LCRO 48/2010

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
BETWEEN	**Mrs AM** of Auckland Applicant
AND	**Ms ZM** of Auckland Respondent

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

DECISION

[1] The New Zealand Law Society received and investigated a complaint by Mrs AM (the Applicant) against Ms ZM (the Practitioner) and decided that no further action would be taken in respect thereof. This was a decision made pursuant to Section 138(2) of the Lawyers and Conveyancers Act 2006, which confers upon a Standards Committee a discretionary power to take no further action on a complaint if, in the opinion of the Standards Committee, it is unnecessary or inappropriate to do so.

[2] The Practitioner acted for the Applicant's husband in respect of matrimonial and property relationship matters. When the Applicant applied for interim maintenance, the Practitioner appeared on her client's behalf to oppose the application. The application was declined by the Court.

Complaint

[3] The complaint was that the Practitioner had deceived or misled the Court in her submissions of 7 July [200Z], filed in opposition to the Applicant's application for interim maintenance, in particular that the Practitioner had submitted that her client was meeting all relationship debt. The Applicant said this information was not correct, and that the Practitioner knew it was not correct. The Applicant contends that the Practitioner breached Rule 13.1 of the Lawyers: Conduct and Client Care Rules 2008 which states:

> A lawyer has an absolute duty of honesty to the court and must not mislead or deceive the court.

[4] The Standards Committee had summarised the Practitioner's response to the complaint, noting that the Applicant was represented by her own counsel throughout, and that there had been a right of reply in the Courtroom to the submissions. The Committee recorded that the Practitioner's response had been forwarded to the Applicant for comment. The Committee had considered the Applicant's response to the Practitioner's explanation.

[5] In declining to uphold the complaint, the Committee expressed the view that the Applicant had the right to take legal advice on matters currently before the Court, including the appropriate legal steps available to challenge the information before the Court. In the Committee's view this did not prevent the Practitioner from acting in the best interests of her client.

Review application

[6] The Applicant sought a review of the Committee's decision because in her view the Committee had failed to examine the Practitioner's actions and to consider whether the submissions were misleading. She considered the complaint was not answered by reference to actions she or her counsel took or could have taken, but that the Practitioner's conduct should be assessed independently of such matters and in its own terms. The evidence provided to support the complaint included copies of correspondence exchanged between the Practitioner and the Applicant's solicitor, and the Practitioner's submissions and her client's supporting affidavit.

[7] A review hearing was held on 1 December 2010, attended by both parties. The Practitioner was accompanied by Counsel. The Applicant was accompanied by a support person. The Applicant reiterated the substance of her complaints, and

presented a document setting out the basis of her complaints and the compensation that she sought. Submissions were also made by the Practitioner and her Counsel.

Background

[8] The Applicant and her husband separated in [200X]. The relationship assets (not yet divided) include the family home and adjoining land, commercial properties (one is rented by her husband's business), and a [holiday bach]. Other assets are not material to this complaint and need not be mentioned. The commercial properties collectively have a reasonably small mortgage, but the bach has a large outstanding mortgage of some [$] which is an interest-only loan. The family home is mortgage-free.

[9] During the marriage the debt on the three commercial properties was met by the rental income which was paid into a joint [bank] account from which was paid the mortgage interest, rates, GST, and other outgoings. The other significant debt (for the purposes of the complaint) related to a mortgage on the parties bach, the interest being paid from the husband's business income directed through the S account, he also meeting outgoings on the family home. This pre-separation arrangement continued for a time after separation during which time the Applicant occupied the family home.

[10] During the latter part of [200Y] (or perhaps even earlier) disagreements between the Applicant and her husband impacted on these financial arrangements. Some of the financial activity is recorded in the correspondence exchanged between the Practitioner and the Applicant's lawyer. The pivotal letters are dated 26 November [200Y], 18 March [200Z], 9 April [200Z], and 7 May [200Z] and record the following activity.

[11] The 26 November [200Y] letter sent by the Practitioner to the Applicant's lawyer enclosed the rates demand (Council and ARC), and called on the Applicant to pay these as she occupied the house. The letter confirmed that the husband would meet the then outstanding rates on the bach.

[12] On 18 March [200Z] a further letter was sent by the Practitioner to the Applicant's lawyer reiterating the Applicant's responsibility for paying the rates, and adding to that the responsibility for payment of house and contents insurance. There is no evidence to show that the husband paid rates on the matrimonial home from the second half of [200Y]. A further letter sent by the Practitioner to the Applicant's lawyer on 27 March enclosed a copy of the rates demand.

[13] The 9 April [200Z] letter sent by the Practitioner to the Applicant's lawyer concerned rental money that had been transferred (by the husband) from the joint [bank] rent account to the S account to pay the bach mortgage. The Practitioner had written, *"My client arranged for a rental payment to be transferred directly into the (bach) account to ensure the status quo until all matters had been dealt with by the Court."* The remainder of the letter noted that the husband had continued to pay other outgoings (rates, power) on the bach notwithstanding that the Applicant also used it.

[14] A 7 May [200Z] letter sent by the Applicant's lawyer to the Practitioner included specific details about the income and outgoings from the rental properties, which included information about the mortgage payments for the bach being met from the rental income of the commercial properties, and not from the personal income of the Practitioner's client.

[15] In addition to the above letters exchanged between the lawyers, there was also a letter sent by the husband to the Applicant's lawyer (and cc'd to the Practitioner) which is dated 13 May [200Z] and in it the husband confirmed that part of the income from rental property had been diverted to paying the bach mortgage.

[16] The Applicant filed an application for interim maintenance in July [200Z]. Her application was opposed by the husband, on whose behalf the Practitioner prepared a notice of opposition. The Practitioner filed her submissions in the Court along with the husband's affidavit. The particular paragraphs in the Practitioner's submissions (which became the basis of the Applicant's complaint to the New Zealand Law Society) appear under the sub-heading of "*Summary of the Respondent's Case*", and are as follows:

> "22. The respondent asserts that:
>
> [a]…
>
> [b]…
>
> [c] That the respondent has assumed responsibility for payment of, without contribution from the applicant, since separation until June [200Y], all of the relationship debts and mortgages which total [$]."

Under the heading "*Factors relevant to the Applicant's reasonable needs*" appear:

> "26. [e] The respondent has paid outgoings since separation without contribution from the applicant on the family home, bach and sections.
>
> …
>
> ....
>
> [j] The parties have been separated for more than two years now, and during that time the respondent has paid the relationship debt without contribution

> from the applicant. The applicant has not had to contribute towards the outgoings in respect of any of the relationship property including the family home. The respondent has only recently suggested that the applicant should make some contribution to the family home, and has requested that the applicant pay the rates on the property at … as well as the section. To date the respondent has met these payments himself but cannot continue to do so."

[17] The husband's affidavit filed with the Practitioner's submissions had stated, in paragraph 5, "*Not all the rental payments were changed to the* (bach) *account, just sufficient to ensure the continued payment of the mortgage".* ... "*It is required to meet relationship property mortgage commitments*".

The complaint

[18] The Applicant asserted that the above submissions of the Practitioner are untrue insofar as the respondent (her husband) had not solely borne either all relationship debt, or outgoings, without contribution from her, and that the Practitioner knew her submissions were untrue. She accused the Practitioner of deceiving or misleading the Court, in breach of her professional obligations as an officer of the Court.

Practitioner's response

[19] The Practitioner considered that the complaint was without foundation. Her response to the Standards Committee related to background information, and mainly focused on the fact that her submissions had been made available in advance to the Applicant's counsel, that the Applicant had been represented by her own lawyer who had the opportunity of addressing these matters in the Court.

[20] At the review that Practitioner enlarged on the reasons for disputing the allegations. This was largely in response to my observation that the evidence on the file appeared in part to be inconsistent with her submissions to the Court. The Practitioner explained that she was acting on instruction of her client, and referred to her submissions being prefaced with the words, "*The Respondent asserts that ......"*. She also referred to her client's affidavit of April [200Z], which she considered supported her submissions.

[21] The Practitioner also explained that the Applicant had frozen the account (from which the interest payments were made) which I took as relevant to the submissions that her client was paying all relationship debt from his own earnings. Her further submissions explained that this was an interim maintenance application and the parties were obliged to provide information to the court directly relevant to that matter which did not require information concerning income that was not 'received' by the parties,

such as rental incomes. The Practitioner noted that neither her client, nor the Applicant, had included in their financial information statements, reference to rents as income.

[22] The Practitioner reiterated her earlier submissions that the Applicant was legally represented and was at liberty to present such evidence to the Court as she considered appropriate to contest the Practitioner's submissions.

Considerations

[23] This review requires consideration of whether the Standards Committee's decision to take no further action properly dealt with the complaint made by the Applicant. As noted, the Committee approached the matter with a focus on the Applicant having a remedy within the Court system to address any erroneous information placed before the Court by counsel. That is, the Committee did not separately consider the question of whether the Practitioner had misled the Court.

[24] The Applicant held the view that the Practitioner's conduct should be considered as a separate matter and be examined in terms of the professional standards that apply to lawyers.

[25] I accept, as correct, the Applicant's position that the Practitioner's conduct should be examinable in a disciplinary context, and independently of any other avenue open to the Applicant to challenge the Practitioner's submissions. If that were not so, then any complaint that a practitioner had misled the court could be answered by reference to the opportunity to challenge submissions that arise in the course of the proceeding before the Court and thereby relieve a practitioner from being subjected to disciplinary examination in regard to the complaint. On that basis it is appropriate that the Practitioner's conduct be considered.

[26] The parties separated in June [200X]. The Practitioner's submissions to the Court are dated 7 July [200Z]. The submissions were stated to be 'assertions' by the husband that he had (a) from separation until June [200Y] assumed responsibility for payment of all relationship debt and mortgages which total [$], (b) paid without contribution by the Applicant outgoings on the family home, bach and sections, (c) during the period since separation has paid the relationship debt without contribution from the Applicant, and (d) that only recently was it suggested that the Applicant should contribute to the rates on the family home.

[27] In confining evaluation of the matter to the information before me I noted that the Practitioner's submissions were not supported by the husband's affidavit that accompanied his opposition to the application, and were to that extent inconsistent with the assertions made by the Practitioner on his behalf. The Practitioner had referred to the husband's affidavit of 8 April [200Z], but it is not clear how that is relevant to the July [200Z] application in respect of which the husband had sworn a subsequent affidavit which is dated 19 June [200Z], and records the Practitioner as his counsel. Nor were the Practitioner's submissions supported by the evidence of the correspondence referred to earlier, and in material respects were inconsistent with that correspondence.

[28] I have carefully considered the Practitioner's submissions to the Court. Paragraph 22 referred to payments made by the husband "*from separation until June [200Y]*". If it was intended to distinguish these from payments made after that time, this is disguised by the Practitioner's subsequent submission in paragraph 26 [j] which stated that *"during the period since separation* (the husband) *has paid the relationship debt without contribution from the Applicant*". The clear impression given by the Practitioner's submissions was that the husband was paying all of the relationship debt and no contribution was being made by the Applicant

[29] It was the Applicant's contention that her husband had never at any time paid *all* of the relationship property debt, a claim that appeared partly to be based on 'relationship debt' including the mortgage debt on the commercial properties as well as that on the bach. Taking into account the debt on the commercial properties that was serviced by the rental income (which was not disputed), it was never strictly correct to claim that *all* of the relationship debt was met from the husband's earnings. However, given that neither of the parties made specific reference to the debt on the commercial properties, I have looked further for evidence relevant to the application on which the Applicant's complaint rested.

[30] It seemed to me that, in relation to servicing of debt, the most significant gap between the Practitioner's submissions and the evidence related to the payment of the mortgage interest on the bach. Interest had previously been paid from the husband's income, but the Practitioner's April [200Z] correspondence records that the bach mortgage debt was now paid from the rental income, apparently arranged by the husband who confirmed this in his own letter. Therefore, the Practitioner's submissions to the Court that the husband was meeting all of the relationship debt was not correct on the basis of evidence in her possession.

[31] In relation to the payment of outgoings, the material gap between the Practitioner's submissions and the evidence related to outgoings (rates and insurance) on the family home and adjoining land. The Practitioner's November [200Y] letter sent to the Applicant's lawyer recorded the husband's demand that the Applicant should meet the rates on the residential property she occupied, and enclosed the then current rates demand. This was repeated in the Practitioner's second letter sent in March [200Z], to which was added the responsibility for payment of house and contents insurance. The Practitioner's submissions had also asserted that the Applicant had not paid any of the rates. While this may have been correct, in the context of the Practitioner's submissions this conveyed the impression that the husband was making these payments when, according to the Applicant (and not disputed by the Practitioner), he had paid none of the rates on the family home after 1 July [200Y]. Nor does it appear to be reasonable for the Practitioner to have submitted to the Court that "*only recently"* was it suggested that the Applicant meet these costs when the Practitioner herself had conveyed such demands on her client's behalf some eight months earlier in November [200Y].

[32] On the evidence of the correspondence and the husband's affidavit, the husband was paying neither all relationship debt nor all the outgoings on all relationship property, at the time that the Practitioner prepared her submissions. The evidence showed that the relationship debt and much of the relationship outgoings were being paid for by rental income which was jointly owned by the parties, and that the Applicant had been required to pay the rates on the family home she occupied. Given the Practitioner's direct involvement in the correspondence concerning financial arrangements it is difficult to find any reasonable explanation for her submissions to the Court (whether by way of the husband asserting or otherwise) that the husband was meeting all of these costs himself without contribution from the Applicant.

Issues of Professional Conduct

[33] The proper administration of justice requires Courts to be able to rely on what a lawyer says and does. To deliberately deceive the court is a major disciplinary matter. This is reflected in the obligation of 'absolute honesty' to the Court as set out in Rule 13 of the Lawyers: Rules of Conduct and Client Care. The Applicant contended that the Practitioner intentionally deceived the Court, and is in breach of Rule 13.1 of the Rules of Conduct and Client Care.

[34] The Practitioner denied any intention to mislead the Court, taking the view that the Applicant was legally represented and was at liberty to present such evidence to

the Court as she considered appropriate to contest the Practitioner's submissions, or correct anything that she considered to be erroneous.

[35] The extent and nature of the professional role of lawyers has been the subject of judicial commentary. *Kyle* v *Legal Practitioners' Complaints Committee* (1999) 21 WAR 56 involved disciplinary proceedings against an Australian practitioner charged with attempting to mislead the court. The adverse finding against the Practitioner was unsuccessfully appealed. The appellant sought to argue that the case against him was flawed in that the Complaints Committee (and the Tribunal) found that there was an attempt to deliberately mislead the Court, but had at the same time accepted that there was neither deceit nor dishonesty. The core of that submission was the proposition that an attempt deliberately to mislead involves an indispensible ingredient of an intent to deceive. The Supreme Court of Western Australia did not accept this argument on that basis, having noted that the lawyer's intention was that the incorrect information he had (deliberately) conveyed to the Court would indeed be corrected by a witness that would be called and that the true position would be revealed to the Court during the trial. The Court took the view that the Tribunal's conclusion concerning the lawyer's intention was qualified as relating only to the intention that the Court would receive the correct information.

[36] The Court agreed that the misleading may only have been temporary, but it was nevertheless a conscious and deliberate strategy on the lawyer's part to advance as true information that he knew was not true. The Court found that the Tribunal had accepted that the lawyer did not act with the object of ultimately deceiving the Court and in particular was not seeking by deceit or dishonesty to secure a decision from the Court on a false factual basis. It was in that context that the Tribunal concluded that the lawyer's action 'did not involve deceit or dishonesty', but the lawyer's course of action was nonetheless deliberate and intended.

[37] Addressing the appellant's argument that there could be no misleading of the court as the misleading conduct did not go to a material issue in the case, the Court concluded that a charge of "attempting to mislead the Court" was appropriate. While the Court considered the appellant's explanation that he did not intend that the Court be ultimately misled insofar as his incorrect information would be corrected by a witness, the Court was not persuaded that a subsequent correction by a witness could negate the wrongdoing. The Judge wrote,

> "While we accept that the practitioner anticipated that ultimately the correct position would have been made known to the court, that is not sufficient to exculpate him from having committed a failure of his duty to the Court ..."

[38] In *Re Gruzman* (1968)70 SR (N.S.W.) 316, the issue before the Court of Appeal involved a question of the professional conduct of a barrister who had obtained Court approval as to a certain costs application. The issue was whether the barrister had deliberately suppressed relevant information from the Court relevant to that order. The complaint against the lawyer was not upheld in that case but in the course of the decision the Court of Appeal made several 'general observations' about the duty of a barrister in litigation, which at page 323:

> "Frankness should be one of the main attributes of a barrister. It is his duty to not keep back from the court any information which ought to be before it, and he must in no way mislead the court by stating facts that are untrue, or mislead the judge as to the true facts, or knowingly permit a client to attempt to deceive the court. How far a barrister may go on behalf of his client is a question too difficult to be capable of abstract definition, but when concrete cases arise one can see for oneself whether what he has done is fair nor not."

[39] *Re Thom* (1918) 80 WN (NSW) 968 concerned a case involving half truths which were considered to have created an incorrect impression, when a barrister drafted an affidavit for his client in a way that had the deponent 'declining to admit' certain matters that the deponent and the lawyer knew to be the case. The Court considered the conduct of the lawyer in the preparation of the affidavit was "deserving of censure". The evidence that was 'not admitted' concerned information that was material to the matter before the Court. The Chief Justice stated, at 75:

> "... the Tribunal dealing with such a case was entitled to be put in a position of having the actual facts before it, and unfortunately the reasons given on the application to the Judge for the preparation of the affidavits in its present objectionable form indicated that there was a conscious withholding of information which a tribunal in such a case would be desirous of knowing in order to do justice to all parties."

Application of professional rules

[40] Rule 13.1 of the Rules of Conduct and Client Care impose an absolute duty of honesty to the Court and to not mislead or deceive the Court.

[41] I have concluded that in this case the Practitioner intentionally placed before the Court submissions that did not accurately reflect the state of affairs known to the

Practitioner at that time concerning debt servicing and that the submissions also created a misleading impression about the payment of outgoings. All of the information concerning relationship debt and outgoings was in the possession of the Practitioner at the time she prepared her submissions.

[42] However, I have also noted that the outcome of Court's decision on the Applicant's interim maintenance application did not ultimately rely on the husband's financial situation, the Court having concluded that the Applicant had sufficient means of her own such that she did not qualify for the order. In this light it could not be said that the Practitioner in fact mislead or deceived the Court. It was nevertheless material to the matter before the Court and may, in other circumstances, have been relevant to the decision.

[43] The Practitioner denied any intention to mislead or deceive the court, adding that any erroneous impression that the Judge gained from her submission could have been corrected by the Applicant or her lawyer. If it is accepted that the Practitioner relied on the Applicant and her counsel to correct any erroneous information, then *Kyle* demonstrates that this does not exonerate a lawyer's conduct. In that case the fact that the lawyer did not intend the Court to be deceived by the submissions (and indeed had relied on the true state of affairs coming to light by means of witness evidence) did not detract from a finding that the lawyer had intentionally placed before the Court information known to the lawyer to be incorrect. The finding that the lawyer had attempted to mislead the Court therefore stood. Case law also establishes that the duty of honesty extends to an impression/s that may be conveyed to the Court by means of submissions of a lawyer.

[44] I also considered whether there had been a breach of the absolute duty of honesty to the Court. Having concluded that the Practitioner intentionally placed before the Court information that was erroneous and known to be erroneous, there is a proper basis for a finding and that there has been breach of the duty of honesty to the Court in this case. In these circumstances there is a proper basis for an adverse finding against the Practitioner.

[45] By way of further observation, I was informed that an interim maintenance application is largely determined on the basis of counsels' submissions and the affidavit evidence of the parties. It is instructive to note that despite other evidence before the Court the Judge (decision of 7 July [200Z]) nevertheless made the observation that as from the time of separation the husband had been paying all relationship debt without contribution by the Applicant, that the Applicant had not been required to contribute to

the outgoings in respect of any of the relationship property including the family home, and that ‘only recently’ had it been suggested that the Applicant pay rates on the family home, which costs had been paid by the husband “to date”. These observations reflect the misleading submissions of the Practitioner. This also demonstrates the importance of the rule of absolute honesty to the Court.

[46] Having considered all the information, and all of the relevant circumstances, I conclude that the submissions filed in the Court by the Practitioner were misleading. However, I do not find that the Practitioner intended that the Court should be ultimately deceived, and furthermore, that the objectionable parts of the Practitioner’s submissions were not material to the Court’s decision.

[47] I am not required to link an adverse finding to any particular rule. It is sufficient to conclude that the Practitioner’s conduct meets the definition of “unsatisfactory conduct” within the threshold set by section 12 of the Lawyers and Conveyancers Act. Sections 12(a) and (b) of the Lawyers and Conveyancers Act define as ‘unsatisfactory’, conduct that falls short of the standard of diligence and competence that a member of the public is entitled to expect of a reasonably competent lawyer, or that would be regarded by lawyers of good standing as being unacceptable. Both of these sections are applicable in this case, as is the obligation of fidelity to the Court as set out in Rule 13.1. For all of the reasons above, I find the Practitioner’s conduct to have been unsatisfactory. The Standards Committee decision will be reversed.

Compensation

[48] The Applicant sought significant compensation, contending that ‘but for’ the Practitioner’s misleading submissions the Court would have granted the interim maintenance order. I have considered the decision of the Court which declined to grant the order sought by the Applicant.

[49] The reason that the application was declined was clearly based on the Judge’s conclusion that the Applicant did not qualify for the interim maintenance she had sought as she has sufficient means of her own. I am obliged to accept the basis of the decision as correct, regardless of whether or not the Applicant agrees with it. On the basis that the husband’s outgoings were not material to the outcome of the application it could not be said that the erroneous information contained in the Practitioner’s submissions deceived or misled the Court if that information was ultimately not relevant to the final decision. A compensation order may be made where there is evidence that the wrong doing of the Practitioner had led to a loss suffered by the complainant. In

this case the Applicant has not shown that she has suffered a financial loss as a result of the Practitioner's actions or omissions. No compensation order can be made.

[50] The Applicant also sought compensation for emotional distress. This is a category of compensation that has been awarded by this Tribunal in the past, albeit to a limited extent. I have carefully considered all of the information which clearly shows that the parties have been, and continue to be, involved in protracted and highly litigious Court proceedings. I do not doubt that the Applicant has endured, and continues to experience, significant stress, that is the nature of such proceedings, but she has suffered no loss by reason of the Practitioner's submissions, and I can see no proper basis for any compensation. The Applicant has her own counsel to advance her case and in the larger circumstances of the matter I am unable to find any proper basis for an award for compensation for emotional distress on this ground.

Penalties

[51] The Practitioner has been found guilty of unsatisfactory conduct and it is appropriate that punishment should follow. By s 211(1)(b) of the Lawyers and Conveyancers Act (the Act) I am able to make any orders that could have been made by a Standards Committee. A range of orders may be made pursuant to section 156 of the Act. It is important to mark out the conduct as unacceptable and deter other practitioners from failing to pay due regard to their professional obligations in this manner. I consider that the most appropriate way to fulfil the functions of a penalty in this context is by a fine.

[52] By s 156(1)(i) of the Act a fine of up to $15,000 may be imposed when unsatisfactory conduct is found. (This is a significant change from the position under the Law Practitioners Act 1982 where the District Disciplinary Tribunals could only impose a much more modest fine of up to $2000 (s 106(4)(a)). In allowing for a possible fine of $15,000 the legislature has indicated that breaches of professional standards are to be taken seriously and instances of unsatisfactory conduct should not pass unmarked. However, for a fine of that magnitude to be imposed it is clear that some serious wrongdoing must have occurred.

[53] The function of a penalty in a professional context was recognised in *Wislang v Medical Council of New Zealand* [2002] NZAR 573 as being:

a. to punish the practitioner;

b. as a deterrent to other practitioners; and

c. to reflect the public's and the profession's condemnation or opprobrium of the practitioner's conduct.

[54] In cases where unsatisfactory conduct is found as a result of a breach of applicable rules (whether the Rules of Conduct and Client Care, regulations or the Act) and a fine is appropriate, a fine of $1,000 would be a proper starting place in the absence of other factors. I take into account the facts elicited in the course of the review itself. I observe that the Practitioner's conduct could not described as inadvertent or attributable to error, but nor is it at the highest end of offending.

[55] Taking into account all of the above matters the Practitioner is ordered to pay a fine of $2,500 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.

Costs

[56] Where a finding has been made against a practitioner is it appropriate that a costs order in respect of the expense of conducting the review be made against them. In making this costs order I take into account the Costs Guidelines published by this office. Applying those guidelines, a costs order will be made against the Practitioner in the sum of $1,200.

Decision

Pursuant to Section 211(1)(a) of the Lawyers and Conveyancers Act, the Standards Committee decision is reversed.

Orders

The following orders are made

[a] The Practitioner is fined the sum of $2,500, such sum to be paid to the New Zealand Law Society within 30 days of this decision.

[c] The Practitioner is ordered to pay costs in the sum of $1,200, this sum to be paid to the New Zealand Law Society within 30 days of this decision.

DATED this 25th day of February 2011

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Hanneke Bouchier
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:

Mrs AM as the Applicant
Ms ZM as the Respondent
The Auckland Standards Committee 4
The New Zealand Law Society