

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Health Ombudsman v SLW* [2020] QCAT 219

PARTIES: **DIRECTOR OF PROCEEDINGS ON BEHALF OF
THE HEALTH OMBUDSMAN**
(applicant)

v

SLW
(respondent)

APPLICATION NO/S: OCR165-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 19 May 2020 (*Ex Tempore*)

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Judicial Member Robertson
Assisted by:
Ms C Elliott
Dr K Forrester
Mr S Lewis

ORDERS:

- 1. In respect of allegation 1, the respondent has behaved in a way that constitutes professional misconduct**
- 2. The respondent is reprimanded pursuant to s 107(3)(a) of the Act**
- 3. Each party bear their own costs and**
- 4. In relation to the order made by the Tribunal on the 28th of June 2019, pursuant to s 66(1) of the QCAT Act, it will remain in place with the following amendments; after (c)(1) in order 1, insert “(d). Information that may enable the respondent to be identified;” and in that Order, after the words “complainant”, insert the words “or the respondent”.**

CATCHWORDS: PROFESSIONS AND TRADES – HEALTH CARE PROFESSIONALS – NURSES – DISCIPLINARY PROCEEDINGS – where the respondent was a registered nurse – where the respondent pleaded guilty to offences of assault occasioning bodily harm whilst armed with an offensive weapon - where the respondent has been

inconsistent in accepting his conduct with the OHO – where the respondent did not notify AHPRA – whether professional misconduct – sanction – scope of prohibition order

Criminal Code 1899 (Qld) s 315A
Health Ombudsman Act 2009 (Qld) s 107

REPRESENTATION:

Applicant: Director of Proceedings on behalf of the Health Ombudsman

Respondent: PAT Law & Associates

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] On the 30th of May 2019, the applicant Director referred these disciplinary proceedings to the Tribunal. In a series of joint submissions, the parties have agreed to the findings and orders to be made.
- [2] Nevertheless, it is still for the Tribunal to make the necessary findings based on the evidence before it. It is agreed that a non-publication order made by his Honour Judge Allen QC, pursuant to s 66(1) of the QCAT Act, is to be continued, to protect the anonymity of the complainant in the criminal proceedings involving the respondent, which are at the heart of these proceedings, subject to a slight change referred to in the parties' joint submission dated the 23rd of December 2019, to which I will refer later in these reasons.
- [3] At all relevant times, the respondent was a registered nurse. He is solely qualified in the area of mental health nursing and has tertiary qualifications from the United Kingdom. Prior to the conduct, the subject of a number of notifications to the Office of the Health Ombudsman in June 2016, the respondent had no prior notifications or traffic or criminal history.
- [4] On the 15th of July 2016, the Health Ombudsman suspended the respondent's registration as a nurse. The suspension was revoked in May of 2019 and he has not been registered since 2017.

The relevant conduct

- [5] The criminal proceedings arise out of a domestic relationship involving the complainant female and the respondent. On the 17th of June 2016, the respondent assaulted his partner during an incident while armed with a piece of rope, which assault was sustained, and which involved slapping and hitting her on multiple occasions to the body, causing visible marks and welts. Police were called during the incident by a neighbour and the respondent was later charged with various serious criminal offences.
- [6] On the 29th of June 2016, a domestic violence protection order was made under the relevant Act to protect the complainant. One of the conditions was that the

respondent was prohibited from contacting her. On the 14th of October 2016, when I infer he was charged with the criminal offences, he entered into a bail undertaking, which contained a similar condition.

- [7] I infer that the respondent initially pleaded not guilty to a series of indictable offences. A trial was set to proceed in February 2017. Just prior to the trial date, and in breach of both a condition of the domestic violence protection order and his bail undertaking, the respondent contacted the complainant female. He attempted to dissuade her from cooperating with the prosecution. He also contacted a mutual friend and told her that he had material in the form of a video that would severely embarrass the complainant if the matter proceeded to trial.
- [8] It was clearly an attempt, quite inappropriately, to dissuade her from cooperating with the prosecuting authorities and could have amounted to an attempt to pervert the course of justice. I can infer that at this point of time, he was showing very little insight into the seriousness of his conduct and was, by improper means, trying to interfere with the criminal justice process.
- [9] From the agreed facts, I infer that after the breaches of those orders, he had a change of heart. On the 16th of June 2017, he pleaded guilty to two summary offences of breaching the domestic violence protection order and the bail undertaking, and one indictable offence of assault occasioning bodily harm whilst armed.
- [10] He was sentenced on the 23rd of June 2017 to a two year probation order by The Chief Judge and no conviction was recorded. Two further charges of depravation of liberty and choking, pursuant to s 315A(1)(a) and (b) of the Criminal Code, were discontinued.
- [11] By the time of the sentence hearing on the 23rd of June 2017, the respondent had spent 142 days in pre-sentence custody. Again, I infer that upon being charged with the breaches of the domestic violence protection order and the bail undertaking in February 2017, he was either denied bail or his bail was revoked. This was a factor that had significant weight in The Chief Judge's approach to the ultimate sentencing outcome.
- [12] At the time of the sentence, the respondent's lawyers tendered a report from a psychologist and clinical neuro-psychotherapist who had treated him in early 2016 for mental health issues arising out of an alleged work-related incident in 2015.
- [13] The respondent has made a number of requests to the Office of the Health Ombudsman (OHO), since the finalisation of the criminal proceedings, seeking a revocation of the suspension of his registration. His first in September 2017 was supported by a report from a different psychologist who did not refer to any work-related trauma, but did refer to the fact the respondent was ashamed of his behaviour, which he described as bondage and role-playing.
- [14] He again requested OHO to reinstate his registration in an email dated the 20th of November 2018. Again, he described his conduct as sexual conduct of a bondage and sadomasochistic kind, resulting from a misunderstanding by a neighbour who called the police.
- [15] His own pleas of guilty are completely inconsistent with this position. The agreed facts, which formed the basis of his plea of guilty in June 2017, make it absolutely clear that the complainant did not consent to being assaulted with the rope, and that during the assault, the respondent's behaviour resulted from professed jealousy, and

on two occasions, he made a threat to kill her. The attending police and the neighbour, according to the agreed statement of facts tendered before The Chief Judge, both heard the complainant pleading with the respondent to stop.

- [16] The characterisation of his own conduct, as he did, in his pleas to have his registration reinstated, as some form of consensual bondage and sexual activity, is contrary to his plea of guilty and to the facts that he agreed to as underpinning that plea.
- [17] Its relevance in these proceedings, is that it shows a lack of insight and undermines his protestations of remorse and shame. The agreed facts for these proceedings referred to another contact by the respondent with the Office of the Health Ombudsman on the 20th of March 2019 to have his registration reinstated. By then, he was acknowledging, as he must, that he was convicted of a domestic violence offence, but his position then still was that the incident involved mutual participation in unusual sexual practices involving himself and the complainant.
- [18] In all his submissions, he has referred to a 17-week stopping family violence program with Relationships Australia, which he undertook soon after being charged, and which I am satisfied he completed successfully.
- [19] Ultimately, OHO was provided with a report dated the 8th of October 2019 from the psychologist who had provided a report for the criminal proceedings. At that point in time, he told her that, “the assault towards his de facto partner occurred in a moment of anger during consensual activities.” He was still, at that point, not showing true insight into the nature of his criminal conduct.
- [20] The psychologist recommended that he see a psychiatrist however there is no evidence that he has done that. He was prescribed anti-depressant medication by his general practitioner. Not surprisingly, the five months he spent in custody caused him significant anxiety, but he appears to have used that time to address the underlying causes of his conduct, and the psychologist opines that he is now stable.
- [21] By the time the parties filed joint submissions on the 14th of November 2019, the respondent accepted that his various versions of what occurred in his request to OHO were at odds with the facts as agreed in the criminal proceedings.
- [22] As noted in the psychologist’s report, he complied with all the conditions of the probation order, which he completed without breach in June 2019. Apart from his appalling conduct surrounding the criminal incident, the material before the Tribunal suggests that the respondent was a competent and respected mental health nurse.
- [23] Although the personality assessment undertaken by the psychologist has some caveats, it does appear that the respondent is now psychologically stable. I am satisfied that he does not have any medical condition that would adversely affect or impair his ability to practice as a mental health nurse.

These proceedings:

- [24] It is accepted that these proceedings are protective in nature and not punitive. The offending was isolated and seems to be out of character. He had no prior troubles with the law and has not been in any trouble since. It is relevant to the characterisation of the conduct to have regard to the Nursing and Midwifery Board of Australia Code of Professional Conduct for nurses in Australia, which the

respondent accepts, by his conduct, he has breached. Such Codes are admissible before the Tribunal as evidence of what constitutes professional misconduct by virtue of section 41 of the Health Practitioner Regulation National Law (Queensland) 2009 (the National Law).

- [25] In relation to allegation 2 in the disciplinary proceedings, the applicant wishes to withdraw that allegation. This relates to the respondent's failure to notify the Board within seven days of the charges of breaching the domestic violence protection order and the Bail Act, which came about as a result of his contacting the complainant in February 2017. Although it is common ground that he did not comply with s 130(1) of the National Law on that occasion, he did comply when charged with the offences originally. The obvious explanation as to why he did not comply on the second occasion is that because his bail was revoked he was incarcerated and, at best, the breach is technical, as submitted, properly and fairly by the applicant. The Tribunal will, therefore, make no finding in respect of that conduct. In relation to allegation 1 involving his conduct, the subject of the criminal proceedings, the parties agree that the proved conduct amounts to professional misconduct as defined by s 5 of the national law, and the Tribunal agrees.

Sanction:

- [26] In deciding the appropriate sanction in a particular case, the Tribunal must take into account the maintenance of professional standards, the preservation of public confidence in the profession and the need to deter the respondent and other professionals from engaging in any form of domestic violence, which is prevalent, sadly, in our society. I have referred above to the many adverse consequences already to the respondent as a result of his conduct, including the inability to practice in his profession for many years. The joint submission refers to a number of decided cases, all of which can be distinguished, but, nevertheless, provide guidance to the Tribunal.
- [27] The orders of the Tribunal will be:
1. The Tribunal finds that in respect of allegation 1, the respondent has behaved in a way that constitutes professional misconduct
 2. The respondent is reprimanded pursuant to s 107(3)(a) of the Act
 3. Each party bear their own costs and
 4. In relation to the order made by the Tribunal on the 28th of June 2019, pursuant to s 66(1) of the QCAT Act, that will remain in place with the following amendments; after (c)(1) in order 1, insert "(d). Information that may enable the respondent to be identified;" and in that Order, after the words "complainant", insert the words "or the respondent".