

COMPLAINTS AND DISCIPLINARY TRIBUNAL

DECISION NO: 01/08/SWDT

IN THE MATTER of the Social Workers
Registration Act 2003

AND

IN THE MATTER of a charge laid by the
Complaints Assessment
Committee

Complainant

AND

Arthur James Curson,
Social Worker

Respondent

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

PRESENT:

Mr V Milner (Chairperson),
Ms A Bennett, Ms S Dyhrberg, Mr D Russell, Mrs J Pearse (Members)
Mr S McKinley (Hearing Officer)

APPEARANCES:

Mr G Brodie (For the Complaints Assessment Committee)
Mr J Parker, Ms C Walker (For the Respondent)

HEARING:

Held in Wellington on Wednesday 30 July 2008.

Introduction

1. Mr Curson is a Registered Social Worker, Specialist Clinical Social Worker, Social Services Consultant and Counsellor.
2. On 27 May 2008 a charge alleging professional misconduct against Mr Curson was filed before the Social Workers Complaints and Disciplinary Tribunal ("The Tribunal") by the Complaints Assessment Committee of the Social Workers Complaints and Disciplinary Tribunal ("CAC"). An Amended Charge was filed by agreement on 28 July 2008. The Tribunal was advised that Mr Curson intimated a guilty plea, to the amended charge, based on the content of an Agreed Summary of Facts.
3. The Amended Charge provided as follows:

*The Complaints Assessment Committee of the Social Workers Complaints and Disciplinary Tribunal having reason to believe that grounds exist entitling the Tribunal to exercise its powers pursuant under part 4 of the Act, and acting pursuant to Section 75 of the Act, **hereby charges** that during the period 1 January 2007 and 31 March 2007 **Arthur James Curson**, a Registered Social Worker, contravened the provisions of the Act and the Code of Conduct in the manner set out below.*

Particulars

When accepting and carrying out instructions to respond to a request from members of the family of [AX, BX, CX.] the respondent:

1. *Failed where the role of social worker and friend existed to identify and fully appreciate at the outset and as events escalated, the potential conflict given his personal friendship with [CX] and given the actual or potential conflict between the interests of the three family members, namely [AX, BX, CX.] and to professionally and effectively manage the same,*
2. *Failed to properly identify the client for whom he was accepting responsibility and to clarify the terms of the engagement in writing so as to record the correct identity of the client,*
3. *Failed to prepare and maintain any adequate records of the services proposed and as they were supplied to the clients,*
4. *Arranged for material which was explained to him to be of a pornographic nature involving young children, to be deleted from the clients' computer,*

This conduct being in breach of the code of conduct for social workers issued by the Social Worker Registration Board on 20 May 2004 and is accordingly professional misconduct pursuant to section 82(1)(a) of the Social Workers Registration Act.

It was clarified by Counsel that the particulars of the Charge were to be considered separately and cumulatively.

Application for a Private Hearing and Name Suppression

4. Mr Curson made an application under s79 of the Social Workers Registration Act 2003 (“the Act”) that:
 - (a) the hearing be in private; and
 - (b) an order be made prohibiting the publication of any report or account of and any part of the sentencing hearing.
5. The Tribunal heard submissions on the Application under s79 in private at the commencement of the hearing.
6. Mr Curson sought name suppression on the following grounds:
 - That the situation involves very sensitive issues which have been extremely traumatic for the X. family.
 - That the X. family and Mr Curson were well known in the community and Mr Curson’s friendship with the extended family would be well known.
 - That there is a real risk that publication of Mr Curson’s name, even without reference to the names of the family members or the locality involved, would ultimately identify the family
 - That Mr Curson would prefer his name to be kept private, although his application is based on a genuine concern for the family and their children.
7. Mr Parker referred to the Tribunal’s discretion in making suppression orders under s79 and to the factors that the Tribunal is to consider in exercising its discretion. These include balancing the public interest in maintaining open justice with:
 - Public interest; and
 - Privacy of complainant; and
 - The interests of any person
8. He also submitted that *R v Liddell* [1995] 1 NZLR 538 is relevant as in that case the Court of Appeal observed that there is an automatic statutory ban on the publication of reports relating to certain specific sexual offences. That ban extends to the publication of the accused’s name or any other particulars if the report would be likely to lead in [sic] the identification of the victim (*Liddell* at p 543).

The Response of the CAC

9. The CAC submitted that there should be an order prohibiting publication of the names and any details of the family members and the name of the town where these things took place. Mr Brodie submitted that this is the first time the Tribunal has sat and one of its roles is to establish standards within the profession and to publish full and frank decisions to help formulate standards of conduct for the wider profession. Mr Brodie said that the starting point should be the presumption of open justice with suppression to meet specific

needs although there should not be a blanket order on publishing decisions. The CAC submitted that there is a need to balance the consequences of publication, the significant precedent value and the public interest, but the CAC is neutral on whether the name of Mr Curson is published.

Submissions in Reply

10. Mr Parker responded that although Mr Curson would not like his name published the primary reason for this application is related to his concern that there is a risk that if he is named then the family could be identified. Mr Parker submitted that the family should be protected, even if this means granting an indulgence to Mr Curson.

Interim Orders

11. The Tribunal heard the Application and submissions in Private and then adjourned to consider its response. The following Interim Orders were made and Counsel were advised that the reasons would form part of the written decision:
 - The hearing would be heard in public.
 - There are interim orders in place for the suppression of all names and all identifying details of the complainant and her family (including but not limited to AX, BX, CX) and Mr Curson, including the town wherein the complaint arose until the written decision at which time further orders will be considered.

Reasons

12. Sections s79(1) and (2) of the Act begin with a presumption that Tribunal hearings will be held in public. They state:

s79 (1) Except as provided in this section ...every hearing of the Tribunal must be held in public .

(2) If after having regard to the interests of any person (including without limitation, the privacy of any complainant) and of the public interest, the Tribunal is satisfied that it is desirable to do so, it may ...make

(a) an order that the whole or part of the hearing must be held in private...

(d) an order prohibiting the publication of the name, or particulars of the affairs, of any person.

13. In ordering that the Hearing be held in public the Tribunal considered that there is an important public interest in ensuring that disciplinary processes are open and transparent. The Tribunal considered it should ensure the disciplinary process is accountable and has the confidence of the public and profession. Counsel referred the Tribunal to *R v Liddell* and the Tribunal noted that in that case the Court of Appeal stated:

“In considering whether the powers given by s.140 should be exercised, the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report the matter fairly and accurately as ‘surrogates of the public’.

14. While no media were present at the Hearing, there is a public interest in ensuring that the freedom of speech is not unnecessarily fettered. The Tribunal reasoned that in this case a public hearing would satisfy the requirements for transparency and open justice; and that the use of interim suppression orders would protect the parties from adverse or premature comment.

Name Suppression

15. The Tribunal considered that it was important to hear all submissions before making a final decision regarding naming Mr Curson, and any adverse effect this might have on the X family. It has therefore ordered that no names or details be published of any person until the written decision was issued.

Factual Background of the Complaint

An agreed summary of facts was submitted to the Tribunal. The following summarises this document:

16. On 24 January 2007 AX found a large amount of child pornography on her husband's (BX) laptop computer. The couple had two young children. BX had received counselling and attended a STOP course in 2002 following allegations he had accessed child pornography on the internet, but following this new incident it appeared that this counselling had been ineffective.
17. This discovery caused considerable family distress. On or about 26 January 2007 the respondent was asked to intervene and assist the family by an extended family member who was a personal friend of the respondent. Later that day or the following day BX also phoned the respondent and sought assistance and the respondent visited the family home. He was told about the discovery of the pornographic material on the computer. The family presented as being in crisis and the parents had decided they would separate. BX had a serious ongoing problem with addiction to child pornography which, given the ages of the children and the need for ongoing family contact, required particular care.
18. At this initial meeting Mr Curson discussed the need to obtain effective treatment, therapy and /or counselling for BX. A possibility was a residential programme at Ashburn Hall and Mr Curson undertook to enquire about this and investigate funding.
19. At this meeting Mr Curson took possession of the computer containing the child pornography. On 30 January he arranged for it to be taken to a computer technician and between 6 and 8 February the pornographic material was removed from the computer. It was returned to Mr Curson on 9 February and he returned it to the family.
20. The attempt to secure funding at Ashburn Hall was unsuccessful and on 15 February Mid Central Health advised that funding would not be available.
21. In the meantime the couple had separated. AX and the children had shifted to another town and BX was effectively left homeless, distressed and suicidal and was drinking heavily. During February and March there was extensive intervention by Mr Curson and alternative counselling for BX through another programme was secured.

22. Although the Summary of Agreed Facts was presented in evidence by counsel for Mr Curson and the CAC, the Tribunal was concerned that clauses 14 – 24 appeared to represent differing viewpoints rather than agreed facts. From clause 14 there are differing recollections of events relating to the deletion of the material from the computer. This is considered further under the Findings of Particular 4. There is also a differing understanding of whom constituted Mr Curson's 'client' and this is discussed under the Findings of Particular 2.

Submission for the CAC

23. The CAC submitted that Mr Curson has breached the Code of Conduct and Guidelines for Social Workers and that such breach may amount to professional misconduct. Counsel did not consider that all breaches equated to professional misconduct and he submitted that there are instances of conduct which although outside the Code are nonetheless unacceptable.
24. The CAC in bringing this charge submitted that its concern is directed most particularly to the failure of Mr Curson, right at the outset, to identify and satisfactorily resolve the conflicts of interest which arose in this case. The CAC stated that it was inappropriate for Mr Curson to become involved with this family, given his admitted relatively close friendship with CX. The CAC stated that as a consequence AX considers that Mr Curson placed the interests of CX, a personal friend, before the interests of herself and her immediate family. AX considers that when Mr Curson arranged deletion of the computer material it was in order to protect BX from the consequences (possibly criminal) and that this left AX feeling disempowered and in her view minimised the seriousness of BX's behaviour.
25. The CAC considered that at the outset there needed to be a frank and comprehensive discussion between Mr Curson and the family to clarify the role of the Social Worker, to address the issues of the personal friendship with CX, to clarify the exact identity of the client and to address consequent issues of confidentiality. The CAC principally focussed on Mr Curson's omission to identify and deal at the onset with the inappropriateness of his becoming involved where there were such diverse and conflicting interests and given his friendship with one side of the family. This has left AX with a sense of grievance.
26. The CAC submitted that Mr Curson's failure to professionally maintain any records of his interaction with the family; the nature and extent of the services to be provided; what he was trying to achieve; whose interests he was looking after; what instructions were given and agreements were reached with the family during the course of his interactions with them; the plans with respect to the deletion of the material from the computer; constitutes a serious breach of his obligations. The CAC submitted that this lack of documentation has contributed very substantially to AX's sense of dissatisfaction and has made the task of sorting out the conflicts between AX and Mr Curson well nigh impossible.
27. The CAC submitted that Mr Curson should be required to undergo a competency assessment and further training and assessment. The CAC also considered that the Tribunal should seriously consider suspension of Mr Curson's registration pending the outcome of a review and assessment, and that he contribute towards costs.

Submission for Mr Curson.

28. Mr Curson emphasised through Counsel that he readily accepted that there were mistakes made in the way this situation was handled. He took full responsibility and so pleaded guilty to the particulars of the amended Charge. He acknowledged the feelings and concerns of AX and the extremely difficult time that she has been through.
29. Mr Curson said he was contacted by CX who was a friend, because AX and BX were in crisis and CX considered that as an experienced social worker, Mr Curson could assist the family. BX also contacted Mr Curson and he went to the home. The discovery of the pornographic material had caused considerable family distress. At the time of the meeting the couple had decided to separate and BX was very distressed and concerned about the future.
30. The events resulting in the deletion of the pornographic material are in contention but it is accepted that the computer was taken by Mr Curson and he arranged for the material to be deleted. The computer was then returned to the family.
31. The family separated with AX and the children moving away. Between February and March there was extensive intervention by Mr Curson on behalf of the family and residential therapy and counselling was obtained for BX. In August 2007 Mr Curson received notice that AX had made a complaint in respect of the professional services he had provided. This was the first time he was aware of any dissatisfaction.
32. Mr Curson admits that his conduct was in breach of the Code and is therefore professional misconduct. Through Counsel he made the following submissions in respect to the particulars:

Particular 1

33. Mr Curson accepts that managing key issues of perception, blurred boundary and clarity are squarely the responsibility of the social worker and he acknowledges he did not manage these effectively in the circumstances. He submits that in the preamble to the Code the term “client” may refer not only to an individual adult or child, but to a family, whanau or aiga. Mr Curson says he was acting on a request for help from members of the family.
34. Mr Curson says that he is aware of the obligation of the social work professional under the Code to discuss potential and actual conflicts of interest with the client and to resolve them expeditiously and he believed that he had dealt with potential or perceived conflict issues. He submits that he now realises that AX may not have understood this and Mr Curson accepts that he failed to ensure that everyone understood the conflict issues he had raised, and he should have.

Particular 2

35. Mr Curson also accepts that he should have clarified the terms of the engagement in writing and he acknowledges there were failings in the way he managed the dual relationship and potential conflict issues. However he submits that there were extenuating circumstances. Mr Curson says that events snowballed reasonably rapidly

and his required involvement increased to an unanticipated level. This was also the summer holiday period and there were increased difficulties in being able to access the appropriate services required by the family.

Particular 3

36. Mr Curson submits that he was aware that the Code and Guidelines require a social work professional to provide clients with details of services to be provided, and to maintain accurate records of his interactions with the family, and he did not do this. He accepts that that is not acceptable practice but attributes the reasons for this failing to the exceptional situation he found himself in rather than any intentional or ongoing failure to comply with accepted practice.

Particular 4

37. Mr Curson did arrange for the deletion of the pornographic material from the computer and he was adamant that he had consent to do this. He believed he was removing the offending material on behalf of the family and was getting the computer 'cleaned' so it could be sold. Mr Curson denies he arranged the deletion to prevent BX being prosecuted although he recognises that AX believes otherwise. Mr Curson completely acknowledges that removing the computer and arranging the deletion was an error of judgement which was done in the heat of the moment, and was an error in light of his assessment of the most appropriate forms of intervention for the family. He regrets his decision and has reflected on it during subsequent supervision. He fully acknowledges he should not have taken this action and that this conduct fell below the standard of a competent Social Worker but emphasises that his actions were motivated out of genuine concern for the family and the therapeutic consequences.
38. Clauses 36-49 of Mr Curson's brief relate to mitigation and penalty and are considered below. His curriculum vitae was provided as an attachment to the submissions.

Other Evidence

39. Under Schedule 2, Clause 5 (2) of the Act, the Tribunal is able to receive as evidence any statement, document, information or matter whether or not such evidence would be admissible in a court of law. The following additional documentation was provided to the Tribunal:
- The Complaint of AX to The Health and Disability Commissioner
 - A Statement by CX which was provided to the CAC
 - A Statement by CM Thomas, supervisor of Mr Curson, provided to the CAC
 - Letter from Aotearoa New Zealand Association of Social Workers dated 29 July 2008
40. Although Mr Curson pleaded guilty to professional misconduct, the Tribunal nonetheless had the responsibility of considering whether further evidence was required and to determine what weight would be given to the evidence considered. As no witnesses were called and statements could not be tested by cross examination, little reliance was placed on the letter of complaint and the statement of CX. The statement of Ms Thomas in relation to events which occurred, was given even less weight as this consisted largely of hearsay evidence and she states that her comments are limited to her knowledge of events

as they were relayed to her by Mr Curson. The Tribunal was concerned that Ms Thomas had been given access to some confidential documentation.

The Tribunal noted the ability of the Aotearoa New Zealand Association of Social Workers organisation to provide a competence assessment for Mr Curson should this be required, and its recommendations. This letter from the Aotearoa New Zealand Association of Social Workers had been provided as a result of the CAC considering the possibilities of a review of competency, and ascertaining whether the Association was in a position to provide this. However, under the Act, ordering a competence assessment is not one of the penalties able to be imposed by the Tribunal (although the Tribunal may impose restrictions on practice, and may order additional training, professional development, or both).

THE LAW

41. Legal Principles – Burden and Standard of Proof:

The CAC bears the burden of proving the particulars of the Charge, in this case both separately and cumulatively. The standard of proof is the civil standard, that is proof, to the satisfaction of the Tribunal that the charges are proven on the balance of probabilities. This standard is subject to what is sometimes called a ‘sliding scale’ whereby the greater the gravity of the allegations the higher the standard of proof that is required. The Tribunal considered the evidence presented to it on the balance of probabilities measured by an assessment by the Tribunal of the severity of the allegations.

Professional Misconduct:

42. Section 82 of the Social Workers Registration Act 2003 provides the grounds on which a registered Social Worker may be disciplined. *The Tribunal may make an order under Section 83 if, after conducting a hearing on a charge laid against the social worker, it is satisfied that the social worker –*

- (a) Has been guilty of professional misconduct; or*
- (b) has been guilty of conduct that-*
 - (i) is unbecoming of a social worker; and*
 - (ii) reflects adversely on the social workers’ fitness to practice*

Code of Conduct:

43. The Code of Conduct for Social Workers was formally adopted by the Social Workers Registration Board, Kahui Whakamana Tauwhiro on 20 May 2005. The following sections were relied on in support of the particulars in the Charge.

The Code of Conduct expects the Social Worker to:

“discuss potential or actual conflicts of interest (both personal and professional) with the client and attempt to resolve them expeditiously. The social worker should bring any potential conflicts of interest to their supervisor’s or their employer’s attention. Unless a resolution is possible, the relationship with the client should be terminated with an appropriate referral being made” (page 5).

“Provide the client with details of the extent and nature of the services to be provided by the social worker and their agency and give details of the client’s right and opportunities as well as any obligations and risks associated with the provision of services” (page 5.)

The Code of Conduct Guidelines

44. The Code of Conduct Guidelines for Social Workers was also formally adopted by the Social Workers Registration Board, Kahui Whakamana Tauwhiro. The following sections were relied on in support of the particulars in the Charge.

The Guidelines note;

“The Social Worker has a duty to clearly establish, and clarify with all interested parties, the identity of the primary client” (page 11).

“Maintaining and managing accurate and objective records covering interactions with clients is a fundamental part of good social work practice. The accurate documentation of practice decisions and interventions provides a clear record of the nature of social work involvement with clients and progress in achieving the established goals. Such records also support the continuity of services to a client in the event of a transfer of services to another professional. This may be particularly important in a situation where social workers are operating as individual private practitioners. Social workers should also be aware of the part that accurate record-keeping plays in any complaints procedure (page 15).

45. While counsel did not distinguish between the Code of Conduct and the Code of Conduct Guidelines Section 82 (2) of the Social Workers Registration Act 2003 states that

*A Registered Social Worker is guilty of professional misconduct if he or she –
(a) Breaches the Code of Conduct.*

Obviously a fact specific analysis is required and an assessment made as to the seriousness of the breach, but the principles of such a Code are a helpful indicator of proper practice and ethical standards.

In reaching its findings after considering the facts, the Tribunal has applied a two fold test to each particular of the charge. The Tribunal has firstly considered whether Mr Curson’s actions can reasonably be regarded as professional misconduct, or conduct unbecoming of a social worker, or reflect adversely on his fitness to practice as a social worker. Where it has been satisfied that grounds exist under section 82 in this case, the Tribunal has then considered the degree of seriousness and whether a disciplinary sanction is warranted to protect the public, maintain standards or as punishment.

The Findings

Particular 1.

46. *[Mr Curson] Failed where the role of social worker and friend existed to identify and fully appreciate at the outset and as events escalated, the potential conflict given his personal friendship with CX and given the actual or potential conflict between the interests of the three family members, namely [AX, BX and CX], and to professionally and effectively manage the same.*

47. Mr Curson says that he understood his obligations under the Code and although he believed that he had dealt with potential or perceived conflict issues, he now realises that AX may not have understood this. He accepts that he failed to ensure that everyone understood the conflict issues he had raised and should have. He did not record any discussions or decisions relating to this issue.

48. The Tribunal considers that the recognition and appropriate resolution of a conflict of interest is a primary and fundamental assessment for any professional social worker. The Code also makes it clear that there is a responsibility for the Social Worker to bring any potential conflicts of interest to their supervisor's or their employer's attention. This 'second opinion' is an important check and would seem to be particularly critical when the social worker is working in private practice. Mr Curson undertakes regular supervision but he admitted that he did not specifically seek the advice of his supervisor, instead waiting to discuss his involvement with the family at the next scheduled supervision session.

49. The Tribunal is of the view that having recognised potential conflicts, it was inappropriate for Mr Curson to think he could provide services in this situation where there were the complexities of the relationships between CX and the couple, and AX and BX. The Tribunal considers that the very different, counselling, safety and therapeutic needs between the different persons, required Mr Curson to identify and document the conflicts of interest and to take independent advice on ongoing management. The Tribunal considers that it was not reasonable practice for Mr Curson even as a very senior consultant Social Worker to think that he could appropriately provide professional services for all involved. It appears to the Tribunal that in his attempt to help a friend and the friend's family, he has blurred his role and in effect left many of his professional tools and responsibilities at the door.

50. The Tribunal was satisfied that Mr Curson failed to identify and fully appreciate the actual and potential conflicts of interest, and actively and effectively manage the same.

The Tribunal found Particular 1 was established and that Mr Curson's practice in this particular falls well below that expected of a reasonable and competent social worker. The Tribunal is satisfied the departure is serious enough to warrant a disciplinary sanction.

Particular 2

51. *[Mr Curson] Failed to properly identify the client for whom he was accepting responsibility and to clarify the terms of the engagement in writing so as to record the correct identity of the client,*

52. The Tribunal has heard evidence that Mr Curson considered his client to be the extended family including the friend, CX who originally contacted him. He pointed to the Code to support the proposition that a family, whanau or aiga can be the client. AX was surprised at this view. While it is acceptable for there to be a family, whanau or aiga as a client, the Tribunal is not convinced that Mr Curson did properly identify the client in this situation, but instead became involved in a family crisis situation and enmeshed in a situation which in his words 'snowballed'. The Tribunal considered Mr Curson's explanations in mitigation that the situation arose over the summer holidays, that the family was in crisis and that events escalated reasonably rapidly and Mr Curson's

required involvement increased to an unanticipated level. The Tribunal considered that these types of circumstances or factors are not that unusual in social work practice and should if anything cause the Social Worker to be more reflective and cautious about their involvement. There is no evidence that Mr Curson at any time pulled back to reflect on who actually was his client and whether other family members would be better served by a referral to other social work practitioners.

53. Mr Curson accepts that he did not at any time document the identification of his client or clarify the terms of engagement in writing. This failure to document is a breach of the Code and the Guidelines and falls well below the standard expected of a reasonable and competent social worker.

The Tribunal was satisfied Particular 2 was established and that Mr Curson's practice in this particular falls well below that expected of a reasonable and competent social worker. The Tribunal is satisfied the departure is serious enough to warrant a disciplinary sanction.

Particular 3

54. *[Mr Curson] Failed to prepare and maintain any adequate records of the services proposed and as they were supplied to the clients,*
55. The absence of any documentation or records in this complex situation was of great concern to the Tribunal. Documentation and record keeping is a fundamental and basic responsibility of any social work professional. The Code of Conduct Guidelines also particularly emphasises the importance of social workers who work in a private capacity to keep good records to ensure continuity of service provision as stated below.

"Maintaining and managing accurate and objective records covering interactions with clients is a fundamental part of good social work practice. The accurate documentation of practice decisions and interventions provides a clear record of the nature of social work involvement with clients and progress in achieving the established goals. Such records also support the continuity of services to a client in the event of a transfer of services to another professional. This may be particularly important in situation where social workers are operating as individual private practitioners. (pages 14 and 15).

56. The Tribunal considered that the complete absence of records indicates that Mr Curson considered he was acting primarily as a friend. However, once a professional has become involved in a practice situation, he or she cannot simply lay professional standards and responsibilities aside and think that they do not apply. The complete failure to document or keep any records is a fundamental breach of the Code and the Guidelines and falls well below the standard expected of a reasonable and competent social worker. The complete absence of records also made the respective tasks of the CAC and the Tribunal very difficult (highlighting one of the stated reasons for imposing this professional requirement).

The Tribunal was satisfied Particular 3 was established and that Mr Curson's practice in this particular falls well below that expected of a reasonable and competent social worker. The Tribunal is satisfied the departure is serious enough to warrant a disciplinary sanction.

Particular 4

57. *Arranged for material which was explained to him to be of a pornographic nature involving young children, to be deleted from the clients' computer,*
58. There is conflicting evidence about the details surrounding this particular and due to Mr Curson pleading guilty to the Charge, no witnesses were called to test the differing views. What is accepted is that Mr Curson took the computer, arranged for the deletion of material which he understood to contain child pornography, and returned the computer to the family. Mr Curson considered that he was acting with consent and that as the family were in difficult financial circumstances, the computer had to be cleaned before it could be sold. AX has a different view and said that the material was only to be deleted if BX could get into the Ashburn Hall programme, but that if that was not possible, she wanted the material available as evidence, in case criminal proceedings were initiated. AX considered that Mr Curson was influenced in his decision by CX and arranged for the deletion of the material to protect BX and that in doing this he acted against the interests of AX and her children.
59. Mr Curson has accepted that taking the computer was an error of judgement and this is something he has reflected on since with his supervisor. The Tribunal considers that his action is evidence of the huge role confusion he had in this case. It is clear to the Tribunal that Mr Curson has not set appropriate boundaries and that he has strayed (albeit with good intentions), well outside the boundaries of what is reasonable practice. The Tribunal considered that Mr Curson was extremely unwise to take the computer and to arrange the deletion of material. He has compounded this error by not documenting any discussions about the computer, how he came to take it and any family consent related to the deletion of the material. In the view of the Tribunal by his actions Mr Curson has fallen below the standard of a reasonable and competent social work professional.

The Tribunal was satisfied Particular 4 was established and that Mr Curson's practice in this particular falls well below that expected of a reasonable and competent social worker. The Tribunal is satisfied the departure is serious enough to warrant a disciplinary sanction.

60. The Tribunal is satisfied that the Code of Conduct was breached, and that the established conduct separately and cumulatively amount to professional misconduct in terms of sections 82 (1)(a) and 82(2)(a). The Tribunal is of the view that the departure from reasonable and accepted standards is serious enough to warrant sanction

Penalty

61. The Tribunal accepts that Mr Curson was well motivated in wanting to provide support for the family of a friend who was in crisis and that his intervention did eventually result in achieving a therapeutic option for BX. It is the view of the Tribunal that Mr Curson entered the situation with good intentions. However, once a professional social worker undertakes to provide services to a client, even in an unpaid capacity or, if appropriate, as a favour to a friend, he or she always remains accountable and is required to practice in accordance with the standards and Code of Conduct of the profession. The impact on the complainant and her family of these breaches was serious.

62. The Tribunal notes that Mr Curson has worked through many issues in supervision and that he immediately stepped down from his position on the Social Workers Registration Board. Mr Curson has co-operated with the disciplinary process, and by pleading guilty and acknowledging his mistakes, he has spared the complainant and other members of the family from having to give evidence. This also has the effect of saving significant costs. The Tribunal has taken these factors into consideration when considering the appropriate penalty.

63. It was suggested by both counsel that the Tribunal order a competence review or an assessment by the Aotearoa New Zealand Association of Social Workers. The Tribunal's jurisdiction to make penalty orders is restricted by the provisions of Section 83 of the Act. It was put to the Tribunal by counsel that the Tribunal could make an order for such an assessment to be conducted in terms of section 83(1)(a)(ii). The Tribunal does not consider that such a restriction on practice is required.

64. Counsel have indicated that this is not a case for cancellation of registration. The Tribunal agrees: although serious and repeated breaches have occurred in this case, the breaches even cumulatively do not meet the threshold of gross or severe professional misconduct under section 83(2).

65. Interim suspension was not imposed by the Tribunal in the first instance in this case, and is not required now. The Tribunal considered that while the departure by Mr Curson is serious, suspension is not warranted. In part this is because the particular situation and relationships that have influenced Mr Curson's actions seem unlikely to be repeated, and as a result the public risk can be managed short of suspension. In this respect the Tribunal sought and received assurances regarding participation in supervision in the interim. The Tribunal has now formed a view that a restriction on Mr Curson's practice will appropriately protect public safety and provide a mechanism for Mr Curson to further reflect and learn from the bad decisions he has made in this case. The Tribunal considers that had Mr Curson contacted his supervisor at the outset, or at the point matters began to 'snowball', to discuss the complex relationships and issues in this case, the outcome might have been different. The Tribunal wants to ensure that more regular supervision occurs in order that Mr Curson, as a sole practitioner, can gain the professional support he requires to minimise the likelihood of any repetition of such a situation. This type of support is in the public interest and helps maintenance of professional standards. The Tribunal's decision to censure Mr Curson and impose a restriction on practice sends a clear message to Mr Curson and the profession that his practice fell below the standards expected of a reasonable and competent social worker and warranted discipline. At the same time it recognises that this was a single series of incidents in a long and successful social work career.

66. Counsel recognised that a fine and costs order could be appropriate. The Tribunal requested further costs details. Mr Curson's Counsel submitted comprehensive comments on the approach taken in other professional disciplinary contexts and the legal system which were helpful to the Tribunal. In determining costs the Tribunal has considered the gravity of the offence, the circumstances of the case, and Mr Curson's ability to pay alongside the approach taken in other jurisdictions. The Tribunal views Mr Curson's misconduct as serious in the mid range with an indicative penalty in the \$5,775.00 to \$9,500.00 range based on submitted costs and information relevant to other jurisdictions. A discount has been given for Mr Curson's co-operation, guilty plea and subsequent reduction in hearing time. The Tribunal has also allowed for the cost that Mr Curson will

bear for the restriction on practice. The tribunal notes that Mr Curson has professional liability insurance. It makes the following orders:

Orders

67. Under section 83 (1)(b) that Mr Curson be censured in the following terms:

Arthur James Curson has been found by the Social Workers Complaints and Disciplinary Tribunal to have committed several serious breaches of the Code of Conduct for Social Workers. The Tribunal censures Mr Curson for failing, as a senior, experienced social worker, to meet and role model reasonable standards of professional conduct at all times.

68. Under section 83(1)(a)(ii) that the following restriction be placed on Mr Curson's practice:

that he undertake monthly supervision for a period of not less than two years and that he contact his supervisor promptly should a situation of potential or actual conflict of interest arise.

69. Under section 83(e) that Mr Curson pay \$2500 of the costs and expenses of and incidental to the inquiry made by CAC, and the prosecution of the charge by the CAC; and \$2500 towards the costs of the hearing by the Tribunal.

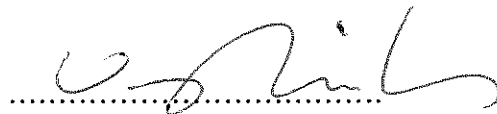
Permanent Name Suppression

70. At the conclusion of the hearing, applications were made for the suppression of names and details of all parties involved. The Tribunal considered whether to make the interim suppression orders permanent. It is noted that the general principle of the Act is that hearings of this Tribunal are to be held in public and are to be transparent. When deciding whether to make a non-publication order, the Tribunal needs to consider whether such an order is desirable. The Tribunal must take into account the interests of any person, the privacy of the complainant and the public interest. These factors were considered when making the interim order. The Tribunal now has before it Mr Curson's plea and a finding of professional misconduct. The Tribunal has also considered the need for the accountability of the disciplinary process.
71. The interim orders suppressing the names and any identifying details of the family and the name of the town where the complaint arose are now made final and permanent.
72. Mr Curson's Counsel acknowledged that Mr Curson would prefer that his name should not be published. Mr Curson raised no grounds on his own behalf but raised issues relating to the protection of the X family's identity. Mr Parker referred to *R v Liddell* but that was a case of serious criminal sexual offending and the appeal against name suppression was allowed in part. AX submitted through the CAC that the extended family already know what has occurred and that the suppression of Mr Curson's name does not enter the balance and that she is neutral regarding this. This is also the view of the CAC. The Tribunal has considered carefully whether naming Mr Curson will have

the effect of identifying the family but given the final suppression order in paragraph 71, and as AX and her children have moved to another town, the Tribunal does not consider that this is likely.

73. It is usual in professional disciplinary cases for names to be published. This leads to greater transparency and prevents suspicion falling on other practitioners. The Tribunal does not consider that the submissions on behalf of Mr Curson outweigh the important public and professional interest in this case of open justice. The previous order for suppression of Mr Curson's name will be vacated seven days after the date of this decision.

DATED at Christchurch this 4th day of September 2008



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Vaughan Milner

Chairperson

Social Workers Complaints and Disciplinary Tribunal