

**REVIEW AUTHORITY
NEW ZEALAND**

NZRA 003/2015

Applicant

J

Respondent

Secretary for Justice

Date of Decision:

22 December 2015

DECISION

INTRODUCTION

1. In a decision dated 27 October 2015, The Secretary for Justice (“the Secretary”) declined approval of the Applicant as a Lead Provider of 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:
 - a. the Applicant had not demonstrated experience and competence in Criminal PAL 1 proceedings; and

- b. had not satisfied the Secretary that he was a fit and proper person to provide legal aid services.
3. The Secretary, in making his decision, had regard to the recommendations of the Southern Selection Committee. That committee considered the application rather than the local Manawatu Committee so that the Applicant could be assured that there was no bias against him amongst any of the committee members.
4. The selection committee noted that the Applicant had not advanced any material to satisfy the recent experience requirement of clause 2(a) of the Schedule to the Legal Services (Quality Assurance) Regulations 2011 ("the regulations").
5. It invited him to make submissions regarding his recent experience so that consideration could be given to a waiver of that requirement under r 6(5) of the regulations given that his last significant involvement in criminal law was in 2010.
6. The Applicant responded by referring to a recent article he had authored, his experience as a criminal lawyer since 1995 and his commitment to being a legal aid lawyer.
7. The Secretary went on to consider that he could not waive the requirement of recent experience which would otherwise have allowed him to approve the Applicant as a provider if he otherwise met the relevant experience and competence requirements and possessed the appropriate level of knowledge and skill to provide legal aid services.
8. In reaching that decision he took into account the following matters:
 - a. That the Applicant was unable to provide examples of criminal cases where he demonstrated his knowledge and skill, especially since the implementation of the Criminal Procedure Act 2011. He considered that the Applicant's recent writing on the subject of discharge without conviction did not make up for lack of recent practical criminal law experience in the courtroom.
 - b. The Secretary found that Applicant should await the resolution of the outstanding complaints affecting him.

9. The Applicant seeks a review of the Secretary's decision declining approval of his application to become a lead provider of Criminal PAL 1.
10. He submitted that he is a very experienced lawyer who has practiced lower level criminal law for over 20 years.
11. His suspicion was that the decision to decline his application was because of the adverse findings of the Standards Committee in respect of complaints made against him.
12. In a letter to the Review Authority dated 2 December 2015, the Applicant attached a copy of decision of the Court of Appeal relating to his plea of guilty to a charge of unsatisfactory conduct and other matters. In its decisions delivered on 24 November 2015, the Court noted at paragraph 48 that none of the grounds of appeal had merit.
13. The Applicant took issue with the decision. It is not for the Authority to enter into a discussion about those issues.
14. The Applicant has also indicated that he would be prepared to be put on probation so that he could put his past behind him and regain approval as a legal aid provider.
15. The Applicant has emphasised that he is remorseful for his conduct that led to the cancellation of his legal aid contract in September 2010. He is prepared to be subject to supervision or mentoring if such would allow him to move on.
16. I have considered this application and find that I do not disagree with the Secretary's decision. The Applicant has not demonstrated that he has 12 months recent experience in criminal case practice which was something which he acknowledged. I have not found that there are any matters which would persuade me that the requirement should be waived.
17. There are unresolved matters that are the subject of proceedings initiated by the Applicant which may impact on whether or not he has shown that he is a fit and proper person to provide legal aid services. I have some reservations about that when I consider his complaints about the decision of the Court of Appeal referred to in paragraph 10 above. I, however, emphasise that I do not make any finding about those matters.

18. I accordingly confirm the decision of the Secretary under review.
19. This review has related to the Applicant's application in respect of Criminal PAL 1. I note that the Applicant also made application for approval as a lead provider in Family and Duty Lawyer. (See his application dated 24 July 2015.) Those applications appear not to have been considered by the Selection Committee.
20. I also note that the Applicant included Duty lawyer in his application for review but does not appear to have addressed that in his submissions.

A handwritten signature in black ink, appearing to read "Kendall". The signature is written in a cursive style with a large initial letter and a horizontal line underneath.

BJ Kendall

Review Authority

22 December 2015