

**DECISION** RSW7/D1/SWDT/2016

**BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

**IN THE MATTER** of a charge laid under the Social Workers  
Registration Act 2003

**BETWEEN** the Complaints Assessment Committee

**AND** **Raewyn Bhana** registered social worker of  
Auckland

**Hearing Held in Auckland on 5 December 2016**

**Present:** Catherine Garvey (Deputy Chairperson)

Phil Comber, Lareen Cooper, Sue Jarvis, Bernie  
Marra (Members)

Fleur Nicholas (Hearing Officer)

Harriet Goodhew and Alex Mills-Wallis (Counsel for  
the Complaints Assessment Committee)

Ms Raewyn Bhana

## **Introduction**

1. This matter proceeds by way of an Agreed Statement of Facts and an agreed bundle of documents (“the agreed bundle”) prepared and signed by counsel on behalf of the Complaints Assessment Committee (“CAC”), and Ms Raewyn Bhana personally.
2. Ms Bhana registered with the Social Workers Registration Board (“the Board”) in May 2010, and holds a Bachelor of Social Work. Pursuant to section 25 of the Social Workers Registration Act 2003 (“the Act”), as a registered social worker Ms Bhana is required to hold a current practising certificate if she is employed or engaged in social work.
3. Pursuant to section 72(3) the CAC laid a charge dated 4 July 2016, which reads as follows:

*“(a) Between 31 March 2015 and 1 May 2016 [Raewyn Bhana] was employed or engaged as a social worker without a current practising certificate;*

*(b) And this conduct amounts to conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker pursuant to s82(1)(b) of the Act.”*

4. Ms Bhana admitted the charge. The charge was heard in Auckland on 5 December 2016. An indication of the Tribunal’s findings as to liability and penalty was given to Ms Bhana at the conclusion of the hearing.

## **Application for private hearing**

5. Prior to the hearing of the charge, Ms Bhana made an application for a private hearing and for permanent orders for non-publication of her name and identifying particulars. The grounds of the application are set out below at paragraph 48 in the part of this decision dealing with suppression.
6. An interim order was made by the Deputy Chair on 13 October 2016 granting Ms Bhana suppression of her name until further order of the Tribunal. Consideration of the application for a private hearing was deferred to the date of the hearing to be considered by the full Tribunal.

7. The Act provides for hearings of the Tribunal to be held in public, with exceptions. Section 79(2) provides:

*“If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by the person or body prosecuting the charge, the social worker concerned, a complainant, or a witness, or of its own motion) make any 1 or more of the following orders:*

*(a) An order that the whole or any part of a hearing must be held in private...”*

8. At the commencement of the hearing Ms Bhana confirmed that she wished the hearing to be held in private. No additional information was provided. Having considered the material submitted prior to the hearing by Ms Bhana in support of her application, the Tribunal was not satisfied that it was desirable to hold the hearing in private and declined the application. The interim suppression order remained in place throughout the hearing. No members of the public were present at the hearing other than Ms Bhana’s support person.
9. Section 79(2)(d) also provides that the Tribunal may of its own volition if it is satisfied that it is desirable to do so, make orders for the non-publication of the name or identifying particulars of “any person.” The Tribunal received information from the applicant containing personal health information relating to a person other than Ms Bhana, namely her husband. We have taken this information into account, but consider, given the nature of the information and the evidence that at the relevant time he was unaware of the disciplinary charge, it is appropriate not to publish those details.

### **Agreed Statement of Facts**

10. As noted, the hearing proceeded by way of an Agreed Statement of Facts signed by Ms Bhana on 25 November 2016. This document was an amended version of one originally signed and filed with the Tribunal. The sole amendment was to correctly record the dates within the charge. It is perhaps for this reason that the Agreed Statement did not reflect the fact that Ms Bhana had obtained her competency recertification and an APC

by 23 November 2016. The CAC relied upon the Agreed Statement of Facts and the documents contained in the agreed bundle and did not provide written statements or call any witnesses. Ms Bhana attended the hearing and did not give evidence.

11. The Agreed Statement of Facts is now set out in full:

*1 The Complaints Assessment Committee has laid a charge in the Tribunal alleging that Ms Raewyn Bhana has been practising as a social worker without an annual practising certificate (“APC”) between 31 March 2015 and 1 May 2016, and that this amounts to conduct that is unbecoming of a social worker and reflects adversely on her fitness to practice as a social worker pursuant to s 82(1)(b) of the Social Workers Registration Act 2003.*

***Background of the Social Worker***

*2 Ms Bhana was first registered in May 2010. She holds a Bachelor of Social Work.*

*3 Ms Bhana is a Justice of the Peace.*

*4 She is currently employed as a Service Manager for Te Runanga a Iwi o Te Orana Ake in Auckland, and as a General Manager for Safer Aotearoa Family Violence Prevention Network in Auckland. Both roles operate out of the same physical location.*

*5 Ms Bhana was the Manager at Safer Aotearoa Family Violence Prevention Network for the relevant time period.<sup>1</sup>*

*6 Ms Bhana does not hold a current APC. Her Competence Certificate expired on 31 March 2015.<sup>2</sup>*

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<sup>1</sup> Counsel submitted that the evidence indicated that Ms Bhana also was in her role at Te Runanga a Iwi o Te Orana Ake over the material period. There was no explanation why this matter had not been clarified with Ms Bhana in the course of preparing the Agreed Statement of Facts, but no suggestion that Ms Bhana denied the position taken by the CAC.

<sup>2</sup> In fact, Ms Bhana completed her competence certification in September 2016 and obtained an APC on 23 November 2016, two days prior to signing the Agreed Statement of Facts.

***Being employed as a social worker without a practising certificate***

- 7 *On 23 January 2015, the Board sent an automatically generated letter to Ms Bhana, in advance of her competence assessment expiring on 31 March 2015.*
- 8 *In response, on 28 January 2015 Ms Bhana contacted the Social Workers Registration Board [the Board] to advise that she had sent her [competence] application to Aotearoa New Zealand Association of Social Workers (“ANZASW”).<sup>3</sup> She advised that this could be the reason for the delay.*
- 9 *On 30 January 2015, Ms Bhana emailed the Board again, to advise them there had been some technical difficulties with submitting her re-certification competence assessment to ANZASW. This email was too large and so was not received. The Board gave Ms Bhana an interim practising certificate until 31 March 2015 to enable her to complete her competence re-certification.*
- 10 *On 15 May 2015, the Board sent Ms Bhana a standard reminder that her APC was to expire on 1 July 2015.<sup>4</sup> This was followed by two further reminders on 5 June, and 22 June 2015.*
- 11 *On 15 September 2015, all registered social workers were sent the “Registrar’s Message”. Amongst other things, this document included information about the number of social workers practising without an APC, and the steps the Board was taking to address this. It also included links to the information on how to apply for an APC online, and how to renew competency.*
- 12 *Through a computer program, the Board can ascertain when an email has been opened. Of the above APC*

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<sup>3</sup> Registered social workers are able to obtain recertification of competence either through a process run by the Board, or a separate process for which ANZASW is responsible.

<sup>4</sup> We note that as this was a standard reminder it did not address the fact that Ms Bhana had an interim practising certificate which expired earlier, on 31 March 2015.

*reminder emails, and the Registrar's Message, the first two reminders (15 May and 5 June) were opened.*

- 13 *The Board did not receive any further contact from Ms Bhana. On 10 September 2015, the Board sent a letter to Ms Bhana. This letter advised her that she had been sent three written reminders and two warning notices, but their records showed that she had not renewed her APC. The letter asked her to provide written evidence explaining why this matter should not be referred to the Chairperson of the Social Workers Complaints and Disciplinary Tribunal ("the Tribunal") by 21 September 2015. It also gave Ms Bhana the option of renewing her APC by 21 September 2015. There is no record of Ms Bhana responding to this request.*
- 14 *On 16 October 2015, the Board sent Ms Bhana a letter to inform her that this matter had been referred to a Complaints Assessment Committee ("CAC") for consideration. This letter was returned to the Board as undelivered.*
- 15 *On 27 October 2015, copies of the 10 January and 10 September letters were sent to Ms Bhana via email. The email also requested that Ms Bhana advise whether the current address details for her were correct. The following day, Ms Bhana contacted the Board to confirm her new physical address as well as her PO Box and postal addresses.*
- 16 *On 29 October 2015, ANZASW confirmed that they had not received any competence paperwork from Ms Bhana.<sup>5</sup>*
- 17 *On 11 November 2015, the Board followed up on their 27 October 2015 email, requesting a response. Ms Bhana replied the same day, and indicated she would read the email and follow up.*

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<sup>5</sup> Information within the agreed bundle suggested that Ms Bhana may have been able to provide evidence of her email communication with ANZASW but this was not requested of her by the CAC and not produced by Ms Bhana.

- 18 *On 7 December 2015, the CAC investigator emailed Ms Bhana requesting a copy of her job description, and asking whether she intended to renew her Competence Certificate. The investigator followed this up with a further email on 16 December 2015.*
- 19 *Ms Bhana replied via email on 21 December 2015, asking when she needed to provide the information by. Ms Bhana was asked to supply this by Friday 8 January 2016.*
- 20 *On 12 January 2016, the CAC investigator contacted Ms Bhana reminding her that her response was now overdue. Ms Bhana responded saying she had accidentally deleted her response and asked to be resent a copy of the original request.*
- 21 *Ms Bhana contacted the investigator on 14 January 2016, asking for a further extension as she needed to attend a tangi. This extension was granted to 18 January 2016.*
- 22 *On 22 and 28 January, and 4, 15, 16, 18 and 23 February 2016 the CAC investigator contacted Ms Bhana to follow up for a response.*
- 23 *Ms Bhana emailed the CAC investigator on 23 February 2016 to confirm she had just returned to work and would have the information returned within 24 hours. On 25 February 2016, the CAC investigator emailed Ms Bhana to give a deadline of 4pm on 26 February 2016. In response, Ms Bhana noted that she had received an email from Margaret<sup>6</sup> saying that she has to March 15, which is why she had not provided anything. The CAC investigator called Ms Bhana to clarify that she was waiting for a job description relating to her current role.*
- 24 *On 26 February 2016, Ms Bhana supplied the CAC investigator with copies of her job descriptions. She apologised for not realising what the emails related to,*

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<sup>6</sup> A reference to the Administration Officer at ANZASW

*and indicated that she thought that the CAC investigator was enquiring about her competence recertification.<sup>7</sup>*

25 *Ms Bhana agrees that her current role is a social work role, and that she was required to hold a valid Competence Certificate and APC during the relevant time period.*

26 *Ms Bhana does not hold a valid Competence Certificate and APC<sup>8</sup>.*

**Admission**

*I, Raewyn Bhana, of Auckland, confirm and admit the agreed statement of facts and consent to the admission of the agreed bundle of documents.”*

**Agreed bundle of documents**

12. In accordance with pre-hearing directions, and as confirmed by Ms Goodhew at the hearing, the agreed bundle of documents was produced on the basis that each document in the bundle:

- a. Is what it purports to be on its face;
- b. Was signed by any purported signatory shown on its face;
- c. Was sent by any purported author to, and was received by, any purported addressee on its face;
- d. Is to be produced from the custody of a party;
- e. Is admissible evidence;
- f. Is received into evidence as soon as it is referred to by a witness in evidence, or by reference in any Agreed Summary of Facts, or by counsel in submissions, but not otherwise. (We note that Ms

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<sup>7</sup> We note that in fact the CAC by letter dated 16 October 2015 requested Ms Bhana to provide her response to the complaint (that she was practising without a valid APC), and on 11 November the investigator emailed Ms Bhana saying “To date we have had no response from you regarding your referral to the Complaints Assessment Committee (CAC). If you would like to make a response/statement to the CAC members I would pass onto them for you.”

<sup>8</sup> As noted, this situation was rectified prior to the hearing.



Goodhew's oral submissions took the Tribunal to the documents within the bundle).

13. As the Agreed Statement of Facts records, Ms Bhana received multiple notifications of the need to renew her competency certification and her annual practising certificate and was given what the Tribunal considered to be substantial leeway in addressing her failure to provide these in a timely way. It was also apparent on the face of the documentation that Ms Bhana provided assurances that she had dealt with her recertification requirements. There was no indication that she had not completed the required documentation for recertification or was struggling to prioritise this, although in hindsight it seems quite likely this was the case.

14. The correspondence sent to Ms Bhana by the Board contained clear notice of the importance of holding a current practising certificate. For example the letter dated 23 January 2015 included the following:

*"It is important that you provide us with an update as continuing to practise without a valid APC or competence certificate is a breach of the Social Workers Registration Act 2003. Our preference is to work with you to ensure your competence certificate is valid so that we can issue you a replacement APC ID card."*

15. The automatically generated notices regarding practising certificates sent by the Board to registered social workers in 2015 contained the phrase:

*"The SWRB is required to strictly enforce the legislative requirement to hold an APC."*

16. Ms Bhana's response to the Board on 28 January 2015 indicated that she had provided the ANZASW with documents required for competence recertification, noting that what she had provided was *"missing the training part."* Unfortunately what this meant was not clarified for the Tribunal by Ms Bhana or by the CAC. Nor was there any immediate follow up with Ms Bhana or the ANZASW on, or shortly after 31 March 2015, being the date on which her interim practising certificate expired. At this time Ms Bhana advised the Board in writing that she had *"just completed"* her competency certification and would copy in the Board when this was sent to ANZASW. In the event, when the CAC did follow up

with ANZASW in October 2015, ANZASW advised that they did not receive any documentation from Ms Bhana.

17. In the correspondence addressed to Ms Bhana dated 10 September 2015, the Board advised:

*“If your APC has not been renewed by 21 September 2015 then we will have no option but to refer your case to the Chair of the Social Workers Complaints and Disciplinary Tribunal as required under section 60 of the Social Workers Registration Act 2003 (the Act).”*

18. This letter went on to refer to the possibility of the matter being considered by a Complaints Assessment Committee and noted that the legal penalties for practising without a valid APC can be serious (referring to the possibility of criminal proceedings). The Board’s correspondence to all social workers on 15 September 2015 identified the Board’s obligation to follow up on practitioners practising without a current APC, and referred specifically to disciplinary action.

19. The investigation by the CAC commenced in October 2015. On the evidence before the Tribunal, other than discussion around the timeframe for providing information Ms Bhana’s communications with the CAC were limited to the provision of her job descriptions which were scanned to the CAC investigator on 26 February 2016. Ms Bhana did not provide the CAC with evidence as to any steps she had taken to fulfil the requirements of her competency recertification in order that she could obtain a practising certificate; or as to any difficulties in completing this.

#### **Liability - findings**

20. Ms Bhana admits the charge of conduct unbecoming reflecting adversely on her fitness to practise. However the Tribunal must still be satisfied that the CAC has proved the charge.

21. We accept the legal principles as outlined by Ms Goodhew on behalf of the CAC namely the burden of proof is on the CAC and the appropriate standard of proof is the civil standard (balance of probabilities).

22. In order for the charge to be upheld, the Tribunal must be satisfied that the following elements are present:

- a. That Ms Bhana is a registered social worker;
- b. That at the relevant time (being the period identified in the charge) Ms Bhana was employed or engaged in social work;
- c. That at the relevant time Ms Bhana did not hold a current practising certificate;
- d. That this conduct is conduct unbecoming;
- e. That this conduct reflects adversely on her fitness to practise.

23. Ms Bhana has admitted the charge, and in paragraph 25 of the Agreed Statement of Facts acknowledges that her current role involves the practise of social work. We find that the evidence establishes that Ms Bhana was practising as a social worker and that for the period the subject of the charge she did not hold a current practising certificate. We note that Ms Bhana has completed the necessary work to attain her competency recertification which requires case studies and reflections (amongst other work) drawing on her social work practise.

24. We are satisfied that Ms Bhana's conduct amounts to conduct unbecoming that reflects adversely on her fitness to practise. Of concern to the Tribunal is the length of time over which Ms Bhana did not hold a current practising certificate or competency certification. The reminders sent to Ms Bhana by the Board and her responses satisfy us that this omission was not due to inadvertence or oversight.

25. Ms Bhana's failure to ensure that she met her statutory obligations falls short of the standards required of a registered social worker. We are satisfied that this conduct meets the threshold to warrant disciplinary sanction.

26. It is important to note that the charge does not rely on section 82(2) which provides that a practitioner is guilty of professional misconduct where a social worker breaches the Code of Conduct<sup>9</sup>, or while employed or engaged as a social worker claims or holds himself or herself out to be registered while not holding a current practising certificate<sup>10</sup>. We have no evidence to suggest that Ms Bhana's employers held her out as a

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<sup>9</sup> Section 82(2)(a)

<sup>10</sup> Section 82(2)(b)

registered social worker while she did not hold a current practising certificate.

### **Penalty – Complaints Assessment Committee Submissions**

27. Section 83 sets out the penalties available to the Tribunal. Counsel submitted that three of these were appropriate: censure, fine and a contribution towards costs. The CAC did not seek any conditions or orders relating to Ms Bhana's continued practise.

28. As submitted on behalf of the CAC, and as previously outlined by this Tribunal, the principles relevant to penalty in this disciplinary setting are as set out by Collins J in *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*.<sup>11</sup>

29. The principles relating to penalty are, in summary:

- a. To protect the public, which includes deterring others from offending in a similar way;
- b. To set professional standards;
- c. Penalties have a punitive function, both directly (such as a fine) and as a by-product of sanctions imposed;
- d. Rehabilitation of practitioners, where appropriate;
- e. To impose penalties that are comparable to those imposed in similar circumstances;
- f. To reserve the maximum penalties for the worst offending;
- g. To impose the least restrictive penalty that can reasonably be imposed in the circumstances;
- h. To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.

30. Counsel for the CAC referred us to a number of recent decisions of this Tribunal where the Tribunal has dealt with social workers practising

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<sup>11</sup> High Court Wellington CIV-2012-404-003916 [12 December 2012].

without a current practising certificate, identifying the range of penalties imposed.<sup>12</sup> Counsel noted that the requirement to hold a current practising certificate is considered to be a “cornerstone” of the Act.<sup>13</sup>

31. It was submitted that the time period to which the charge relates, and the lack of action by Ms Bhana, despite repeated reminders from the Board and despite an interim practising certificate being issued to enable Ms Bhana to continue practising whilst completing her competency recertification, are aggravating features.
32. In mitigation, the CAC acknowledged Ms Bhana’s cooperation with the CAC, the fact that she obtained competency certification (in September 2016) and an APC (on 25 November 2016). The CAC also noted the significant stress on Ms Bhana associated with her husband’s illness.
33. The CAC submitted that an appropriate penalty was censure, a fine in the range of \$300 to \$400 and a contribution towards costs. Permanent suppression of Ms Bhana’s name was opposed by the CAC.
34. Ms Bhana did not wish to make submissions in relation to penalty, other than acknowledging her error and accepting that a penalty would follow.

### **Penalty findings**

35. We accept the aggravating factors identified by the CAC are relevant to our consideration of penalty. The failure to renew her APC seems entirely due to Ms Bhana’s failure to complete her competency recertification in a timely fashion. We have no evidence directly from Ms Bhana satisfactorily explaining the delay. Even if electronic attempts to submit the recertification material to ANZASW were unsuccessful, as the emails from Ms Bhana to the Board suggest, there is no evidence of Ms Bhana persisting and sending the material in tranches, or as a hard copy by post. The only evidence available to the Tribunal from ANZASW was an email from the ANZASW’s Administration Officer to the Board’s Professional Standards Coordinator dated 29 October 2015 denying any documentation was received from Ms Bhana.

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<sup>12</sup> *CAC v Kuruvilla* RSW1/D1/SWDT/2016, 19 April 2016; *CAC v Nelson* RSW4/D1/SWDT/2015, 18 December 2015; *CAC v Russell* RSW6/D1/SWDT/2015, 18 December 2015; *CAC v Estall* RSW8/D1/SWDT/2015 18 December 2015; *CAC v Angelo* RSW9/D1/SWDT/2015, 2 March 2016.

<sup>13</sup> Eg. *CAC v Angelo* at [9].

36. There was no evidence before the Tribunal that Ms Bhana provided the CAC with a detailed explanation regarding her failure to submit her competency recertification documentation and application for a practising certificate.
37. In terms of mitigating factors, we accept that Ms Bhana is a senior practitioner with substantial community involvement and significant professional and personal responsibilities.
38. We accept the mitigating features that the CAC has identified ought to be taken into account. In addition to the stress on Ms Bhana as a consequence of her husband's illness, there is information (accepted by the CAC) that she is the primary caregiver for a number of grandchildren. Ms Bhana holds two senior roles, one of which is a voluntary position, and also serves the community as a Justice of the Peace. Undoubtedly she is hard working and bears significant professional and personal responsibility.
39. There is no evidence of any concerns arising in the course of Ms Bhana's work. Ms Bhana has not been the subject of any previous disciplinary proceedings.
40. In the circumstances we agree that a censure, fine and contribution towards costs is appropriate. With regard to the financial penalties, Ms Bhana was invited by the CAC and by the Tribunal to provide evidence of her financial position if she wished this to be taken into account, but elected not to do so.
41. Censure is intended to reflect the disapproval of the Tribunal that the conduct the subject of the charge has occurred.
42. The maximum fine available under section 83(1)(c) of the Act is \$10,000. We have taken into account the recent decisions of this Tribunal to ensure proportionality, where fines ordered for practising without a current practising certificate have ranged from \$200-\$1000.<sup>14</sup>
43. We agree that the range proposed by the CAC is reasonable and we will impose a fine in the sum of \$350.

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<sup>14</sup> The fine of \$1000 was ordered in *CAC v Entwistle*. In that case Ms Entwistle was found guilty of a second disciplinary charge of practising without a current practising certificate.

44. With regard to costs, we accept as Ms Goodhew submitted that a reasonable starting point is a contribution of 50% of the costs of the CAC and the Tribunal.<sup>15</sup> It is appropriate to reduce this figure when the Tribunal takes into account Ms Bhana's co-operation with the CAC including the production of an Agreed Statement of Facts, agreed bundle of documents, her admission of the charge and Ms Bhana's attendance at the hearing. Ms Bhana did not prolong the hearing by defending the charge or producing evidence/witnesses requiring cross examination. We note also however, that hearing from Ms Bhana directly may have been of assistance and we have been unable to take any financial matters (for example) into account when determining penalty.
45. It is appropriate for social workers who are the subject of a disciplinary charge to contribute to the costs incurred where that charge is proved; the costs are otherwise borne by the profession as a whole. As the evidence before the Tribunal illustrated, the costs associated with those practising without a current practising certificate is significant and is a matter about which the Board has published its concern to registered social workers on several occasions. The decisions of this Tribunal are also available on the Board's website.
46. Having considered the authorities and the evidence before us, we consider that a contribution of \$2,200 is appropriate. The total costs incurred by the CAC and Tribunal are over \$11,000.

#### **Permanent name suppression - application**

47. Section 79(2)(d) provides that if, after having regard to the interests of any person and the public interest the Tribunal is satisfied that it is desirable to do so may make an order:

*"...prohibiting the publication of the name, or any particulars of the affairs, of any person."*

48. By application dated 9 September 2016 Ms Bhana applied for a private hearing (as referred to above) and for permanent suppression of any identifying particulars. The grounds for this application can be summarised as follows:

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<sup>15</sup> *Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J

- a. Concern that the proceedings would bring Ms Bhana's employer "*into disrepute*", with Ms Bhana accepting full personal responsibility for her failure to complete the requirements on her as a registered social worker;
  - b. That Ms Bhana was "*not aware of the huge implications that my noncompliant performance (not completing the required paperwork) has brought to the industry, my own professionalism (lack of) and implications for the clients.*"
  - c. Concern for Ms Bhana's husband and the possible implications of publication on him including emotional distress as well as distress to Ms Bhana's dependents;
  - d. The stress caused to Ms Bhana personally.
49. The application is signed by Ms Bhana but does not include supporting affidavit evidence. In support of her application Ms Bhana produced two letters: the first (also dated 9 September 2016) from the Practice Administrator at the medical practice at which Ms Bhana and her husband are patients. The second is an undated and unsigned letter from a General Practitioner at the same location, containing greater detail about the stressors experienced by Ms Bhana, and her husband's medical condition. This was sent by Ms Bhana to the Hearings Officer on 29 September 2016.
50. This letter refers to "*the last twelve months*" when discussing the particular stressors affecting Ms Bhana. The thrust of the GP's letter is to explain Ms Bhana's circumstances as a reason for her omitting to take the necessary steps to complete her recertification requirements. On the assumption that this letter was current when produced to the Tribunal in September 2016, we considered that neither of these letters could be taken to address Ms Bhana's circumstances in January 2015 to 31 March 2015, when Ms Bhana's interim practising certificate was in place to enable her to complete recertification requirements. The GP commends suppression primarily to protect Ms Bhana's husband but also "*the service, her clients, her family.*"
51. We note that the letter from the GP, Dr Sachs, records that Ms Bhana had appropriately sought assistance in dealing with the personal difficulties she has faced. It also records her resilience which has enabled



her to continue to fulfil her multiple roles. Dr Sachs records that had she been aware that Ms Bhana was facing difficulties in completing “the research admin work for her competency”, she would have supported an extension of time being sought. Unfortunately, as the evidence before the Tribunal shows, at no time did Ms Bhana acknowledge that she had not completed the work required and was having difficulty doing so, but instead asserted that it had been submitted to ANZASW, or was about to be.

52. At the hearing, Ms Bhana did not give evidence under oath and did not submit any evidence from her employers. Such evidence might have usefully addressed the employers’ awareness of the disciplinary proceedings, the perceived effect of publication on the employers, and/or on Ms Bhana’s colleagues and/or Ms Bhana’s clients or agencies with whom she works.

#### **Permanent suppression – CAC submissions**

53. In opposing permanent orders for non-publication the CAC submitted:

- a. There is a presumption in favour of an open hearing;
- b. The Tribunal had a “*paucity of evidence directly linking publication to hardship to Ms Bhana, her husband and wider family, or her employer*” and in particular a lack of evidence of current stressors;
- c. That the absence of any allegation that Ms Bhana has acted unethically or harmed clients is relevant in that the effect of any publicity would be assessed in light of the nature of the charge;
- d. The public interest is in favour of publication, noting Ms Bhana’s senior leadership roles.

54. The CAC referred us to *Director of Proceedings v Y*<sup>16</sup> in which the Health Practitioners Disciplinary Tribunal (“HPDT”) discussed the legal principles applying to an application for a permanent order of non-publication of name in the context of HPDT proceedings. We consider these principles apply to this Tribunal also.

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<sup>16</sup> HPDT Decn 591/Med13/258P, 23 December 2013

55. Counsel for the CAC also referred us to the Court of Appeal’s decision in *Y v Attorney-General*.<sup>17</sup> This was an appeal against a decision of the High Court declining to suppress the names of proposed witnesses who were to give evidence of physical abuse alleged in relation to persons in the care of the Ministry of Social Development or its predecessors. This is the first decision in which permanent suppression has been considered by this Tribunal in light of that decision and so we set the principles out in some detail. The Court of Appeal considered that the approach to be taken to suppression in civil cases required clarification because of divergent approaches taken by the courts, and outlined the following guidance:

- a. The starting point is the principle of open justice, and the right to freedom of expression guaranteed by s14 of the New Zealand Bill of Rights;<sup>18</sup>
- b. Given the importance of open justice a court needs to have sound reasons for finding that the presumption in favour of publication is displaced. Rather than an onus of proof resting on the applicant seeking suppression the court is to consider whether the circumstances justify an exception to the fundamental principle.<sup>19</sup> but “*the applicant needs to point to factual material justifying the court departing from that presumption. That may require, but does not necessitate, the applicant adducing evidence.*”<sup>20</sup>
- c. There is no requirement for exceptional or extraordinary circumstances to justify permanent suppression in civil cases. However the threshold for granting suppression is high;<sup>21</sup>
- d. The court [and in applying the applicable principles, this Tribunal] is required to “*strike a balance between open justice considerations and the interests of the party who seeks suppression*”;<sup>22</sup>

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<sup>17</sup> [2016] NZCA 474, Stevens, Wild and Winkelmann JJ, 4 October 2016

<sup>18</sup> At [25]-[28]

<sup>19</sup> At [29], citing *ASB Bank Ltd v AB* [2010] 3 NZLR 427 (HC) at [14]

<sup>20</sup> At [36]

<sup>21</sup> At [30], citing *Jay v Jay* [2014] NZCA 445, [2015] NZAR 861 at [118]

<sup>22</sup> At [31], citing *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA

- e. The variety of civil cases means the balancing exercise in each case is different. In some cases the legitimate public interest in knowing the name of the practitioner charged will be high for example where existing or prospective clients ought to be able to make informed decisions about who is to represent them. In other instances it may be that intensely personal or confidential or commercially sensitive information makes publication less desirable and the balance will tip in favour of the person seeking suppression.<sup>23</sup>

### **Permanent suppression - findings**

- 56. We appreciate that being the subject of a disciplinary charge and appearing before the Tribunal was difficult for Ms Bhana on a personal level, and in the context of her seniority and her standing within the Maori community in particular. When considering any matter including orders for permanent non-publication, the Tribunal can only proceed on the basis of information that is placed before us. While not a straightforward decision there is insufficient factual material justifying us to depart from the principle of open justice, taking into account the charge has been found proved and the findings we have made regarding the events leading to the charge. Accordingly, the Tribunal declines the application for permanent suppression of Ms Bhana's name and identifying details.
- 57. This is not a case in which we have specific evidence to suggest that publication might affect Ms Bhana's employment or her ability to continue as a senior practitioner, and we certainly not consider that to be a reasonable consequence. As such the risk to rehabilitation recognised in *B v B*<sup>24</sup> as a ground for allowing such an application does not apply.
- 58. We also accept the submission for the CAC that it is significant that there is no evidence of a lack of competence. Ms Bhana has successfully completed the work necessary to obtain her competency recertification and holds an annual practising certificate.

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<sup>23</sup> At [32]-[33]

<sup>24</sup> *B v B* HC 4/92, 6 April 1993 at 99

## **Conclusion**

59. The Tribunal makes the following orders:

- a. That Ms Bhana is censured;
- b. A fine of \$350.
- c. An order for costs to be paid in the sum of \$2,200 being approximately 20% of the total costs incurred by the CAC and the Tribunal. Of these costs, \$1200 is to be paid to the Tribunal and \$1000 to the CAC.
- d. Ms Bhana's application for orders for permanent non-publication of her name and identifying details is declined.
- e. Of the Tribunal's own motion we have determined that it is appropriate not to publish details personal to Ms Bhana's husband but have considered these in reaching our decision.

60. The Tribunal directs that a copy of this decision be published on the Board's website in the usual manner.

Dated: 22 December 2016



**Catherine Garvey**

**Deputy Chairperson**

**Social Workers Complaints and Disciplinary Tribunal**