

Complaints and Disciplinary Tribunal

DECISION NUMBER: RSW9/D1/SWDT/2015

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

BETWEEN the Complaints Assessment Committee
Complainant

AND Katrina Angelo
Respondent

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

Present: Catherine Garvey (Chairperson)
Tim O'Donovan, Yvonne Crichton-Hill, Phil Comber,
Lareen Cooper (Members)
Amanda Mounla (Hearing Officer)
Dale LaHood (Counsel for the Complaints
Assessment Committee)
Katrina Angelo (Respondent, in person)

Hearing Held in Wellington on 17 December 2015

Introduction

1. Ms Katrina Angelo holds a Bachelor of Social Work (Hons). Ms Angelo registered with the Social Workers Registration Board ("the Board") on 21 April 2006. Throughout the relevant period Ms Angelo was employed in New Plymouth as a youth worker for Canteen. At the time of the hearing Ms Angelo was not practising as a social worker, having chosen to pursue another career.
2. Ms Angelo's practising certificate expired on 1 July 2013, at which time she was not employed by Canteen. She commenced employment with Canteen in the role of Youth Worker Member Services in October 2013. Ms Angelo then worked without a current practising certificate until the end of September 2014. Ms Angelo did hold current competency certification throughout this period.
3. A Complaints Assessment Committee appointed under the Social Workers Registration Act 2003 ("the Act") laid a charge pursuant to section 82(1)(b) of the Act in relation to Ms Angelo practising without a current practising certificate between 31 October 2013 and 1 September 2015.
4. The charge reads as follows:

"Pursuant to section 72(3) of the Act the Complaints Assessment Committee charges that Katrina Angelo, registered social worker, of New Plymouth:

(a) Between 31 October 2013 and 1 September 2015 was employed or engaged as a social worker without a current practising certificate;

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

Legal principles

5. The burden of proving the charge rests with the CAC. The standard of proof is the balance of probabilities.
6. The purpose of the Act is set out in section 3. This includes to protect the safety of the public by prescribing or providing for mechanisms that ensure that social workers are competent to practise, and accountable for the way in which they practise: section 3(a)(i) and (ii).
7. Section 3(d) further provides that the Act is to "*enhance the professionalism of social workers.*"
8. Section 25 of the Act requires all registered social workers who are employed or engaged as a social worker to hold a current practising certificate.

9. Section 44 of the Act requires all registered social workers to complete a competency assessment every five years. If a practitioner's certificate of competence expires, then the practitioner's practising certificate immediately becomes invalid.
10. The Tribunal must be satisfied that the following elements of the charge are established:
 - a. That at all material times Ms Angelo was a registered social worker; and
 - b. That at all material times she was employed or engaged as a social worker; and
 - c. That Ms Angelo's conduct in failing to renew her practising certificate amounts to conduct unbecoming a registered social worker; and
 - d. That this conduct reflects adversely on Ms Angelo's fitness to practise.
11. During the hearing the Tribunal heard evidence in relation to Ms Angelo's job description, the nature of her day to day work, and as to the scope of practise that is considered by the CAC to constitute being employed or engaged as a social worker. Ms Angelo believed that few elements of her role could be considered to be social work. Ms Angelo's employer did not consider her to be engaged in social work or to require registration for the purposes of her role. Ms Angelo's job description required her to hold a tertiary qualification in Social Work, Youth Work or as a Health Professional.
12. The terms "*social work*" and "*employed or engaged as a social worker*" are not defined in the Act. Whether a person is engaged, employed or practising as a social worker is a factual matter. The Tribunal was referred by counsel for the CAC to a Crown Law opinion jointly obtained by the Board and Ministry of Social Development, which commends a broad approach be taken to what constitutes social work. This opinion concludes that a registered social worker is "*employed or engaged as a social worker*" and required to hold a current practising certificate if he or she:
 - 3.1 *is engaged with casework decisions at any level; and/or*
 - 3.2 *in the context of performing his or her role, expressly or implicitly holds himself or herself out as a registered social worker, or is held out in that way by his or her employer or colleagues."*
13. This quotation was relied on by the Board in correspondence with Ms Angelo and her employer.
14. The Crown Law opinion goes on to say that "*all people for whom being a registered social worker is an important aspect of their role, or of the way in which they perform their role, are required to hold practising certificates pursuant to s25.*" This

is the approach commended by the CAC and is the approach that the Tribunal adopts.

15. The charge relies on section 82(1)(b), namely that Ms Angelo's acts/omissions amount to conduct unbecoming and which reflects adversely on her fitness to practise. There are a number of decisions of this Tribunal where s82(1)(b) has been considered, and in which the approach of the Health Practitioners Disciplinary Tribunal ("the HPDT") has been adopted. Section 82(1)(b) is not mirrored in the charges available under the Health Practitioners Competence Assurance Act 2003 ("the HPCA Act"). As with earlier decisions of this Tribunal, we rely on the meaning given to "conduct unbecoming" and the threshold test ("that reflects adversely on fitness to practice") set out by the HPDT and the High Court in relation to the Medical Practitioners Acts 1968 and 1995.

16. In *B v Medical Council*,¹ Elias J discussed the test as follows:

"There is little authority on what comprises "conduct unbecoming." The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards. That departure must be significant enough to attract sanction for the purposes of protecting the public..."

The structure of the disciplinary processes set up by the Act, which rely in part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards not be permitted to lag. The disciplinary process in part is one of setting standards."

17. In *Zauka*² the HPDT held:

"It is not necessary that the proven conduct should conclusively demonstrate that the practitioner is unfit to practise. The conduct will need to be of a kind that is inconsistent with what might be expected from a practitioner who acts in compliance with the standards normally observed by those who are fit to practise medicine. Not every divergence from recognised standards will reflect adversely on a practitioner's fitness to practise. It is a matter of degree."

Facts

¹ [2005] 3 NZLR 810

² Re Zauka, 236/03/103C, Health Practitioners Disciplinary Tribunal

18. The Tribunal considered the Agreed Summary of Facts, agreed bundle of documents, Dr Janet Duke's affidavit and oral evidence, and evidence heard directly from Ms Angelo.
19. Ms Angelo registered with the Board on 21 April 2006. She held a practising certificate for the 2006-07, and 2007-08 practising cycle, before going overseas in 2008. The Board appears to have been notified that Ms Angelo was to be overseas, as the register records that she was non-practising. Ms Angelo was issued with a practising certificate in May 2011, and completed competency certification that year. Relevant to the charge, her 2012/2013 practising certificate expired on 31 June 2013. Ms Angelo continued working between 1 July and 31 October 2013.
20. Ms Angelo gave evidence that in her employment as a social worker from 2006 to 2008, and in 2011 to early 2013, she was required her to hold a practising certificate, and that her employer paid the renewal fee on her behalf. Even so, Ms Angelo was required to personally complete the accompanying declaration, and was familiar with the renewal process.
21. On 31 October 2013, the Board emailed Ms Angelo regarding an update of the Board's database. Ms Angelo's current physical address was requested, and the Board noted that her APC renewal documentation had not been received. This email appears to have coincided with Ms Angelo starting her role with Canteen.
22. Ms Angelo replied the same day as follows:

"I am sorry I have changed address which may explain why I have not received my paperwork. My new address is [...] and [I] would be very keen to renew my practising certificate as I am still practising Social Work."
23. The Board advised they would post a copy of the renewal form, and Ms Angelo confirmed she would complete and return it.
24. The next communication between Ms Angelo and the Board was in February 2014 by email from the Board. A copy of this email was not provided to the Tribunal, but it is clear from Ms Angelo's actions that the email raised concern that she was practising without a valid practising certificate. Ms Angelo sought clarification from Canteen as to whether they required their employed social workers to be registered. Ms Angelo was advised by her employer that they did not. This correspondence was then provided by Ms Angelo to the Board.
25. By email dated 13 February 2014 the Chief Executive of the Board wrote to Ms Angelo and Canteen (to the HR Manager and Regional Manager) setting out the following information:
 - a. Acknowledgment that Ms Angelo and her employer might not be completely aware of the requirements of a registered social worker, and providing a link to the Board's website;

- b. That the decision as to whether Ms Angelo was required to hold an APC was a matter for the Board to determine, not her employer;
 - c. That (once registered) an APC is not optional;
 - d. That legal consequences exist for a social worker and an employer where the requirements of the Act are not met;
 - e. Reference to the Crown Law opinion (setting out the quote at paragraph 13 above), and advising that direct contact with clients is not required, only some engagement with cases that may include a supervisory, mentoring or management capacity;
 - f. An offer to send a further APC renewal form.
26. Ms Angelo's employer responded to advise that they would consider the Chief Executive's comments. They subsequently wrote to the Board by email dated 18 February 2015, noting that Ms Angelo was employed as a youth worker, and providing a copy of Ms Angelo's job description. This email stated:
- "As you can see from the position description, the role does not have responsibility for case work, there is no needs assessment, no process to review cases and no multi-disciplinary team."*
27. On 17 March 2014 a response from the Board's Social Work Advisor Barbara Gilray was posted (rather than emailed as the previous correspondence had been) to Ms Angelo and her employer. Ms Gilray's letter advised that Ms Angelo was required to renew her practising certificate, and that she should do so *"as expeditiously as possible."*
28. Whether this letter was received by Ms Angelo and her employer is unclear. Although it was correctly addressed to Ms Angelo's employer, Canteen maintained in later correspondence with the Board that the letter was not received. When giving evidence to the Tribunal Ms Angelo conceded it was likely she did receive the letter. Whether or not the correspondence was received was not material to the Tribunal's findings.
29. There was no further communication between the Board and Ms Angelo until the Board wrote to her on 27 November 2014. This was a standardised letter sent to all registered social workers who had not renewed their practising certificate or notified the Board that they were non-practising. As such, the letter made no reference to the earlier correspondence from Ms Gilray. The potential for referral to a Complaints Assessment Committee was outlined, with the request for a response from Ms Angelo by 19 December 2014 *"providing written evidence that you have not been practising as a Registered Social Worker since 1 July 2014."*
30. Ms Angelo did not respond to this letter, but acknowledged to the Tribunal that she had received it. There was no evidence that she discussed it with her employer.

31. By letter dated 24 March 2015 Ms Angelo was advised that she had been referred to a Complaints Assessment Committee (“CAC”).
32. Ms Angelo responded by email dated 13 April 2015 expressing her shock at the referral to the CAC. Ms Angelo referred to receiving no reply to her employer’s correspondence with the Board in February 2014, and to her belief that she was not practising social work. Ms Angelo advised that insofar as her job was concerned:
- “My contact with the young people in our organisation is simply on a monthly basis when we get together for fun activities, hardly qualifying me as doing social work. Any other areas of social work practice I refer on to social work agencies for counselling or other services, as this is not my role.”*
33. Ms Angelo stated that had a response been received from the Board then her employer would have paid for her “*registration.*” However no payment or application to renew her practising certificate was made in 2015, despite the Board’s unambiguous position.
34. Ms Angelo’s employer also wrote to the Board on 13 April 2015, to reiterate their belief that Ms Angelo role was not practising social work on the basis that she was “*not required to perform case work, needs assessments or be a participant in multidisciplinary meetings.*” The email goes on to assert that no response was received following the February 2014 interchange and that they “*assumed that [the Chief Executive of the Board] had concluded, the same as we had, that as Katrina was not performing the role of a social worker and she would not be able to meet her on-going obligations to maintain registration that this was not required.*”
35. The Registrar of the Board replied to Ms Angelo and Canteen on 13 April 2015, referring to the 17 March 2014 and 27 November 2014 correspondence and lack of response. Ms Angelo was requested to make submissions to the CAC.
36. Canteen requested a copy of the letter dated 17 March 2014. Ms Angelo did not respond. There is no further correspondence between Ms Angelo and the Board, or her employer and the Board outside of the CAC process.
37. The next correspondence produced to the Tribunal is dated 22 October 2015, and is an email intended for the Tribunal by Ms Angelo, setting out her explanation for not renewing her practising certificate. Ms Angelo states:
- a. That she had never held herself out as a registered social worker while employed by Canteen.
 - b. That she is “*well aware of what a social worker does and was not performing even remotely the same tasks at [C]anteen.*”
 - c. That once she had decided to leave her role at Canteen, it “*would not be worth taking the process any further.*”

- d. That neither she nor her employer believed that she was practising social work.
 - e. Her concern that she was being singled out, and her hope that she was *“not being used as an example...”*
38. The Tribunal was required to consider whether in fact Ms Angelo was employed or engaged in social work.
39. To this end, the Tribunal received a copy of Ms Angelo’s job description. The CAC produced an affidavit by Dr Janet Duke, setting out the basis for the CAC’s position that Ms Angelo was engaged in social work.
40. The Tribunal heard from Ms Angelo evidence to the effect that there was significant variance between her job description and her day-to-day tasks. She stated that a significant proportion of her time was spent on administrative tasks and fundraising. She stated that her three performance appraisals were adjusted to reflect her actual tasks rather than her job description.
41. Ms Angelo was questioned in detail with direct reference to the job description. The CAC was able to call evidence from Dr Duke to address Ms Angelo’s evidence. Dr Duke was present at the hearing and immediately available.
42. To a large extent, the tasks identified in Ms Angelo’s job description were tasks that she confirmed to the Tribunal she did perform, albeit in the context of a part time, sole charge position. Ms Angelo confirmed that her role included:
- a. Developing and engaging the membership of the branch through communication, facilitation of activities camps and events (and she confirmed she attended camps and other events with members, in a supervisory capacity);
 - b. Supporting the requirements and developments of the connector programme (we understand this to be the more recent named for the Teen Link programme referred to in Ms Angelo’s job description). This included identifying an appropriate ‘connector’ for new members and attending a first meeting, and deal with any issues if they arose within that relationship;
 - c. Providing advocacy and support to members when necessary, with an emphasis on referral to other services;
 - d. Maintaining and developing a referral system for young people living with cancer through liaison with other specified services. This included discussion of specific cases;

- e. Participating in reporting to her manager on a regular basis, and undertaking performance assessments where the job description was the primary document with modifications over time;
 - f. Developing professional alliances with other professional and clinical services. This included discussion of specific cases;
 - g. Undertaking professional development;
 - h. Completing administrative duties (including banking, filing, maintaining a database).
43. These are all matters taken from Ms Angelo's job description.
44. Dr Duke gave evidence that many of these tasks constitute the practise of social work. Dr Duke maintained that Ms Angelo's qualifications and experience as a social worker equipped her to fulfil her role, and she maintained that Ms Angelo was engaged as a social worker at the material time.
45. It is important to record that the CAC confirmed, and the Tribunal accepts, that Ms Angelo carried out her work competently.

Findings - liability

46. After hearing submissions from counsel on behalf of the CAC, the evidence from Ms Angelo and Dr Duke, the Tribunal retired to consider the charge. The parties were advised that a written decision would be issued.
47. The Tribunal finds the charge is proved.
48. As above, the purpose of the Act includes the protection of the public, ensuring that social workers are accountable, and enhancing the professionalism of social workers. The requirement for accountability and professionalism attach to individuals and employers. However as important as it is that an employer of a registered social worker understands the requirements of registration, and their own obligations, this does not absolve registered social workers of their individual responsibility to meet the statutory requirements of registration and certification.
49. The Tribunal finds that on Ms Angelo's evidence she was employed or engaged in social work by virtue of her direct involvement with members of Canteen, making arrangements to introduce new members to a suitable connector, advising members on available services (clinical or otherwise), discussing members with clinical and other services and attending camps in a supervisory capacity.
50. As such, Ms Angelo was required to hold a current practising certificate.
51. The requirement to hold a current practising certificate set out in section 25 is mandatory and a fundamental mechanism used to achieve the purposes of the Act. While the Tribunal is sympathetic to Ms Angelo's position, and commends her for

her presentation at the hearing, this finding reflects the profession's expectation that statutory obligations will be met in a timely fashion by all registered social workers.

52. Ms Angelo was advised by the Board of the need to renew her practising certificate. She stated her intention to do so, and ought to have been aware from her previous experience what was involved in the renewal process.
53. The Tribunal is unable to be certain whether Ms Angelo received the letter dated 17 March 2014 from the Board's Social Work Advisor addressed to her employer and copied to her. At the hearing she suggested that if properly addressed, she would have received it; however the correspondence dated April 2015 does suggest that neither she nor her employer did in fact receive it.
54. From the Tribunal's perspective it was significant that on receipt of the Board's letter dated 27 November 2014, Ms Angelo took no action. It ought to have been plain at that point (at the latest) that the Board required Ms Angelo to hold a practising certificate. No evidence was provided of any discussion with Ms Angelo's employer at this time, for example to follow up on the apparent lack of response to Canteen's 14 February 2014 correspondence to the Board, and to query why the Board was writing if (as Ms Angelo assumed) the Board had accepted she did not need to renew her practising certificate.
55. The Tribunal acknowledges the further attempt by email to discuss Ms Angelo's position in April 2015. At this time a copy of the 17 March 2014 correspondence by Ms Gilray was provided, but there was no response to this. The absence of response makes it difficult for the Tribunal to accept Ms Angelo's submission that, had the Board's position been clear, then her practising certificate would have been renewed.
56. Finally, Ms Angelo acknowledged that upon deciding to leave her employment in or about mid 2015 she did not consider it worthwhile pursuing the matter of her practising certificate. She therefore continued to work for several months in the knowledge that she was required to renew her practising certificate, but took no steps to do so.

Conclusion

57. The Tribunal finds the charge of conduct unbecoming that reflects adversely on Ms Angelo's fitness to practise is proved.
58. The Tribunal will now receive submissions from the parties in relation to penalty. The parties are requested to provide details as to costs incurred (the CAC), and financial information should Ms Angelo wish to make submissions as to her capacity to meet any fine or award of costs, should such penalties be imposed.

59. The Tribunal directs the Executive Officer to publish a copy of this decision on the Board's website together with the penalty decision once the penalty decision has been issued.



DATED this 2nd day of March 2016

Catherine Garvey
Chairperson
Social Workers Complaints and Disciplinary Tribunal