

Applicant

AK

Respondent

Secretary for Justice

Date of Decision:

6 August 2012

DECISION

INTRODUCTION

1. In a decision dated 21 June 2012, The Secretary for Justice ('Secretary') declined approval of the applicant as a provider of Category 2 Criminal Proceedings and the Police Detention Legal Assistance Scheme.
2. The Secretary decided that the Applicant had not demonstrated active and substantial involvement in three trials on indictment, as required for approval at those levels by the Legal Services (Quality Assurance) Regulations, 2011.
3. In reaching that decision, the Secretary adopted the recommendation of the Selection Committee which had considered the applicant's application for approval as a lead provider in the matters referred to.
4. The Applicant seeks a review of the Secretary's decision.

BACKGROUND

5. The Applicant was admitted as a Barrister and Solicitor in New Zealand in approximately July 2008 and commenced practice as a Barrister in October 2008 with a concentration on criminal proceedings.
6. At the time of his application for approval under the current legislation he held approvals as a lead provider in Criminal Proceedings Category 1

and Duty Solicitor which have continued following the Secretary's decision of 21 June 2012.

THE APPLICATION

7. The applicant seeks a review of the Secretary's decision for the reasons set out in writing namely that he had shown active and substantial involvement in three or more trials on indictment.
8. He re-submitted with his application for review three case examples of his involvement in trials on indictment which had already been considered by the selection committee. One of the case examples related to two trials in that the defendant was the subject of a re-trial
9. The applicant attached to his application for review copies of the notes indicating his cross-examination of 3 witnesses in separate trials, Judge's notes in respect of a bail application in which the applicant appeared for the defendant on 25 June 2012, and Judge's notes on sentencing of a defendant represented by the applicant as the result of a sentence indication which event occurred after consideration of his application for approval..
10. The Secretary responded to the applicant's application by letter of 18 July 2012 and noted that the material mentioned in paragraph 9 above was not provided with the original application.
11. The Secretary, having referred to the requirements of Regulation 6 of the Legal Aid (Quality Assurance) Regulations, 2011, noted the limited discretion that the regulation provides given the cumulative requirements set out in Regulation 6(2) and the Schedule.
12. The Secretary refers to the Legal Aid Application Guidelines which refers to active and substantial as: *preparation and participation in particular cases, demonstrating a significant contribution to legal proceedings...considerable input into the court or informal proceedings (such as mediation, negotiation examination or cross examination of witnesses, leading evidence, delivering opening and/or closing addresses and presenting submissions)*

13. The onus is on an applicant to provide information which proves his/her competence and experience to meet the criteria in the Schedule
14. The Secretary says that in respect of additional information supplied to the Review Authority and not included in the original application for approval, the applicant should be required to reapply to the Secretary for approval.
15. The applicant answered the Secretary's response on 25 July in which:
 - a. He clarified criticisms of his examples of work samples noting that he had provided 6 examples of involvement in trials on indictment 2 of which were re-trials.
 - b. He refers to another PC 3 matter of aggravated robbery which he says is not referred to by the Secretary and which went to trial on two occasions.
 - c. He asserts that he provided examples of two other matters saying *"I suspect that where the box reads Gor..n, it should read Gerr....d and/or Br...s.*

DISCUSSION

16. The primary question is whether or not the applicant has demonstrated that he has had active and substantial involvement in at least three trials on indictment as required by Clause 2 of the Schedule to the Quality Assurance Regulations.
17. I have in my decision under **RA 009/2012** expressed satisfaction with the description of 'substantial and active' involvement published in the Ministry's Legal Aid Application Guidelines.
18. I have reviewed all of the material that the applicant submitted in support of his application for approval as a provider in respect of Criminal Proceedings Category 2 and as well the material subsequently supplied with the application for review and in answer to the Secretary's response to that application.

19. I have found his materials and explanations confusing. Without his subsequent explanations contained in his most recent letter to the Authority of 25 July, it has been difficult to discern that 3 of the matters *Re..i, Gor...n, and D Ki.g* included re-trials.

20. I observe also that the materials supplied with that letter do not allow for easy identification and are materials that were not before the Secretary at the time the decision declining approval was made.

21. What I have gleaned from a study of his work samples is that in 4 of the cases submitted his preparatory work represented an average of 22.5% of total. He examined and/or cross-examined 1 witness in each of 3 trials according to the information he has supplied.

22. I note that materials supplied in respect of *Han.....a, Ger...d, Hy...e and Ma..i*, relate to matters occurring after the applicant had submitted his application for approval as a lead provider and in part after the Secretary had made a decision in respect of the application for approval.

23. In any event, if I were to take them into account, I do not consider that they together with his earlier submitted materials would take him to the threshold of substantial and active involvement.

24. **DECISION**

25. When I consider all the materials supplied by the applicant and details of his experience alongside the test for substantial and active involvement, I have reached the conclusion that I am unable to grant his application for review.

26. Accordingly, pursuant to s 86(1) of the Legal Services Act 2011, I confirm the decision of the Secretary now under review.