

DECISION NO: 2NAPC 05/13/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 Kelly Anderson
Registered Social Worker

Respondent

**BEFORE THE SOCIAL WORKERS REGISTRATION BOARD
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

PRESENT:

Ms V Hirst (Chairperson)
Ms S Dyhrberg, Mr D Russell, Ms J Prentice,
Ms R Corrigan (Members)
Mr S McKinley (Hearing Officer)

HEARING: Held in Wellington on Friday 22 March 2013.

Introduction:

1. Kelly Anderson is a Registered Social Worker.
2. On 24 January 2013, a Complaints Assessment Committee of the Social Workers Complaints and Disciplinary Tribunal (CAC) laid a disciplinary charge against Kelly Anderson under the Social Workers Registration Act 2003 (the Act).
3. The Tribunal hearing was held on 22 March 2013. Kelly Anderson did not appear. Evidence of the charge and various documents relating to the proceeding being served on Kelly Anderson at his/her last known address was placed before the Tribunal. The Tribunal is satisfied that he/she had been appropriately served under Section 145 of the Social Workers Registration Act 2003.

The charge:

4. *Practising without a current practising certificate contrary to Section 25 of the Social Workers Registration Act 2003.*

Section 25 of the Act provides “No registered social worker may be employed or engaged as a social worker unless he or she holds a practising certificate.”

The Facts:

5. Kelly Anderson has been a registered social worker since 18 February 2008 under the Social Workers Registration Act 2003.
6. That since 1 July 2012 Kelly Anderson has continued to practice as a social worker while not holding a current practicing certificate.
7. Documentary evidence was led from Mr S McKinley, Registrar and Chief Executive of the Social Worker’s Registration Board (the Board).

8. It was submitted that the evidence established the following chronology, which the Tribunal accepts.
9. Kelly Anderson was first registered as a social worker on 18 February 2008 and remains on the register.
10. Under Section 25 it is a requirement for practising registered social workers to hold an Annual Practising Certificate (APC). An APC includes holding a valid Certificate of Competency.
11. When an APC is due for renewal, a notice including a declaration is sent to the social worker at the address they have given to the Board, as well as an invoice. Notice for renewal was sent to Kelly Anderson on 14 May 2012.
12. It is also a requirement to inform the Board if the social worker is no longer practising by indicating this on the Renewal of Annual Practising Certificate form.
13. Kelly Anderson was advised by registered letter dated 9 November 2012 that due to not receiving any notification from him/her or not completing the requirement to renew their APC, including holding a valid Certificate of Competency, he/she was deemed to be practising without a current APC and that the matter had been referred to a CAC, as per section 65 (1) of the Act.
14. Membership of the CAC was advised and Kelly Anderson was informed of their right to request changes in membership. Kelly Anderson was also informed of their right to make a written explanation or statement or to appear before the committee.
15. Kelly Anderson did not take up these opportunities but responded to the registered letter by requesting an APC renewal form as she had completed a competence assessment recertification and was eligible for an APC.

16. The CAC determined that Kelly Anderson was deemed to be practising social work since 1 July 2012 without an APC and was therefore in breach of Section 25 of the Act. A charge was laid with the Tribunal.
17. Kelly Anderson was advised of this outcome by letter dated 1 February 2013 and offered the opportunity to appear before the Tribunal – either personally or by a representative. Kelly Anderson chose not to do so.

Discussion and Finding:

18. The Tribunal finds that the charge under section 25 of the Act is made out. Despite communication from the SWRB that it is a legal requirement under the Act for a registered social worker to hold an APC, including a current certificate of competency, Kelly Anderson continued to practise from 1 July 2012 without an APC.
19. The Tribunal may exercise its powers under Part 4 of the Act if a charge laid against a social worker has been made out. Pursuant to section 82(1), an order under section 83 of the Act may be made if after a hearing the Tribunal is satisfied 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 worker's fitness to practice as a social worker; or (not applicable)
20. Section 82(2)(b) of the Act deems a registered social worker to be guilty of professional misconduct if “*While employed or engaged as a social worker, claims or holds himself or herself out to be registered while not currently holding a current practicing certificate*”. The Tribunal considers that “holding himself or herself out to be registered” would require some positive action or representation which gave a reasonable person the impression that

the social worker held a current APC, or that they were currently practising as a registered social worker.

21. The Tribunal has had regard to cases in other professional disciplinary regimes in which there is a similar ground of misconduct. In *The Auckland Standards Committee 2 of the NZLS v Andersen* [2012] NZLCDT 17, the lawyer no longer held a valid practising certificate, but continued to represent clients and in several cases, did not alert them to her changed status. She continued to sign off documents above a website address with the word “lawyer” in the name, although removed the words “barrister and solicitor” from her sign-off. The Committee held that the lawyer had “put her shingle up”, and it never came down. Although she advised the Law Society that she was closing her practice, the lawyer continued to hold out to clients that she could act in matters not restricted to lawyers. She did not tell clients who had come to her because she was a lawyer that she was no longer practising as a lawyer. She therefore held herself out as a lawyer, despite not having a valid practising certificate.

22. Unlike the legal and medical professional regimes, social worker registration is voluntary, not mandatory, and there is no protection of the title “social worker”. Unless a social work role expressly requires the social worker to be registered, a non-registered social worker can practise and call themselves a social worker. Under section 25 a registered social worker is not legally permitted to practise as a social worker without a current APC. However, merely continuing to practise as a social worker does not “hold out” that the social worker holds a current APC. The Tribunal considers this would require some action or statement to give the impression that the social worker is registered. This could involve signing off a document as a registered social worker, telling someone they were a registered social worker or held a current APC, or acting in a role which was expressly open only to a registered social worker.

23. The Tribunal considers that there is no evidence in this case that Kelly Anderson has ‘*held himself or herself out*’ to any party that *he/she* was registered while not holding an APC. The facts do not therefore support a finding of professional misconduct.
24. The Tribunal considers the conduct in this case potentially meets the threshold set by section 82(1)(b), that is, conduct unbecoming a social worker, and which reflects adversely on their fitness to practice. A finding under section 82(1)(b) can result in a penalty under section 83, although not the most serious sanction of cancellation of registration (section 83(2)).
25. As this is the first occasion (albeit in respect of several such cases) on which the Tribunal has had to consider charges arising out of a breach of section 25, and potentially falling under s82, the Tribunal has had regard to the approach of other regulatory and disciplinary bodies and the Courts.
26. The leading case cited in professional disciplinary cases in relation to similar grounds for sanction generally referred to as cases of “conduct unbecoming” is *B v Medical Council* [2005] 3 NZLR 810. The Court held the conduct in question must be measured against the standards of “competent, ethical and responsible practitioners”. Conduct unbecoming a practitioner is a lesser disciplinary offence than professional misconduct, but is still a serious matter and may have disciplinary consequences.
27. In the Court of Appeal in *F v The Medical Practitioners Disciplinary Tribunal* (CA213/04) at [80] the Court said:

“In cases of both professional misconduct and conduct unbecoming it will be necessary to decide if there has been a departure from acceptable standards, and then to decide whether the departure is significant enough to warrant sanction. Where conduct is found not to be professional misconduct, because it is a lower level misconduct in the course of a practitioner’s practice or it is conduct outside the scope of practice, the Tribunal or Court needs to satisfy itself that the conduct adversely affects the

practitioner's fitness to practice in order to determine that the conduct warrants a disciplinary sanction".

28. The New Zealand Law Society Standards Committee has held that a lawyer's failure without good reason to provide documents requested by the Committee (as provided for by the applicable legislation). The Committee considered that the lawyer's undue delay in responding and providing relevant documentation, without reasonable excuse, was a serious matter. It was a failure to measure up to the standard of a competent, ethical and responsible practitioner. Even though the lawyer subsequently repented and complied with the request, the delay and willful disregard was a serious breach. The lawyer was censured, fined and ordered to pay costs and expenses (case summarised in LawTalk 744).
29. The Tribunal considers that the requirements for practitioners who have chosen to register to maintain a current competency certificate and to apply in time for renewal of their APC is fundamental to the professionalism of a registered social worker. These requirements are the cornerstones of the system which registered social workers choose to participate in, to assure employers, clients and the public that they are practising professionally and safely.
30. The fact that the registration regime is voluntary, not mandatory, does not remove the responsibility registered social workers bear for complying with the requirement to renew their APC. The system relies on timely, diligent completion of simple paperwork. The Board staff provide ample advance notice to practitioners, and offer assistance to complete the requirements.
31. The Board records indicate Kelly Anderson has still not completed the required paperwork and therefore has not been issued with an APC. This is despite numerous reminders and warnings from the Board. The Tribunal holds that his/her conduct in failing to complete the paperwork in a timely manner, and his/her continuing to practice, despite being put on notice that practising without an APC would breach the Act falls well below the standard of a competent, ethical and responsible social worker. This reflects

poorly on his/her professionalism, organisational skills and respect for their legal obligations, which are essential qualities in a social worker. The Tribunal therefore finds, in terms of section 82(1)(b) that the social worker has been guilty of conduct which is unbecoming and reflects adversely on his/her fitness to practice.

32. The Tribunal notes the recommendation from the CAC that a censure would be an appropriate penalty. A censure is a serious penalty. It tells the profession and the public that a social worker has acted in a way which attracts formal criticism. It is, however, at the lowest end of the range of penalties available to the Tribunal under section 83.
33. The Tribunal has given careful consideration to the facts of this case. Kelly Anderson did complete a competence recertification which made her eligible to renew her APC. An APC renewal form was requested and sent out by the Board. This form was not completed and not returned to the Board. The Board has not been contacted at all to date.
34. Kelly Anderson continues to practice without an APC. This breach has continued for some 11 months. The Tribunal considers this wholly unacceptable. In addition, the Tribunal has considerable doubts as to how seriously Kelly Anderson has taken the obligation to hold an APC.
35. The Tribunal has therefore decided that the penalty of an order to suspend the registration of Kelly Anderson until they hold an APC or for a period not more than 12 months (section 83a(i)) for breaching section 25 and a censure for conduct unbecoming of a social worker and which reflects adversely on their fitness to practice (section 83(1)(b)) is an appropriate outcome. The Tribunal would like it noted that consideration was also given to making orders that Kelly Anderson pay a fine or pay part of the costs towards the CAC inquiry and/or the Tribunal hearing, as is usual practice for Tribunals. The Tribunal has decided not to pursue

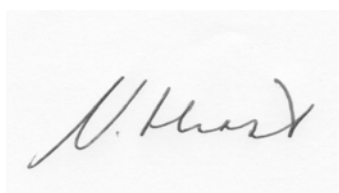
these orders on this occasion, but gives notice that in the future these orders may very well be given greater consideration.

36. The Tribunal needs to send a clear message to the social worker and the profession that practising without an APC is unacceptable in any circumstances. This is because the principal purpose of the Act as stated in section 3(a) *is to protect the safety of members of the public, by prescribing or providing mechanisms to ensure social workers are (i) competent to practise; and (ii) accountable for the way in which they practise*; APC's and certificates of competency are key to meeting this purpose. An APC in effect communicates to the public that a practitioner is fit and competent to practice as a registered social worker. The process for issuing practicing certificates allows for a degree of scrutiny of the social worker's current practice. Failure to comply undermines the fundamental premise on which the regulatory system operates.

37. If Kelly Anderson should come before a CAC on a further charge of practising without holding a valid APC, the CAC may give consideration to utilising the more serious course of action open available to it i.e. laying an information in the District Court under section 148 of the Act, and if a conviction is entered, laying a charge of professional misconduct under section 82(1)(a).

38. The Tribunal directs that a copy of this decision be published on the Board's website.

DATED at Auckland this 20th day of May 2013.



Vicki Hirst

Chairperson

Social Workers Complaints and Disciplinary Tribunal