

Complaints and Disciplinary Tribunal

DECISION NUMBER: RSW3/D3/SWDT/2015

IN THE MATTER of a charge laid under the Social Workers
Registration Act 2003

BETWEEN the Complaints Assessment Committee
Complainant

AND Ms Anna-Jane Surowiez-Lepper
Respondent

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Present: Ms V Hirst (Chairperson)
Ms J Drayton, Mr D Russell, Ms J Prentice, Mrs
Toni Hocquard (Members)
Mrs Amanda Moulna (Hearing Officer)
Mr Ian Murray (Counsel for the CAC)

Hearing Held in Wellington on Monday 10 August 2015

Introduction

- 1 Ms Surowiez-Lepper is a registered social worker of Wellington. Until April 2014 she was employed as a Mission for Seniors Social Worker with the Wellington City Mission.
- 2 On 11 June 2015 a Complaints Assessment Committee ("**CAC**") filed a notice of disciplinary charges with the Social Workers Complaints and Disciplinary Tribunal ("**Tribunal**"). Ms Surowiez-Lepper consented to an Agreed Statement of Facts and advised that she did not intend to appear before the Tribunal. She did not attend either in person or through counsel.
- 3 The charges laid by the CAC, pursuant to section 72(3) of the Social Workers Registration Act 2003 ("**Act**") are that Ms Surowiez-Lepper breached the Code of Conduct ("**Code of Conduct**") issued pursuant to s105 of the Act by:

Particulars

- (a) entering into a friendship with Mrs G immediately after ceasing a professional relationship as her social worker without placing clear boundaries on the relationship, thereby creating confusion for Mrs G, who was a vulnerable elderly woman;
- (b) exploiting the relationship she had developed with Mrs G for personal gain, namely by obtaining items of value and cash from her;
- (c) failing to raise the conflicts of interest inherent in the friendship with her employer, the Wellington City Mission, or Mrs G at any stage; and
- (d) abruptly ending the relationship when Mrs G sought receipts for the cash she had provided to her, leaving Mrs G distressed and uncertain about what had occurred.

And this conduct considered individually and/or cumulatively constitutes:

- (a) professional misconduct pursuant to section 82(1)(a) of the Act, in that it breached the Code of Conduct; or in the alternative
- (b) conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker pursuant to section 82(1)(b) of the Act.

Factual background of the complaint – agreed statement of facts

- 4 Ms Surowiez-Lepper graduated with a National Diploma of Social Services and was registered with the Social Workers Registration Board in 2012.
- 5 The Wellington City Mission employed Ms Surowiez-Lepper as a Mission for Seniors Social Worker for approximately six years until 22 April 2014.
- 6 On 14 January 2012 Ms Surowiez-Lepper began acting as the social worker for Mrs G, an elderly woman who lived on her own in Porirua.
- 7 Mrs G had been referred to the Wellington City Mission by the Care Coordination Centre of the Capital and Coast District Health Board in order for Mrs G to gain support. Ms Surowiez-Lepper's role as Mrs G's social worker was to assist her to maintain a social role in her community and to access health services. Ms Surowiez-Lepper also assisted Mrs G resolve a dispute with a second hand shop selling some of Mrs G's goods.
- 8 Ms Surowiez-Lepper closed the social work file on 18 June 2012.
- 9 On 20 June 2012, Mrs G took Ms Surowiez-Lepper out for lunch (it was Ms Surowiez-Lepper's birthday). Ms Surowiez-Lepper told Mrs G that she was no longer her social worker and that they could now be friends.
- 10 Over the following year, the friendship between the two women continued and they met relatively frequently. During this period, Mrs G gave Ms Surowiez-Lepper a number of gifts, including a dinner set, a white gold diamond and topaz ring and Italian glasses. In June 2013, Mrs G gave Ms Surowiez-Lepper \$500 cash for personal car repairs.
- 11 Ms Surowiez-Lepper declared neither the gifts nor the fact of the friendship to her employer, the Wellington City Mission, in breach of their policies.
- 12 Ms Surowiez-Lepper also did not discuss any conflict with Mrs G.
- 13 On 20 August 2013, Ms Surowiez-Lepper drove Mrs G to her bank. This was in work hours and Ms Surowiez-Lepper used a Wellington City Mission vehicle.
- 14 Mrs G withdrew \$700 and gave \$400 to Ms Surowiez-Lepper, on the understanding that this was to help two of her clients, Ted Anderson and Jean Albert with a phone bill, power bills and food. Ted Anderson and

Jean Albert were not current or past clients of the Wellington City Mission.

- 15 Ms Surowiez-Lepper subsequently wrote two thank you notes purported to be from Mr Anderson and Ms Albert and sent them to Mrs G along with two small gifts.
- 16 In October 2013, Mrs G wrote to Ms Surowiez-Lepper asking for receipts for the money she had given her on 20 August 2013, as she was suspicious that the clients were not genuine.
- 17 Ms Surowiez-Lepper responded by letter dated 26 October 2013, stating that she was unable to provide receipts and given the request she did not see any future in the friendship and would leave her alone.
- 18 Mrs G then approached the Whiteria Community Law Centre to seek legal advice as to how to recover her money and gifts.
- 19 In February 2014, Mrs G was admitted to Wellington Hospital. She discussed the matter with a hospital social worker and on 4 March 2014 a complaint was laid with the Social Workers Registration Board.
- 20 Ms Surowiez-Lepper's employer was also informed and after an inquiry they referred the matter to the police.
- 21 On 29 July 2014, Ms Surowiez-Lepper pleaded guilty to a charge of obtaining by deception in the Porirua District Court. After paying reparation of \$800 and writing a letter of apology to Mrs G, Ms Surowiez-Lepper was granted diversion (i.e. the charge was withdrawn by the police).

Ms Surowiez-Lepper's applications for private hearing and permanent name suppression

- 22 In a letter dated 29 June 2015 Ms Surowiez-Lepper applied for a private hearing and permanent name suppression. The Tribunal granted interim name suppression and suppression of identifying features on 1 July 2015, with a final decision on permanent name suppression and a private hearing to be made at the hearing of the charges.
- 23 Orders relating to hearings and publication are available pursuant to section 79 of the Act:

79 Hearings of Tribunal to be public

- (1) Except as provided in this section and in section 80, 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 to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by the person or body prosecuting the charge, the social worker concerned, a complainant, or a witness, or of its own motion) make any 1 or more of the following orders:
 - (a) an order that the whole or any part of a hearing must be held in private:
 - (b) an order prohibiting the publication of any report or account of any part of a hearing, whether held in public or in private:
 - (c) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at a hearing:
 - (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
- (3) An application to the Tribunal for an order under subsection (2) must be heard in private; but the other parties to the proceedings and any complainant are entitled to be present and to make submissions on it.
- (4) If the Tribunal of its own motion proposes to make an order under subsection (2), it must consider the matter in private; but the parties to the proceedings and any complainant are entitled to be present and to make submissions.

...

24 As set out in section 79, the general principle of the Act is that hearings of the Tribunal are to be held in public. When deciding whether to make any order, the Tribunal needs to consider whether such an order is desirable. The Tribunal must take into account the interests of any person including the privacy of the complainant and the public interest.

25 The Tribunal considered the application for a private hearing from Ms Surowiez-Lepper. She stated via a signed statement, witnessed by a Deputy Registrar of the District Court that *'the charges against me are serious and in that, have caused me undue hardship in an emotional, physical, spiritual and economical way upon myself and my husband.'* She further stated *'Yes I take full responsibility for the issues I have caused, I have paid back double what I was given by [Mrs G] via reparation payment. I still live with the depression associated with this whole situation. To have this trial in public would drag on my downward thinking and add to my personal disappointment within myself that I already carry while I continue to face the days ahead.'* She attached proof of the medication she is currently taking.

- 26 As a second reason, Ms Surowiez-Lepper noted that her daughter carries the same surname, which is not common in New Zealand. Ms Surowiez-Lepper raised concerns the impact a public hearing would have on her daughter's completion of her studies and future career.
- 27 The Tribunal carefully considered Ms Surowiez-Lepper's reasons for her application for a private hearing and notes that Ms Surowiez-Lepper and her daughter share the same surname, Surowiez, which is not a common surname. However, the Tribunal agrees with Mr Murray's submissions that the reasons submitted by Ms Surowiez-Lepper were insufficient to outweigh the public interest factors in hearing this matter in public.
- 28 The Tribunal considered the Law Commission's paper on "Suppressing Names and Evidence"¹, which references relevant case law including *Lewis v Wilson and Horton*² and applying the law we accept that ordinary hardship is not enough: some damage out of the ordinary and disproportionate to the public interest in open justice in the particular case is required to displace the presumption in favour of reporting. In this case we find no more than ordinary hardship.
- 29 In determining whether or not to grant Ms Surowiez-Lepper's application for permanent name suppression, the Tribunal must weigh up the interests of the individual concerned against the public interest.
- 30 Relevant public interest factors include³:
- a) the need for openness and transparency in disciplinary proceedings;
 - b) accountability of the disciplinary process;
 - c) the public interest in knowing the identity of a professional charged with a disciplinary offence;
 - d) the importance of freedom of speech; and
 - e) the need to avoid unfairly impugning other practitioners.
- 31 In respect of the application by Ms Surowiez-Lepper for permanent non-publication of her name, the Tribunal carefully considered the grounds

¹ Law Commission *Suppressing Names and Evidence* (NZLC R109, 2009)

² *Lewis v Wilson & Horton* [2000] 3 NZLR 546

³ *R v Liddell* [1995] 1 NZLR 538, *Director of Proceedings v Nursing Council* [1999] 3 NZLR 360, *PCC v Renau* 108/Nur07/57P

put forward by Ms Surowiez-Lepper in support, namely to protect the identity of her daughter.

- 32 After careful consideration, the Tribunal agrees with Mr Murray's submissions that it is not uncommon for family members of a practitioner charged with a disciplinary offence to also suffer because of the actions of a practitioner. The Tribunal accepts that while this is unfortunate, this cannot in itself outweigh the important public interest factors outlined above.
- 33 Taking into consideration the fact that registration of social workers is not compulsory, the Tribunal also accepted that there is a real risk that a potential future employer would not necessarily be aware of this matter if Ms Surowiez-Lepper's name were suppressed. While she is not currently working in a social work role, she may choose to return to social work in the future without applying for a new practicing certificate.
- 34 For these reasons, the Tribunal ordered that the hearing be held in public and permanent name suppression was not granted. The order for interim name suppression was lifted at the hearing and remains so.
- 35 The Tribunal accepted Mr Murray's verbal submissions that it is appropriate that the victim's identity is suppressed; that there is no public interest in disclosing her identity and she is an elderly and vulnerable woman. She is referred to throughout this decision as "Mrs G".

The Charges before the Tribunal: Submissions for the CAC

- 36 The CAC submitted that the agreed statement of facts relevantly establishes:
- (a) Mrs G was Ms Surowiez-Lepper's client at the Wellington City Mission between 14 January 2012 and 18 June 2012, during which time she assisted her to try to gain support in the local community.
 - (b) On 20 June 2012, Ms Surowiez-Lepper advised Mrs G that she was no longer her social worker and they could be friends.
 - (c) Over the following year, Mrs G gave Ms Surowiez-Lepper a number of gifts and cash.
 - (d) Ms Surowiez-Lepper did not disclose her friendship with Mrs G or the gifts she received from her with the Wellington City Mission, nor did she discuss any conflict with Mrs G.

- (e) In August 2013, Mrs G gave Ms Surowiez-Lepper \$400 cash on the basis that this would be given to two clients of Ms Surowiez-Lepper's to help them buy food and pay bills.
 - (f) The clients did not in fact exist and when Mrs G became suspicious, Ms Surowiez-Lepper abruptly terminated their friendship leaving Mrs G confused and distressed.
 - (g) Ms Surowiez-Lepper was subsequently charged by the police with obtaining by deception. After she had paid reparation and written a letter of apology to Mrs G, the police withdrew the charge.
- 37 The CAC submitted this conduct considered individually and/or cumulatively constitutes, in reference to section 82 of the Act:
- (a) professional misconduct pursuant to section 82(1)(a) of the Act, in that it breached the Code of Conduct; or in the alternative
 - (b) conduct that is unbecoming of a social worker and reflects adversely on her fitness to practise as a social worker pursuant to section 82(1)(b) of the Act.
- 38 The CAC submitted Ms Surowiez-Lepper's behaviour represents a significant departure from the standards reasonably expected of a social worker. It was further submitted that her conduct illustrated that her ability to work with clients in a fully professional manner in the future has been severely compromised. Therefore it was submitted that the Tribunal should find Ms Surowiez-Lepper's breaches amount to gross or severe misconduct.
- 39 Mr Murray further submitted that Ms Surowiez-Lepper's misconduct went to the heart of the role of a social worker. Ms Surowiez-Lepper knew Mrs G to be vulnerable based on the fact she was referred from the Care Coordination Centre of the Capital and Coast District Health Board. Mrs G undoubtedly would have placed trust in her. Ms Surowiez-Lepper breached that trust and severely compromised her role as a registered social worker.
- 40 By hiding the fact that she was maintaining a friendship with a recent former client from her employer, and having received a number of gifts from Mrs G, counsel for the CAC submitted Ms Surowiez-Lepper breached not only her employer's policy and processes, but also the Code of Conduct.
- 41 It was further submitted she continued to work with clients when her professional judgement and fitness to practice as a social worker were

severely compromised. Had Ms Surowiez-Lepper told her manager or supervisor of the inappropriate relationship, steps could have been taken to address the situation and reassess her continued contact with clients.

Ms Surowiez-Lepper's feedback to the CAC

- 42 Following initial difficulties locating her, Ms Surowiez-Lepper sent an email to the CAC on 25 March 2015 stating she had no new information to add.
- 43 Ms Surowiez-Lepper agreed to the Summary of Facts. She was invited to submit any further information in relation to the charge, but forwarded information in relation to penalty only.
- 44 In an email to the Tribunal dated 22 July 2015 Ms Surowiez-Lepper provided information and proof of her healthcare concerns and financial situation. She stated she did not feel strong enough to face the reality of her hearing.

The Law

Burden and Standard of Proof

- 45 The CAC bears the burden of proving the particulars of the charges, in this case both separately and cumulatively. The standard of proof is the civil standard, that is, proof to the satisfaction of the Tribunal on the balance of probabilities, rather than the criminal standard. The degree of satisfaction called for will vary according to the gravity of the allegations. The greater the gravity of the allegations the higher the standard of proof that will be required.⁴

Professional Misconduct

- 46 The principal purpose of the Act is *'to protect the safety of members of the public, by prescribing or providing for mechanisms to ensure that social workers are competent to practise and are accountable for the way in which they practise'*.⁵ In addition, the Act has as a purpose *'to enhance the professionalism of social workers'*.⁶

⁴ CAC v Curson 01/08/SWDT, 30 July 2008. For further comment on the standard and onus of proof in professional disciplinary proceedings, see *Z v Complaints Assessment Committee* [2009] 1 NZLR. The Health Practitioners Disciplinary Tribunal has followed the principles enunciated in *Z* in its decisions, including for example *Professional Conduct Committee v Dawson*,⁴ and *Professional Conduct Committee v Karagiannis* 181/Phar08/91P; 3/10/08.

⁵ Social Workers Registration Act 2003, s 3(a).

⁶ Social Workers Registration Act 2003, s 3(d).

47 Accordingly, when considering this matter the Tribunal should keep at the forefront of its deliberations the fact that the primary purposes of its professional disciplinary powers are the protection of the public and enhancing professionalism by providing for mechanisms to ensure that social workers are competent to practise, and are accountable for the way they practice.

48 Section 82 of the Act defines the grounds on which a registered social worker may be disciplined. Section 82 provides:

Grounds on which Tribunal may make order

- (1) The Tribunal may make an order under section 83 in respect of a registered social worker 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 worker's fitness to practise as a social worker; or
 - (c) has been convicted by a court (in New Zealand or elsewhere) of an offence that—
 - (i) is punishable by imprisonment for a term of 3 months or longer; and
 - (ii) was committed in circumstances that reflect adversely on the social worker's fitness to practise as a social worker; or
 - (d) has failed to comply with restrictions on his or her registration, or restrictions stated under section 77(1)(b). ...
- (2) A registered social worker is guilty of professional misconduct if he or she—
 - (a) breaches the code of conduct; ...

Code of Conduct

49 The Code of Conduct was formally adopted by the Social Workers Registration Board (“**Board**”) in May 2005. The following sections are relevant to the current charges:

1 To uphold high standards of personal conduct and act with integrity a social worker is expected to:

- refrain from any professional or personal behaviour that puts at risk the individual’s and/or the profession’s reputation and

compromises the social worker's ability to work with the client in a fully professional and caring manner;

- not exploit their relationship with clients for personal or professional gain;
- 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 or actual conflicts of interest to their supervisor's on employer's attention. ...

Case Law

50 Counsel for the CAC referred the Tribunal to its previous finding of professional misconduct in *Curson v CAC*⁷, and the discussion of the Code of Conduct in that case. Counsel also referred the Tribunal to comparable cases decided by the Health Practitioners Disciplinary Tribunal (“HPDT”).⁸

51 The Tribunal was referred to the leading case relating to the purpose of professional disciplinary proceedings. In *Dentice v The Valuers Registration Board*⁹, Eichelbaum CJ described the purpose of professional disciplinary procedures as follows at pages 724-725:

The disciplinary procedure: Although in respect of different professions the nature of unprofessional or incompetent conduct, which will attract disciplinary charges, is variously described, there is a common thread of scope and purpose. Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself, against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of its members conform to the standards generally expected of them; see generally, *In Re A Medical Practitioner* [1959] NZLR 784 at pp 800, 802, 805 and 814.

Findings

52 The Tribunal accepted the submissions made by Mr Murray on behalf of the CAC to the effect that Ms Surowiez-Lepper's conduct went to the heart of what a registered social worker is and does. Ms Surowiez-Lepper knew the client to be vulnerable, given the referral from the Care

⁷ *CAC v Curson* 01/08/SWDT, 30 July 2008

⁸ *Roberts v PCC* [2012] NZHC 3354, *Director of Proceedings v McMillan* 634/Nur14/274D, 26 May 2014, *PCC v Maharajh* 581/Med13/243D, 12 November 2013, and *Director of Proceedings v Mete* 191/Nur08/104D.

⁹ *Dentice v The Valuers Registration Board* [1992] 1 NZLR 720

Coordination Centre, her age and the fact she lived alone. Mrs G undoubtedly would have placed trust in Ms Surowiez-Lepper and she exploited that trust.

- 53 The personal and professional boundaries were blurred by Ms Surowiez-Lepper. The relationship between Ms Surowiez-Lepper and Mrs G began as a professional social work relationship on 14 January 2012. The social work file was closed by Ms Surowiez-Lepper on 18 June 2012. Only two days later Mrs G took Ms Surowiez-Lepper out for lunch and Ms Surowiez-Lepper told Mrs G that she was no longer her social worker and that they could now be friends. Ms Surowiez-Lepper subsequently received gifts including a dinner set, a white gold diamond ring and topaz ring, Italian glasses and \$500 cash from Mrs G.
- 54 Ms Surowiez-Lepper's actions became even more serious when on 20 August 2013 she drove Mrs G to her bank in a work vehicle and in work time to withdraw \$700, of which she gave Ms Surowiez-Lepper \$400 on the pretext that it was to help two fictitious clients. Ms Surowiez-Lepper subsequently wrote two thank you notes purported to be from the clients. When Mrs G became suspicious and asked for receipts for the money, Ms Surowiez-Lepper said she was unable to provide the receipts and given the request, did not see any future in the friendship and would leave Mrs G alone.
- 55 The Tribunal is concerned at the manner in which Ms Surowiez-Lepper ended the relationship she had with Mrs G when she asked for receipts for the cash given.
- 56 Ms Surowiez-Lepper admitted the charge of obtaining by deception and, after paying reparation of \$800 and providing a letter of apology to Mrs G, was granted police diversion.
- 57 Ms Surowiez-Lepper does not dispute the facts of this charge.
- 58 The Tribunal is very troubled by the fact that Ms Surowiez-Lepper, did not declare the friendship, nor the receipt of gifts and cash to her employer, the Wellington City Mission, which was in breach of their policies and obligations about the treatment of clients and former clients.
- 59 By hiding the fact that she was having a friendship with a recent former client from her employer and supervisor, counsel for the CAC submitted, and the Tribunal accepts, Ms Surowiez-Lepper lied by omission, and continued to work with clients when her professional judgement and fitness to practice as a social worker were severely compromised. Had Ms Surowiez-Lepper told her manager or supervisor of the friendship and

gifts, steps could have been taken to address the situation and, in all likelihood, terminate her contact with clients.

60 Ms Surowiez-Lepper's actions demonstrated a complete lack of competence to work with vulnerable older persons. Furthermore, the Tribunal does not consider Ms Surowiez-Lepper's failure to recognize and respect boundaries in professional practice to be proven to be limited to working with older people. Ms Surowiez-Lepper selfishly put her personal interests before her professional responsibilities, and the best interests of a vulnerable client.

61 The Tribunal accordingly finds Ms Surowiez-Lepper guilty of professional misconduct pursuant to section 82(1)(a) of the Act, in that her conduct breached the Code of Conduct.

62 Ms Surowiez-Lepper breached the Code of Conduct in three respects under Principle 1. Ms Surowiez-Lepper failed to uphold high standards of personal conduct and to act with integrity, in that, as a social worker:

- (a) she did not refrain from personal behaviour that put at risk her reputation and the profession's reputation and compromised her ability to work with the client in a fully professional and caring manner.

The Tribunal notes the proximity of closing the work file on 18 June 2012 and two days later over lunch stating that she was no longer Mrs G's social worker and that they could now be friends. Furthermore the relationship continued over the following year during which time, Ms Surowiez-Lepper received a number of gifts including a dinner set, ring and glasses, \$500 cash for personal car repairs and \$400 from Mrs G on the understanding that this was to help two of Ms Surowiez-Lepper's clients. Second that neither the gifts nor the fact of the friendship was declared to her employer, which was in breach of their policies. The Tribunal notes the relationship was confused and lines blurred by Ms Surowiez-Lepper using the work vehicle during work hours to take Mrs G to the bank to withdraw cash from Mrs G's bank account to give to Ms Surowiez-Lepper.

The Tribunal also gave consideration to the wording of the Code of Conduct, in particular the wording "compromises the social worker's ability to work with *the client* in a fully professional and caring manner" (emphasis added). The Tribunal notes that at the time of both instances of misconduct, Mrs G was no longer a client of Ms Surowiez-Lepper. However, the Tribunal considers on

a purposive interpretation, the obligations on Ms Surowiez-Lepper were ongoing in respect of a very recent, vulnerable client (and one whom might well require further social work services). The purpose of the Act and the Code of Conduct is to impose on registered social workers high standards of personal conduct and integrity and to ensure the protection of the public. The Tribunal also considers “the client” can be read as referring to clients in general. The Tribunal considers the misconduct impacted on Ms Surowiez-Lepper’s ability to meet her social work responsibilities to Mrs G and all clients.

- (b) she exploited her relationship with Mrs G for personal gain, namely to obtain items of property and cash.
- (c) she did not discuss potential or actual conflicts of interest (both personal and professional) with the client and attempt to resolve them expeditiously and did not bring any potential or actual conflicts of interest to her supervisor’s or employer’s attention.

We find no evidence that a potential or actual conflict of interest was discussed with Mrs G and accept on the balance of probabilities they were not. Furthermore, Ms Surowiez-Lepper accepted through the Agreed Summary of Facts that *‘Neither the gifts nor the fact of the friendship was declared by Ms Surowiez-Lepper to her employer, the Wellington City Mission, in breach of their policies’*. We find proven on the balance of probability that Ms Surowiez-Lepper did not disclose any potential or actual conflict of interest to her employer, the Wellington City Mission. The Tribunal also found that she did not disclose the gifts or cash received to her employer.

- 63 The Tribunal found this charge established. The Tribunal further considers that the breaches of the Code of Conduct resulting in the proposed misconduct finding are serious enough to warrant a disciplinary sanction.
- 64 In addition, the Tribunal concludes the conduct was on the facts gross or severe misconduct.
- 65 On the basis of the proven facts the Tribunal also separately, and in the alternative, found that Ms Surowiez-Lepper’s conduct is unbecoming of a social worker and reflects adversely on her fitness to practice as a social worker pursuant to section 82(1)(b) of the Act.

Penalty

66 Given that the Tribunal has made a finding pursuant to section 82(1) of the Act, we may make any of the following orders:

- (a) cancellation of registration;
- (b) suspension for a period not exceeding 12 months;
- (c) conditions on practice, for a period not exceeding three years;
- (d) censure;
- (e) fine; and
- (f) costs.

67 Counsel for the CAC helpfully summarised the applicable principles set out by the High Court in *Roberts*¹⁰, per the judgment of Collins J:

- (a) the first consideration requires the Tribunal to assess the penalty that most appropriately protects the public;
- (b) the Tribunal must be mindful of the fact that it plays an important role in setting professional standards;
- (c) the penalties imposed by the Tribunal may have a punitive function, although protection of the public and setting professional standards are the most important factors;
- (d) where appropriate, the Tribunal must give consideration to rehabilitating professionals;
- (e) the Tribunal should strive to ensure that any penalty it imposes is comparable to other penalties imposed in similar circumstances;
- (f) the Tribunal must assess the professional's behavior against the spectrum of the sentencing options available;
- (g) the Tribunal should endeavor to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances; and
- (h) the Tribunal must assess whether the penalty imposed is fair, reasonable and proportionate in the circumstances.

¹⁰ *Roberts v PCC* [2012] NZHC 3354, at [44]-[51].

- 68 The CAC referred the Tribunal to a number of comparable cases. At the time of the hearing the Tribunal had only produced one decision on professional misconduct in circumstances arising out of a breach of the Code of Conduct.
- 69 In *CAC v Curson* the respondent was found guilty of professional misconduct in relation to four particulars. Mr Curson failed to recognise and respond to a conflict of interest, and failed to identify his client and clarify his terms of engagement in writing. Additionally, he failed to prepare and maintain adequate records of his services and arranged for pornographic material to be deleted from his client's computer. Mr Curson was censured, ordered to practice under supervision for two years and with related conditions and ordered to pay \$5,000 towards the costs of the CAC and the Tribunal.
- 70 The CAC also referred the Tribunal to appropriate penalties found in disciplinary proceedings from other professions:

*Collie v Nursing Council of New Zealand*¹¹

*PCC v Rich*¹²

*PCC v Fogarty*¹³

*PCC v Wilson*¹⁴

- 71 Counsel for the CAC submitted that the Tribunal, having found the offences amounted individually or cumulatively to gross misconduct, should cancel Ms Surowiez-Lepper's registration pursuant to section 83(1)(a)(i) and censure her.
- 72 The CAC also submitted the following aggravating features were relevant to the Tribunal's consideration of the appropriate penalties. Mrs G was elderly and had been specifically referred to the Wellington City Mission as she lived alone and needed support. That the relationship between a social worker and their client requires trust and confidence and an ability to observe professional boundaries. By blurring the boundaries of the personal and professional relationship, Mrs G was very vulnerable to the deception which ultimately occurred. Ms Surowiez-Lepper only ceased her behaviour when Mrs G questioned her and then abruptly ended the friendship. Throughout, Ms Surowiez-Lepper put her own interests above those of Mrs G.

¹¹ *Collie v Nursing Council of New Zealand* [2000] NZAR 74

¹² *PCC v Rich* 94/Nur 07/51P

¹³ *PCC v Fogarty* 141/Nur 07/55P

¹⁴ *PCC v Wilson* 424/Nur 11/194P

- 73 It was submitted that a relevant mitigating factor was that Ms Surowiez-Lepper chose not to defend these disciplinary proceedings and has accepted her actions were wrong.
- 74 Ms Surowiez-Lepper's conduct represented a gross abuse of the trust and confidence paramount in the special relationships between social workers and clients, and an inability to respect professional boundaries. The only mitigating factors were Ms Surowiez-Lepper's decision not to defend these disciplinary proceedings and accept that her actions were wrong.
- 75 Counsel for the CAC submitted that, taking into account the seriousness of the breach of the code of conduct involved and the need to protect the public and enhance the professionalism of social workers, cancellation was the only appropriate penalty pursuant to 83(1)(a)(i) of the Act. The Tribunal agrees with that submission, and also takes into account the lack of any significant insight into the harm caused to Mrs G by Ms Surowiez-Lepper's actions.
- 76 The Tribunal finds the seriousness of Ms Surowiez-Lepper's breach of trust and the gravity of the departure from the standard expected of a registered social worker was at a high and serious level. Cancellation is therefore warranted.
- 77 The Tribunal also accepts the CAC submission that Ms Surowiez-Lepper's conduct requires censure.

Orders as to Cancellation of Registration and Censure

- 78 Pursuant to section (83)(1)(a)(i) of the Act the Tribunal orders that the registration of Ms Surowiez-Lepper be cancelled forthwith.
- 79 Pursuant to section (83)(1)(b) the Tribunal orders that Ms Surowiez-Lepper be censured in the following terms:

Ms Surowiez-Lepper has been found guilty by the Social Workers Complaints and Disciplinary Tribunal of charges of gross misconduct. The Tribunal censures Ms Surowiez-Lepper for failing to uphold the standards of a registered social worker.

Orders as to Restoration of Registration and Conditions under section 84

80 Counsel for the CAC referred the Tribunal to legal precedents, particularly *McMillan*¹⁵, in relation to conditions the Tribunal may choose to impose when imposing conditions under section 84 of the Act. The Tribunal has also had regard to *Davis* and *Baker*¹⁶.

81 The Tribunal has considered whether it should make an order exercising its discretion under section 84(1)(a) to impose a minimum period during which Ms Surowiez-Lepper cannot reapply for registration. Counsel for the CAC confirmed that the discretion under section 84(1) is unfettered, and the Act provides no guidance as to the exercise of the discretion. Mr Murray submitted the Act provides a period of 3 years as the maximum period for which conditions may be imposed. It was suggested 3 years would therefore be a minimum period for an order that a practitioner not reapply after being struck off. However, the Tribunal ought not unreasonably to limit the discretion of the Board to consider a future application for re-registration. The Board's requirements provide a significant protection for the public.

82 Given the seriousness of the breaches by Ms Surowiez-Lepper and the significant failures of judgement and professionalism involved, the Tribunal makes the following orders:

- (a) pursuant to section 84(1)(a) Ms Surowiez-Lepper may not apply for registration again before 10 August 2018, i.e. a period of 3 years.
- (b) pursuant to section 84(1)(b) the Tribunal imposes the following condition that Ms Surowiez-Lepper must satisfy before she may apply for registration again:

She must successfully complete a Board approved education programme on the Code of Conduct, with particular emphasis on professional boundaries and the ethics of the social work profession.

Costs

83 The total cost for the disciplinary proceedings is in excess of \$12,500.

¹⁵ *Director of Proceedings v McMillan* 634/Nur14/274D, 26 May 2014.

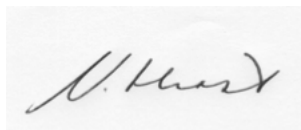
¹⁶ *PCC v Davis* 645/Ost14/284P, 25 June 2014, *PCC v Baker* 473/Nut/12/209P, 29 June 2012.

- 84 The CAC referred the Tribunal to the applicable legal precedents¹⁷ where, in imposing costs on social work and health professionals, the starting point was fifty percent of total reasonable costs, with a discretion to be exercised either increasing or decreasing that amount in the particular circumstances of the case. The CAC noted, however, that given Ms Surowiez-Lepper's personal circumstances outlined in an email dated 22 July 2015 a substantial award of costs would be unrealistic.
- 85 The Tribunal holds the view that as a matter of principle, social workers found to have committed acts of misconduct, particularly gross misconduct, should be ordered to contribute a reasonable amount to the costs of disciplinary proceedings, which would otherwise fall on the whole profession. The Tribunal notes Ms Surowiez-Lepper deserves credit and a reduction in costs for her cooperation and decision not to defend the proceedings. Taking into account Ms Surowiez-Lepper's personal circumstances, the Tribunal makes an award of \$2,500.00 towards the total costs incurred in respect of the disciplinary proceedings.

Publication of Order

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

Dated this 3rd day of September 2015



V Hirst

Chairperson
Social Workers Complaints and Disciplinary Tribunal

¹⁷ *Curson and Cooray v Preliminary Proceedings Committee* AP23/94, 14 September 1995, Doogue J.