

**Complaints and Disciplinary Tribunal**

**DECISION NUMBER:** RSW4/D1/SWDT/2016

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

**BETWEEN** the Complaints Assessment Committee  
**Complainant**

**AND** Trevor Batin  
**Respondent**

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

**Present:** Catherine Garvey (Chairperson)  
Phil Comber, Kim Fry, Peter McGurk and Bernie  
Marra (Members)  
Fleur Nicholas (Hearing Officer)

**Counsel:** Kate Feltham (Counsel for the Complaints  
Assessment Committee)  
Matthew McClelland (Counsel for Mr Batin)

**Hearing:** (on the papers) 16 May 2016 and 28 June 2016

## **Introduction**

1. By agreement of the parties, this matter proceeded by way of a hearing on the papers. Mr Batin admits a disciplinary charge pursuant to section 82(1)(b) of the Social Workers Registration Act 2003 (“the Act”) of conduct unbecoming that reflects adversely on his fitness to practise as a social worker. The disciplinary charge relates to Mr Batin being employed or engaged as a social worker when he did not hold a current practising certificate.
2. The Tribunal convened on 16 May 2016 to consider an Agreed Statement of Facts, agreed Bundle of Documents and a joint memorandum of counsel on behalf of the Complaints Assessment Committee (“CAC”) and counsel on behalf of Mr Batin. The Tribunal also considered submissions filed by counsel for the CAC addressing the Tribunal’s jurisdiction to conduct a hearing on the papers.
3. The joint memorandum noted Mr Batin’s intention to seek permanent orders for non-publication of his name and identifying details, and the CAC’s intention to oppose any such application. Accordingly timetabling orders were made for the filing of an application and supporting affidavit by 3 June 2016. The CAC was to file and material in opposition by 17 June. Following receipt of submissions from both parties the Tribunal reconvened on 28 June.

## **Background**

4. Mr Batin registered with the Social Worker’s Registration Board (“the Board”) on 21 August 2006. Pursuant to section 25 of the Act, as a registered social worker Mr Batin is required to hold a current practising certificate if he is employed or engaged in social work.
5. The Agreed Statement of Facts records as follows:

“...

3. *Between January 2013 and 1 September 2015, Mr Batin was employed by Stand Children’s Services (“Stand”) in the position of a Regional Manager. Mr Batin is currently employed in this role.*

### ***Registration as a social worker***

- 4 *Mr Batin was first registered in 21 April 2006. He underwent a competency assessment and obtained a Competency Certificate from the Aotearoa New Zealand*

*Association of Social Workers. Mr Batin's competence certificate expired on 7 September 2011, but has since been renewed (see below).*

***Being employed as a social worker without a practising certificate***

- 5 *Between 31 January 2013 and 1 September 2015, Mr Batin was employed by Stand as a Regional Manager.*
- 6 *Stand is a charity that provides specialist home and school based social services including therapeutic care and education to children aged 5 to 12. Stand's services include home and school based social work services, a nationwide therapeutic care and education service for children and families, child and family mentoring, and respite services for caregivers, including grandparents and foster parents.*
7. *On 23 April 2013, Mr Batin contacted the Social Worker's Registration Board ("the Board") by email to inform it that, although he had previously been working in a non-practising management role, he had begun a new role that would involve oversight of social work staff and, accordingly, that he would like to re-register with the Board.*
8. *The Board emailed Mr Batin on 31 October 2013. In this email the SWRB notified Mr Batin that it had not received his Annual Practising Certificate ("APC") renewal form and sought confirmation of his address and employer. The Board also informed Mr Batin that his Competence Certificate had expired, and sought information on whether Mr Batin had renewed his competence certification.*
9. *On 4 November 2013, Mr Batin responded confirming his address and employment details and notifying the Board that he was working through the recertification process.*
10. *On 24 January 2014, the Board emailed Mr Batin to follow up on his recertification and APC. In this email the Board notified Mr Batin that if it did not receive his new Competence Certificate by 7 February 2014, he would be referred to the Tribunal.*
11. *On 27 November 2014, the Board contacted Mr Batin to advise him that their records showed that he had not renewed his Competency, which made his APC invalid. The Board requested written evidence as to why the matter should not be referred to the Chairperson of the Tribunal.*

12. *On 24 March 2015, the Board wrote to Mr Batin to inform him that the complaint had been referred to a Complaints Assessment Committee (“CAC”).*
13. *On 8 June 2015 the CAC requested details of Mr Batin’s recent employment and a copy of his Position Description. On 15 June 2015, Trevor Batin provided the Board with his Position Description. In addition, he noted that he had not prioritised competency certification as he should have, and he apologised. He noted that he would submit his application for competency before the end of June 2015. He further noted that his manager was aware of the matter.*
14. *In his 15 June 2015 email, Mr Batin noted that the Regional Manager role involves managing a number of staff, including other registered social workers. Specifically, the Regional Manager directly manages four Team Leaders, each of whom in turn manages a team. The position titles of the Team Leaders are as follows:*
  - (a) Community Social Work Team Leader;*
  - (b) Residential Services Team Leader;*
  - (c) Social Workers in Schools Team Leader; and*
  - (d) Education Team Leader.*
15. *Each of the team leaders is a registered social worker, except for the Education Team Leader who is a registered teacher. Mr Batin noted that he does not have a caseload, or provide formal clinical supervision.*

**Current registration status**

16. *Mr Batin provided his updated competency documentation to the Board on 21 October 2015. As of 10 November 2015, Mr Batin had a current APC and his Competence Certificate is valid to 9 November 2020.”*
6. The joint memorandum of counsel filed on 16 May 2016 includes the following admission of the charge:

*“Mr Batin admits liability in respect of the disciplinary charge dated 18 September 2015, as follows:*

*Between 31 January 2013 and 1 September 2015 was employed or engaged as a social worker without a current practising certificate.*

*And this conduct amounts to conduct that is unbecoming of a social worker and reflects adversely on his fitness to practise as a social worker pursuant to s82(1)(b) of the Act.”*

### **Manner of disposal of proceedings**

7. Following the notice of disciplinary charge being served on Mr Batin, a pre-hearing conference was convened on 27 October 2015. This was attended by Mr Batin and counsel for the CAC. At that time, the parties indicated their intention to prepare an Agreed Statement of Facts, and usual timetabling orders were put in place for the exchange of evidence and other matters leading to a hearing scheduled for 30 November 2015.
8. Mr Batin subsequently instructed counsel, and the initial date for hearing was vacated by consent. The matter was then set down for hearing on 19 May 2016.
9. By joint memorandum dated 16 May 2016 the parties advised the Tribunal that Mr Batin admitted liability, and that they had reached agreement as to penalty. On this basis, the parties sought a hearing on the papers but acknowledged that the matter remained one for the Tribunal to determine. Following the Tribunal's request to both parties, counsel for the CAC provided written submissions concerning the Tribunal's authority to dispense with a public hearing. In summary the CAC submitted:
  - a. No factual matters were in dispute between the parties, meaning the Tribunal is not required to decide on matters of fact;
  - b. It was a matter for the Tribunal's discretion whether to dispense with a public hearing and deal with the disciplinary charge on the papers;
  - c. The requirement (pursuant to Schedule 2 of the Act) to observe the rules of natural justice were met by the communications between the parties and provision of all available evidence to Mr Batin;
  - d. The public interest is met by the publication of the Tribunal's decision in the usual manner;
  - e. Other professional disciplinary tribunals conduct hearings on the papers, as do the District and High Courts where the parties are in agreement. Counsel provided two decisions of the New

Zealand Teachers Disciplinary Tribunal in support of this submission<sup>1</sup>.

- f. The CAC was not aware of any additional persons (other than Mr Batin and the CAC) who may be affected by the proceedings being dealt with by way of a hearing on the papers;
- g. The right of appeal attaches to any person who is adversely affected by the Tribunal's decision<sup>2</sup>.

### **Discussion**

- 10. Pursuant to clause 5 of Schedule 2 of the Act, the Tribunal is to observe the rules of natural justice, and otherwise may regulate its own procedure.
- 11. The Act provides for hearings of the Tribunal to be held in public, with exceptions. For present purposes s79(2) is relevant:

*"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..."*

- 12. This provision is essentially the same as section 95(2) of the Health Practitioners Competence Assurance Act 2003 which deals with hearings of the Health Practitioners Disciplinary Tribunal ("HPDT").
- 13. Similarly, recent amendments to the Education Act 1989<sup>3</sup> provide for hearings of the teachers Disciplinary Tribunal to be held in private if the Tribunal thinks it is "*proper*" to do so after having regard to the interests of any person including, without limitation, any complainant. As submitted by counsel for the CAC, that tribunal quite frequently determines matters on the papers.

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<sup>1</sup> CAC v Toon NZZTDT 2014/17F; and CAC v Simpson NZDT 2015/50.

<sup>2</sup> Section 88(2)

<sup>3</sup> Section 405, inserted 1 July 2015

14. Section 119 of the Act pertains to hearings by the Tribunal. It does not stipulate the manner in which a hearing is to be conducted but requires that hearings must take place at a time and place appointed by the Tribunal or presiding officer, and that each member of the Tribunal is to be present.
15. We are satisfied that it is desirable and in the interests of justice, including facilitating a just, speedy and cost-efficient outcome to these proceedings to resolve the disciplinary charge against Mr Batin on the papers.
16. In reaching a decision to proceed with a hearing on the papers and to accept the penalty proposal made by the parties, we have considered matters including the provisions of the Act set out above, the evidence that has been provided to the Tribunal in order to satisfy us that the charge is established, the appropriateness (from a proportionality perspective) of the proposed penalty, and the time and cost implications of proceeding to a full hearing in the circumstances of this case.
17. We consider that the Act does not preclude the Tribunal from dispensing of proceedings in this manner in appropriate circumstances. Each matter must be approached on a case by case basis.
18. We have also taken guidance from the HPDT's comments in *Re Tamma*.<sup>4</sup> That case was not a hearing on the papers but one in which the practitioner accepted the penalty and costs submissions made by the Director of Proceedings following the Tribunal's determination of liability. The Tribunal discussed the role of a decision maker in those circumstances, and the matters to be taken into consideration:

“[51] *It is necessary to consider the correct role of a decision maker where there is consensus between the parties as to the appropriate penalty. In Commerce Commission v New Zealand Milk Corporation Ltd (1994) 2 NZLR 740, the Court held that when parties have reached an agreement, the Court is likely to provide its approval if it accepts that the agreed penalty is “proportionate to the evidence available, and the Defendant’s conduct.” The Court cited an Australian case, Trade Practices Commission v Allied Mills Industries Pty Ltd (No 4) (1981) 37 ALR 256 where Shepherd J at page 259 said:*

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<sup>4</sup> Decn No 577/Med13/247D

*“It is, of course true that the penalty has been suggested to me by the agreement of the parties. Uninformed of their agreement I may have selected a different figure, but I am satisfied that it would not have been very different from theirs...”*

*This line of cases has been applied previously in a disciplinary context: Johnston v PCC, a decision of the Appeals Council of the Institute of Chartered Accountants of New Zealand, dated 23 December 2003.*

[52] *The Tribunal agrees that providing the terms proposed by the parties are proportionate to the evidence and the Defendants’ conduct, it is likely the Tribunal will approve the terms proposed by the parties. But the final decision is for the Tribunal.”*

19. If the Tribunal had not been prepared to resolve this disciplinary charge in the manner proposed by the parties, we would have proceeded to the hearing as scheduled.

#### **Findings - Liability**

20. Mr Batin admits a charge of conduct unbecoming that reflects adversely on his fitness to practise in relation to his being employed or engaged as a social worker while not holding a current practising certificate.

21. As set out in previous decisions, the Tribunal must be satisfied that:

- a. At all material times Mr Batin was a registered social worker; and
- b. At all material times he was employed or engaged in social work; and
- c. That Mr Batin’s conduct in failing to renew his practising certificate amounts to conduct unbecoming a registered social worker; and
- d. That this conduct reflects adversely on his fitness to practise.

22. In the absence of a statutory definition of the terms “social work” and “employed or engaged as a social worker” we have adopted a broad approach to these terms.<sup>5</sup>

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<sup>5</sup> See for example RSW8/D1/SWDT/2015; RSW9/D1/SWDT/2015

23. We have carefully considered the material contained within the Agreed Bundle of Documents, including the detailed Position Description outlining Mr Batin's role. We have considered Mr Batin's communication with the Board on 23 April 2013 in which he advised that he wished to renew his 'registration' (necessarily meaning his practising certificate), on the basis that his new role as Regional Manager required him to have oversight and discussion with social work staff. The Agreed Statement of Facts confirms that Mr Batin remains in this role.

24. We are satisfied that the evidence establishes that Mr Batin was practising as a social worker during the time period the subject of the charge. He was employed or engaged in social work in his role as Regional Manager which included the following tasks and responsibilities:

- a. Supervision of other registered social workers;
- b. Working directly with the children and parents and caregivers engaged with Stand including a requirement to track each child's progress, provide resources and become involved and engaged with parents/caregivers;
- c. Liaison with community agencies, Child Youth and Family and others in relation to specific children and their parents/caregivers;
- d. Championing the needs and rights of all children accessing the service;
- e. Providing cover for team leaders in their absence.

25. We are satisfied that Mr Batin's conduct in failing to take the necessary steps to renew his practising certificate amounts to conduct unbecoming which reflects adversely on his fitness to practise for reasons including:

- a. Section 25 sets out a mandatory requirement for registered social workers to hold a practising certificate if they are employed or engaged in social work;
- b. The time period to which the charge relates is lengthy, being January 2013 to September 2015;

- c. Mr Batin's failure to renew his APC was not a matter of inadvertence or oversight;
- d. A significant factor in the delay in the renewal of his practising certificate was the need to renew his competency certification.

26. We record that there is no evidence before the Tribunal to suggest that Mr Batin's employer held him out as a registered social worker over the period in which he did not hold a current practising certificate.

### **Findings – Penalty**

27. We adopt the principles as to penalty in the disciplinary context that have been set out in a number of this Tribunal's recent decisions, in reliance on *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*.<sup>6</sup> These principles are, in summary:

- a. To protect the public, which includes deterring others from offending in a similar way;
- b. To set professional standards;
- c. Penalties have a punitive function, both directly (such as a fine) and as a by-product of sanctions imposed;
- d. Rehabilitation of practitioners, where appropriate;
- e. To impose penalties that are comparable to those imposed in similar circumstances;
- f. To reserve the maximum penalties for the worst offending;
- g. To impose the least restrictive penalty that can reasonably be imposed in the circumstances;
- h. To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.

28. The requirement under section 25 that a registered social worker who is employed or engaged in social work must hold a practising certificate is a "cornerstone" of the Act<sup>7</sup>.

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<sup>6</sup> High Court Wellington CIV-2012-404-003916 [12 December 2012], Collins J.

<sup>7</sup> *Sanders*, Decn 11 NSPC/05/13/SWDT

29. This requirement, with the related requirement to hold current competency certification is a mechanism by which the purposes of the Act set out in section 3 are met, in particular:

a. *to protect the safety of members of the public, by prescribing or providing for mechanisms to ensure that social workers are—*

*i. competent to practise; and*

*ii. accountable for the way in which they practise; and*

*...*

*(d) to enhance the professionalism of social workers.”*

30. The parties proposed the following penalty:

a. That Mr Batin be censured;

b. A fine in the sum of \$500;

c. Costs in the sum of \$1000.

31. The Tribunal agrees that this is an appropriate penalty, although a different penalty may well have been imposed had the matter proceeded to a hearing. The penalty is proportionate to the evidence that we have received of Mr Batin’s conduct. It is also proportionate when considered in the context of other charges dealt with by this Tribunal pertaining to registered social workers practising without a current practising certificate. We are mindful that this is Mr Batin’s first offence, and that there is no evidence to suggest that he is anything other than a competent social worker.

32. Accordingly the Tribunal orders:

a. Mr Batin is censured.

b. Mr Batin is to pay a fine of \$500.

c. Mr Batin is to pay costs in the sum of \$1,000, to be paid 60% to the CAC and 40% to the Tribunal.

### **Non-publication – submissions on behalf of Mr Batin**

33. Following consideration of the charge, and in response to counsel for Mr Batin's indication that permanent suppression orders would be sought, the Tribunal directed that Mr Batin was to file and serve an application and supporting affidavit(s) by 3 June 2016.
34. On 7 June 2016 counsel for Mr Batin filed submissions seeking permanent non-publication of Mr Batin's name and identifying details. The submissions were not accompanied by an application or supporting affidavit.
35. On behalf of Mr Batin it was submitted that he has enjoyed a long career with no other complaints to professional bodies, and that during the period to which the charge relates, he was under significant pressure:
- a. He had recently commenced a new job;
  - b. He suffered stress related to the Christchurch earthquake, including upheaval caused by moving workplace, and having to leave his home;
  - c. His daughter was seriously ill (the nature of the illness or other details were not specified).
36. In terms of weighing the public interest against Mr Batin's personal interests, counsel submits that Mr Batin does not pose a risk to the public and as such no issue arises as to the protection of the public. Counsel submits that it is not necessary to identify Mr Batin in order for the Tribunal to fulfil its role of setting standards or to act as a deterrent.
37. Counsel referred us to the decision of *CAC v Surowiez-Lepper*<sup>8</sup>, in which an application for a private hearing and permanent suppression was declined, and the social worker found guilty of professional misconduct. The charge involved a breach of professional boundaries and exploitation of a client for personal and financial gain. The Tribunal recorded the need to weigh up the interests of the social worker against the public interest in a public hearing, and referred to well-established public interest factors (as summarised at paragraph 40 below).

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<sup>8</sup> RSW3/D3/SWDT/2015

38. Ms Surowiez-Lepper's primary ground for seeking suppression was to protect the identity of her daughter. The Tribunal concluded:

*"After careful consideration, the Tribunal agrees with [counsel for the CAC'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."*

39. Counsel for Mr Batin submits that this case is distinguishable, as Ms Surowiez-Lepper's charges involved serious misconduct, with *"clear and obvious public interest factors where the Tribunal accepted that there was a potential risk to the public"*. We accept that the seriousness of the offending is a matter to be factored into the mix when weighing the public interest, and the interests of the person seeking suppression.

#### **Non-publication – submissions on behalf of CAC**

40. Counsel for the CAC made the following submissions in opposition to an order for permanent suppression:

- a. The starting point, by reference to section 79 of the Act, is that disciplinary proceedings should be conducted in the open;
- b. In reliance on established principles the following should be taken into account:
  - i. The openness and transparency of disciplinary proceedings;
  - ii. Accountability of the disciplinary process;
  - iii. The public interest in knowing when a practitioner has been charged with a disciplinary offence;
  - iv. The principle of freedom of speech enshrined in section 14 of the New Zealand Bill of Rights Act 1991;
  - v. To avoid unfairly impugning others.

41. The CAC accepts that Mr Batin has suffered stress, but submits that there are not sufficient grounds for permanent non-publication orders to be made. The CAC acknowledge the absence of any suggestion that Mr Batin has behaved unethically or harmed clients.

42. Finally, the CAC submit that if Mr Batin's submissions are accepted this would entitle most others facing a similar disciplinary charge to obtain a permanent non-publication order.

### **Discussion**

43. There is a presumption that disciplinary hearings will be held in public, and the names of those charged with a disciplinary offence will be published<sup>9</sup>. This is clear from section 79 (1). However, the Tribunal may prohibit the publication of some or all parts of a proceeding, including the social worker's name. Section 79 provides:

*(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."*

44. The test, whether "*the Tribunal is satisfied that it is desirable*" to make an order prohibiting publication of the name or particulars of any person, mirrors section 95(2)(d) of the Health Practitioners Competence Assurance Act 2003. There is ample guidance found in decisions of the

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<sup>9</sup> See for example *B v B*, HC 4/92, 06 April 1993 per Blanchard J at [99]

HPDT and appeals from that tribunal as to the application of this test. This Tribunal has rarely considered s79(2)(d), and only two such decisions were referred to us by counsel.

45. We are required to consider the interest of any person, and the public interest.
46. We accept the public interest factors referred to by counsel, in reliance on *M v Police* (1991) 8 CRNZ 14; *R v Liddell* [1995] 1 NZLR 538 and *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546.
47. We also accept that the threshold for suppression in this disciplinary context is a lower threshold than applies in criminal matters.<sup>10</sup>
48. There may be different considerations applied in the making of interim orders as compared to permanent non-publication orders, in particular following a guilty finding. In *Tonga v Director of Proceedings*<sup>11</sup>, the practitioner appealed against the HPDT's decision to decline to grant permanent suppression. Panckhurst J discussed the test as follows:

*"[35] To my mind there is a presumption in favour of openness, and therefore name publication in s.95. Obviously, the section is to be read as a whole...The requirement of public hearing necessarily impacts in relation to ss(2) of the section. It empowers and enables the Tribunal to ameliorate the impact of a public hearing by making orders in terms of the sub-section where it is desirable to do so, including, of course, an order granting name suppression. The scheme of the section means, in my view, that the publication of names of persons involved in the hearing is the norm, unless the Tribunal decides it is desirable to order otherwise. Put another way, the starting point is one of openness and transparency, which might equally be termed a presumption in favour of publication.*

*[42] ...following an adverse disciplinary findings more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that the public interest considerations will require that the name of the practitioner be published in the preponderance of cases. Thus the statutory test of what is 'desirable' is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may include in favour of the private interests of the practitioner. After the hearing, by which time evidence is out and findings have been*

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<sup>10</sup> *Director of Proceedings v I* 2004 [NZAR] 635

<sup>11</sup> HC Christchurch CIV 2005-409-2244 21 February 2006 at [42]

*made, what is desirable may well be different, the more so where professional misconduct has been established.”*

49. In *Anderson v PCC*<sup>12</sup> Gendall J agreed with the above remarks of Panckhurst J. His Honour referred to what might constitute the relevant private interests of a person seeking name suppression as follows:

*“Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interest such as protection of the public, maintenance of professional standards, both openness and “transparency” and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors’ reputations being affected by suspicion, are all factors to be weighed on the scales.*

*...Of course publication of a practitioner’s name is often seen by the practitioner to be punitive but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It also reflects the principles of openness of such proceedings and freedom to receive and impart information.”*

50. These cases of course refer to health practitioners, and involved professional misconduct. However, we consider that the underlying principle of serving the purposes of the Act, and weighing the public interest in openness and transparency in disciplinary proceedings against any private interests advanced by the person being disciplined, is apt.
51. In terms of Mr Batin’s personal interests, the submissions lodged on his behalf identify stressors that affected him during the period to which the charge relates. Mr Batin has not filed an affidavit giving detail of these matters. Nor is there any material within the Agreed Bundle of Documents on which we might rely; Mr Batin was in his communications with the Board, candid that he had *“failed to prioritise”* his competency certification. He did not give reasons for this.
52. There is no suggestion that the stressors identified on behalf of Mr Batin persist, or that he is currently suffering from any personal or health circumstances that would cause undue harm if his name is published in relation to these proceedings. It is the Tribunal’s understanding that his employer is aware of Mr Batin’s situation (based on paragraph 14 of the

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<sup>12</sup> HC Wellington CIV-2008-485-1646 14 November 2008 at [36] and [37]

Agreed Statement of Facts, and emailed correspondence from Mr Batin to the Board dated 15 June 2015 in the agreed bundle).

53. We do not ignore the risk of embarrassment and distress that may be caused to Mr Batin by publication of his name in this decision. We also acknowledge that there may be far more serious disciplinary matters that this Tribunal is required to consider and in relation to which the importance of publication will be very clear. Certainly the majority of authorities dealing with the issue of permanent suppression pertain to quite serious matters; that may be because suppression is not frequently sought where the charge relates to more minor offences and where the risk of reputational harm is comparatively less.
54. With that said, the requirement to hold a current practising certificate is a fundamentally important one. Mr Batin did not hold a certificate of competence for the period in the charge, and this was not renewed until October 2015. This is not a minor matter. We do accept that there is no evidence that Mr Batin was not practising competently during this time.
55. We agree with the thrust of the CAC's submission that if we order non-publication because of an absence of need to protect the public, and on the basis that the educative and deterrent purposes of disciplinary proceedings can be met by publishing an anonymised decision, then the presumption of openness and transparency is too easily displaced.
56. In applying the principles discussed above and balancing the public interest against the private interests advanced in submissions on behalf of Mr Batin we are not satisfied that it is desirable to make the order sought.
57. Accordingly the application for permanent non-publication of Mr Batin's name is declined.

### **Summary**

58. The Tribunal has found the disciplinary charge proved.
59. For the reasons set out above, Mr Batin's application for non-publication of his name is declined.
60. The Tribunal orders as follows:
  - a. Mr Batin is censured.

b. Mr Batin is to pay a fine in the sum of \$500.

c. Mr Batin is to pay costs in the sum of \$1,000.

61. The Tribunal directs that this decision be published on the Board's website in the usual manner.



**DATED** this 30th day of June 2016

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**Catherine Garvey**

Chairperson

Social Workers Complaints and Disciplinary Tribunal