

**LEGAL COMPLAINTS REVIEW OFFICER  
ĀPIHA AROTAKE AMUAMU Ā-TURE**

[2021] NZLCRO 105

Ref: LCRO 79/2021

**CONCERNING**

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

**AND**

**CONCERNING**

a determination of the [Area] Standards Committee [X]

**BETWEEN**

**SW**

Applicant

**AND**

**LL**

Respondent

**DECISION**

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

**Introduction**

[1] Ms SW has applied for a review of a decision by the [Area] Standards Committee [X] to take no further action in respect of her complaint concerning the conduct of the respondent, Mr LL.

**Introduction**

[2] On 13 April 2021 the [Area] Standards Committee [X] issued a decision in respect of a complaint made by Ms SW against Mr LL. The Committee declined to uphold the complaint pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006 (the Act).

[3] Ms SW filed an application to have that decision reviewed. Her review application was received by the Legal Complaints Review Officer (LCRO) on 9 June 2021.

[4] I am required to address the issue of whether the application for review can be considered as a matter of jurisdiction, on the basis that it was filed after the expiry of the statutory time frame for a review application to be made.

### **The Law**

[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 a form approved by the chief executive of the Ministry of Justice after consultation with the Legal Complaints Review Officer; 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] The original wording of s 198 provided that the 30-working day period began on the day that the Standards Committee determination was made. The effect of this was that the time 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.

[7] Section 198 was amended by the Lawyers and Conveyancers Amendment Act 2012.<sup>1</sup> When the Act was first introduced, the general policy statement set out the explanation for amending s 198 of the Act.<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

<sup>1</sup> Lawyers and Conveyancers Amendment Act 2012, s 12.

<sup>2</sup> Lawyers and Conveyancers Amendment Bill 2010 (120-1) (explanatory note) at 7.

lodging those applications thus starts to run before the relevant decisions or actions are brought to the attention of possible applicants for review.

[8] 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 an applicant. This is to ensure that there is sufficient time for an application for review to be lodged.

[9] 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.

[10] There are two critical elements to s 198. First, 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.

[11] The provisions of s 198 of the Act are stated in mandatory terms and there is no statutory discretion to ameliorate their harshness, other than the ability for applicants to rebut the presumption that the decision was served on them within five working days after the decision was delivered.

[12] It is also important to note that an application for review is not lodged unless it is in the approved form and accompanied by the necessary filing fee. This means that both must be lodged within the 30-working day period.

[13] In *KX v WA*, this Office held:<sup>3</sup>

[9] For the avoidance of doubt, the statutory requirement is for a review application to be "lodged with the Legal Complaints Review Officer within 30 working days after the determination...", together with the fee. (Underlining added). There can be no lodgement of documents after the closing time of the Registry, which is generally recognised to be between the normal working hours of 9:00 a.m. and 5:00 p.m. This is supported by *AEL Group Ltd v Kensington Swan Lawyers* 31/7/08, Associate Judge Christiansen, HC Christchurch CIV-2008-409-1225. There the Court found that service on a law firm after 5:00 p.m. on a business day would not be effective (although in the circumstances considered by the Court service by facsimile prior to 5:00 p.m. was effective.) In this case the review application was lodged with this office the following day, when staff were in a position to receive and date stamp it, this being 19 April.

[10] The provisions of s 198 of the Act are stated in mandatory terms and there is no statutory discretion to ameliorate their harshness. I accept this may be a harsh result and there may be reasons why an application was not made within the requisite time. However, the obligation to comply with the procedural requirements in making an application clearly lies with the Applicant. This

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<sup>3</sup> *KX v WA* LCRO 84/2012 (30 April 2012) at [9]–[10].

position is reiterated by previous decisions of this Office that the LCRO has no discretion to extend the timeframe.

[14] This was confirmed by this Office in *UQ v OI* as follows:<sup>4</sup>

As a matter of jurisdiction 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.”

## **Discussion**

[15] The Standards Committee delivered its decision on 13 April 2021.

[16] The decision records that it was forwarded by email to Ms SW on that date.

[17] Ms SW was required to file her review application by 26 May 2021.

[18] Following receipt of the Committee’s decision, Mr LL promptly wrote to Ms SW enclosing a copy of his overdue account. Ms SW responded to Mr LL to advise that the bill was “in dispute” with the Law Society. Mr LL replied to Ms SW, and in doing so, confirmed that the Committee had issued its decision.

[19] On 6 May 2021, Ms SW informed Mr LL that she would be appealing the Committee’s decision. She also wrote to the Complaints Service on that day to advise of her intention to appeal the Committee decision. She indicated that she was, at the time of forwarding her correspondence, suffering a bout of the flu and noted that she would be “in touch as soon as I’m better with more facts to support my case”.

[20] On 3 June 2021, Ms SW wrote to the LCRO to advise that she had been unable to attend on a doctor due to COVID-19 symptoms. She advised that she had been in bed for two weeks, and that she had been “in quarantine”.

[21] A case manager forwarded a review application to Ms SW on 3 June 2021. In correspondence accompanying that application, the case manager explained that Review applications were required to be filed within 30 days of date of delivery of the Standards Committee decision. Ms SW was informed of the requirement that applications be accompanied by the filing fee.

[22] Ms SW responded to advise that she was able to pay the filing fee online and noted that she was still in quarantine.

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<sup>4</sup> *UQ v OI* LCRO 19/2013 (2 April 2013) at [5].

[23] On 10 June 2021, the Complaints Service advised the LCRO that Ms SW had informed the Service on 10 June 2021 that she was suffering from the flu, but at no time had Ms SW advised the Complaints Service that she was in quarantine.

[24] On 10 June 2021, the Service Manager for the LCRO (following up on earlier phone conversations with Ms SW), informed Ms SW that her application appeared to have been filed out of time. In what was a reasonably detailed explanation of the filing process, the Service Manager:

- (a) noted that the Standards Committee decision had been emailed to Ms SW on 13 April 2021;<sup>5</sup> and
- (b) invited Ms SW to provide explanation for her review application being filed out of time.

[25] No further information was received from Ms SW.

[26] In her review application, Ms SW explained that she had recently moved to [City]. She said that she had been, for a period of time, unable to access her emails. She advised that she had been ill for a two-week period. She explained that she had been required to quarantine for a two-week period when her fiancé had become ill.

[27] This information was presumably provided by Ms SW in explanation for her review application being filed out of time.

[28] I am satisfied that the appropriate commencement date for calculating time frames for the review was 13 April 2021.

[29] Whilst Ms SW submits that she had difficulty getting her review application filed in time because of ill health and problems with her email, she provides no evidence to assist in clarifying how these difficulties prevented her from filing her application in time.

[30] I appreciate that having the flu may have incapacitated Ms SW, but a party making complaint of suffering from the flu, is not of sufficient significance to merit a LCRO departing from the rigorous requirement for parties to file their applications in time.

[31] Ms SW's indication that she had problems accessing her internet is not supported by any evidence which explains the nature of the problem.

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<sup>5</sup> This had been confirmed to the LCRO by the Complaints Service

[32] It has been noted in many decisions that there is no provision in the Act for a LCRO to extend the timeframe within which an application for review must be lodged.<sup>6</sup>

[33] It has also been observed that in some cases hardship may result in the strict application of the time limit prescribed by s 198 of the Act.<sup>7</sup>

[34] The only circumstance in which consideration could be given to extending the time for filing, would be if Ms SW had provided evidence to support argument that an extension should properly be allowed under the Epidemic Preparedness Act 2006.

[35] Ms SW refers to her having been required to quarantine, but she provides no details to explain the nature of the quarantine period, nor does she provide any evidence of that period of quarantine being imposed on her.

[36] It is clear that Ms SW was served with the Standards Committee decision on 13 April 2021. The decision (as is required for all Standards Committee decisions) provides careful explanation of the process that parties are required to follow if they wish to review a Committee's decision. The time frames for filing a review application are explained, as is the requirement for payment of the filing fee. The methods by which an application may be filed are explained and a contact phone number and website details provided for parties to obtain further information if required.

[37] In writing to the Complaints Service some weeks after receiving the Committee decision, and in giving indication in that correspondence of her intention to make further contact with the Complaints Service when she considered she was in a position to appeal the Committee's decision, Ms SW may unfortunately have been labouring under the misapprehension that her challenge to the Committee's decision was properly advanced through the Complaints Service.

[38] Ms SW was required to have filed her review application with the LCRO by 26 May 2021.

[39] Ms SW's application cannot be accepted for filing. It is filed out of time.

[40] There is no provision in the Act for this Office to extend the fixed time limit within which an application for review must be lodged. There is good reason for that: it is consistent with the Act's requirements that complaints (and reviews of complaints decisions) are to be dealt with fairly, efficiently and effectively. I accept however that in

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<sup>6</sup> *D v T* LCRO 36/2009, *LCRO 190/2017* (6 November 2017), *KX v WA* LCRO 84/2012.

<sup>7</sup> *D v T*, *LCRO 230-2017* (15 December 2017).

some cases hardship may result in the strict application of the time limit prescribed by s 198 of the Act.

### **Outcome**

[41] This Office has no jurisdiction to deal with the application for review that was lodged by Ms SW, as it was not lodged within 30 working days after the date on which the Committee's determination was served, given to or otherwise brought to his attention.

**DATED** this 30<sup>th</sup> day of June 2021

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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:

Ms SW as the Applicant  
Mr LL as the Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society