

Lawyers and Conveyancers Amendment Bill

Government Bill

Explanatory note

General policy statement

Overview

This Bill implements government policy on Queen's Counsel (currently titled Senior Counsel). It also makes minor amendments to provisions in the Lawyers and Conveyancers Act 2006 (the **Act**) on several other matters.

Queen's Counsel

The Act changed the historical office or rank of Queen's Counsel by renaming it Senior Counsel. The Act also extended eligibility for appointment to the rank to all lawyers specialising in advocacy regardless of the form of their practice.

Part 1 of the Bill replaces the Act's provisions relating to Senior Counsel. The new provisions revert to the title Queen's Counsel. They also restrict standard eligibility for appointment as Queen's Counsel to those barristers whose form of practice protects the independence that is a traditional and key feature of the rank. The rank will continue to be a mark of excellence in advocacy.

The purpose of the change to the rank's title is to ensure that it reflects better the rank's public purpose and status.

The standard eligibility category and practice restrictions protect the independence of Queen's Counsel, enhancing their ability to accept instructions and to provide frank, independent, and objective legal advice.

The amendments preserve the Governor-General's power under the Royal prerogative to appoint other lawyers as Queen's Counsel from time to time in recognition of their contributions to the law.

Savings and transitional provisions preserve and make clear the position of Senior Counsel appointed after, and also the position of Queen's Counsel appointed before, the Act came into force on 1 August 2008.

Other matters

Part 2 of the Bill amends the Act to—

- enable (but not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a trust in which—
 - each beneficiary is a relative of 1 or more of the trustees; and
 - each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services:
- enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm:
- require the power of attorney that a lawyer or conveyancing practitioner in sole practice must give to authorise the donee of that power to conduct that practice as an agent to be given for any periods during which the lawyer or conveyancer is an undischarged bankrupt:
- ensure applications for a review by the Legal Complaints Review Officer of a specified decision or action by (or on behalf of, or with the authority of) a Standards Committee must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to

the applicant's attention (which is presumed to have occurred on the fifth working day after the decision or action).

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 relates to commencement. *Part 1* comes into force on **1 July 2010**. The rest of the Bill comes into force on the day after Royal assent.

Clause 3 specifies the principal Act amended by the Bill: the Lawyers and Conveyancers Act 2006. A reference in this analysis to a provision is, unless the context otherwise requires, a reference to a provision of that Act.

Part 1

Amendments relating to Queen's Counsel

Clause 4 states the purpose of *Part 1*, which amends the principal Act to—

- end the renaming as Senior Counsel of the office or rank that before 1 August 2008 was, and after **30 June 2010** is again to be, known in New Zealand as Queen's Counsel; and
- restrict standard eligibility for appointment, under the Royal prerogative, to that office or rank to a specified category of lawyers practising independently as barristers sole; and
- require people who hold that rank, and who when appointed to it were lawyers in that specified category, to practise in ways that maintain its independence.

Clause 5 amends the heading above section 117 by omitting a reference to Senior Counsel. This amendment is consequential on the amendment made by *clause 6*.

Clause 6 repeals sections 118 and 119 and substitutes *new sections 118 to 119C*.

New section 118 ends the renaming as Senior Counsel of the office or rank that before 1 August 2008 was, and after **30 June 2010** is again to be, known in New Zealand as Queen's Counsel.

New section 118A(1) restricts standard eligibility for appointment as a Queen's Counsel to a person who holds a current practising certificate

authorising him or her to practise as a barrister and not as a barrister and solicitor, and who—

- practises alone (that is, not in partnership with any other lawyer); and
- is not actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal services; and
- (whether or not he or she is a statutory officer) is not an employee.

New sections 118A and 119 do not limit or affect appointments, under the Royal prerogative (as preserved by *new section 119C*), to the office of Queen's Counsel of people outside that standard category: *new section 118A(2)*.

New section 118B(1) requires a person who holds the rank of Queen's Counsel, and who when appointed to it was a lawyer in the standard eligibility category in *new section 118A(1)*, to practise in ways that maintain its independence. A person who is subject to, and who contravenes, these practice restrictions is treated as having surrendered the rank: *new section 118B(4)*.

New section 118C contains savings and transitional provisions preserving and making clear the position of a person who at the close of 31 July 2008 held, and at the close of **30 June 2010** continued to hold, the rank of Queen's Counsel.

New section 118D contains savings and transitional provisions preserving and making clear the position of a person who after 31 July 2008 was appointed to, and at the close of **30 June 2010** continued to hold, the rank of Senior Counsel.

New section 119 re-enacts the powers in section 119(1) and (2) to make regulations relating to Queen's Counsel.

New section 119A(1) re-enacts (and extends to suspensions from practice as a solicitor) section 119(3) on a person ceasing to hold the rank of Queen's Counsel if he or she is suspended from practice as a barrister or struck off the roll. *New section 119A(2)* preserves unaffected (as did sections 118(6) and 119(5)) the Crown's power to revoke, under the Royal prerogative, the appointment of any person who was appointed as a Queen's Counsel for New Zealand.

New section 119B provides for the style of the rank if the Sovereign for the time being is a King.

New section 119C preserves unaffected (as did section 119(5)) the power to appoint, under the Royal prerogative, people to the office of Queen's Counsel.

Part 2

Amendments relating to other matters

Clause 7 states the purpose of *Part 2*, which amends the principal Act to—

- enable (but not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a trust in which—
 - each beneficiary is a relative of 1 or more of the trustees; and
 - each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services:
- enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm:
- require the power of attorney that a lawyer or conveyancing practitioner in sole practice must give to authorise the donee of that power to conduct that practice as an agent to be given for any periods during which the lawyer or conveyancer is an undischarged bankrupt:
- ensure applications for a review by the Legal Complaints Review Officer of a specified decision or action by (or on behalf of, or with the authority of) a Standards Committee must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the applicant's attention (which is presumed to have occurred on the fifth working day after the decision or action).

*Incorporated conveyancing firms and
incorporated law firms*

Clause 8(1) and (2) amend the definitions in section 6 of incorporated conveyancing firm and incorporated law firm. The amendments enable (but do not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a qualifying trust.

Clause 8(3) inserts in section 6 a definition of a qualifying trust, which means a trust in which—

- each beneficiary is a relative of 1 or more of the trustees; and
- each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services.

Clause 8(4) amends the definition in section 6 of the term relative. It is used in the definitions (amended by *clause 8(1) and (2)*) of incorporated conveyancing firm and incorporated law firm. It is also used in section 16, which relates to people being qualified to be shareholders of incorporated firms. The main effect of the amendment is to enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm.

*Appointment of agent to conduct sole practice
of lawyer or conveyancing practitioner*

Clause 9(1) amends Schedule 1, which (together with section 44) requires a lawyer or conveyancing practitioner in sole practice to give a power of attorney authorising the donee of that power, for specified periods (for example, periods during which the lawyer or conveyancing practitioner is absent from his or her practice), to conduct that practice as an agent. The amendment inserts a *new clause 7(ba)*, which requires that power of attorney to be given for periods during which the lawyer or conveyancer is an undischarged bankrupt.

Clause 9(2) makes it clear that *new clause 7(ba)*—

- applies to a power of attorney required by Schedule 1 to be given before the commencement of *clause 9* of the Bill; and

- requires a power of that kind to be amended or replaced within 3 months after the date on which *clause 9* of the Bill comes into force so that, as so amended or replaced, it is given for periods that include the periods specified in *new clause 7(ba)*.

Legal Complaints Review Officer

Clause 10(1) repeals and replaces section 198(b). The amendment relates to applications for a review by the Legal Complaints Review Officer of a specified decision or action by (or on behalf of, or with the authority of) a Standards Committee.

New section 198(b) ensures that those applications must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the attention of the applicant for review.

New section 198(b) also ensures that, in the absence of proof to the contrary, a copy or notice of that kind is presumed to have been brought to the attention of the applicant for review on the fifth working day after the decision or action.

By contrast, under section 198(b), the 30-working-day period for lodging those applications starts when the decision or action is made or taken. The period for lodging those applications thus starts to run before the relevant decisions or actions are brought to the attention of possible applicants for review.

Clause 10(2) ensures that *new section 198(b)* applies only to applications for review—

- made, and not withdrawn or finally determined, before the commencement of *clause 10*; or
- made after that commencement.

Regulatory impact statement

A regulatory impact statement (RIS) was prepared for the proposal relating to Queen’s Counsel. The RIS, considering the different options for reform, is available on the Crown Law Office website:

<http://www.crownlaw.govt.nz/uploads/qcs.pdf>

It is also available on The Treasury’s website:

<http://www.treasury.govt.nz/publications/informationreleases/ris>

Executive summary (Queen's counsel)

The RIS concluded that the proposed changes best met the objectives of the proposed reform. Those objectives were to recognise—

- the reciprocal relationship between Queen's Counsel and the Crown; and
 - the need to maintain the independence and objectivity of the rank.
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Hon Nathan Guy

Lawyers and Conveyancers Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Lawyers and Conveyancers Amendment Act **2010**.

2 Commencement

- (1) **Part 1** comes into force on **1 July 2010**. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Lawyers and Conveyancers Act 2006.

Part 1

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Amendments relating to Queen's Counsel

4 Purpose of this Part

The purpose of this Part is to amend the principal Act to—

- (a) end the renaming as Senior Counsel of the office or rank that before 1 August 2008 was, and after **30 June 2010** is again to be, known in New Zealand as Queen's Counsel; and 15
- (b) restrict standard eligibility for appointment, under the Royal prerogative, to that office or rank to a specified category of lawyers practising independently as barristers sole; and 20

- (c) require people who hold that rank, and who when appointed to it were lawyers in that specified category, to practise in ways that maintain its independence.

5 Heading above section 117 amended

The heading above section 117 is amended by omitting “, *Senior Counsel*,”. 5

6 New sections 118 to 119C substituted

Sections 118 and 119 are repealed and the following sections substituted:

“118 Office or rank of Queen’s Counsel 10

The office or rank that before 1 August 2008 was known in New Zealand as Queen’s Counsel, and that from the close of 31 July 2008 to the close of **30 June 2010** was renamed as Senior Counsel, is on and after **1 July 2010** again to be known in New Zealand as Queen’s Counsel. 15

“118A Eligibility for appointment

“(1) A person who holds a current practising certificate authorising him or her to practise as a barrister and not as a barrister and solicitor is eligible for appointment, under the Royal prerogative, as Queen’s Counsel if he or she— 20

“(a) practises alone (that is, not in partnership with any other lawyer); and

“(b) is not actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal services; and 25

“(c) (whether or not he or she is a statutory officer) is not an employee.

“(2) A person practising as a barrister and not as a barrister and solicitor is not actively involved in the provision by an incorporated law firm of legal services for the purposes of **subsection (1)(b)** by reason only of the fact that he or she provides legal services on the instructions of a barrister and solicitor actively involved in the provision by that firm of legal services. 30

“(3) Neither this section nor **section 119** limits or affects appointments, under the Royal prerogative (as preserved by 35

section 119C), to the office of Queen’s Counsel of people outside the category in **subsection (1)**.

- “(4) This section does not limit or affect any qualifications and experience guidelines of the kind specified in **section 119(2)(a)**.

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“118B Restrictions on practice of specified category of lawyers who hold rank

- “(1) A person who holds the rank of Queen’s Counsel, and who when appointed to that rank was in the category in **section 118A(1)**,—

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“(a) must not practise in partnership with any other lawyer; and

“(b) must not be actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal services; and

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“(c) must not be an employee; but

“(d) is not precluded, by reason only of the fact that he or she holds that rank, from being a statutory officer.

- “(2) A person practising as a barrister and not as a barrister and solicitor is not actively involved in the provision by an incorporated law firm of legal services for the purposes of **subsection (1)(b)** by reason only of the fact that he or she provides legal services on the instructions of a barrister and solicitor actively involved in the provision by that firm of legal services.

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- “(3) **Subsection (1)** is subject to **sections 118C(5) and 118D(4)**, but overrides anything in other provisions of this Act or in (or in any guidelines issued under) any regulations made under **section 119(1)**.

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- “(4) A person who is subject to, and who contravenes, **subsection (1)** must be treated as having surrendered at the time of the contravention the rank of Queen’s Counsel.

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“118C Queen’s Counsel appointed before 1 August 2008

- “(1) This section applies to a person who at the close of 31 July 2008 held, and at the close of **30 June 2010** continued to hold, the rank of Queen’s Counsel for New Zealand.

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- “(2) If, after 31 July 2008 and under section 118(5) (as repealed by **section 6** of the Lawyers and Conveyancers Amendment

Act **2010**), the person used, in relation to himself or herself, the words Senior Counsel and the abbreviation SC, then after **30 June 2010** he or she—

- “(a) may continue to use, in relation to himself or herself, those words and that abbreviation; or 5
- “(b) may use instead, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.
- “(3) The precedence to which the person is entitled is not affected by **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**). 10
- “(4) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after **30 June 2010**:
- “(a) **sections 118B, 119A, and 119B** (as so substituted):
- “(b) any regulations made under **section 119(1)(c) and (e) to (g)** (as so substituted). 15
- “(5) Despite **subsection (4)(a), section 118B** (as so substituted) does not apply, but **section 118D(4)** (as so substituted) does apply, to the person if after **31 July 2008** and before or on **1 April 2010** and under section 118(2)(b) (as repealed by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**) he or she— 20
- “(a) practised in partnership with any other lawyer; or
- “(b) was actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal services; or 25
- “(c) (whether or not he or she was a statutory officer) was an employee.
- “(6) **Subsections (3), (4), and (5)** apply to the person whether or not after **30 June 2010** and under **subsection (2)** he or she uses, in relation to himself or herself, the words Senior Counsel and the abbreviation SC. 30

“**118D Senior Counsel appointed after 31 July 2008 and before 1 July 2010**

- “(1) This section applies to a person who after 31 July 2008 was appointed to, and at the close of **30 June 2010** continued to hold, the rank of Senior Counsel for New Zealand. 35
- “(2) After **30 June 2010**, the person—

- “(a) may continue to use, in relation to himself or herself, the words Senior Counsel and the abbreviation SC; or
“(b) may instead use, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC.
- “(3) The precedence to which the person is entitled is not affected by **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**). 5
- “(4) After **30 June 2010**, the person is not precluded, by reason only of the fact that he or she holds that rank,—
- “(a) from practising either alone or in partnership with any other lawyer; or 10
“(b) from being actively involved in the provision by an incorporated law firm (other than one in which he or she is the only voting shareholder) of legal services; or
“(c) from being an employee or statutory officer. 15
- “(5) The following apply to the person in the same way as they apply to a Queen’s Counsel appointed to that rank after **30 June 2010**:
- “(a) **sections 119A and 119B** (as so substituted):
“(b) any regulations made under **section 119(1)(c) and (e) to (g)** (as so substituted). 20
- “(6) **Subsections (3), (4), and (5)** apply to the person whether or not after **30 June 2010** and under **subsection (2)** he or she uses, in relation to himself or herself, the words Queen’s Counsel and the abbreviation QC. 25
- “119 Regulations relating to Queen’s Counsel**
- “(1) The Governor-General may, by Order in Council, make regulations prescribing—
- “(a) the process by which candidates may be recommended to the Governor-General for appointment, by letters patent, under the Royal prerogative as Queen’s Counsel: 30
“(b) the fees to be paid by candidates for appointment as Queen’s Counsel:
“(c) the privileges and duties of Queen’s Counsel: 35
“(d) the conditions on or subject to which candidates may be appointed as Queen’s Counsel:

- “(e) the conditions on or subject to which Queen’s Counsel may practise their profession:
- “(f) the precedence that Queen’s Counsel are to have in the courts of New Zealand:
- “(g) such other matters as may be necessary in relation to Queen’s Counsel. 5
- “(2) Regulations made under **subsection (1)** may authorise the Chief Justice and the Attorney-General to issue guidelines in relation to both—
- “(a) the qualifications and experience that should be possessed by candidates for appointment as Queen’s Counsel; and 10
- “(b) the process by which such candidates may be recommended for appointment.
- “119A Other ways of ceasing to hold rank 15**
- “(1) A person who holds the rank of Queen’s Counsel ceases to hold that rank if—
- “(a) he or she is suspended from practice as a barrister or as a solicitor or as both (even if the suspension is only until a charge against the person has been heard and disposed of by the Disciplinary Tribunal); or 20
- “(b) his or her name is struck off the roll.
- “(2) Nothing in **sections 118 to 119C** (as substituted by **section 6** of the Lawyers and Conveyancers Amendment Act **2010**) abrogates the power of the Crown to revoke, under the Royal prerogative, the appointment of any person who was appointed as a Queen’s Counsel for New Zealand. 25
- “119B Style of rank if Sovereign for time being is King**
- “(1) If the Sovereign for the time being is a King,—
- “(a) every reference to Queen’s Counsel in a provision to which this paragraph applies is, unless the context otherwise requires, to be read as a reference to King’s Counsel; and 30
- “(b) the words and abbreviation that a lawyer who holds the rank of Queen’s Counsel are to use, if he or she wishes, in relation to himself or herself, are King’s Counsel and KC. 35

- “(2) **Subsection (1)(a)** applies to—
- “(a) provisions in this Act (other than in **subsection (1)** or in **section 118C(1)**); and
 - “(b) provisions in (or in any guidelines issued under) any regulations made under **section 119(1)**. 5

“**119C Royal prerogative power to appoint unaffected Sections 118A and 119** do not derogate from the power to appoint, under the Royal prerogative, people to the office of Queen’s Counsel.”

Part 2 10

Amendments relating to other matters

7 Purpose of this Part

The purpose of this Part is to amend the principal Act to—

- (a) enable (but not require) a conveyancing practitioner to hold non-voting shares of an incorporated conveyancing firm, and a lawyer to hold non-voting shares of an incorporated law firm, as a trustee of a trust in which— 15
 - (i) each beneficiary is a relative of 1 or more of the trustees; and
 - (ii) each trustee is (for an incorporated conveyancing firm) a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services: 20
- (b) enable grandchildren of a conveyancing practitioner or, as the case may be, a lawyer to be non-voting shareholders of an incorporated conveyancing firm or, as the case may be, an incorporated law firm: 25
- (c) require the power of attorney that a lawyer or conveyancing practitioner in sole practice must give to authorise the donee of that power to conduct that practice as an agent to be given for any periods during which the lawyer or conveyancer is an undischarged bankrupt: 30
- (d) ensure applications for a review by the Legal Complaints Review Officer of a specified decision or action 35

by (or on behalf of, or with the authority of) a Standards Committee must be lodged within a 30-working-day period commencing on the day after a copy or notice of the decision or action is brought to the applicant’s attention (which is presumed to have occurred on the fifth 5 working day after the decision or action).

Incorporated conveyancing firms and incorporated law firms

8 Interpretation

- (1) Paragraph (d)(i) of the definition of **incorporated conveyancing firm** in section 6 is amended by inserting “(any one or each of whom may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)” after “paragraph (b)”. 10
- (2) Paragraph (d)(i) of the definition of **incorporated law firm** in section 6 is amended by inserting “(any one or each of whom 15 may, but none of whom is required to, hold those shares as a trustee of a qualifying trust)” after “paragraph (b)”. 15
- (3) Section 6 is amended by inserting the following definition in its appropriate alphabetical order:
 - “**qualifying trust** means, for the purposes of the definitions in 20 this section of incorporated conveyancing firm and incorporated law firm, a trust in which—
 - “(a) each beneficiary is a relative of 1 or more of the trustees; and
 - “(b) each trustee is (for an incorporated conveyancing firm) 25 a conveyancing practitioner, or (for an incorporated law firm) a lawyer, who is actively involved in the provision by the body corporate of regulated services”.
- (4) Paragraph (e) of the definition of **relative** in section 6 is amended by inserting “or grandchild” after “child”. 30

Appointment of agent to conduct sole practice of lawyer or conveyancing practitioner

9 Schedule 1 amended

- (1) Clause 7 of Schedule 1 (which states periods for which the power of attorney required by clause 2(1) or 4(1) of that sched- 35

ule must be given) is amended by inserting the following paragraph after paragraph (b):

“(ba) any current or future period or periods during which the donor is an undischarged bankrupt; and”.

(2) **Clause 7(ba)** of Schedule 1 of the principal Act (as inserted by **subsection (1)**)— 5

(a) applies to a power of attorney that was required by clause 2(1) or 4(1) of that schedule to be given before the commencement of this section; and

(b) requires a power of that kind to be amended or replaced within 3 months after the date on which this section comes into force so that, as so amended or replaced, it is given for periods that include the period or periods specified in **clause 7(ba)** of Schedule 1 of the principal Act (as so inserted). 10 15

Legal Complaints Review Officer

10 Applications for review

(1) Section 198 is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) be lodged with the Legal Complaints Review Officer within 30 working days after a copy or notice of the determination, requirement, or order made, or the direction given, or the performance or exercise of the function or power, by the Standards Committee (or by any person on its behalf or with its authority) is served on, given to, or otherwise brought to the attention of, the applicant for review (which, in the absence of proof to the contrary, is presumed to have occurred on the fifth working day after it is made, given, or performed or exercised); and”.

- (2) **Section 198(b)** of the principal Act (as substituted by **subsection (1)**) applies only to applications for review under section 193 of the principal Act—
- (a) made, and not withdrawn or finally determined, before the commencement of this section; or
 - (b) made after that commencement.

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