

**REVIEW AUTHORITY  
NEW ZEALAND**

**RA 002/2017**

**Applicant**

**AC**

**Respondent**

**Secretary for Justice**

**Date of Decision:**

4 May 2017

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## **DECISION**

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### **INTRODUCTION**

1. In a decision dated, 7 March 2017, The Secretary for Justice (“the Secretary”) declined approval of the Applicant as a Lead Provider for Criminal PAL 1.
2. The Secretary decided that the Applicant did not meet the criteria for approval under the Legal Services Act 2011 and the Legal Services (Quality Assurance) Regulations 2011 as a provider for the following reasons:
  - i. Mr AC had not demonstrated substantial and active involvement appearing as counsel in at least 3 trials in criminal proceedings.
  - ii. He had been assisting in the three trials in the case examples he had submitted in support of his application for approval but had not played an active role in them.
  - iii. Mr AC had not demonstrated that he had the appropriate level of knowledge and skill to provide legal aid services for Criminal PAL 1 trials.
3. The applicant seeks a review of the Secretary’s decision.

## BACKGROUND

4. The applicant was admitted as a barrister and solicitor on XX November 2010. He commenced practising in the field of Criminal Law in July 2011. He was granted approval as a supervised provider of Criminal legal aid from November 2012 to November 2014. He subsequently spent time overseas. He returned to practice and was granted supervised criminal approval again in April 2016.

## THE APPLICATION

5. The applicant seeks a review of the Secretary's decision declining approval as a lead provider for Criminal Legal Aid PAL 1 for the following reasons:-

- (a) That the Secretary has drawn the wrong conclusion about his application after considering the decisions in *AJ v Secretary for Justice* (RA 010/12), *AE v Secretary for Justice* (RA 007/14) and *AL v Secretary for Justice* (017/14).
- (b) That the Secretary erred in her decision by giving weight to two decisions which discuss the standard and criteria required for Category 2 Criminal Proceedings rather than for Category 1 Criminal Proceedings.

6. The Secretary responded to the application for review on 26 April 2017 and reiterated the reasons for declining to approve Mr AC as a lead provider for Criminal Proceedings PAL 1.

7. The Secretary disagreed with Mr AC's assertion that he had drafted documents in each of his case examples, noting that Mr AC had indicated that he had not completed drafting in any of his three case examples. The Secretary submitted that the drafting of documents refers to documents that are submitted to the court, rather than the taking of notes during trial or the recording of the judge's decision.

8. In answer to the applicant's criticism of the perceived weight given by the Secretary to the decision of the Review Authority in *AL v Secretary for Justice* (*supra*), the Secretary says that the decision was referred to because it discusses the interpretation of the words "*substantial and active involvement*" contained in the Schedule to the Regulations.

9. I accept the Secretary's analysis that Mr AC has, in respect of the three case samples submitted, conducted pretrial research and has cross-examined one witness in each of the three trials.

10. Mr AC has reported that he has carried out other tasks in relation to those cases which can be described as management of the files.

11. In RA 005/2012 at paragraph 17 I said that '*substantial and active involvement will encompass such steps as researching the law, interviewing witnesses, briefing of evidence, drafting documents, examining witnesses, cross-examination, making submissions, making opening/closing addresses, appearing at sentence, and appearances in support of or in response to an appeal*'.

12. I find that Mr AC has shown only one aspect of court room activity in that he has cross-examined a witness in three separate trials.

13. The information that he has supplied does not demonstrate that he has the ability to undertake a trial from start to finish. (See *AL v Secretary for Justice* (RA17/12)).

14. I agree with the decision of the Secretary to decline approval of the Applicant. Accordingly I confirm it pursuant to S.86(1) of the Legal Services Act 2011.

B J Kendall  
Review Authority