

**REVIEW AUTHORITY
NEW ZEALAND**

RA 003/2017

Applicant

AD

Respondent

Secretary for Justice

Date of Decision:

10 October 2017

DECISION

INTRODUCTION

[1] In a decision dated 28 June 2017, The Secretary for Justice (the Secretary) made the following decisions:

- (a) Cancelling the applicant's approvals to provide legal aid services and specified legal services in Criminal PAL 1-3, Family, Court of Appeal and Supreme Court, Civil, PDLA, Duty Lawyer, and Refugee and Protected Persons:
- (b) Barring him from applying for approval to provide legal aid services and specified legal services for two years.
- (c) Declining his application for re-approval.

[2] The Secretary made her decisions for the following reasons following recommendations from the Performance Review Committee:

- (i) The applicant had repeatedly breached his professional and contractual obligations and the Practice Standards for Legal Aid Providers.
- (ii) The extent and persistence of the applicant's breaches of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Care Rules), his Provider Contract for Services and the Practice Standards.
- (iii) The cumulative nature of the issues, the persistence of them and the applicant's failure to remedy the breaches despite having been given many opportunities to do so.

[3] The applicant seeks a review of the Secretary's decision.

BACKGROUND

[4] The applicant states the he has been a lawyer since 1997. He also states that he has been representing clients on legal aid since about 1987. There is an apparent mismatch of dates which I have not been able to reconcile from the materials supplied to me. The applicant was approved in 2001 to provide legal aid services and specified legal services under the Legal Services Act 2000. The approvals were in respect of Civil, Family, and as a Duty Lawyer. Additional approvals were given in 2003 for services in the Waitangi Tribunal and then in 2008 for Criminal PAL 1-2, PDLA and Refugee and Protected Persons matters.

[5] The applicant gained approval under the Legal Services Act 2011 to provide legal aid services and specified services on 17 September 2012. Those approvals were the same as previously. He was further approved to provide services for Criminal on 8 December 2014. He was approved to provide legal aid services and specified legal services in the same areas of law on 10 October 2014, and then on 25 October 2016, and 9 December 2016.

[6] The applicant has been the subject of a number of substantiated complaints since his first approval. They are:

- (a) A First Notice issued in December 2011 for failing to act competently and take reasonable care (the Care Rules).
- (b) A Second Notice issued in October 2012 for failing to respond to requests for information regarding a determination of the Legal Complaints Review Officer upholding a finding of unsatisfactory conduct by the Auckland Law Society's Standards Committee.
- (c) A Final Notice issued in January 2015 concerning the applicant's failure to appear in court for a client.
- (d) A referral to the New Zealand Law Society in May 2015 concerning the applicant's failure to respond to several requests for information about his failure to appear in court for a client.
- (e) A referral to the Performance Review Committee in October 2015 because of a further substantiated complaint which raised concerns about the applicant's on-going service delivery. The Secretary modified the applicant's approvals by suspending his Criminal PAL 1 and 2 approvals for a period of six months.

[7] The applicant was audited for quality and value purposes. The auditor gave him a 'poor' rating having noted the following matters:

- (i) Communication deficiencies with clients, there being no client care letters on file, no evidence of communications with clients as to the merits of case or reporting on progress, no reporting of outcomes in any file.

- (ii) None of the files were in a fit state for auditing thus being in breach of the provider's obligations including a failure to provide all legal aid communications including invoices.
- (iii) No information provided as to time spent on matters resulting in an inability to confirm the amounts charged for services.
- (iv) Inadequate supervision on a named file which caused problems and delays.
- (v) Inability to locate a further named file.

[8] The auditor's report was considered by the Performance Review Committee. Its recommendations were accepted by the Secretary whose decision is set out in paragraph 1 above.

THE APPLICATION

[9] The applicant advances the following reasons for seeking a review of the Secretary's decision:

- (a) The Secretary did not consider the matter properly;
- (b) He provides quality service to clients and complies with all aspects of the Act;
- (c) Grounds for cancelling his approvals do not exist; and
- (d) Grounds for not approving his application for re-approval do not exist.

[10] The applicant made a lengthy written submission. In para 7 of that submission he stated that he did not know what the reasons were for cancelling his approvals. He did not accept that there were any shortcomings he needed to address.

[11] He went on to emphasize that he was a good lawyer in trials, appeals and immigration and protection matters. He focused on some of the criticisms made of a named Family Court matter and asserted that the criticism was short sighted and completely unjustified. The applicant set out arguments why the steps he took in the proceedings were justified.

[12] The applicant accepted that some of the complaints recorded against him were justified and, had his organisation been better, they would not have happened. He has given lengthy explanations about two matters which were the subject of complaints upheld against him by the NZLS.

[13] The applicant addresses the question of efficiency by stating that he ranks himself as 'among the most effective lawyers around' and that he is efficient enough to be effective. He submitted that in the legal aid context efficiency was easy to measure because the fees paid are fixed fees. The applicant concludes his submission by saying that the audit done on the selected files was inadequate and poorly conducted. It was substandard.

THE SECRETARY'S RESPONSE

[14] The Secretary submits that:

- (i) Her decision outlines detailed reasons for the cancellation of the applicant's approvals;
- (ii) There was evidence to prove that the applicant had not provided quality service to his clients; was not compliant with his obligations to legal aid services, the clients and the courts; and
- (iii) Taken together the concerns were grounds for cancelling his approvals and declining the applicant's application for re-approval to provide legal aid services.

[15] The Secretary argued that the applicant had been given a number of opportunities to address his shortcomings. She referred to the documents supplied in support of her submission which included written advice to him of 24 February 2016 and to his submission of 20 January 2016.

[16] As to the applicant's criticism of the audit of his quality and value, the Secretary noted that the process was carried out in accordance with the detailed policy of the Ministry of Justice which has an aspect of review built into it. She further noted that the applicant did not make any response to the draft report which was provided to him. The report was thus finalised by the auditor without any comment from the applicant.

[17] The Auditor's report was then referred to the Performance Review Committee which subsequently reported to the Secretary who then accepted its recommendations to cancel the applicant's approvals; bar him from re-applying for two years and decline his application for re-approval.

DISCUSSION AND DECISION

[18] I have considered the applicant's lengthy submissions and the volume of documents that the Secretary has made available including Provider Manual; Terms of Reference for Quality and Value Audits; Monitoring and Provider Manual for Cancellation of Approvals. I have reviewed all of the recommendations of the Performance Review Committees and Auditor's report which gave rise to the final recommendations to the Secretary upon which she made her decision.

[19] I have noted that there is recognition of the skill and experience of the applicant as a lawyer and litigator, albeit some minor criticism of the approach he took in respect of a particular matter in the Family Court.

[20] The primary focus has been on the applicant's quality and value. His deficiencies in that regard are detailed in paragraph 7 of this decision.

[21] I find that the applicant has failed to address them in this application for review other than to be dismissive of them.

[22] I agree with the decision of the Secretary made on 28 June 2017 and accordingly confirm it pursuant to s 86(1) of the Legal Services Act 2011.

BJ Kendall

Review Authority