

# Social Workers Complaints and Disciplinary Tribunal

Social Workers Registration Act 2003

## BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

**REF** RSW10/D1/SWDT/2020

**UNDER** the Social Workers Registration Act 2003  
("the Act")

**IN THE MATTER** of a disciplinary charge laid against a social worker  
under Part 4 of the Act.

**BETWEEN** **A PROFESSIONAL CONDUCT COMMITTEE**  
appointed under the Act

**Applicant**

**AND** **BESSIE MIHIROA HANLEY** of Hastings  
registered social worker

**Practitioner**

**HEARING held by audio visual link on Tuesday 17 November 2020**

**MEMBERS** Ms C Garvey (Chairperson), Ms A McKenzie, Ms S Hunt, Mr P McGurk,  
Mr B Marra (Members)

Ms G Fraser (Executive Officer)

**APPEARANCES** Mr M Regan (Counsel for the Professional Conduct Committee)

No appearance for or by the practitioner

## Introduction

1. Ms Hanley is a registered social worker with 15 years experience. On 22 March 2019 she was convicted of a charge of indecent assault pursuant to s135 of the Crimes Act 1961. The conviction was confirmed on appeal on 2 July 2019.
2. Pursuant to s 63 of the Social Workers Registration Act 2003 (the Act), notice of Ms Hanley's conviction was given by the court Registrar to the Social Workers Registration Board (the Board) on 29 April 2019. As required by s 65 of the Act, the Board referred Ms Hanley to a Professional Conduct Committee (PCC). Following an investigation with which Ms Hanley provided her full co-operation, the PCC laid a disciplinary charge, and notice of the intention to bring disciplinary proceedings was issued on 26 August 2020. The charge reads:

“Pursuant to section 72(3) of the Act, the Committee has made a determination to submit Ms Hanley's conviction to the Tribunal on grounds that:

- (a) she was convicted by a court in New Zealand of an offence punishable by imprisonment for a term of 3 months or longer (s 82(1)(c)(i) of the Act); and
- (b) the offence was committed in circumstances that reflect adversely on her fitness to practise as a social worker (s 82(1)(c)(ii) of the Act ).

In particular:

- (a) Ms Hanley was convicted on 22 March 2019 in the Hastings District Court of a charge of indecent assault contrary to s 135 of the Crimes Act 1961, which carries a maximum penalty of 7 years' imprisonment.
  - (b) the nature and extent of Ms Hanley's conduct, as set out above, reflects adversely on her fitness to practise as a social worker and/or breached Principles 1 and/or 9 of the Code of Conduct issued by the Social Workers Registration Board pursuant to section 105 of the Act.”
3. The hearing was conducted by Audio Visual Link (AVL) on 17 November 2020, and proceeded by way of an Agreed Summary of Facts signed by Ms Hanley and Mr Regan, counsel for the PCC. The Agreed Bundle of Documents included the District Court judgment on Ms Hanley's conviction, the High Court judgment on Ms Hanley's appeal against conviction and sentence, the Ministry of Justice Notice of Conviction and reports from Ms Hanley's psychologist and general practitioner, amongst other things. Mr Regan appeared as counsel for the PCC and addressed the Tribunal on written submissions that were filed in advance of the hearing. Ms Hanley did not appear but did provide a two page statement dated 9 November 2020, together with details of her financial circumstances, both of which were admitted by consent.

## Section 82(1)(c)

4. The burden of proof rests with the PCC to prove the charge to the civil standard, the balance of probabilities<sup>1</sup>. Section 82(1)(c)(i) requires evidence of a qualifying conviction, being one that carries a penalty of 3 months imprisonment or more. This can be established by way of a formal Notice of Conviction.
5. The rider in section 82(1)(c)(ii) requires that in addition to a qualifying conviction which gives rise to the need to consider discipline, the circumstances of the conviction must be found to reflect adversely on the practitioner's fitness to practise. It is well settled that this does not require the Tribunal to find that in fact Ms Hanley is unfit and as Mr Regan observed, that is an important distinction. Section 82(1)(c)(ii) is identical to s 82(1)(b)(ii) of the Act, and also s 100(1)(c) of the Health Practitioners Competence Assurance Act 2003. The Tribunal agrees with the discussion in *Zauka*<sup>2</sup> as to the meaning of the rider, as follows:

“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.”

6. Fitness to practise is not confined to matters that go to a social worker's competence, as is apparent from the previous decisions of this Tribunal and numerous authorities addressing provisions identical to s82(1)(c)(ii). It is also clear from the distinction in the Act between competence and fitness in Part 3.

## The Agreed Summary of Facts

7. According to the Agreed Summary Ms Hanley registered with the Board on 11 February 2010 and worked as a community social worker before gaining employment with Oranga Tamariki. Ms Hanley's statement adds that she worked first in a care and protection role and then in youth justice, where she remained until resigning on 2 April 2019.
8. With regard to the circumstances of the offending, the Agreed Summary describes the following facts as underpinning Ms Hanley's conviction, in reliance on the High Court's decision on the appeal against conviction and sentence<sup>3</sup>:

---

<sup>1</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1

<sup>2</sup> MPDT 236/03/103C – there are many HPDT cases which have followed this discussion of reflecting adversely on fitness to practise, also drawing a distinction between fitness and competence.

<sup>3</sup> Ms Hanley sought a discharge without conviction.

"7 On appeal, Justice Simon France summarised the facts of Ms Hanley's offending as follows:

The indecent assault charge embraced a course of conduct carried out by Ms Hanley, at this stage very drunk, on [the victim]. The venue was a local bar. Having similarly but less seriously molested another [woman], Ms Hanley approached the victim:

- (i) She made a vulgar comment about "fingering" the victim;
- (ii) She lunged at her vagina with a move described as between a grab and a punch;
- (iii) Told not to, Ms Hanley repeated the gesture. On both occasions she contacted the victim on her genital area, albeit over her clothing; and finally
- (iv) She wrapped her arms around the victim, kissed her on the cheek and muttered about conduct she was going to do, thereby achieving a level of vulgarity that exceeded her initial comments. The District Court described the comments as consisting of "obscene and vulgar sexual things you would like to do to her."

9. The Board sought Ms Hanley's response to the Notice of Conviction. The Agreed Summary records that she:

- a. accepted that her behaviour was inappropriate and offensive;
- b. took full responsibility for her actions and did not offer excuses;
- c. expressed her "embarrassment, humiliation, disgust and disappointment" at what had occurred;
- d. Acknowledged the role of alcohol and binge drinking in her conduct;
- e. recognised that her behaviour had fallen short of the conduct expected of a social worker and the consequential impact that had on her employer, [the victim], the profession, and her family.

10. The Agreed Summary goes on to record Ms Hanley's co-operation with the PCC, including meeting with the PCC and acknowledging responsibility for the offending as well as outlining positive changes she has made. Ms Hanley's self-report was supported by information from her General Practitioner Dr Helen Perez and her psychologist Emma Aiken. Ms Aiken confirmed to the PCC on 31 July 2020 Ms Hanley's acceptance that excessive alcohol use was the cause of her offending, and that she recognised faulty

beliefs around the acceptability of excessive alcohol use and alcohol related negative behaviour and has been able to critically examine her behaviours and attitudes.<sup>4</sup>

11. The Agreed Summary concludes:

“The PCC recognised that Ms Hanley had taken positive steps since being convicted, and noted that she presented as insightful, intelligent and honest. The PCC further noted that Ms Hanley was co-operative with its investigation and accepted full responsibility for her offending.”

## **Liability**

12. The Tribunal had no difficulty in finding the first part of the charge made out. There was clear evidence that Ms Hanley was convicted of a qualifying offence by way of the notices from the court registry and the court judgments. Section 135 of the Crimes Act is a qualifying offence with a maximum period of 7 years imprisonment. The fact that the actual sentence imposed was payment of reparation in the sum of \$1500 and a period of 12 months supervision, reduced to 6 months on appeal, does not have any bearing on whether s 82(1)(c)(i) is made out.

13. With regard to s 82(1)(c)(ii) the PCC submitted that viewed objectively, the circumstances leading to Ms Hanley’s conviction reflect adversely on her fitness to practise because:

- a. the offending occurred in the context of her socialising with a number of other social workers in a public venue;
- b. Ms Hanley was in a supervisory role;
- c. the conduct is inherently inconsistent with that expected of a practitioner acting in compliance with the standards normally observed by those who are fit to practise social work;
- d. measured against principles 1 and 9 of the Code of Conduct as pleaded in the charge, and also principle 8, the conduct does not meet expected professional standards.

14. In her communication with the Board, Ms Hanley herself identified that her conduct offended principles 1, 8 and 9 of the Code. She referred to the need to act with integrity in principle 1, the need to work openly and respectfully with colleagues including avoiding harassment in principle 8 and the need to maintain public trust in the social work profession. in principle 9.

---

<sup>4</sup> PCC interview with Emma Aiken

15. In her written statement to the Tribunal Ms Hanley stated:

“First, I accept full responsibility for my actions. I am responsible for binge drinking on the night in question, and I am responsible for all the behaviors that followed- including assaulting [the victim].

I was incredibly humiliated, and I carried a lot of shame and guilt for what I did. My behaviors that night, go against my personal values and ethics. I agree that this is completely unacceptable behavior of a social worker.”

16. The Tribunal considered that the circumstances of the offending included factors identified by Ms Hanley in the material she placed before the Board, PCC and Tribunal such as significant workplace stress due in part to Ms Hanley supervising a largely new team of social workers, and a particularly difficult case involving serious offending. Ms Hanley self-reported the normalisation of excessive alcohol use in her personal sphere. The evidence also suggested tolerance of socialising with alcohol amongst colleagues.

17. The guidance material in principle 9 of the Code recognises that there cannot be a complete separation of the personal and the professional when characterising conduct as unethical and sanctionable:

“For conduct outside of work to be sufficiently serious to warrant discipline it has to have a direct relationship with your professional behaviour or there has to be a connection with your professional position to bring discredit to the profession...While the SWRB does not wish to intrude into the personal lives of individual social workers it does have a responsibility to ensure the safety of the public and to ensure that Registered Social Workers do not behave in ways that reflect adversely on their fitness to practice...

Some convictions will obviously reflect adversely on the social work profession (for example violence or sexual offences). Some convictions may be less clear-cut (for example a one-off drink driving offence).”

18. The factors that we rely on in finding that Ms Hanley’s conduct reflects adversely on her fitness to practise are:

- a. the seriousness of the offending;
- b. [ ]
- c. the combined importance of Ms Hanley’s role within the youth justice system and her supervisory role, and the loss of credibility that her offending was likely to cause;

- d. the conduct did in fact impact adversely on Ms Hanley's professional relationships and professional standing. For example:
  - i. [the complainants] became witnesses in criminal proceedings;
  - ii. Ms Hanley reported in her counselling sessions the stress she had caused to her colleagues and the loss of trust and respect she felt amongst her colleagues;
  - iii. Ms Hanley resigned her position and has not worked as a social worker for approximately 19 months.
- e. Ms Hanley's conduct is in breach of principles 1 and 9 of the Code as pleaded, and we agree also that her actions constituted a breach of principle 8.

19. Accordingly, s 82(1)(c)(ii) is established.

### **Penalty**

20. As submitted for the PCC, the primary purpose of the Act is to provide mechanisms for the protection of the public and the maintenance of professional standards by ensuring that social workers are competent and accountable for the way in which they practise<sup>5</sup>. The Act is also intended to enhance the professionalism of social workers<sup>6</sup>. There are a number of mechanisms under the Act which serve these purposes, and the disciplinary process is one of these. The penalties available to the Tribunal when a charge is made out and the conduct warrants sanction are set out in s83. The PCC submitted that as the penalty provisions of the Act have been amended by the Social Workers Registration Legislation Act 2019 it is appropriate to consider the penalties that were available at the time of the offending. In light of our findings there is little material difference between what was available at the relevant time and the penalties now provided for.
21. The penalty principles are well established, applying the factors set out by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand*<sup>7</sup> namely:
- a. the protection of the public, including deterring others from acting in the same way;
  - b. to set professional standards;
  - c. that penalties may have a punitive function, through the imposition of a censure or fine, but this is not the primary purpose of penalty;

---

<sup>5</sup> Section 3(a)

<sup>6</sup> Section 3(d)

<sup>7</sup> HC Wellington CIV 2012-404-003916, 12 December 2012 at [44]-[55]

- d. rehabilitation of the practitioner, 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 in the circumstances;
- h. to assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.

22. The PCC submitted the following penalties were appropriate for Ms Hanley:

- a. Censure (pursuant to s 83(1)(b)); and
- b. Imposition of the following conditions (pursuant to s 83(1)(a)(ii)):
  - i. To be under the supervision of a senior social worker (to be approved by the Social Workers Board) - for a period of 2 years; and
  - ii. To advise any employer or prospective employer of the proceeding and the Tribunal's decision - for a period of 2 years;
- c. Costs (pursuant to s 83(1)(e)(ii)).

23. The PCC referred us to cases of the Teachers Disciplinary Tribunal and the HPDT involving convictions. These cases illustrate that the insight and rehabilitative prospects of the practitioner may significantly influence penalty. Briefly, in *Professional Conduct Committee v Savage*<sup>8</sup> Mr Savage, a nurse was convicted on two charges of indecent assault under s 135 of the Crimes Act, for unwanted sexual contact and inappropriate sexual remarks made to a female colleague in the workplace during one night shift. The conviction was notified to the Nursing Council and a charge laid before the HPDT. The Tribunal found the convictions reflected adversely on Mr Savage's fitness to practise and cancelled his registration and censured him. Mr Savage played no role in the disciplinary proceedings. The Tribunal did not have any information as to his position on the charge and his intentions for his nursing practice and observed that had Mr Savage participated then there "may have been room to consider a result other than cancellation."<sup>9</sup>

---

<sup>8</sup> 953/Nur17/389P, 8 February 2018

<sup>9</sup> At [26]



24. In *Complaints Assessment Committee v Ali*<sup>10</sup> the Teachers Disciplinary Tribunal imposed censure and conditions (supervision and notification to prospective employers) on Mr Ali who was charged after being convicted of doing an indecent act in a public place under s125 of the Crimes Act. By the time of the disciplinary hearing Mr Ali had taken steps to address the circumstances which led to the offending conduct, and he was not considered to pose a risk of reoffending, or to his students. His co-operation with the proceedings was influential in the Tribunal's decision to impose conditions. In a second teacher's case, *Complaints Assessment Committee v Evans*<sup>11</sup> the teacher was found guilty of common assault for an assault on a stranger while Mr Evans was extremely intoxicated. Taking into account his remorse, the absence of any further issues in the two years since the offending, identification of the root causes of the offending and co-operation with the disciplinary process the Tribunal imposed censure and a condition that Mr Evans advise any employer of prosoective employer of the proceedings and the Tribunal's decision for a period of two years.
25. There will be occasions where a charge arising out of a qualifying conviction will not meet the threshold for discipline, and others where the circumstances of the conviction give rise to consideration of the most serious penalties of cancellation or suspension of registration, where those steps are necessary for the protection of the public. This is not a case where we have considered it necessary to impose suspension or cancellation. Ms Hanley's high level of engagement with the PCC and Tribunal proceedings, together with the steps she has taken to address her alcohol use and other issues have led us to the view that the protection of the public can be served by the imposition of conditions. The reports of Emma Aiken and Dr Perez provide reassurance that Ms Hanley does not pose a risk such that she could not be considered safe to hold a practising certificate. Ms Aiken confirmed the extensive counselling work Ms Hanley has undertaken, her acceptance of responsibility, and her normal scores on alcohol assessment tools when seen by Dr Perez<sup>12</sup>.
26. We are also mindful that Ms Hanley has been penalised through the criminal sanctions imposed on her, and the loss of her job (albeit she resigned). Ms Hanley has no previous convictions, and to the Tribunal's knowledge, no professional complaints or other disciplinary matters. Ms Hanley has indicated her desire to return to social work practice at some point in the future.
27. Taking the above matters into account the Tribunal considered what conditions would best address the issues that Ms Hanley's offending brought to light, while recognising the steps she has already taken. Conditions should reflect the fact the offending occurred in the context of alcohol abuse, that Ms Hanley demonstrated a lack of control in a public place, with colleagues, and on the day in question was using alcohol as a coping strategy for a high level of work-related stress. The conditions the Tribunal will

---

<sup>10</sup> NZTDT 2019/56, 15 October 2019

<sup>11</sup> NZTDT 2018/68, 4 February 2019

<sup>12</sup> Dr Perez report to PCC 26 January 2020

impose are consistent with those proposed by the PCC, with the exception that we will not limit the requirement of disclosure to a two year period. Ms Hanley will be required to undertake professional supervision for a period of two years commencing when she returns to a social work role. This supervision should include reflection regarding the maintenance of professional boundaries, management of occupational stress and thriving at work, and the Code of Conduct to ensure that Ms Hanley maintains the positive personal changes that she has made. Ms Hanley's supervisor should be a senior social worker approved by the Board with appropriate experience and skills. We do not stipulate that this be external supervision, nor any other matters such as reporting to the Board, as we consider in this case these matters can be addressed between Ms Hanley and her future employer.

28. The Tribunal also considers censure appropriate.

### Costs

29. The disciplinary process serves a necessary and important function in meeting the purposes of the Act. The costs involved can be significant and are largely borne by the profession. Practitioners appearing before the Tribunal often have limited financial means. The majority appearing before the Tribunal to date have been unrepresented and unfortunately without professional indemnity insurance, which by reference to the experience of other professions is of substantial assistance when complaints and disciplinary matters arise.

30. The principles of costs in professional disciplinary proceedings, as with the penalty principles, are well-established. We have followed the guidance of the High Court in *Vatsyayann v Professional Conduct Committee*<sup>13</sup> as this Tribunal has previously done<sup>14</sup>, in applying the following principles:

- a. the profession should not be expected to bear the full weight of costs of a disciplinary proceeding;
- b. social workers who appear on a disciplinary charge should make a proper contribution towards costs;
- c. if available the Tribunal should take into account the social worker's means. We add that evidence should be provided in a formal way if the practitioner requests the Tribunal to take their financial position into consideration in reducing or not imposing a costs order;
- d. practitioners have the right to defend themselves and should not be deterred from doing so by the risk of a costs order;

---

<sup>13</sup> [2012] NZHC 1138

<sup>14</sup> Going; Harrison

- e. in reliance on *Cooray v Preliminary Proceedings Committee*<sup>15</sup> and the line of authorities which follow, a starting point is 50% of reasonable costs with a discretion to adjust upwards or downwards depending on the circumstances of each case.
31. The PCC acknowledged that Ms Hanley’s cooperation with the investigation enabled costs to be kept at a more moderate level than they might otherwise have been. The agreement of the parties to conduct the half day hearing by way of AVL also assisted in managing costs and the preparation done in advance by both parties minimised the time required for hearing. Mr Regan referred to the financial information provided by Ms Hanley and acknowledged that while some costs award was appropriate her limited financial means would have a significant bearing on the level imposed. We agree with Mr Regan that costs should not “cripple” a practitioner, and nor are they intended to be punitive.
  32. This Tribunal has considered the information put before us by Ms Hanley as to her and her family’s financial position. They currently live off her husband’s income and have modest expenses due to living a modest lifestyle and assisted by Ms Hanley having addressed certain regular outgoings from savings in advance in mid 2020. Those regular expenses will need to be met however from mid 2021.
  33. We are satisfied that Ms Hanley is in a position to make a contribution towards costs, being approximately 15% of the total costs incurred by the PCC and the Tribunal.

### **Suppression**

34. The Tribunal has the power to make orders for non-publication under s 79 of the Act. The Tribunal is required to have regard to the interests of any person, including the complainant (if relevant) and the public interest, and may make an order if it is satisfied it is desirable to do so. This power extends beyond the social worker and those directly involved in the proceedings. Section 79(2)(d) provides for “an order prohibiting the publication of the name, or any particulars of the affairs, of any person.” There is a permanent order suppressing the name of Ms Hanley’s victim.
35. Ms Hanley had interim suppression of her name pending the hearing of the charge. At the conclusion of the hearing the PCC indicated that it opposed a permanent order being made, noting the absence of any evidence to support this. The Tribunal indicated that on the evidence then available we were not inclined to permanently suppress Ms Hanley’s name and identifying particulars. However we allowed Ms Hanley 7 days to lodge any application for permanent suppression and to provide affidavit evidence if such an order was sought. Ms Hanley advised on 23 November that she was not seeking an order.

---

<sup>15</sup> HC Wellington AP23/94, 14 September 1995

## Orders

36. The Tribunal makes orders as follows:

- a. Ms Hanley is censured;
- b. Conditions:
  - i. That Ms Hanley notify any employer or prospective employer with whom she is to be employed as a social worker of the outcome of these disciplinary proceedings;
  - ii. That Ms Hanley undertake a period of professional supervision for a period of two years commencing when she returns to a social work role. Supervision is to include regular reflection regarding the maintenance of professional boundaries, management of occupational stress and thriving at work, and the Code of Conduct to ensure that Ms Hanley maintains the positive personal changes that she has made.
- c. Ms Hanley is to pay costs in the sum of \$2,500.
- d. The name of the victim of Ms Hanley's offending is not to be published in relation with these proceedings.

37. The Tribunal directs the Hearing Officer to request the Board Registrar to publish this decision on the Board's website and to publish a summary of the Tribunal's decision in its professional publication to members of the social work profession.

Dated at AUCKLAND this 2nd day of December 2020



**Catherine Garvey**  
**Chairperson** | Social Workers Complaints and Disciplinary Tribunal