DECISION NO: 9ANAPC 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 Donna MacNicol
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. Donna MacNicol is a Registered Social Worker.

2. On 24 January 2013, a Complaints Assessment Committee (CAC) of the Social Workers Complaints and Disciplinary Tribunal laid a disciplinary charge against Donna MacNicol under the Social Workers Registration Act 2003 (the Act).

3. The Tribunal hearing was held on 22 March 2013. Donna MacNicol did not appear. Evidence of the charge and various documents relating to the proceeding being sent to Donna MacNicol were placed before the Tribunal. The Tribunal is satisfied that Donna MacNicol 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. Donna MacNicol has been a registered social worker since 8 December 2006 under the Social Workers Registration Act 2003.

6. That from 1 July 2012 Donna MacNicol practiced 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. Donna MacNicol was first registered as a social worker on 8 December 2006 and remains on the register.

10. Under Section 25 it is a requirement for practising registered social workers to hold an Annual Practicing 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. A notice was sent to Donna MacNicol 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. Donna MacNicol 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 Donna MacNicol was informed of their right to request changes in membership. Donna MacNicol was also informed of their right to make a written explanation or statement or to appear before the committee. Donna MacNicol did not respond.

15. The CAC determined that Donna MacNicol was deemed to be practising social work from 1 July 2012 without an APC and was therefore in breach of Section 25 of the Act. A charge was laid with the Tribunal.

16. Donna MacNicol 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. Donna MacNicol chose not to do so. To date there has been no response from Donna MacNicol.

Discussion and Finding:

17. The Tribunal finds that the charge under section 25 of the Act is made out. Despite communications from the Board that it is a legal requirement under the Act for a registered social worker to hold an APC, including a current certificate of competency, Donna MacNicol continued to practice from 1 July 2012 without an APC.

18. 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 accepts that there is not sufficient evidence in this case that Donna MacNicol has 'held himself or herself out' to the Board or their employer that he/she was registered while not holding an APC.

19. If the Tribunal had made a finding of professional misconduct penalties under section 83 of the Act may have been considered. The Act, as it stands, in respect of penalties for breaching section 25 does not provide any other sanctions or penalties other than section 48 (3) that *"Every social worker commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding $10,000 or both, who is engaged or employed as a social worker contrary to section 25"*.

20. The Tribunal is not convinced that this is an appropriate penalty in these circumstances. This is the first time Donna MacNicol has had a disciplinary charge laid before the Tribunal. However, the

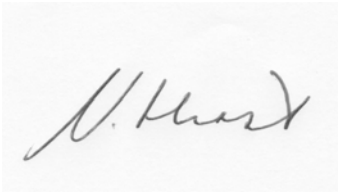
Tribunal accepts that Donna MacNicol is likely to still be practising.

21. The Tribunal does need to send a clear message to the profession that practicing 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 practice; 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. 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.

22. If Donna MacNicol should come before the Tribunal on a further charge of practising without holding a valid APC that is made out the Tribunal may give fuller consideration to utilising the more serious penalties available to it under section 148 of the Act.

23. 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