

CONCERNING

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

AND

CONCERNING

a determination of the [City] Standards Committee 1

BETWEEN

MS BA

Applicant

AND

MR ZU

Respondent

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

DECISION

Background

[1] On 8 January 2014 the Standards Committee issued a decision in respect of a complaint made by the Applicant against the Practitioner. The committee declined to uphold the complaint pursuant to s 138 (1) of The Lawyers and Conveyancers Act 2006 (the Act).

[2] On 7 March 2014 the Applicant wrote to the office of the LCRO to advise that she had received, by post, a copy of the committee's decision on the 27 February 2014. An examination of the envelope in which the decision had been posted, confirmed that the decision had been posted on 8 January 2014.

[3] On perusal of information attached to the decision which informed the Applicant of her review rights, the Applicant was alerted to concern that the delay in receiving the decision may have jeopardised her ability to file an application for review.

[4] The applicant was advised that a Review Officer would need to consider whether the application was filed after the expiry of the statutory timeframe for a review

application to be made. The Applicant was encouraged to file an application promptly if she wished to proceed. An application for review was received on 24 March 2014.

[5] Section 198 of the Lawyers and Conveyancers Act 2006 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 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] This Office has no discretion to accept review applications that are outside of the statutory time limit. Section 198 of the Act requires an application for review to be lodged "within 30 working days after a copy or notice of the determination....is served on, given to, or otherwise brought to the attention of, the applicant for review".

[7] Previous decisions of this Office have emphasised that this Office has no discretion to extend the date by which applications for review must be filed.

[8] There is no dispute that the committee's decision was posted to the Applicant on 8 January 2014. The Applicant confirms that to be the case.

[9] The next step is to ascertain whether the review application was filed within 30 working days of 8 January 2014.

[10] "Working day" is not defined in the Act. It is therefore necessary to refer to section 29 of the Interpretation Act 1999, which provides:

Working day means 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; and

- (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday

[11] The review application ought to have been filed no later than 20 February 2014 (allowance made for Waitangi day). The application was lodged with this Office on 24 March 2014, which was, in my calculation, 22 days after the last date for filing.

[12] The Applicant advises that immediately on receipt of the decision she contacted the office of the LCRO to seek an extension. There is no record on the file of that conversation, but in any event the Applicant does not suggest that she received advice to the effect that an extension would be granted. It is not the function of LCRO staff to advise parties as to whether extensions can be granted, and that very advice was provided to the Applicant when she made written request for extension by letter dated 7 March 2014, received on 18 March 2014. If the Applicant had placed reliance on incorrect information, that would not have provided opportunity for a departure from the rigorous requirement to comply with the statutory timeframes.

[13] In *D v T* LCRO 36/2009, the LCRO addresses the issue as to whether advice an Applicant has received from this Office can be taken into account when considering an application for extension of time. At paragraph 16 of that decision, the LCRO comments:

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] A copy of the committee's decision, when sent as required under s 198, in the absence of proof to the contrary, is presumed to have been received on the fifth working day after it is sent.

[15] The Applicant advances argument that deficiencies in the postal service and problems with mail being misdirected have been the cause of delay. She gives examples of other experiences she has experienced with late delivery of mail. She submits that documents should be forwarded by registered mail, or alternatively, that she should have received a confirmation email, on the day the decision was sent.

[16] Section 198 does not impose obligation on a committee to serve documents by registered mail, or to confirm despatch of correspondence by email.

[17] I am sympathetic to the Applicant's argument that she has been let down by the postal system, but persuasive evidence would need to be advanced to displace the presumption that the notice is received on the fifth working day after it is sent.

[18] The requirement for applications to be filed within a strict time frame may on occasions present as harsh, and there may frequently be instances where a party to complaint may, for a number of reasons, have been unable to make an application within the required period.

[19] If this Office were to depart from the strict requirements imposed by s 198 on the basis of complaint that failures in the postal system had resulted in a party being unable to file in time, that could potentially open the door to a floodgate of applications for extensions, and undermine the express statutory objective of ensuring that complaints against lawyers are resolved expeditiously (s 120 (2) (b)). The absence of a power to extend the time to make an application for review ensures that there is finality to the complaints process.

Conclusion

[20] I have no power to grant the extension sought, the application has been filed out of time, and accordingly there is no jurisdiction to conduct a review in this matter.

DATED this 13th day of May 2014

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:

M BA as the Applicant
L ZU as the Respondent
The [City] Committee 1
The New Zealand Law Society