduction**

[1] Mr AP seeks a review of a Standards Committee determination dated 14 November 2014.

**Background**

[2] The New Zealand Law Society Complaints Service (NZLS) received the complaint from Mr AP on 3 June 2014. Mr AP did not provide an email address on the complaint form, but in an undated fax to NZLS he stated “Any Corrispondince (sic) email [email address]”.

[3] The Committee’s determination was sent to Mr AP by post and email on 14 November 2014.

[4] Mr AP lodged an application for review on 9 January 2015. He was contacted by the Registry the same day and advised that his application may be out of the time and the matter would be referred to the Legal Complaints Review Officer (LCRO) to determine whether the application could be accepted.

### **Relevant principles**

[5] 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).

[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.<sup>1</sup>

### **Application for Review**

[7] By a letter to the LCRO dated 12 January 2015 Mr AP stated:

I picked up the email from my friend SF. He had text me that I had an email there to pick up. Due to the slow response from the lawyers complaints service I was in no hurry too (sic) pick email untill (sic) I was in town next. 20/11/14. This is the reason I chose the 5 working days after the date 14 November 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.

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<sup>1</sup> *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:<sup>2</sup>

(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.

[13] The Standards Committee made its determination on 14 November 2014, the determination was served on Mr AP by post and email on 14 November 2014. Mr AP had advised NZLS that any correspondence was to be emailed to the address provided. Under s 198(b) Mr AP would have 30 working days after the date that the determination was **served on** him to lodge his application for review.

[14] There is no dispute that the email was sent by NZLS or that Mr AP was aware of its existence. The 30 working day timeframe began to run after 14 November 2014 when the determination was served on Mr AP by email. Mr AP needed to lodge his application for review by 6 January 2015.

[15] Mr AP's decision to delay uplifting the email (he had been advised of its arrival) cannot be advanced as reasonable argument for displacing the requirement that a

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

review application be filed within 30 days of the determination being served. Mr AP acknowledges that he received notification of the email's arrival.

[16] 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.

[17] Section 198 does not provide the applicant with a right to choose when the timeframe runs from.

### **Conclusion**

[18] 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 31<sup>st</sup> day of March 2015

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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:

AP as the Applicant  
ZB as the Respondent  
The Standards Committee  
The New Zealand Law Society