

**REVIEW AUTHORITY
NEW ZEALAND**

RA 001/2019

Applicant

AB

Respondent

Secretary for Justice

Date of Decision:

2 September 2019

DECISION

INTRODUCTION

[1] In a decision dated 11 July 2019, The Secretary for Justice (“the Secretary”) approved AB as a lead provider in Criminal PAL 1-2 and as a provider of specified legal services in PDLA and as duty lawyer. Approval of the Applicant as a Lead Provider for Criminal PAL 3 was declined.

[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 Criminal PAL 3 for the following reasons:

- [i] AB had not demonstrated substantial and active involvement appearing as counsel in at least 4 trials in level 3 or 4 criminal proceedings.
- [ii] She had been involved at trial in four of the five trials in the case examples she had submitted in support of her application for approval. Only one of those cases demonstrated involvement in the

examination of witnesses and leading of evidence. She had not demonstrated experience in opening and closing addresses.

[iii] AB had not demonstrated that she had the appropriate level of knowledge and skill to provide legal aid services for Criminal PAL 3 trials.

[iv] The Secretary was not satisfied that AB could lead a PAL 3 trial from start to finish.

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

BACKGROUND

[4] The applicant was admitted as a barrister and solicitor on 13 February 2009. She commenced practising in the field of Criminal Law in July 2009 and has continued to do so down to the present time.

THE APPLICATION

[5] The applicant seeks a review of the Secretary's decision declining approval as a lead provider for Criminal Legal Aid PAL 3 for the following reasons:

[a] The Secretary has drawn the wrong conclusion in her interpretation of the decision *AL v Secretary of Justice* (RA (017/12)) by deciding that she show an ability to undertake a trial from start to finish at PAL 3 level. That decision was about an application for PAL 2 level

[b] She is not required to show that she has conducted a Category 3 proceeding alone.

[c] It is not necessary to demonstrate an opening and closing address in PAL 3 proceedings, having experience of opening and closing addresses at PAL 2 level. (*AE v Secretary for Justice* (RA 05/12, at [17]))

[d] She was granted limited approval as a PAL 3 provider in October 2018 in a matter of an aggravated robbery which she ran from start to finish.

[6] The Secretary responded to the application for review on 23 August 2019 and reiterated the reasons for declining to approve AB as a lead provider for Criminal Proceedings PAL 3.

[7] The Secretary noted that the applicant has a good level of involvement in pre-trial work, but considered that the case examples provided did not show substantial and active involvement.

[8] The Secretary noted that, while AB had not delivered an opening or closing address in a PAL 3 matter, such would not necessarily be fatal to an application for approval at PAL 3 level if she could show substantial and active involvement in all other areas. The Secretary submitted that AB's application showed a general lack of in-trial experience in PAL 3 or 4 matters.

[9] The Secretary noted that AB was granted a limited PAL 3 approval in an aggravated robbery matter subject to a condition that she be monitored by Annabel Maxwell-Scott for the duration of the proceeding. The Secretary has argued that, having waived aspects of the PAL 3 criteria, this case was not evidence of itself that AB had met the criteria for approval at PAL 3 level.

[10] AB responded to the Secretary's submissions on 2 September 2019. She made the strong point that she was considered suitable to act in the proceedings for which she was granted limited approval. It was a trial at PAL 3 level which she conducted from start to finish.

DISCUSSION

[11] The relevant rule requires that an applicant for approval in level 3 proceedings must:

- [a] Have at least 36 months' recent experience working on approval level 2 criminal proceedings; and
- [b] Have appeared as counsel with substantial and active involvement in at least 4 approval level 3 or 4 criminal proceedings where –
 - [i] At least 1 charge carries a maximum penalty of 10 years' imprisonment or more; or
 - [ii] The person charged is likely to face cumulative sentences of more than 10 years' imprisonment.

[12] AB has met the requirement as to recent experience and has been involved in at least 4 approval level 3 or 4 criminal proceedings.

[13] The question is whether or not AB has met the requirement for substantive and active involvement in those proceedings.

[14] She provided 5 case examples at PAL 3 level detailing her involvement in each. She conducted research, briefed witnesses and drafted documents in all of the examples submitted. She examined witnesses and cross-examined witnesses totaling 10. She had involvement in sentencing on one occasion. She had appearances for pre-trial matters of bail, case review, and sentence indication which are matters that can be taken into account in terms of the Provider Manual. She has appeared as Junior Counsel in the Court of Appeal having drafted the submissions in that matter.

[15] When I take those matters into consideration along with her conduct of the PAL 3 matter for which she was granted limited approval, I am satisfied that AB has met the requirement for substantive and active involvement as set out in the Schedule to the Legal Services (Quality Assurance) Regulations.

[16] I therefore reverse the decision of the Secretary declining approval of AB as a provider of legal aid services in respect of PAL 3 level criminal proceedings and do so pursuant to Section 86(1) of the Legal Services Act 2011.

B J Kendall,

Review Authority