IN THE DISTRICT COURT
AT WELLINGTON

CIV-2014-085-000472
[2016] NZDC 3954

UNDER	Health Practitioners Competence Assurance Act 2003
IN THE MATTER	of an appeal under Section 106 against a decision of an Authority continuing the suspension of the appellant from practice as a registered nurse
BETWEEN	ROSEMARY FRANCES REIN Appellant
AND	THE PROFESSIONAL CONDUCT COMMITTEE OF NURSING COUNCIL OF NEW ZEALAND Respondent

Hearing: 8 March 2016

Appearances: Appellant in person
Mr M F McClelland QC and Ms C Prendergast for Respondent

Judgment: 14 March 2016

RESERVED JUDGMENT OF JUDGE B DAVIDSON

Appeal

[1] This is an appeal under s 106 of the Health Practitioners Competence Assurance Act 2003 (Act) against a decision of the Health Committee of the Nursing Council of New Zealand, given on 13 June 2014, declining to revoke the suspension of the appellant's nursing registration. In essence, the Committee[1] concluded it was not satisfied that the appellant was able to practice satisfactorily as a nurse.

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[1] The Committee consisted of 2 registered nurses and was assisted by a legal advisor. Dr Rein submitted that the committee was not properly constituted. It is clear the committee complied with the requirements of Schedule 3 of the Act and was properly constituted.

[2] The appellant says the Committee erred in its findings and its conclusion was wrong as:

2.1 it placed improper reliance on Australian decisions concerning her nursing registration[2] in Victoria;

2.2 it failed to give sufficient weight of Dr Ingram's report of 20 March 2014 that she was fit to practice;

2.3 it placed undue weight on her email interaction with the Nursing Council in 2013 – 2014 and on her conduct at the hearing itself on 15 May 2014;

2.4 it failed to have proper regard to her experience and qualifications.

Background

[3] The appellant is now 69. She holds degrees in medicine, law and psychology. As well she was registered as a general and obstetric nurse in New Zealand in 1969, when she was aged 23.

[4] Between 1990 and 2006, she was involved in a *"long and torturous history"*[3] with the Australian medical authorities over her nursing registration. It is unnecessary, and probably counter-productive, to recite the history in detail; suffice to say in 2002 – 2003 both the Nurses Board of Victoria and the Queensland Nursing Council, as they were obligated to do, notified the respondent that the appellant's nursing registration had been suspended in Victoria and Queensland.

[5] As a result in May 2003 the respondent suspended her registration. This decision was upheld on review later that year and again in 2006 and 2010.

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2 Decision of Judge Duggan, in the Victorian Civil and Administrative Tribunal on 27 February 2002 and Judge Bowman in the same Tribunal on 30 June 2006.

3 Decision of Judge Bowman, 30 June 2006, para [3]

[6] The appellant sought a further review in 2011. On 25 August 2011 the Health Committee decided that her suspension should not be revoked. She appealed. Her appeal was dismissed by Judge Harrop on 11 May 2012[4].

[7] The significance of this brief history cannot be understated. It must mean, logically, that the only truly relevant material that I need to consider, absent some demonstration by the appellant of total error in all the proceedings, is that which occurred since the August 2011 Committee hearing.

[8] It is unclear exactly when the appellant asked for her suspension to be reviewed again, but it was at least by 4 September 2013, only 16 months after Judge Harrop's decision. Critical to the disposal of this appeal is an exchange of emails between September 2013 and April 2014. These emails were all about arranging a written report on the appellant's ability to practice as a nurse. For reasons which I will come to later they, however, became a vehicle for the appellant to engage, yet again, in a collateral attack on the respondent.

Jurisdiction

[9] In his 2012 decision, Judge Harrop was inclined to think that there was in fact no jurisdiction, under s 106 of the Act, to appeal against a decision declining to revoke a suspension[5].

[10] This matter was raised at the hearing before me. The appellant argued that there was jurisdiction because, if not, a suspended nurse would be deprived of any remedy other than by way of judicial review. This was noted by Judge Harrop at paragraph [15] of his decision where he said:

> … As a matter of practicality, that would appear to be inconsistent and potentially to put a practitioner in a position where, once there is a valid suspension, it is impossible to return to practice even if the Nursing Council is completely unwarranted in maintaining the suspension.

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4 See *Dr Rosemary Rein v Professional Conduct Committee of the Nursing Council of New Zealand* (CIV-2011-085-000771, 11 May 2012)

5 See paragraphs [9] – [15] inclusive of his decision.

[11] Mr McClelland did not press the point. He said that the Nursing Council considered that Judge Harrop's view was correct; nevertheless it did not want to stymie potential appeal rights on a strict jurisdictional basis. I note for example here, that when the respondent reported its findings to Dr Rein by letter on 13 June 2014, it advised her as follows:

> If you wish to review the decision you must ask for a review by the full Nursing Council in writing within 20 working days. **Alternatively you could lodge an appeal in the District Court within 20 working days of receiving this letter.**

[12] For what it is worth, in my view, there is jurisdiction if only for practical and functional reasons. Section 106(1)(d) relevantly reads as follows:

> A person may appeal to a District Court against any decision or direction of an authority to
>
> …
>
> (d) suspend his or her practicing certificate or registration.

[13] In my view when this provision is read purposively it must mean that a decision not to revoke a suspension in real terms means a decision to suspend. The whole process demonstrated by the email exchange between September 2013 and early 2014 must amount to notice under s 49 of the Act requiring medical examination, thereby engaging the suspension power, yet again under s 50.

[14] However, like Judge Harrop because I intend to dismiss the appeal on its merit, I reach no concluded view.

The appeal test

[15] Section 109(2) reads:

> An appeal under this part is by way of rehearing.

[16] It was explained this way by Keane J[6]:

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[6] *A v Professional Conduct Committee* (HC Auckland, CIV-2008-404-002927) paragraph [65]

> An appellant still must show, the Supreme Court said, why the Court appealed to should differ from the Tribunal whose decision is under appeal. Unless the appellant can show that the Tribunal appealed from was wrong the Court on appeal is not entitled to interfere. The Court on appeal will still recognise any advantage that the Tribunal appealed from enjoys, like expertise or the ability to assess witnesses first hand, where these are important … but otherwise no deference is called for.

[17] Neither party disputed the legal basis for the appeal hearing.

The Health Committee hearing

[18] This took place on 15 May 2014. The appellant attended from Australia by telephone conference.

[19] As the appellant acknowledged at the appeal hearing before me, this in itself posed some logistical issues. She acknowledged that she may well have been better advised to have attended in person.

[20] The committee had all the requisite information before it, both historical and current. I have seen that material and a transcript of the hearing itself. As I noted before, the critical material lies in events between the 2011 committee hearing and the 2012 appeal and this hearing in May 2014. It included:

- exchange of emails late 2013/early 2014;
- Dr Ingram's report 20 March 2014;
- transcript of the hearing itself.

[21] These documents are critical. The respondent's case is essentially that nothing had changed since the 2011/2012 decisions; or if it had the email exchange and the conduct of the appellant at the hearing itself underscored the essential correctness of the committee's decision.

[22] Mr McClelland further pointed out that Dr Ingram's report of March 2014 was in essentially the same terms as his earlier report of July 2010 which had been considered in full in 2011 and 2012. He submitted the committee was right to have

concerns around the lack of support and corroboration for some of the matters contained within Dr Ingram's report.

[23] I intend therefore to deal with each of these three aspects before coming back to the appellant's submissions themselves.

The email exchange

[24] I have read these in full. At the appeal hearing before me the appellant conceded in reply to Mr McClelland's submissions that some of her emails could be said to have been inappropriate.

[25] I detail those of some significance:

> 3 September 2013 –
>
> … The global warming reference is appropriate when one considers how many people don't believe it is happening – it's an opinion, and that is all psychiatry is – there is no psychiatric hard tests to prove one way or the other that a person is mentally ill. …
>
> I expect you will ignore my pleas and not respond to me. If you do not I intend that legal hearings may solve this matter. I have been very damaged, and insults have been hurled at me for years. I am not nor ever was mentally ill, but I remain extremely damaged by your behaviour.
>
> 4 September 2013 –
>
> … You should have thought of all this and not have written to me in such a blasé manner with no feelings.
>
> 16 September 2013 –
>
> Please respond to me – I intend going to the NZ court again, as I have nightmares about being raped and these won't settle until I have got my registration back as it all linked together. Why would a country like NZ want to go along with a corrupt Australia. …
>
> 17 September 2013 –
>
> ... It is abusive to allege I am mentally ill. Do you believe the Indians trained a nutcase from 1996 – 2001, and that between 2009 – 2010 they had a mad doctor working in Delhi. I sent the material so that you would realise the case was not what was alleged, but even you are abusing me. It is horrible. What use is it if I am telling you this matter is corrupt and you come back to me with this rubbish. Shame on NZers – you are letting the country down. You are not worth corresponding with if all you can do is use

> mental health to abuse me. How come I have never seen a psychiatrist for 20 years except to get reports for you. …
>
> 17 September 2013 –
>
> You insinuated the Indian race is stupid by allowing me to live and work in their country recently – you said they didn't know I was a fruitcake and if they did they must be stupid – please confirm this is what you meant.
>
> 17 September 2013 –
>
> You lot are just great bullies and something should be done about the way you call people names – your behaviour is truly disgusting. Would you like to be told you are a fruitcake – play clean because you are such a disgusting pack of bullies.
>
> 6 January 2014 –
>
> … I have always been aware of this disgusting system and these people who profess to know all about people and actually know nothing and are dangerous in society. I am as much an expert in the field as they are.
>
> 13 March 2014 –
>
> … my good study history has all been ignored to get some deviant and corrupt psychiatrists off taking any blame.

[26] Dealing with these emails the committee in its decision said:

> The Committee was particularly concerned by the content and tenor of Dr Rein's recent correspondence with Liz Banks, Nurse Advisor. The Committee attempted to discuss these emails with Dr Rein; however she responded in an inappropriate manner (including a comment that the group of medical students she trained with in India nearly "all passed because I kept the standard very high") and was unable to recognise that her communication had been inappropriate.

[27] In my view these emails are highly revealing. The appellant knew the purpose of the email exchange was to seek a reconsideration of her suspension and to organise the appropriate medical assessment. She must be taken to have understood what Judge Harrop had said of her only a year or so earlier[7]:

> Against all of this background, there is the rambling and unfocussed content of the emailed submissions leading up to the hearing on 11 August 2011 and the performance at the hearing itself. That conduct seems to be clearly explained by her personality disorder but whether or not it is possible or appropriate to attribute it in that way, the key point is that her conduct

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[7] Paragraph [62] *Dr Rosemary Rein v Professional Conduct Committee of the Nursing Council of New Zealand* (footnote 4)

> revealed a serious misjudgement of what the occasion required. If a self-centred person such as Dr Rein is unable to work out, despite her intelligence, what is the best way to act in her own interests at and before such a hearing, what hope is there that she would act in the interests of patients under stress in a nursing environment? One could well imagine her response if a patient suffered from mental illness sought her advice about how to handle a psychiatrist who had provided an adverse diagnosis.

[28] Yet against that background, the overall tenor of the emails again was abusive and obfiscating.

Dr Ingram's report 20 March 2014

[29] In his report, Dr Ingram noted as follows:

> There has been no change in Dr Rein's condition since I last saw her and therefore I feel my assessment is much as it was in my previous report, where I felt that she was most likely to have been suffering from a personality disorder, which had led to her relating to people in an aggressive way at times and which possible had led to some psychotic symptoms in the past. However, there is no evidence that she has had any psychotic symptoms for many years.
>
> Dr Rein presents with a long and complicated history of psychiatric problems reaching back for thirty-five years. It has clearly been difficult to make an exact diagnosis of what her problem has been over the years, but certainly there is no evidence of her having had any psychotic symptoms for several years and I feel the most likely diagnosis is one of a personality disorder.
>
> In regard to the specific questions asked in your letter of the 14th March 2014,
>
> 1. I do not feel that Dr Rein has any current psychiatric illness and therefore there is no current or proposed treatment plan.
>
> 2. I do not feel that Dr Rein's health condition means that she is unable to perform the functions required for nursing. Certainly, in the past she has had multiple conflicts with people in authority, though I feel this is less likely to be an issue if she was to stick to basic nursing duties. Assuming her account of her voluntary nursing in England in 2013 is accurate, she was able to perform normal nursing duties in this circumstance, albeit in a voluntary capacity, without any particular problems.
>
> 3. I therefore do not feel that there should be any particular conditions placed on her ability to practise, except that initially I do not feel it would be appropriate to put her in positions of authority, until there had been an opportunity to assess her functioning at a more junior level.

[30] But this report was no different, in reality, than that from his 2010 report. The conclusions were the same. The lack of supporting or corroborative material equally was much the same.

[31] Of Dr Ingram's report the committee said:

> The committee carefully considered Dr Ingram's report. It noted that Dr Ingram remained of the view that Dr Rein most likely suffered from a personality disorder, which had led to her relating to some people in an aggressive way at times and may have led to some psychotic symptoms in the past. The committee noted this accorded with the diagnosis provided by previous psychiatrists … The committee did not accept Dr Ingram's opinion that Dr Rein's health condition did not mean that she was unable to perform the functions required for nursing. The committee noted that Dr Ingram's report was based on the information provided to him by Dr Rein and he had not spoken with Dr Rein's general practitioner or any family or friends who would have been well placed to comment on what effect Dr Rein's health condition may have on her capacity to work as a nurse.

[32] It was of course open to the committee to accept or reject Dr Ingram's 2014 report in full or in part. As well, the report had to be seen against all of the other material before the committee, including the large number of other reports.

The hearing itself

[33] I have read in detail the transcript of the hearing.

[34] At the appeal hearing before me, Dr Rein accepted that she could have handled herself better with the committee. She accepted she tended to talk over committee members and did not focus on issues that they had wanted to address with her.

[35] The transcript needs to be read as a whole. When done so, it is clear that the appellant was unable to focus on the critical and relevant issues, the very purpose of the hearing itself. She over-talked the committee. She would not listen to committee members when asked to do so. She went off on wholly inappropriate diversions.

[36] Dealing with Dr Rein's conduct at the hearing itself the committee said:

> The committee noted that Dr Rein remained preoccupied with the past, made multiple references to irrelevant information and was inappropriately tangential in her communications with the Council and the committee. The committee noted the importance of clear, effective, respectful communication and providing safe nursing care and was concerned that Dr Rein's interactions with the Council and committee indicated that she could not satisfactorily meet this fundamental requirement of nursing practice.

Appellant's submissions

[37] It is not easy to discern the exact basis of her appeal. I note that Mr McClelland in correspondence prior to the appeal had unsuccessfully tried to do so.

[38] But a few core points emerged from Dr Rein's submissions:

- she remains concerned that she has been wrongly diagnosed in a number of medical reports[8]. Naturally enough, there are some variations and differing descriptions, labels and background material in these reports. But when read as a whole the overall impact is undeniable. They were summarised this way by Dr Ingram in his 2010 report –

  > From the history Dr Rein related, it is difficult to make a clear psychiatric diagnosis. However, given the variety of different diagnoses and the absence of any deterioration of her mental state or any perceptual or delusional abnormality at the present time, I think the most likely diagnosis is one of a personality disorder, which at times has led to her relating to people in an aggressive way and which at times possibly led to some psychotic symptoms.
  >
  > It is also possible that she may have had a bipolar disorder, though I think the evidence for this is less convincing. I do not think there is evidence to support the diagnosis of schizophrenia, especially given that there has been no deterioration of her overall level of functioning with time, in fact she continues to function at a very high level, and there is certainly no evidence of any psychotic symptoms at the present time.

- she remained concerned about factual errors in the judgements of Judges Duggan and Bowman in the Victorian Civil and Administrative Tribunal in 2002 and 2006. Nevertheless, even assuming there may have been some factual errors, their findings and conclusions are abundantly clear;

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[8] At least 6 psychiatric reports between May 2003 and July 2010.

- she contended that the Health Committee breached the Human Rights Act 1993 as its findings were discriminatory (presumably age-based). Little further need be said other than repeating her submission itself. The submission is palpably incorrect; the committee's finding was based on other clearly expressed reasons;

- she contended that no regard had been given to her experience and qualifications. However, her experience and qualifications were not the litmus test the committee was to decide. The committee's task was to decide on her fitness to practice, not her competency. It also needs to be noted that at the appeal hearing before me she produced a body of material to show her attendance, after the 2014 Health Committee hearing itself, at various medical and nursing workshops. This, however, was not material which was before the committee.

[39] Assuming I have correctly discerned her principal grounds of appeal, I reject each. I see nothing in any, either singularly or in combination.

Conclusion

[40] Accordingly I dismiss the appeal. I see nothing wrong or incorrect with the committee's decision at all. I can go further and say it is one with which I entirely agree.

[41] In reality nothing had changed since the committee's findings in 2011 and Judge Harrop's decision of 2012. If anything the appellant again destroyed any possible prospect that her suspension might be revoked by her history of contact with the Nursing Council and by her conduct at the hearing itself.

[42] Put bluntly she has simply failed to convince me that the committee's conclusion was wrong.

[43] Accordingly the appeal is dismissed.

[44] Under Rule 18.24(1)(c) District Court Rules 2014 there will be an order for costs, against the appellant, in favour of the respondent on a 2C basis.

B Davidson
District Court Judge