

**CONCERNING**

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the Auckland Standards Committee 3 of the New Zealand Law Society

**BETWEEN**

**MR PENZANCE**

of Auckland

Applicant

**AND**

**MS RUNCORN**

of Auckland

Respondent

**The names and identifying details of the parties in this decision have been changed.**

**DECISION ON ORDERS**

[1] The firm of XX and Co acted on Mr Penzance's behalf in respect of paternity matters between July and August 2008. In January 2009 Ms Runcorn of that firm was acting against him in respect of certain parenting issues before the Court. The Auckland Standards Committee 3 considered that complaint and decided that no further action would be taken on it. Mr Penzance sought a review of that decision. After conducting the review I issued a decision on 16 December 2009 in which I found that:

- [a] XX and Co held information that was confidential to Mr Penzance;
- [b] disclosure of the confidential information would be likely to affect the interests of the former client adversely;
- [c] There was a more than negligible risk of disclosure of the confidential information within the firm.
- [d] Ms Runcorn was in breach of her fiduciary obligation in continuing to act against Mr Penzance

[2] This amounted to a breach of r 8.7.1 of the Rules of Conduct and Client Care. I sought the views of Mr Penzance as to whether, given the findings made in that decision (and any subsequent conduct of Mr Runcorn and XX and Co) he desired further action to be taken in the making of other orders. I also sought submissions from Ms Runcorn as to whether a finding pursuant to s12(c) of the Lawyers and Conveyancers Act 2006 should be made against her and if so what orders are appropriate (including costs orders). It struck me that it was possible that a determination that no further action was appropriate or necessary could be made if either Mr Penzance accepted as satisfactory the findings in the decision and / or the submissions of Ms Runcorn indicated that she accepted the findings and no further regulatory action was necessary.

[3] Mr Penzance, by letter of 19 December indicated that he wished the matter to be taken further and sought that orders be made. Ms Runcorn provided submissions on 8 February 2010 (after an extension of time to 4 February 2010). On the same day Mr XX (Ms Runcorn's employer) provided submissions. Somewhat unhelpfully both of those submissions sought mainly to revisit the findings made in the earlier decision.

[4] Mr XX referred to the earlier decision as a "preliminary" decision. That decision set out my findings in respect of the facts, the law, and the professional obligations of Ms Runcorn. It was my view that in all of the circumstances an opportunity should be given to Ms Runcorn to provide arguments as to whether or not a finding of unsatisfactory conduct should be made. Other than revisiting the matters of fact which were (or should have been) raised at the earlier hearing of this matter (and have been determined), the submissions do not address that question.

[5] While they were not sought it appears unobjectionable to take into account the submissions of Mr XX. Like those of Ms Runcorn they are largely directed to disagreeing with my earlier decision.

[6] In so far as the submissions address matters relevant to whether a finding of unsatisfactory conduct is made the following can be observed:

[a] Ms Runcorn discussed the issue of conflict / confidence with Mr Penzance at the outset;

[b] She sought the advice of her principal who stated that there was no bar to acting;

On this basis she considers that her actions do not warrant a finding being made against her (and do not amount to a professional breach).

[7] I also take into account that Ms Runcorn is a relatively new practitioner.

[8] It is not clear whether or not Ms Runcorn (or the firm) are continuing to act against Mr Penzance. Mr XX in his submission has stated “there is no reason why we should not continue to act for the client” this is suggestive that, notwithstanding my earlier decisions, the firm continues to act against Mr Penzance. If this is the case that is a matter of concern, however in the absence of a clearer indication that this is so I do not take it into account.

[9] Mr XX in his submission argued that before any finding could be made against Ms Runcorn she ought be given a further opportunity to be heard and to adduce evidence. I heard from Ms Runcorn and Mr XX on 1 December. Mr Penzance did not attend that hearing so a further hearing was scheduled for 10 December 2009. Notices of that hearing were provided to Ms Runcorn and Mr Penzance. That notice indicated that Ms Runcorn was not obliged to attend the hearing but was entitled to do so. Mr Penzance attended that hearing and I heard from him. Neither Ms Runcorn nor Mr XX attended that hearing. Ms Runcorn was given an ample opportunity to provide any information, submissions, or evidence in respect of her conduct matters at those hearings. In respect of the question presently before me – what orders should be made – Ms Runcorn has had since 16 December to make submissions. It is not tenable to argue that Ms Runcorn has not been given a full opportunity to be heard.

[10] I take into account the fact that Ms Runcorn does not accept the findings of my earlier decision. She is not apologetic and expresses no remorse or regret. She does not appear to accept that as a regulator I have made a finding that she is in breach of a professional rule. This weighs in favour of making an order against her to mark out her conduct which was the subject of the complaint as unacceptable.

[11] I have found that Ms Runcorn’s conduct is a breach of r 8.7.1 of the Rules of Conduct and Client Care for Lawyers. By s 12(c) of the Lawyers and Conveyancers Act 2006 unsatisfactory conduct will exists where there is:

conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm, or of any other Act relating to the provision of regulated services (not being a contravention that amounts to misconduct under section 7)

[12] Accordingly I replace the determination of the Standards Committee with a determination that there has been unsatisfactory conduct by Ms Runcorn in this matter.

[13] Ms Runcorn was invited to make submissions on what orders would be appropriate if such a finding were made against her. The submissions she has provided do not directly address that matter. I observe that in this matter there is no

suggestion that financial loss has been suffered by any party and therefore any order of compensation would be inappropriate.

[14] I have considered whether it would be appropriate to require Ms Runcorn to undergo further practical training and concluded that it would not. In particular Ms Runcorn must have recently completed her degree and practical legal training which dealt with the ethical obligations of lawyers. It would seem futile to duplicate this.

[15] I consider that in all of the circumstances it is appropriate to impose a fine in the sum of \$1000.

[16] Ms Runcorn was also invited to make submissions on whether a costs order should be made in this matter. Her submissions did not address this. In light of this it appears appropriate to adopt the costs as set out in the Costs Order Guidelines of this office to which Ms Runcorn was referred. Accordingly, this case being a matter that was relatively straightforward and heard in person, a costs order of \$1200.00 is imposed.

### **Decision**

[17] The application for review is upheld pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act. The decision of the Auckland Standards Committee is reversed.

[18] Pursuant to s 152 of the Lawyers and Conveyancers Act 2006 it is determined that there has been unsatisfactory conduct by Ms Runcorn in this matter.

### **Orders**

[19] The following orders are made:

- Ms Runcorn is to pay a fine of \$1000 pursuant to s 156(1)(i) of the Lawyers and Conveyancers Act 2006. That fine is to be paid to the New Zealand Law Society within 30 days of the date of this decision.
- Ms Runcorn is to pay \$1200.00 in respect of the costs incurred in conducting this review pursuant to s 210 of the Lawyers and Conveyancers Act 2006. Those costs are to be paid to the New Zealand Law Society within 30 days of the date of this decision.

**DATED** this 10<sup>th</sup> day of February 2010

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Duncan Webb

## **Legal Complaints Review Officer**

In accordance with s.213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr Penzance as Applicant  
Ms Runcorn as Respondent  
Mr XX / XX and Co as a related party  
The Auckland Standards Committee 3  
The New Zealand Law Society