

Complaints and Disciplinary Tribunal

BEFORE THE SOCIAL WORKERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

DECISION NO: RSW3/SWDT2/2019

UNDER the Social Workers Registration Act 2003

IN THE MATTER of a disciplinary charge laid against **ROBERT JOHN PULETAGALOA LUISI** of Auckland, registered social worker

Hearing Held in Auckland on 2 September 2019

TRIBUNAL: Mrs J C Hughson (Chairperson)

Ms L Cooper, Mr P McGurk, Ms S Jarvis, Mr B Marra
(Members)

IN ATTENDANCE: Ms G J Fraser (Executive Officer)

Ms J Kennedy (Stenographer)

APPEARANCES: Ms R Kos for the Professional Conduct Committee (PCC)

Mr D McGill for Mr Luisi

Mr S Williams (support person for Mr Luisi, no speaking rights)

Introduction

1. It is a mandatory requirement for any registered social worker who is employed or engaged as a social worker to hold a current annual practising certificate (APC)¹.
2. It is the registered social worker's responsibility to ensure that a current APC has been issued before he or she is employed or engaged as a social worker.
3. As the Tribunal observed in *Nash*² although there may be views held by a registered social worker's employer about whether or not a registered social worker who is employed by them is employed or engaged as a social worker, that does not relieve the registered social worker from his or her primary responsibility to ascertain whether the Social Workers Registration Board (the Board) requires one to be held, and if so, to obtain one.

Mr Luisi

4. Mr Luisi obtained full registration as a social worker on 27 November 2014. He holds a Bachelor of Social Work (which he gained in 1999). From 2002 to 2015 Mr Luisi worked voluntarily for the Ranui135 Trust which operates in the Ranui community in West Auckland. The initiative was set up in 2002 in response to youth challenges within that community³. Mr Luisi and his wife are co-founders of the initiative. Prior to 2015 Mr Luisi was employed as a social worker in schools.
5. In 2015 Mr Luisi was seconded to Ranui135 Trust (Ranui135), from his social work position with the Anglican Trust⁴. He was seconded to do a 12-month piece of work as a "Youth Work Broker". The purpose of that role was to create a pathway supporting young people to get into work⁵. Mr Luisi described his role as being to bring young people to Ranui135 and make connections with employers.⁶ Mr Luisi has remained in full-time employment with Ranui135 since that time. Over the years his role has developed to managing a team of youth workers⁷. The Trust also runs activities for youth and youth leadership programmes.

¹ Section 25 of the Social Workers Registration Act 2003

² *CAC v Nash* RSW2SWDT2017

³ Affidavit of Mr Luisi sworn on 26 August 2019 at [2]-[4]

⁴ By then the Ranui135 Youth Trust had become the Ranui135 Leadership Trust; affidavit of Mr Luisi para [4]

⁵ The agreed evidence was that the young people initially ranged in age from 18 to 24 years and then from 2016, the age changed to from 16 to 24 years. Refer Agreed Statement of Facts (ASF) at [4].

⁶ ASF, para [3]

⁷ Mr Luisi's affidavit at [6]

6. Mr Luisi's APC lapsed in 2016 when he left his employment as a social worker at the Anglican Trust and commenced full time work at Ranui135 Trust.⁸ Mr Luisi did not consider he was practising social work in his role as a "Youth Work Broker" at Ranui135 and therefore he did not consider it necessary to maintain his APC.⁹
7. The Job Description for the .5 Team Leader and .5 Youth Education, Training and Employment Worker roles Mr Luisi holds with the Trust does not require him to be a registered social worker. However, there is reference to the Social Work Code of Ethics in that document and the remuneration package includes a base salary and payment to cover the costs of monthly supervision, Social Work professional membership and "Social Work Professional Registration with the ANZASW and/or SWRB".¹⁰
8. Mr Luisi has not renewed his APC at any time since it expired on 1 July 2016, but he has continued to work in his Team Leader and Youth Education, Training and Employment Worker roles with the Trust. These roles encompass working with individuals, groups and communities.
9. In September 2016 Mr Luisi was contacted by the Social Workers Registration Board (the Board) about renewing his APC. Mr Luisi advised that he had not practised social work since 27 July 2015, but he intended to renew his APC. Later in September 2016 Mr Luisi advised the Board that he was not practising social work but that he had been approached for clinical supervision. The Board advised him that he would need an APC to provide supervision. Mr Luisi indicated again that he would take steps to renew his APC by completing the application form.
10. Between 28 October 2016 and 18 January 2017 Mr Luisi was contacted several times by the Board about renewing his APC. In that time Mr Luisi and his Manager at the Trust (his wife) provided the Board with his Job Description and this was reviewed by the Board. In November 2017 Mr Luisi had advised the Board that he was not engaged in social work as he was working as a youth worker. The Board advised Mr Luisi that it considered he was using his social work knowledge and skills in his job and therefore was required to hold an APC.
11. A Professional Conduct Committee ("PCC") appointed under section 66 of the Social Workers Registration Act 2003 (the Act) investigated the matter of Mr Luisi allegedly having been

⁸ Mr Luisi's affidavit at [7]

⁹ Mr Luisi's affidavit at [8]

¹⁰ ABD, Job Description, page 59-62

employed or engaged as a social worker without an APC and laid a charge under section 82(1)(b) of the Social Workers Registration Act 2003 (the Act).

The Charge and the hearing

12. The charge alleged that between 2 July 2016 and 31 April 2019, Mr Luisi was employed or engaged as a social worker without a current practising certificate. That conduct was alleged to amount to conduct that is unbecoming of a social worker and reflects adversely on his fitness to practise as a social worker.
13. At the hearing Mr Luisi confirmed that he admitted the charge in all respects¹¹.
14. The Tribunal received an agreed statement of facts signed by Mr Luisi as well as a bundle of relevant documents including documents concerning Mr Luisi's registration and his APC history, his Job Description, relevant correspondence between the Board and Mr Luisi and notes of interviews conducted by the PCC (and comments received about those notes). The PCC called Judith Douglas, registered social worker of Wellington, as an expert witness. Ms Douglas's evidence related to the issue of whether Mr Luisi had been engaged or employed as a social worker in the relevant period. As discussed below, it was Ms Douglas' opinion that Mr Luisi had been practising as a social worker because his professional role includes some tasks that are usually considered to be social work tasks. The Tribunal accepted Ms Douglas' evidence. The Tribunal also considered two affidavits filed by Mr Luisi including one he had sworn on 26 August 2019 and one from Scott Michael Williams who is the Chairperson and Founding Member at Ranui135 Trust. All the evidence was considered carefully.

Legal principles

15. The relevant legal principles are well established by previous decisions of the Tribunal.
16. In any charge before the Tribunal the onus is on the PCC to prove the charge. That onus is proof to the satisfaction of the Tribunal on the balance of probabilities. The greater the gravity of the allegations, the stronger the evidence required to satisfy the burden.
17. The purpose of the Act is set out in section 3(a) and includes the protection of the safety of the public by prescribing or providing for mechanisms that ensure that social workers are

¹¹ Transcript, page 26 L7-20

both competent to practise, and accountable for the way in which they practise. Section 3(d) provides that a purpose of the Act is to “enhance the professionalism of social workers.”

The requirement to hold an APC is a fundamental mechanism by which the purposes of the Act are achieved.

18. In comparable cases involving charges brought under section 82(1)(b) of the Act the Tribunal has found the following matters need to be proven; that:
 - i. the social worker was registered in the time period set out in the charge; and
 - ii. the social worker was employed or engaged as a social worker during that period;
 - iii. the social worker did not hold an APC during that period; and
 - iv. the social worker’s conduct in continuing to be employed or engaged as a social worker without an APC during that same time period, amounts to conduct unbecoming of a registered social worker and which reflects adversely on the registered social worker’s fitness to practise as a social worker.
19. To answer the question whether the registered social worker was employed or engaged as a social worker at the relevant times it is necessary to find that the registered social worker was engaged in social work duties that fall within the Board’s authority.
20. In previous decisions the Tribunal has explained that a person can be employed or engaged as a social worker even where his or her job title is not “social worker”. The Act envisages circumstances in which a registered social worker may not be formally employed as a “social worker” but nonetheless is engaged in tasks and undertaking responsibilities that can properly be considered social work. This is consistent with the broad purpose of the Act¹².
21. In *CAC v Angelo*¹³ the Tribunal adopted the approach set out in a Crown Law opinion which was referred to by Counsel for the PCC. This opinion was jointly obtained by the Board and the Ministry of Social Development (MSD) in November 2013 and recommended a broad approach be taken to what constitutes social work or being employed or engaged as a social worker. The opinion concluded that a registered social worker is “*employed or engaged as a social worker*” and required to hold a current practising certificate if he or she:

“3.1 is engaged with casework decisions at any level; and/or

¹² Section 3, Social Workers Registration Act 2003

¹³ RSW9/D1/SWDT/2015

- 3.2 *in the context of performing his or her role, expressly or implicitly holds himself or herself out as a registered social worker or is held out in that way by his or her employer or colleagues.”*
4. *Extrapolating on the second point, we consider that all people for whom being a registered social worker is an important aspect of their role, or the way in which they perform their role, are required to hold practising certificates pursuant to s. 25.”*

22. In assessing whether a person is employed or engaged as a social worker, the Tribunal has in previous cases also considered whether a person is using his or her “social work skills and training” (*CAC v Kuruvilla*¹⁴, *CAC v Hungahunga*¹⁵). In that regard, the Tribunal must assess, on a case by case basis, the nature of the role which the registered social worker is undertaking.
23. In this case the Tribunal was assisted by the facts admitted by Mr Luisi, his Job Description, the PCC interview notes, and the independent opinion of Ms Douglas, as well as the affidavits filed by Mr Luisi.
24. As for the test of conduct unbecoming of a social worker and which reflects adversely on a registered social worker’s fitness to practise as a social worker, previous decisions of the Tribunal have confirmed there are two steps involved in assessing what constitutes conduct unbecoming of a social worker¹⁶. These are:
- a. The first step involves an objective analysis of whether the registered social worker’s acts or omissions can reasonably be regarded by the Tribunal as constituting conduct unbecoming of a social worker;
 - b. The second step requires the Tribunal to be satisfied that the registered social worker’s acts or omissions reflect adversely on the social worker’s fitness to practise as a social worker, and therefore require sanction for the purposes of protecting the safety of the public and/or enhancing the professionalism of social workers. This is the threshold step which requires the Tribunal to decide whether the departure from acceptable standards is significant enough to warrant sanction. This is a question of degree.¹⁷

¹⁴ RSW1/D1/SWDT/2016

¹⁵ RSW6/D1/SWDT/2016

¹⁶ *F v Medical Practitioners Disciplinary Tribunal* [2005] 3NZLR 774 (CA) at [79]

¹⁷ *B v Medical Council* [2005] 3 NZLR 810

25. The Tribunal is not required to find the proven conduct conclusively demonstrates that the registered social worker is not a fit and proper person to practise social work.¹⁸
26. In *B v Medical Council*,¹⁹ the High Court observed that the relevant conduct must be measured against the standards of “competent, ethical and responsible practitioners”.
27. For the avoidance of doubt there was no suggestion or evidence in this case that Mr Luisi was not (and is not) a fit and proper person to practise social work.

Charge – discussion

Part A - Practising social work without holding a current practising certificate

28. The facts as agreed between the parties and accepted by the Tribunal included that Mr Luisi:
 - was a registered social worker during the time periods referred to in the charge;
 - did not hold an APC during those dates; and he
 - practised social work duties during that period in his employment as Team Leader and Youth Education, Training Employment Worker at Ranui135 (and therefore he was required to hold an APC for this role).
29. Despite these admissions it was for the Tribunal to determine for itself that this part of the charge was established.
30. In relation to the extent of Mr Luisi’s practice as a social worker, the Job Description in respect of the .5 Team Leader role stated:

“Primary Purpose

The Team Leader as a Senior Member of staff alongside Management, will develop innovative and responsive youth development programmes focusing on enhancing the overall education, health and wellbeing outcomes for young people.

The Team Leader will develop relationships with key stakeholders including but not limited to schools, continuity, tertiary providers, youth providers, clubs enhancing better overall education, health and wellbeing outcomes for young people.

¹⁸ CAC v Hungahunga RSW6/D1/SWDT/2016, 8 November 2016 at [24]

¹⁹ *B v Medical Council*, above n 11, at 811

The team leader will oversee all youth workers employed and contracted by the organization, students and volunteers.

The Team Leader will demonstrate their ability to plan, direct, or coordinate the activities of a community organization, oversee the program or organization's budget and policies regarding participant involvement, program requirements, and benefits. Work may involve but will not be limited to directing youth workers/practitioners, other staff, volunteers and/or contractors.

Key tasks will involve:

- *Internal training and development of youth workers, staff, students and volunteers*
- *Planning and administering programme budgets*
- *Supervising youth workers, contractors, students and volunteer work programmes*
- *Develop programme evaluation tools and creative data collection methods including visual and/or digital platforms to evaluate program impact*
- *Preparing monthly reports for management/board*
- *Representing the organization in formal settings*
- *Identifying opportunities for further professional development of youth workers, staff. Students and volunteers*
- *Building and maintaining key networks relevant to education, training and employment and overall health and wellbeing needs of clients currently receiving mentoring and/or one to one support via Ranui135 programmes*
- *Ongoing professional development*

Key performance indicators will include:

- *Time management*
- *Monthly reports*
- *Overseeing all direct reports are meeting contractual outcomes*
- *Monthly one to one and group supervision (internal)*
- *Programme development*
- *Staff meeting lead*

31. The Job Description for the .5 Youth Education, Training and Employment Worker stated:

Primary Purpose

The Youth Education, Training and Employment Worker will provide support and identify the education, training and employment needs of a minimum of 20 young people aged between 12-24 in a range of

settings including one to one and group work settings (where applicable). The youth worker will take a holistic approach to identifying the young person's needs and develop an individual plan tailored appropriately to enhance positive education, training and employment outcomes so that young people can lead fulfilling lives, taking into consideration additional family intervention and support needs as identified through the assessment process.

The Youth Education, Training and Employment Worker will develop relationships with key stakeholders including but not limited to schools, community, tertiary providers, youth providers, clubs, identifying opportunities to engage and enhance better overall education, health and wellbeing outcomes for young people.

The Youth Education, Training and Employment Worker will work intensively with each client for 6 weeks on completing their goals on their individuals' plans.

Key tasks will involve:

- *Client case management and managing caseloads and individual plans*
- *Up to date files relating to client case management*
- *Monthly reports*
- *Group work initiatives where applicable*
- *Keeping appointments and transportation of clients to appointments where necessary*
- *Hosting the monthly Ranui Youth Work Network*
- *Identifying and participating in opportunities for further professional development*
- *Assessing external supervision (where applicable) monthly*

Relevant knowledge

Te tiriti o Waitangi

Youth Development Strategy Aotearoa

Youth Work Code of Ethics

Cultural competencies

Social Work Code of Ethics

Adolescent development

32. Ms Douglas has been registered as a social worker since the Act came into force. She has experience in social work practice gained since her first role as a social worker in Child Youth and Family in 1985. Ms Douglas has held several Advisor and Senior Advisor roles within MSD

and from 2015 to 2017 she was a Lecturer in the School of Social Sciences at the Open Polytechnic of New Zealand. In her evidence before the Tribunal Ms Douglas confirmed that currently she is a lecturer in the Social Work degree programme.

33. It was Ms Douglas' opinion that Mr Luisi was using his social work skills and knowledge in a role that is described in his Job Description and carried out in a way that matches a range of tasks, models and approaches that are considered to be part of social work; and therefore that involved Mr Luisi practising social work. The matters Ms Douglas relied on in support of her opinion, which Mr Luisi through his counsel indicated he did not take issue with²⁰ and which the Tribunal accepted, included:

a. Mr Luisi's Job Description and statements from his employer and himself to the PCC confirm that Mr Luisi works with individuals, groups and communities and that his tasks include:

- Direct engagement with individual young people around their employment needs and as part of the *Realise* project where he works alongside young people supporting them to make their own storyboards;
- Contact with the families of these young people;
- Project-based work which involves relationship building, networking and evaluation of programmes using a community development approach;
- Research as part of a research team largely in a liaison role;
- Community engagement with a range of local community organisations including hosting and facilitating network meetings, encouraging collaborative approaches to projects to meet the needs of young people in the local area;
- Involvement in the planning and coordination of community events for young people;
- Support, supervision, training of staff, volunteers and students; and
- Programme development.

b. All the tasks performed by Mr Luisi are found in social work, including casework with individual young people, project work and training and support of staff, volunteers and students. The roles carry with them an expectation that the person will have a knowledge base in the field and the ability to develop and implement training

²⁰ Transcript, page 33, L 9-11

programmes for less experienced staff. These are components to the roles of many social workers.

- c. It is likely Mr Luisi is using both his personal attributes (including his cultural knowledge and lived experience growing up in the area where he is practising) as well as a set of integrated knowledge, skills and values from his social work studies and subsequent practice as a social worker in schools. Ms Douglas opined that she does not believe it is possible or helpful to disaggregate the two. The Tribunal noted that Mr Luisi confirmed to the PCC when he was interviewed, that he was using his social work skills and training when he was performing his roles at Ranui135.
- d. Mr Luisi's role in offering support and supervision to other team members about how to engage with youth makes apparent that he is offering professional knowledge to other less senior practitioners and that Mr Luisi holds a high level of responsibility for the work he and others undertake. Further, that Mr Luisi is regarded by others as a person in the community who has a wider range of knowledge and skills than solely youth work, and who is perceived as a senior practitioner with significant experience, competence and credibility.
- e. Mr Luisi engages in a supervision relationship with an "old social work supervisor" (the formality of which was not clear to the Tribunal), to get support for himself around the management of staff and other issues related to his Team Leader role. Mr Luisi has attended some professional development training on child safety. Regular supervision and ongoing professional development are both requirements of maintaining social work registration and typically associated with practising social work.
- f. Mr Luisi's work appears to be youth-focused, holistic and grounded in the principles of community development. His Job Description includes taking an "holistic approach to identifying the needs of young people between 12 and 24 and working intensively with each client for six weeks". In his role he is expected to document individual files and keep 'up to date files of case management'. Direct client contacts and record keeping are core activities of social work, as is responsibility for casework decisions in respect of people the social worker is working with. By virtue of his supervision of others, it is likely Mr Luisi has input into casework decisions particularly of his street team and the youth work team (around their direct casework with young people).

34. Ms Douglas, answered in the affirmative when she was asked by Tribunal member Ms Jarvis whether the skills and tasks that Mr Luisi carries out in his roles at Ranui135 would be able to be used as examples for the purposes of social work “recertification”.²¹
35. Ms Douglas also addressed the distinction between the fields of “youth work” and “social work”, noting that youth work and community development can be considered both as a standalone field and part of a wider set of field of practice within social work. Tribunal members questioned Ms Douglas about this issue. Ms Douglas stated that there is a great deal of crossover between youth work principles and the youth work code of ethics and the professional codes of social work. A person could practise youth work or community development with different or lower level qualifications than are required for registration as a social worker, but a person who had qualified as a social worker should have the skills and knowledge to practise as a social worker in the youth and community development contexts.
36. Ms Douglas acknowledged that there is some debate about how the wider profession of social work is seen in relation to its many fields of practice but she stated that it is generally accepted that social work as a discipline can and does include youth work and community development as part of the wider definition of social work. She referred to a recent New Zealand social work text with individual chapters devoted to both *youth social work* and *community development*.²² She referred generally to professional social work scholarly journals both in New Zealand and internationally which include articles about both youth work and community development approaches, although she acknowledged there are also specialist journals which focus on these fields as discrete practice areas. When answering a question from Tribunal member Ms Cooper, Ms Douglas stated that she regards youth work as one of the specialist fields of practice within social work, rather than as a “standalone entity”²³.
37. In any event, the Tribunal accepted Ms Douglas’ evidence as it related to Mr Luisi’s roles at Ranui135 and was satisfied that those roles involved him being “employed or engaged as a social worker”.
38. Satisfied that Mr Luisi was engaged as a social worker at the relevant times, it followed that Mr Luisi was required to hold an APC at those times, pursuant to section 25 of the Act. As

²¹ Transcript, page 24 L 18-29

²² Hay, Dale & Cooper, 2016

²³ Transcript, pages 23 and 24

above, it was not in dispute that Mr Luisi did not hold an APC in the periods from between 2 July 2016 and 5 April 2019.

39. It was for those reasons the Tribunal found that the PCC had proved that in the relevant period Mr Luisi was employed or engaged as a social worker without a current practising certificate.

Part B - Conduct unbecoming which reflects adversely on fitness to practise

40. Mr Luisi accepted that this conduct was conduct unbecoming which reflects adversely on his fitness to practise social work. The Tribunal agreed.
41. Applying the relevant legal principles, and having sought guidance from previous decisions of the Tribunal which have considered the charge of conduct unbecoming in situations where a registered social worker has practised without an APC²⁴, the Tribunal was satisfied that Mr Luisi's continued practise as a social worker without an APC in the period from 2 July 2016 to 5 April 2019 amounted to conduct unbecoming pursuant to section 82(1)(b). Personal factors were a factor relevant to penalty not liability²⁵ and personal responsibility is key²⁶.
42. Holding an APC is vital to upholding the purposes of the Act. As in *Haswell*, the significant responsibility afforded to Mr Luisi means it is important that he understands the statutory obligations of the Act and meets those obligations.
43. The evidence showed that Mr Luisi was contacted by the Board about renewing his APC between September 2016 and 18 January 2018. On two occasions directly and once through his Manager he was told by the Board that his Job Description had been assessed and was considered to involve social work. While Mr Luisi expressed an intention to obtain an APC on 16 September 2016, 7 December 2016 and 1 March 2017, he took no steps to do so. On 27 March 2017 he was warned that if he did not renew his APC then he would be referred to the Tribunal²⁷. There was further dialogue between Mr Luisi and the Board between then and 19

²⁴ *CAC v WT* 25WAPC05/13/SWDT, 22 March 2013; *CAC v Sanders* 05/13/SWDT, 20 May 2013, *CAC v Nelson* RSW4/D1/SWDT/2015, 18 December 2015, *CAC v Russell* RSW6/D1/SWDT/2015, 18 December 2015, *CAC v Haswell* RSW5/D1/SWDT/2015, 19 April 2016, *CAC v Kuruvilla*, above, *CAC v Angelo*, above, *CAC v Hungahunga* RSW6/D1/SWDT/2016, 8 November 2016, *CAC v G* RSW8/D1/SWDT/2016, 20 December 2016, *CAC v Nash* RSW2/SWDT/2017, 24 July 2018

²⁵ *CAC v Hungahunga* fn. 17

²⁶ *CAC v Angelo*; *CAC v G*

²⁷ ASF at [13]

December 2017 when Mr Luisi was advised that until he had an APC, he could not continue to work in a social work position²⁸. Mr Luisi took no steps to apply for an APC.

44. The Tribunal accepted the PCC's submission that Mr Luisi's failure to renew his APC in the face of repeated requests to do so by the Board and clear statements that he was practising social work in his current roles represents a significant departure from the standards reasonably to be expected of a social worker, and therefore reflects adversely on his fitness to practise as a social worker. Further, the period in which Mr Luisi practised social work without renewing his APC despite this contact from the Board, was significant.
45. Counsel for Mr Luisi requested the Tribunal to take note that 18 to 20 months of the period covered by the charge (from January 2018 to the time of hearing) was taken up with the PCC investigation and "the charging process". The submission was that that was a period when Mr Luisi "remained in doubt about whether he was indeed practising social work". Counsel for Mr Luisi disclosed that it was not until Mr Luisi took legal advice more recently and that issue was carefully considered by his legal advisors, that Mr Luisi then fully accepted and acknowledged that in fact he did require an APC to be working with the Ranui135 Trust. The Tribunal considered this matter but was not persuaded this affected its finding that Mr Luisi's conduct in failing to renew his APC in the face of repeated requests by the Board to do so and clear statements that he was practising social work, was an unacceptable discharge of his professional obligations. Further, in other cases considered by the Tribunal the practitioner had renewed their APC notwithstanding that a conduct committee investigation process and prosecution was occurring. In this case, as at the hearing date, Mr Luisi had taken no steps to renew his APC although his counsel indicated that he wishes to do so to ensure his registration as a social worker is maintained.

Summary of findings as to liability

46. As above, the purpose of the Act includes the protection of the public, ensuring that social workers are accountable, and enhancing the professionalism of social workers. Registered social workers have a responsibility to meet the statutory requirements of registration in terms of currency of practising certificates in order to practise legally. Non-compliance with these requirements is therefore a serious matter.

²⁸ ASF at [14]-[23]

47. The Tribunal was satisfied that at the material times Mr Luisi was a registered social worker. The first element of the charge was met on the evidence.
48. The Tribunal was also satisfied the evidence established that Mr Luisi's roles as .5 Team Leader and .5 Youth Education, Training and Employment Worker at Ranui135 Trust involved him engaging in social work in the relevant period, for the reasons given. The second element was also met.
49. As Mr Luisi was engaged in social work in the relevant period, he was required to hold an APC. The Tribunal was satisfied that the evidence established Mr Luisi failed to renew his practising certificate and that in the period covered by the charge, he practised social work without an APC. On this basis the Tribunal found that the third element of the charge was established.
50. The Tribunal considered that when viewed objectively, Mr Luisi's conduct in continuing to be engaged in social work over a significant period of time despite not holding an APC is entirely inconsistent with what might be expected for a practitioner who acts in compliance with the standards normally observed by those who are fit to practise. The Tribunal was satisfied therefore that the conduct was a significant departure from accepted and expected standards, involved a breach of the Act and was 'conduct unbecoming' of a registered social worker.
51. The Tribunal was also satisfied that Mr Luisi's conduct in practising social work in breach of this mandatory legal requirement across a lengthy time period reflected adversely on his fitness to practise as a social worker, for the reasons given. As the Tribunal has stated in other cases, the APC requirement is one of the cornerstones of the regulatory regime and assures employers, clients and the public that they are professional, and fit and competent to practise. The Tribunal did not consider Mr Luisi discharged his professional and legal obligations to comply with the Board's requirements to obtain an APC, to an acceptable standard. In the Tribunal's view this reflected poorly on his professionalism.
52. Satisfied that all the elements of the charge were proved, the Tribunal found that the Charge was established.
53. That finding having been announced orally at the hearing, the Tribunal heard submissions from both Counsel for the PCC and Counsel for Mr Luisi on matters relevant to penalty and name suppression.

Penalty

PCC Submissions:

54. Counsel for the PCC submitted²⁹:

- i. The relevant penalty principles which have been applied in other cases before the Tribunal applied in Mr Luisi's case (these are referred to below);
- ii. In considering the appropriate penalty there are two aggravating features; the first is that in the period from 2 July 2016 to 5 April 2019 (the date of the PCC's determination) Mr Luisi practised as a social worker without holding an APC, despite being told by the Board that he was required to hold one; and secondly his failure to engage with the Board throughout the period from September 2016 to January 2018.
- iii. Having regard to the seriousness of practising without an APC, its importance in maintaining the principal purposes of the Act, and that Mr Luisi has a senior role within his organisation involving the supervision of others, a censure, a fine and costs are appropriate penalties.
- iv. In *Hungahunga* a fine of \$300 was imposed to reflect the length of time over which Ms Hungahunga was engaged in social work without an APC (almost one year) and without taking any steps to undertake a competence assessment³⁰;
- v. In *Haswell* a fine of \$400 was imposed and Ms Haswell was ordered to pay 25% of the total costs of the Tribunal and the Complaints Assessment Committee³¹;
- vi. In *Nash* the Tribunal censured the practitioner, considering this was the appropriate penalty to reflect the seriousness of the failure to comply with a mandatory requirement that flows from registration as a social worker and to mark the Tribunal's disapproval of Mr Nash's conduct. The PCC noted that the Tribunal did not impose a fine in that case, taking account of the censure and the fact that Mr Nash would bear the burden of costs to be paid in the proceeding³²;
- vii. The Tribunal may make an order of costs in accordance with the usual principles (discussed below) and any such order should have regard to Mr Luisi's financial circumstances.

²⁹ Written Penalty Submissions for the PCC; and oral submissions

³⁰ *CAC v Hungahunga* fn.34

³¹ *CAC v Haswell* RSW5/D1/SWDT/2015

³² The Tribunal's decision in *Nash* records that financial circumstances were a feature of that case.

Submissions for Mr Luisi:

55. For Mr Luisi it was submitted (in summary)³³:
- i. Mr Luisi accepted that his conduct fell short of acceptable standards of practice and that it occurred over an extended time period. However, it was conduct that fell short of the “upper end of the disciplinary spectrum” and was not conduct which warrants the cancellation or suspension of his registration (noting that was not sought by the PCC);
 - ii. Mr Luisi accepts it took him some time to accept responsibility for his conduct but ultimately, he achieved “comprehensive insight into his conduct” and has acknowledged this³⁴;
 - iii. Mr Luisi is remorseful and regretful for his conduct and has learned from his actions;
 - iv. Contextual matters are relevant including his genuinely held but “erroneous belief” that he did not require an APC in his role as a “Youth Work Broker” because he considered his work was different to the work he carried out when he was a “social worker”; he did not hold himself out as a social worker; his employer did not consider he needed to maintain his APC because he was employed as a youth worker not a social worker; and Mr Luisi and Mr Williams now understand that Mr Luisi’s role as a youth worker at Ranui135 involves social work skills and knowledge. For that reason, Mr Luisi intends to renew his practising certificate and adhere to his obligations as a registered social worker;
 - v. Mr Luisi’s case differs from *Hungahunga* because Mr Luisi did not make a deliberate decision to flout his obligations to obtain an APC. Rather, he “genuinely believed he did not require an APC in his role as a Youth Work Broker”. Further, he held current competence certification in the relevant period;
 - vi. As in *Angelo* and other cases, Mr Luisi’s employer did not require him to hold an APC;
 - vii. At no time did Mr Luisi pose any risk to the public and no harm has occurred to the public; referral to the Board came of its own motion, not from any complaint by a member of the public;
 - viii. Mr Luisi is a well-regarded, competent youth worker and is a highly valued member of the Ranui community as a result of the work he does for young people in the community;

³³ Submissions and Bundle of Authorities for Mr Nash – Penalty (Document 7); and oral submissions

³⁴ Mr Luisi’s affidavit sworn on 26 August 2019

- ix. Mr Luisi takes his work very seriously and is embarrassed and feels he has failed himself, his colleagues, the young people he works with and his family. He has already suffered the consequences of his “misguided actions”;
- x. He is experiencing financial hardship and the imposition of a “large fine” would place further hardship on his household;
- xi. He has cooperated with the Board throughout including providing information to the investigation and he has cooperated with and fully participated in the Tribunal process including engaging a legal representative, agreed to a statement of facts, chose not to defend the charge and has provided evidence and attended the hearing;
- xii. Taking into consideration the penalties imposed in comparable cases and the level of offending, a censure together with a very modest fine (if any) is an appropriate penalty.

Tribunal’s consideration of penalty

- 56. The Social Workers Registration Legislation Act 2019 brought changes to the penalties available to the Tribunal under section 83 of the Social Workers Registration Act 2003 (the Act). The charge against Mr Luisi spanned the period in which those amendments were made. The most significant change to the penalty regime under the Act was the increase to the period for which the Tribunal may order suspension or conditions on practice, from 12 months to three years.
- 57. The penalties available to the Tribunal in this case otherwise remain as set out in section 83; cancellation of registration, suspension, conditions on practice, for a period not exceeding three years, censure, fine and costs.
- 58. The penalty which is imposed must fulfil the functions connected to the purpose of the Act which are protection of the public³⁵ and enhancement of the professionalism of social workers³⁶.
- 59. The principles relevant to penalty in the disciplinary context were not in dispute. These principles are comprehensively set out by Collins J in *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*.³⁷ In summary, the Tribunal’s role in

³⁵ Social Workers Registration Act 2003, section 3(a)

³⁶ Social Workers Registration Act 2003, section 3(d)

³⁷ High Court Wellington CIV 2012-404-003916 [12 December 2012]

determining the appropriate penalty in any case involves consideration of the following eight factors:

- The protection of the public, which includes deterring other social workers from offending in a similar way;
- To set professional standards;
- That penalties have a punitive function, both directly (such as a fine) and as a by-product of sanctions imposed;
- Rehabilitation of the social worker, where appropriate;
- To impose penalties that are comparable to those imposed in similar circumstances;
- To reserve the maximum penalties for the worst offending;
- To impose the least restrictive penalty that can reasonably be imposed in the circumstances;
- To assess whether the penalty is a fair, reasonable and proportionate one in all the circumstances.

60. Of all these factors the primary factor is what penalty is required to protect the public and deter similar conduct³⁸. The need to punish the practitioner can be considered, but this is of secondary importance.³⁹
61. The Tribunal was satisfied this was a case where it was appropriate to impose penalties.
62. There are similarities between this case and other cases the Tribunal has considered where a registered social worker has not renewed their APC and has continued to practise or be engaged as a social worker. The similarities are the fact that there had been notification to the social worker by the Board of the requirement to renew their practising certificate; and a lengthy period during which the practising certificate was not held⁴⁰. The cases highlight that conduct of the nature the Tribunal has reviewed in this case is serious. In this case the Tribunal has focused on the significant period when Mr Luisi practised without an APC, aggravated by the fact that his professional body had told him an APC was required.

³⁸ *Katamat v Professional Conduct Committee* [2012] NZHC 1633, 21 December 2012

³⁹ *Singh v Director of Proceedings* [2014] NZHC 2848, at [57] and [62]

⁴⁰ *CAC v Nelson* RSW4/D1/SWDT/2015, 18 December 2015; *CAC v Russell* RSW6/D1/SWDT/2015, 18 December 2015; *CAC v Estall* RSW8/D1/SWDT/2015, 18 December 2015; *CAC v Angelo* RSW9/D1/SWDT/2015, 19 April 2016; *CAC v Haswell* RSW5/D1/SWDT/2015, 19 April 2016; *CAC v Kuruvilla* RSW1/D1/SWDT.2016, 19 April 2016.

63. The Tribunal considered all the matters raised by Counsel for Mr Luisi in his submissions.
64. The Tribunal accepted that Mr Luisi's conduct was partly influenced by the views of his employer that he was not employed or engaged as a social worker and therefore did not require an APC. However, the Tribunal did not accept the conduct was wholly explained by that factor. Mr Luisi is a registered social worker who had a senior position within the Trust and who could reasonably be expected to have been involved in discussions with his employer about his APC obligations and status as a practising social worker at the relevant times. Further, Mr Luisi had expressed his intention to renew his APC on three separate occasions, as discussed.
65. The Tribunal was satisfied that having been through the hearing process (and cooperated with the process), Mr Luisi is aware of his legal and professional obligations to hold a current practising certificate if he is employed or engaged in social work and that he now has insight into the nature of his offending and is unlikely to reoffend in a similar way. The Tribunal considered that Mr Luisi deserved some credit for his cooperation, as well as for the effort he made to attend the hearing.
66. When deciding whether to impose penalties in this case, and when doing so, the Tribunal had regard to the need for general deterrence to the social work profession as well as whether there was any need for specific deterrence to Mr Luisi. The need to maintain professional standards was also considered.
67. The Tribunal has imposed a penalty in respect of the conduct charged and which the Tribunal is satisfied has been established. As such when considering comparable cases the Tribunal has considered cases where the length of time involved has been at the higher end of the range of time periods the Tribunal has considered, and the circumstances including whether the registered social worker had been advised by the Board that he or she was required to hold an APC.

Censure and Fine

68. The Tribunal considered that the appropriate penalty orders in this case were an order of censure and an order requiring Mr Luisi to pay a fine.
69. The Tribunal considered censure was an appropriate penalty to reflect the seriousness of the failure to comply with a mandatory requirement which flows from registration as a social worker, and when combined with a fine, to mark the Tribunal's disapproval of Mr Luisi's

conduct. The censure will remain on Mr Luisi's disciplinary record with the Board and therefore is not an insignificant penalty.

70. A fine of \$400 is imposed to further reflect the Tribunal's disapproval of the conduct it has reviewed and for deterrence.
71. The Tribunal considered these were the least restrictive penalty orders that could fairly and reasonably be imposed in this case.
72. The Tribunal accepted that there is no indication that there is any issue in relation to Mr Luisi's current fitness to practise as a social worker such that public safety protection is not a material feature in this case.

Costs

73. The Tribunal also has the power to make an order of costs. The costs incurred by the PCC when conducting its investigation, and when prosecuting the charge need to be considered as well as the Tribunal's costs.
74. The costs and expenses (excluding GST) incurred by the PCC were indicated to be in the region of \$11,611.21 (including for the hearing). The Tribunal's costs and expenses in this case were estimated to be \$13,878.00⁴¹.
75. The principles relating to the imposition of an order for costs in disciplinary proceedings are well settled and have been referred to in previous decisions of the Tribunal.
76. A useful statement as to the applicable principles when considering the issue of costs, which the Tribunal has previously adopted, is the statement of Priestley J in *Vatsyayann v PCC* ⁴²:

[34] "So far as costs orders were concerned, the Tribunal correctly addressed a number of authorities and principles. These included that professional groups should not be expected to bear all the costs of a disciplinary regime and that members of the profession who appeared on disciplinary charges should make a proper contribution towards the costs of the inquiry and a hearing; that costs are not punitive; that the practitioner's means, if known, are to be considered; that a practitioner has a right to defend himself and should not be deterred by the risk of a costs order; and that in a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards. The Authority went on to consider High Court judgments where adjustments were made when GST had been wrongly added to costs orders".

⁴¹ PCC Fees (Document 9) and Estimated Costs of the Tribunal (Document 10)

⁴²[2012] NZHC 1138

77. Information about Mr Luisi's current financial situation was before the Tribunal⁴³. Having considered this information and taken into account the submissions which were made by Mr Luisi's Counsel as to his ability to contribute to costs were the Tribunal minded to impose a costs order, the Tribunal was satisfied that Mr Luisi does have financial means to meet a costs order.
78. The Tribunal proceeded on the figures indicated by Counsel for the PCC and the Tribunal's Hearing Officer and accepted that the total reasonable costs of the PCC and the hearing were in the region of \$25,500.00.
79. Having regard to Mr Luisi's financial circumstances as disclosed to the Tribunal, the Tribunal considered that Mr Luisi should be ordered to pay 10% towards costs, in the sum of \$2,550 (to be divided evenly between the CAC and the Tribunal).

Non-publication orders

80. Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise. Section 79 of the Act deals with the Tribunal's powers to make non-publication orders as follows:

" (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 the complainant) and the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on the 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:

...

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

81. Mr Luisi sought permanent name suppression. He had earlier applied for and been granted interim name suppression⁴⁴, the grounds of which application were outlined in a Memorandum of Counsel⁴⁵.
82. Having reviewed Mr Luisi's application for interim orders and the supporting memorandum, and having considered the PCC's position (which was to consent to the orders sought by Mr

⁴³ Mr Luisi's affidavit sworn on 26 August 2019, paragraph 19

⁴⁴ Minute of Chairperson dated 31 May 2019

⁴⁵ Memorandum of Counsel in support of application for order prohibiting publication of information dated 30 May 2019

Luisi on an interim basis) the Chairperson was satisfied that it was appropriate for interim orders to be made and ordered accordingly. The interim orders were in place throughout the proceedings in respect of the names and identifying details of Mr Luisi and his employer, Ranui135 Leadership Trust.

83. At the conclusion of the hearing an application for permanent suppression of Mr Luisi's name and the name of the Trust, was made, under section 79. As discussed below, the Tribunal declined to make permanent orders. When indicating that outcome at the hearing, Counsel for Mr Luisi sought an order to ensure that the interim orders would not lift until the expiration of the statutory appeal period to enable Mr Luisi to consider his appeal rights. As will be apparent below, this request was considered by the Tribunal.

Evidence in support of application for permanent name suppression:

84. Mr Luisi provided two affidavits in support of his application for permanent orders. His own affidavit in support was sworn on 31 August 2019⁴⁶ and an affidavit was also sworn by Mr Williams, on the hearing date⁴⁷.
85. Mr Luisi described the distressing, stressful and humiliating nature of the disciplinary process and the significant impact it had had on him, his family, his colleagues and his employer. He stated that he feels he has let down himself and the people he works with at Ranui135. He described being devastated that he was facing a disciplinary process as he has worked extremely hard, and had made significant sacrifices, to get to where he is.
86. Mr Luisi deposed as to his concern about the effects that would eventuate if his name or identifying details were published. He referred to the "small" Ranui community in which he works, and to his concerns about the effects on his reputation and the negative impact he believes will occur, were his name to be published. Mr Luisi expressed concern that if his name was published in connection with these proceedings then Ranui135 may lose its funding, and he would lose his job, causing further financial hardship for him and his family, and significant stress and anxiety.
87. Mr Luisi stated that he is genuinely remorseful and regrets his actions. He deposed that he believes it is unfair that his colleagues or the young people in the Ranui community should suffer the effects of publication of his name or Ranui135's name in connection with this matter.

⁴⁶ Document 12

⁴⁷ Document 13

88. Mr Williams deposed that he had witnessed the negative effects the disciplinary process has had on Mr Luisi including feelings of stress and embarrassment. He stated that Mr Luisi's remorse and regret is genuine and that both Mr Luisi and Ranui135 have learnt from the process and now understand the importance of ensuring that employees comply with their professional and ethical obligations. Mr Williams reiterated that Mr Luisi is a highly valued employee of Ranui135 and a well-regarded member of the community who has spent the last 20 years building up his client base and gaining the respect of the young people he works with. Mr Williams expressed concern that as Ranui is a small community, publication of Mr Luisi's name will impact on the reputation he has worked hard to build.
89. Mr Williams stated in his affidavit that Ranui135 is a well-known community-led initiative that has a good reputation in the Ranui community, and he believes that publication of Mr Luisi's and Ranui135's names will have a detrimental impact on the Trust's reputation. Mr Williams disclosed that the Trust relies on the financial aid of several local foundations and he is concerned that publication of Mr Luisi's name and/or Ranui135's name in connection with these proceedings will result in funding losses. Mr Williams evidence was that if Ranui135 loses its funding it will be unable to operate and this would have far-reaching consequences for the Trust and its employees (including loss of jobs for Mr Luisi and other employees), and also for the Ranui community which benefits from the Trust's services.
90. The Tribunal considered the submissions made by Counsel for Mr Luisi which were that:
- a. Simply because Mr Luisi admitted guilt in respect of the charge does not mean that publication is warranted.
 - b. Taking into account the private interests and the public interest in publication of Mr Luisi and Ranui135's names, it is desirable for the Tribunal to make a permanent order prohibiting publication of Mr Luisi's and Ranui135's names and identifying details.
 - c. Mr Luisi has already suffered the consequences of his actions including a degree of distress and embarrassment; publication would likely cause further distress and embarrassment for him.
 - d. Mr Luisi has accepted he has been practising in breach of his professional obligations. Harm would be caused by publication that would "exceed his wrongdoing".
 - e. The effect of publication would have significant personal effects on Mr Luisi including reputational damage within the Ranui community and Mr Luisi is concerned about the prospects of securing future employment if his name or identifying details are

published. Serious harm may also be caused to Mr Luisi's wife's professional reputation as she also works in the Ranui community and for Ranui135.

- f. A permanent order is necessary to preserve the position of the Ranui135 Trust;
- g. There will be reputational damage to Ranui135 Trust if its name and identifying details are published.
- h. There will be funding effects on Ranui135. When questioned by Tribunal member Mr McGurk about this Counsel for Mr Luisi confirmed he was unable to provide any evidence (for example, from a community contributor) stating that if these matters become public then the Trust's lines of funding would be reviewed. Counsel submitted that the concern is held by the Chairperson, Mr Williams, that in terms of the Trust's relationship with contributors, if these matters were to become public this could strain relationships and "potentially result in a loss of funding"⁴⁸.
- i. While Mr Luisi breached his professional obligations, his acceptance of his genuinely held view that he did not require an APC does not warrant causing Ranui135 and the people involved with the Trust "suffering the consequences if Ranui135 were to lose its funding".
- j. The public interest in identifying Mr Luisi is outweighed by the interests of Mr Luisi and Ranui135.
- k. Mr Luisi has insight into his offending and that reduces the interest in the public in knowing his identity.
- l. The profession can be educated about this case without the need to identify Mr Luisi.
- m. Mr Luisi does not pose a danger to the public and there is nothing to warn the public about. The charge does not raise public safety issues. Yet significant harm would be suffered by Mr Luisi and Ranui135.
- n. Mr Luisi's offending is at the lower end of the scale and there is limited public interest in the matter.
- o. In all the circumstances, the "presumption" of open justice should be departed from, and by implication, it is "desirable" to suppress the names and identifying details of Mr Luisi and Ranui135.

⁴⁸ Transcript, page 68 L 20-32

91. Counsel for the PCC addressed the Tribunal orally and indicated the PCC's opposition to the application on the basis there was no evidence that would support the desirability of making permanent non-publication orders in respect of Mr Luisi's name and identifying details or of Ranui135. The essence of Counsel's submissions were that the factors raised in support of the application for permanent orders are factors which are present in many cases which come before the Tribunal and they are not sufficient to justify a departure from the starting point of open justice and public disciplinary proceedings.

Discussion

92. As above, section 79 of the Act requires the Tribunal's hearings to be in public. The Tribunal must take account of this important principle of open justice in judicial proceedings. Section 79 does give the Tribunal discretion to order name suppression, but this discretion must only be exercised in accordance with the guidance given under that section and in the relevant case law.
93. When the Tribunal is considering an application to prohibit publication of the name of any person appearing before it, it must consider whether it is satisfied it is "desirable" to make such order taking into account the interests of any person (private interests) and the public interest.
94. The "interests of any person" will include those of any complainant, the applicant and any third parties.
95. An evaluation of the relative strengths of the public interest factors is also required. These factors include:
- a. Openness and transparency of disciplinary proceedings⁴⁹
 - b. Accountability of the disciplinary process;⁵⁰
 - c. There is a public interest in knowing the identity of a practitioner charged with a disciplinary offence;⁵¹

⁴⁹ *M v Police* (1991) CRNZ 14; *R v Liddell* [1995] 1 NZLR; *Lewis v Wilson & Horton Ltd* [2003] 3 NZLE 546; *Director of Proceedings v I* [2004] NZAR 635

⁵⁰ *Director of Proceedings v Nursing Council* [1999] 3 NZLR 360

⁵¹ Above fn 129; *F v Medical Practitioners Disciplinary Tribunal* (Auckland, High Court; AP 21-SWO1; 5/12/01, Laurenson J

- d. Importance of freedom of speech and the right enshrined in s. 14 of the New Zealand Bill of Rights Act 1990.⁵²
- e. The need to avoid unfairly impugning other practitioners.
96. Once a practitioner has been found guilty of a disciplinary offence the onus is on the practitioner to satisfy the Tribunal that there should be a departure from the starting point of open justice including publication of name.⁵³ The onus is that the suppression orders are “desirable” as set out in section 79(2) of the Act.
97. It was submitted by both Counsel that decisions under the Health Practitioners Competence Assurance Act 2003, which has an identical statutory provision, were helpful to the Tribunal’s consideration of applications made under section 79. The Tribunal accepted those submissions.
98. In *Tonga v Director of Proceedings*⁵⁴ the High Court (Blanchard J) held:
“Following an adverse disciplinary finding more weighty factors are necessary before permanent name suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding had been made, the probability must be that public interest considerations will require that the name of the practitioner be published in a 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 incline in favour of the private interests of the practitioner. After the hearing, by which time the evidence is out and findings are made, what is desirable may well be different, the more so where professional misconduct has been established.”
99. The Tribunal noted that in his Memorandum in support of Mr Luisi’s application for interim orders, Counsel for Mr Luisi acknowledged that it is well accepted that what is “desirable” may well be different, the more so where a charge has been established.⁵⁵
100. Blanchard J in *B v B*⁵⁶ stated:
“In the normal course where a professional person appears before a disciplinary Tribunal and is found guilty of an offence, that person should expect that an order preventing publication of his or her name will not be made. That will especially be so where the offence proved or admitted is sufficient serious to justify striking off or suspension from practice.”

⁵² *R v Liddell; Lewis v Wilson & Horton Ltd* (above)

⁵³ *Director of Proceedings v I* [2004] NZAR 635

⁵⁴ High Court, Christchurch; CIV 2005-409-2244; 21/2/06 Panckhurst J at [42]

⁵⁵ Memorandum of Counsel in support of application for order prohibiting publication of information dated 30 May 2019, para [9]. For example, factors such as the presumption of innocence are no longer relevant.

⁵⁶ High Court, Auckland, HC4/92; 6/4/93; Blanchard J at page 99

101. Gendall J in *Anderson v PCC*⁵⁷ reasoned:

“Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests 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 in 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.

Those factors were also referred to at some length in the Tribunal. 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 reflects also the principles of openness of such proceedings, and the freedom to receive and impart information.”

102. Blanchard J in *B v B* went on to say:

“But where the orders made by a disciplinary tribunal in relation to future practice of the defendant are directed towards that person’s rehabilitation and there is no striking off or suspension but rather, as here, practice may continue, there is much to be said for the view that publication of the defendant’s name is contrary to the spirit of the decision and counterproductive. It may simply cause damage which makes rehabilitation impossible or very much harder to achieve.”

103. Counsel for the CAC referred to the Court of Appeal decision in *Y v Attorney General*⁵⁸ where the Court noted that in the context of professional disciplinary proceedings the public interest in open justice principles generally favours the publication of the names of practitioners, and part of that is so that existing and prospective clients may make informed choices. That discussion was in the context of a decision about a lawyer however the Court of Appeal went on to note that “consequently, a professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure” of name.

104. The Tribunal balanced the various competing interests involved. The Tribunal was very mindful that there is a public interest in knowing the identity of a practitioner who has been found guilty of a disciplinary charge, of the need for transparency of the Tribunal’s process and also, of the need to avoid other Auckland registered social workers who practise in senior

⁵⁷ High Court, Wellington CIV-2008-485-1646; 14/11/08; Gendall J

⁵⁸ [2016] NZCA 474

youth work and community engagement roles, being unfairly impugned should Mr Luisi's name be suppressed.

105. The Tribunal accepted the submissions of Counsel for the PCC and concluded as follows.
106. While the Tribunal has some sympathy for Mr Luisi and the position he now finds himself in (having been found guilty of a disciplinary offence), stress and embarrassment, and concerns about reputational damage are features of almost all the cases which have come before the Tribunal. This factor is not sufficient, either alone or in combination with other factors, to warrant a departure from the starting point of open justice.
107. There is no evidence to suggest that Mr Luisi's intention to re-engage with the Board would be impacted by publication of his name in connection with these proceedings;
108. The concerns held about reputational damage to Mr Luisi and to his credibility in the youth industry he works in are speculative. In any event, as will be apparent from this decision, the offending in this case involved a failure to hold an APC while Mr Luisi engaged in social work. While this is a serious matter, it did not involve conduct that gave rise to concerns about Mr Luisi's clinical competence as a social worker or his conduct towards his clients. The Tribunal considered the concerns held about reputational damage in that light, as it did the concerns held by Mr Luisi and the Chairman (Mr Williams) about reputational damage to Ranui135 Trust and funding impacts.
109. It is apparent on the evidence that the community members Mr Luisi engaged with did not have knowledge that he did not hold an APC to be employed or engaged as a social worker; and did not require him to hold one. The Tribunal considers that the same can presumably be said for the funders of Ranui135. The Tribunal was not persuaded that the reputational damage that may occur with publication of Mr Luisi's name would be at a level that makes it desirable to depart from the wider public interest in open and transparent discipline.
110. On balance the Tribunal decided that it was not desirable that there should be an order permanently suppressing Mr Luisi's name. His relevant private interests were not considered sufficient to outweigh the public interest in his name being published in connection with these proceedings.
111. Rehabilitation was not a focus of the Tribunal's consideration of penalty, the Committee having accepted the submission of Counsel for Mr Luisi that there is a low risk of reoffending because Mr Luisi has insight into his conduct. Consequently, the considerations about

rehabilitation referred to in *B v B* were not a feature in this case and in any event, not sufficiently weighty to tip the balance in favour of name suppression for Mr Luisi.

112. The Tribunal considered that Mr Luisi had not discharged the onus of satisfying it that his private interests outweighed the public interest in his name being published.
113. It was on these bases the Tribunal decided that the interim suppression order in respect of Mr Luisi's name would not be made permanent.
114. The Tribunal then considered whether the name or identifying details of the Trust should be permanently suppressed from publication. In view of the Tribunal's decision in respect of Mr Luisi's name the Tribunal considered that it was also appropriate that the interim suppression orders in place in respect of Trust be lifted. If Mr Luisi's name is to be published the Trust will be identifiable or identified and any permanent orders made suppressing its name would be rendered nugatory. The Tribunal has already commented on the issue of reputational damage to the Trust and its view that such concerns are speculative. Such concerns arise in many cases that come before the Tribunal and in the absence of robust evidence, they are not sufficiently strong to justify a departure from the starting point of public proceedings which includes publication of the names and details of those individuals who are involved in them.
115. However, as was indicated orally at the hearing, the interim orders will not lift until 14 working days from the date on which this decision and orders are served on Mr Luisi. This will provide Mr Luisi with enough time to consider this decision and his appeal rights.

Orders of the Tribunal

116. The Orders of the Tribunal are as follows:
 - a. The charge against Mr Luisi under section 82(1)(b) of the Social Workers Registration Act 2003 is established.
 - b. Mr Luisi is censured to mark the Tribunal's disapproval of his conduct the subject of the charge⁵⁹;
 - c. Mr Luisi is ordered to pay a fine of \$400 to the Board⁶⁰;
 - d. Mr Luisi is ordered to pay 10% of the costs and expenses of, and incidental to, the inquiry made by the PCC in relation to the subject matter of the charge, the

⁵⁹ Section 83(1)(b)

⁶⁰ Section 83(1)(e)

prosecution of the charge by the PCC, and the hearing, which amounts to \$2,550.00 (to be divided evenly between the PCC and the Tribunal);

- e. The Tribunal directs that a copy of this decision and a summary be placed on the Social Workers Registration Board's website. The Tribunal further directs that a notice as to the effect of its decision be placed in the Board's newsletter.
- f. Pursuant to section 79(2)(d) of the Social Workers Registration Act 2003 the Tribunal makes an order suppressing from publication Mr Luisi's name, address, occupation, place of work, and any other details which might lead to his identification, including the name of his employer (Ranui135 Leadership Trust) this order to subsist for 14 working days from the date on which this decision is served on Mr Luisi and then expire.
- g. Pursuant to section 79(2)(c) of the Social Workers Registration Act 2003 the Tribunal makes an order permanently suppressing from publication the financial information contained Mr Luisi's Affidavit sworn on 26 August 2019 and any specific details relating to that information that were discussed at the hearing.

[Note: Mr Luisi is advised of his right to appeal against the above orders pursuant to section 88 of the Social Workers Registration Act 2003. An appeal must be brought within 20 working days after the notice of this final decision and orders are served on Mr Luisi, or within any further time a District Court Judge allows on application made before or after the period expires⁶¹].

DATED this 29th day of October 2019



Jo Hughson
Chairperson
Social Workers Complaints and Disciplinary Tribunal

⁶¹ Section 88 (4)(b), Social Workers Registration Act 2003