

Complaints and Disciplinary Tribunal

DECISION NUMBER: RSW9/D2/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)
Fleur Nicholas (Hearing Officer)

Hearing Held on 4 May 2016

PENALTY DECISION

Introduction

1. The Tribunal heard a disciplinary charge laid pursuant to s82(1)(b) of the Social Workers Registration Act 2003 (“the Act”) on 17 December 2015. The hearing was attended by counsel on behalf of the Complaints Assessment Committee (CAC”), Mr La Hood, and Ms Angelo appeared in person. At the conclusion of the hearing the Tribunal retired to consider its decision. The substantive decision of the Tribunal was issued on 2 March 2016 and provided to the parties. The CAC and Ms Angelo were invited to make submissions in writing as to penalty.
2. A copy of the Tribunal’s decision was sent by pre-paid courier to Ms Angelo’s last known residential address on 17 March 2016. This courier was returned, and a further copy sent by pre-paid courier to a second address for Ms Angelo on 22 March 2016. This was not returned. On 3 March a copy of the decision was also sent by the Hearings Officer to the email address that had successfully been used by the Board and the Hearings Officer previously to communicate with Ms Angelo. This email did not ‘bounce back.’
3. Penalty submissions were received from the CAC on 11 March 2016. A copy of these submissions was emailed to Ms Angelo on 15 March 2016.
4. With each email and postal correspondence Ms Angelo was invited to provide submissions including relevant financial information in relation to penalty. No submissions or other correspondence was received from Ms Angelo.
5. The Tribunal reconvened by telephone conference on 4 May 2016 to consider penalty.

Legal Principles

6. 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*.¹
7. The principles relating to penalty are, in summary:

¹ High Court Wellington CIV-2012-404-003916 [12 December 2012].

- 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.
8. The Tribunal was referred by the CAC to a number of recent decisions involving social workers practising without a current practising certificate. The CAC also referred for guidance to the decision of the Health Practitioners Disciplinary Tribunal in *PCC v R*².
9. The Tribunal accepts that the requirement under section 25 that a registered social worker who is employed or engaged in social work must hold a practising certificate is a “cornerstone” of the Act³. That requirement is not avoided simply because an employer does not require the social worker to hold registration. The requirement to ensure that a current practising certificate is held is ultimately an individual responsibility. With that said, this and other recent cases considered by the Tribunal illustrate how important it is that employers also understand the requirements of registration. There is otherwise a risk of incorrect advice being given, with significant implications for the registered social worker.
10. Ms Angelo practised without a current practising certificate for a total of 23 months. The Tribunal understood that for a period of approximately

² *PCC v R* 689/MLS14/294P, 17 April 2015.

³ *Sanders*, Decn 11 NSPC/05/13/SWDT

eight months Ms Angelo appears to have believed that the issue had been resolved because of correspondence from her employer stating that she was not required to be registered and an apparent lack of follow up confirming the contrary position. As stated in our substantive decision however, this misunderstanding did not negate Ms Angelo's responsibility to ensure the mandatory requirements of the Act were met. (We record that there is no evidence that Ms Angelo's employer held her out as a registered social worker).

11. Ms Angelo was co-operative with the CAC, including with the preparation of an Agreed Summary of Facts. Ms Angelo attended the hearing and gave evidence. These are mitigating factors. The Tribunal also notes that Ms Angelo held current competency certification at all relevant times.
12. Counsel for the CAC submitted that censure, a fine in the range of \$200-\$500 and an award of costs is appropriate. The Tribunal agrees.
13. The maximum fine available under section 83(1)(c) of the Act is \$10,000. As we have noted previously this is a substantially lower maximum than the maximum fine of \$30,000 available to the Health Practitioners Disciplinary Tribunal pursuant to the Health Practitioners Competence Assurance Act 2003. Any comparison with cases determined by the Health Practitioners Disciplinary Tribunal must take this difference into account. The Tribunal will also seek to impose a fine that is proportionate to those imposed in comparable cases.
14. With regard to costs, we accept as Mr La Hood submits that reasonable starting point is a contribution of 50% of the costs of the CAC and the Tribunal⁴. We also accept that this figure can be reduced when the Tribunal takes into account Ms Angelo's co-operation with the CAC including the production of an Agreed Summary of Facts and agreed bundle of documents and her attendance at the hearing.
15. 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.

⁴ *Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J

Conclusion

16. The Tribunal makes the following findings as to the penalty to be imposed:
- a. That Ms Angelo is censured;
 - b. A fine of \$250.
 - c. An order for costs to be paid in the sum of \$1700. Of these costs, \$1000 is to be paid to the Tribunal and the remainder to the CAC.
17. The Tribunal directs that this decision be published together with the substantive decision on the Board's website.



DATED this 16th day of May 2016

Catherine Garvey
Deputy Chairperson
Social Workers Complaints and Disciplinary
Tribunal