

- i Member A apologizing to X.
 - ii Member A undertaking in writing to X “not take make any comments in the future about X that X would consider as damaging or harmful to X's reputation”.
 - iii Member A paying X's legal costs to a certain point in time.
5. It seems that the matter was not concluded at that point and the Convenor has laid the charges and is indeed the complainant in the matters that are now before the Complaints Resolution Panel for determination.

THE FACTS

6. Counsel for ANZASW and Member A signed on the 24th of September 2012 an Agreed Statement of Facts. For the sake of completeness we reproduce that Agreed Statement of Facts (amended by the deletion of name of “the member of the public” and replacing it with “Y”) –

“Agreed Statement of Facts

Background

- " 1. X is a practicing social work professional, who, at all material times, is and was a member of the Association. X practices social work [...] in private practice.
- " 2. [Member A] is a practicing social work professional, who at all material times, is and was a member of the Association. [Member A] practices social work [...] for a Trust.

- " 3. Y is a member of the public, who, at all material times was employed part-time by X's practice and part-time by another Agency [...]. Y worked [...] with clients at [Member A's] Trust's long term residence.
- " 4. As a result of an unrelated complaint received by the Association concerning facts which occurred in 2008, the Association convened a Complaints Resolution Panel (*"the 2009 Panel"*) which considered the matter at a hearing [...] 14 October 2009. The Panel issued its decision on 9 November 2009 (*"the 2009 Panel Decision"*).
- " 5. [Member A] was one of three ANZASW practicing social worker members of the five person 2009 Panel.
- " 6. X in this matter was the subject of the 2009 Panel Decision.
- " 7. The 2009 Panel Decision made an order suppressing the name and identity of X at [4].
- " 8. Subsequent to the 2009 Panel Decision, the ANZASW publicized, in an anonymised way (in accordance with the letter and spirit of the 2009 Panel's Decision's order referred to) the facts and finding of the 2009 Panel, on its web and in its magazine, for the guidance of its members, the profession more widely, and the public.

The Member's Conduct

" 9. In a conversation with Y on 29 July 2011 (which [A] regarded as private) [Member A] said [...] that:

9.1. X, who [was] named, was the person referred to in the 2009 Panel Decision;

9.2. [Member A had] been on the Panel;

9.3. X was not trustworthy,

9.4. X took advantage of disabled persons,

9.5. X used [the] position of being in charge of people's money to buy them things they did not need, or had not asked for, and that had charged a percentage of the value of those things;

9.6. X was a shady operator;

9.7. X was named and shamed in a ANZASW newsletter.

" 10. In a subsequent conversation with Y on 1 August 2011, [Member A] asked Y not to tell X about the discussion on 29 July 2011, "X could make a serious complaint about [...] me, that it had not been appropriate [...] to say those things.."

" 11. Y has reported the 29 July 2011 conversation to X prior to 1 August 2011.

Subsequent events of relevance

" 12. X threatened to issue defamation proceedings against the [Member A] in the civil courts. These threatened proceedings were resolved by:

12.1. [Member A] apologising to X;

12.2. [Member A] undertaking in writing to X *"not to make any comments in the future about [X] that [...] [X] could consider as damaging or harmful to [...] reputation"*;

12.3. [Member A] paying X's legal costs to a certain point in time.

Dated this 24th day of September 2012"

THE ALLEGATIONS

The First Charge

7. Clause 7.1 of the ANZASW code of ethics provides –

"Members act with integrity at all times and in the knowledge that their standards and behaviour reflect also on the Association and the profession of social work".

8. The basis of the charge is that on or about the 29th of July 2011, Member A breached a non publication Order made by a Complaints Resolution Panel as part of a decision in relation to a complaint against X, a social worker, issued on the 9th of November 2009 by disclosing the

practitioner's suppressed name to a member of the public which the Convenor alleges amounted to serious professional misconduct.

The Second Charge

9. Clause 5.1 and 5.7 of the ANZASW code of ethics provides –

“Members relate to colleagues with integrity, respect, courtesy and openness and honesty. They should respect and seek to understand differences of opinion and practice, and express constructive criticism of each other in a responsible manner and both the everyday and professional conduct and integrity of members must be beyond reproach”.

10. The basis of this charge is the content of the discussion which occurred on the 29th of July 2011 between Member A and a member of the public, the content is set out in the agreed Statement of Facts (which is accepted by A) and which A accepts amounts to professional misconduct.

EXTENT OF THE ENQUIRY TO BE MADE BY THE PANEL

11. The Panel (because of the agreed Statement of Facts) is confining its consideration of these matters to the following points –
- i Does the behaviour in charge one amount to serious professional misconduct?

- ii What consequence should be imposed by way of penalty if the Panel determines that professional misconduct or serious professional misconduct has occurred?
- iii Member A has admitted the second charge of professional misconduct and it is therefore proved by admission. The only determination to be made by the Panel in relation to the second charge therefore is to what penalty (if any) is to be imposed.

GENERAL DISCUSSION

12. There are three documents which regulate to a more or lesser extent social work practice in New Zealand of members. They are –

- i The code of ethics of ANZASW.
- ii The Standing Orders of ANZASW.
- iii The constitution of ANZASW.

13. Under the constitution of social workers, the obligation of members is clear in terms of their responsibility under each of the three documents that we have referred to.

Clause 7 of the Constitution provides –

“7 Obligation of Members

A person accepted for membership agrees –

- a) *To be bound by the rules of this constitution and*

b) *To be bound by any Standing Orders approved pursuant to this constitution and*

c) *To be bound by the Association's Code of Ethics*

h) *To be bound by and comply with any decision and Order of the Complaint's Convenor or Complaints Resolution Panel which may apply to him or her."*

14. An overview of the three essential documents referred to indicates that the primary reason for their existence is to regulate the practice of social work and, in aspects of service delivery, to maintain a very high standard of delivery of such a service. A secondary purpose is to regulate the relationship between members. While the purposes of these documents may differ, the importance of what they are designed to achieve, its equally important.

15. What is apparent from the helpful submissions filed by Counsel for ANZASW and Counsel for Member A is that under charge one, Member A accepts that Member A's behaviour amounted to professional misconduct but does not accept that it would amount to serious professional misconduct.

DISCUSSION ON ISSUES RELATING TO THE FIRST CHARGE

16. The first matter therefore for determination is whether or not such behavior as admitted by Member A could amount to serious professional misconduct.

17. The Panel observes that levels of professional misconduct are to be dealt with in 3 categories being professional misconduct (per se), serious professional misconduct and gross professional misconduct.
18. The Panel is not aware of any definition which could be used to determine the difference between professional misconduct and serious professional misconduct.
19. A definition of the word “serious” as defined in the Collins, Oxford and Webster dictionaries include –
 - *“Giving cause for concern”* (Collins)
 - *“Not to be trifled with, not slight”* (Oxford)
 - *“Important, weighty”* (Webster)
20. The Panel adopts the principle that the word “serious” should be given its ordinary or normal meaning.
21. Member A was in 2009 a member of a Complaints Resolution Panel. As such Member A would, as is pointed out by Counsel for ANZASW, have accepted the important role of determining the resolution of matters relating to fellow members of the Association.
22. Member A was part of the Panel which determined an Order for non-publication of the name of X. There must have been recorded reasons for this. It was a decision in which Member A would have played a part. This Panel finds that Member A could not have been under any misunderstanding about that issue. The very grave issue arises that a

member of a Panel has breached that Panel's Order. There are significant and far reaching consequences from this failure. The Panel finds that it goes to the heart of the disciplinary process and would have the effect of undermining the credibility and integrity of the Disciplinary Panel. It would also engender a loss of confidence by members of ANZASW that disciplinary proceedings concerning them would be dealt with in a way that was just and effective. Moreover the public confidence in ANZASW could be affected.

23. Given that as already discussed, the behaviour of Member A directly undermined the integrity of the disciplinary process The Panel cannot regard the behaviour as trifling or of minimal effect and finds that the charge of serious professional misconduct is established.

DISPOSITION

24. The submissions from Member A's Counsel are directed substantially towards mitigating circumstances that the Panel should take into account in assessing what penalties are to be imposed. It is a principle in law that the more serious the charge the less weight personal circumstances have in mitigating the penalty. Having said that however the Panel has taken some care to understand Member A's position. What is advanced on Member A's behalf and noted by the Panel is –

- i Member A's immediate recognition that A's behaviour on the 29th of July 2011 was inappropriate and Member A took steps to remedy that situation (albeit they were too late).

- ii A was facing difficult circumstances [...] The Panel has not given great weight to this factor because many professional people and social workers [facing similar circumstances] adhered to their professional level of conduct.
 - iii Having regard to references from the CEO and the director of clinical practice of the organisation for which Member A works and a further reference from a reputable professional it is accepted that Member A is a person who is held in high regard as a competent and honest practitioner.
 - iv That whatever the outcome it appears from the reference from Member A's employer, that there will be continuing employment offered to Member A within that organisation.
25. The Panel have considered to some extent the general law as it applies to breaches of Suppression Orders in other disciplines and particularly the breach of Suppression Orders that have been made in New Zealand Courts. The breaching of a Suppression Order results normally in fine only outcomes. The aggravating feature of this case however is that the breach occurred by a Panel member therefore breaching its own order.
26. Revocation of membership is a very significant step which would (as the Panel understands it) have far reaching effects on Member A and would mean that Member A would perhaps have even livelihood undermined by the making of such an Order. An effect would be that Member A's valuable contributions made so far to social work practice would be seriously affected. We have considered whether in those circumstances

the revocation of membership would be out of proportion to the gravity of the offending. To some extent the Panel has also taken into account the personal circumstances of Member A (in a limited way) but more particularly to the agreed Statement of Facts which in effect was a partial admission of the first charge and an unreserved admission of the second charge. This made the Panel's task considerably more straight forward. The result therefore is that the Panel have determined that Member A's membership of ANZASW is to be suspended for a period of six months. The Panel has considered whether Member A should be directed to a form of training or recertification but came to the view that those training issues or the like would not be of any significant value.

CHARGE TWO

27. Charge two has been admitted. From the agreed Statement of Facts the Panel infers that Member A's involvement on the Panel was used to support the truth of what Member A was saying about X. Damaging comments that had been made were that, *"X was not trustworthy, that X took advantage of disabled person, that X's position was abused by [...] buying items for people who did not require them and charging a percentage of the value"*. A statement was also made that *"X was a shady operator"* and finally that *"X had been named and shamed in a ANZASW newsletter"* which is a further reference to the 2009 Panel. The Panel has considered the impact statement supplied by X. To some extent the actions taken by Member A in settling matters with X have gone some way to ameliorate the effect upon X of the behaviour of Member A. Nonetheless the Panel thinks that some form of deterrence needs to be

imposed and Orders are to be made that Member A is to be censured and ordered to pay the sum of \$1000.00 to X.

ISSUES OF PUBLICATION

28. We have already indicated our intention to suspend rather than revoke Member A's membership. In doing so we have considered all relevant mitigating factors and express the view that we have taken a lenient view of that matter. We do not conclude because of that that we are precluded from considering mitigating factors which could be taken into account in assessing whether publication of Member A's name in relation to these proceedings should be made.
29. The Panel has found however that the charge of serious professional misconduct is proven. The proper functioning of ANZASW could be seriously undermined by any repetition of behaviour of that kind.
30. The Association is duty bound to protect its own processes to ensure that they merit the trust and respect of both its own members and the public generally. Even if the Panel had found that the facts in the first charge could only substantiate a charge of professional misconduct, it is highly likely that no Order prohibiting publication of Member A's name would have been made. The Panel therefore do not find any grounds or any reasons why a non-publication Order of Member A's name should be made.
31. ***Note: The Board of Governance determined, following submissions from Member A, that complaint documentation identifying A was to***

be removed from the Association's website on Monday 18 August 2014 and replaced by this anonymous version.

COST

32. An order for payment of a contribution to the costs of this proceeding of \$2,500.00 pursuant to Standing Order 5.11.18.4.3.

DISPOSITION

33. The following orders of the Panel are therefore –
- i Charge One – suspension of Member A's ANZASW membership for a period of six months commencing 25 days after the delivery of this decision to Member A. (Standing Orders 5.11.18.4.5).
 - ii Charge Two –
 - Member A is to be censured (Standing Orders 5.11.18.3)
 - Member A is to make a payment of \$1000.00 to X. (Standing Orders 5.11.18.4.2).
 - iii In relation to both charges an Order for payment of a contribution to the costs of this proceeding of \$2,500.00 (Standing Order 5.11.18.4.3).
 - iv In relation to this proceeding the Panel orders the non publication of the name of or any information tending to reveal the identity of any person involved in these proceedings apart from Member A.

