

**IN THE DISTRICT COURT  
AT HAMILTON**

**I TE KŌTI-Ā-ROHE  
KI KIRIKIRIROA**

**CIV-2021-019-001557  
[2022] NZDC 15601**

BETWEEN

JENNIFER KAY LOURIE  
Appellant

AND

THE COMPLAINTS ASSESSMENT  
COMMITTEE  
Respondent

Hearing: 3 August 2022

Appearances: M Dillon for the Appellant  
S C Waalkens for the Respondent

Judgment: 30 August 2022

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**RESERVED JUDGMENT OF JUDGE R G MARSHALL**

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[1] A Complaints Assessment Committee (“CAC”) appointed under the Social Workers Registration Act (“the Act”) laid a charge under s 82(1)(b) in relation to the Appellant Ms Lourie being employed or engaged as a social worker without a current practising certificate. The charge read:

“Pursuant to section 72(3) of the Act the Complaints Assessment Committee charges that Jennifer Lourie, registered social worker, of Hamilton:

Between 1 July and May 2016 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 her fitness to practise as a social worker pursuant to section 82(1)(b) of the Act.<sup>1</sup>”

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<sup>1</sup> *CAC v Lourie RSWI/D1/SWDT/2017*.

[2] Following a hearing on 8 February 2017 which Ms Lourie attended, the Tribunal issued a minute finding the charges proved on the balance of probabilities with reasons to follow.

[3] On 27 April 2017 the Tribunal reconvened to consider penalty.

[4] On 23 May 2017 the Tribunal released its reasons for finding the charges proved and its decision on penalty. The maximum fine provided for under the Act is \$10,000 and after taking account of Ms Lourie's financial position the Tribunal ordered her to pay a fine of \$400 and did not make an award of costs. An application by Ms Lourie for permanent name suppression was declined.

[5] An application for leave to appeal out of time was filed and considered by Judge Crayton. On the 12 April 2022 His Honour granted the Applicant leave to appeal against the Tribunal's decision finding the charge against Ms Lourie proved.<sup>2</sup> The Respondent's position on the application had been neutral.

### **Grounds of appeal**

[6] The grounds of appeal set out in the Notice of Appeal are as follows:

- (i) With reference to s 25 of the Act, what does it mean to be "employed or engaged as a social worker"?
- (ii) With reference to s 82(1)(b)(i) of the Act, what amounts to "conduct that is unbecoming of a social worker" where s 25 is breached?
- (iii) With reference to s 82(1)(b)(ii) of the Act, what conduct "reflects adversely on a social worker's fitness to practise as a social worker" where section 25 is engaged?

The relevant sections are set out as follows:

#### **25 Practising registered social workers to hold practising certificates**

No registered social worker may be employed or engaged as a social worker unless he or she holds a current practising certificate.

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<sup>2</sup> *Lourie v CAC* [2022] NZDC 6455.

**82      Grounds on which Tribunal may make order**

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

[7]      It is accepted that the appeal needs to be determined under the then Social Workers Registration Act 2003 which has since been repealed by the Social Workers Registration Legislation 2019.

**Background to appeal**

[8]      An agreed statement of facts was before the Tribunal which meant that little of the factual material before the Tribunal was disputed.

[9]      Ms Lourie completed a degree in Social Work at the Waikato Institute of Technology. Following roles as a community educator and guidance counsellor she completed a Diploma of Counselling and a Bachelor of Applied Social Science at the same institute in 2005.

[10]     In that same year Ms Lourie commenced work as a social worker with Child Youth and Family Services (now Oranga Tamariki).



[11] On 13 November 2013 Ms Lourie first registered as a social worker with the Social Workers Registration Board.

[12] At the time Ms Lourie left Child Youth and Family Services in September 2014 she was held the position of a “senior practitioner”.

[13] After a period of not working she was employed in January 2015 by a private company, Serco, as a “senior case manager” at the South Auckland Corrections facility.

[14] In May of 2015 a standard reminder was sent to Ms Lourie that she needed to renew her annual practising certificate (“APC”). It was agreed in the agreed statement of facts that this reminder was opened by Ms Lourie. Two further reminders were sent to her in June which it was agreed were not opened by her.

[15] On 30 June 2015 Ms Lourie’s current APC expired and was not renewed on the due date 1 July 2015.

[16] On 15 September 2015 a “Registrar’s message” was sent to Ms Lourie warning her of the potential consequences of continuing to practise without a current APC. It was agreed that this correspondence was not opened.

[17] On 16 October 2015 the Board sent a letter to Ms Lourie by registered mail informing her the matter had been referred to the CAC and inviting her to make a written statement. This correspondence was returned to the Board.

[18] On 3 November 2015 an email was sent to Ms Lourie asking her to confirm her work status and attaching the Board’s letter of 16 October. It was agreed that she did not respond.

[19] On 1 December 2015 the Board sent her a letter notifying her that an investigator had been appointed by the CAC.

[20] On 7 December 2015 the investigator emailed her to request her employment details as from 1 July 2015.



[21] On 8 December 2015 Ms Lourie telephoned the investigator and informed the investigator she did not want her registration to continue when it expired and assumed it would lapse.

[22] On 15 December 2015 the Principal Adviser to the Board emailed Ms Lourie that there had been no communication from her that she was not practising as a social worker. She then telephoned him to advise that she did not believe she could renew her APC and also had “trust issues” with the Board and so did not engage about the renewal. Further Ms Lourie re-stated that she did not believe her work in the prison context was social work and her manager told her not to use social work terminology.

[23] In January 2016 Ms Lourie provided a written response to the CAC re-stating the reasons she did not renew her APC and in support of Ms Lourie’s position, a Human Resources representative at Serco sent a letter dated 20 January 2016 setting out essentially Ms Lourie’s job description and emphasising the fact that Serco did not consider Ms Lourie was employed to do social work by that company.

[24] The hearing then proceeded before the CAC on an agreed statement of facts. Evidence was also heard from Dr Michael Dale an experienced and registered social worker, who since 2011 has held a position as a Senior Lecturer in the School of Social Work at Massey University. He was called by the CAC to give expert evidence on defining what constitutes practising or engaging in social work. Ms Lourie gave evidence at the hearing but did not have legal representation. At the time she gave evidence she had resigned from her employment with Serco and was in the process of taking up employment with an NGO supportive of her holding an APC.

**First ground of appeal – What does it mean to be employed or engaged as a social worker?**

[25] The Tribunal observed in its decision the terms “social work” and “employed or engaged as a social worker” are not defined in the Act. The Tribunal observed that in earlier decisions it had adopted the opinion of Crown Law that had been obtained by the Board and Ministry of Social Development in November 2013:

....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
- 3.2 in the context of performing his or her role, expressly or implicitly holds himself out as a registered social worker, or is held out in that way by his or her employer or colleagues.<sup>3</sup>

[26] The Tribunal also referred to its earlier decisions:

“in assessing whether a person is employed or engaged as a social worker ... whether or not the person is using his or her “social work skills and training” ... and the extent to which they are doing so in the role in which they are working”<sup>4</sup>

[27] The Tribunal reviewed the evidence given by Ms Lourie in its decision. This included her Success Profile which set out her responsibilities and areas of accountability in her role as a Case Manager. She did not need to be a registered social worker to carry out her role. In her evidence the Tribunal said that she said “she spent significant amounts of her time writing reports for the Parole Board, referring to this aspect of her job as being predominantly in the nature of data entry, with only 20% of her time spent working with allocated prisoners”. Later the Tribunal observed “Under cross examination Ms Lourie accepted that in some respects she was using her social work skills and knowledge in her role as a Case Manager although she stated she was also using her overlapping counselling qualification, and counselling skills and training. In this regard Ms Lourie’s evidence was that she had worked mainly in social work and only minimally as a counsellor, in the past”.<sup>5</sup>

[28] The Tribunal then reviewed Dr Dale’s evidence which it said it accepted as follows:

[37] Dr Dale’s evidence (which the Tribunal accepts) was that in his opinion, in discharging her functions and accountabilities Ms Lourie was using her foundational social work training (including core interpersonal skills associated with establishing rapport with prisoners, interviewing and assessment skills associated with obtaining and evaluating information provided by the prisoner and drawn from other sources including court documents and prisoner records, and the application of core social work practice theory such as motivational interviewing, working with client

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<sup>3</sup> *CAC v Lourie RSWI/D1/SWDT/2017* paragraph [16].

<sup>4</sup> *CAC v Lourie RSWI/D1/SWDT/2017* paragraph [17].

<sup>5</sup> *CAC v Lourie RSWI/D1/SWDT/2017* paragraph [36].



resistance, cross-cultural practice and the location of the client within ecological framework), as well as her social skills and knowledge. It was Dr Dale's opinion that in discharging her role as Case Manager Ms Lourie was a registered social worker who was involved in working directly with clients via case management of individual client through the assessment and parole processes. Ms Lourie did not take significant issue with the opinion that she was using her social work qualification, skills, knowledge and past experience when she worked as a Case Manager. Again, her evidence was that she was also using her counselling training, skills and knowledge.<sup>6</sup>

[29] The Tribunal made an assessment of the evidence before and made the following findings:

[52] The Tribunal was satisfied it had sufficient evidence before it as to the nature of Ms Lourie's case management work to enable it to make a finding that on the balance of probabilities she was engaged in social work (and therefore as a social worker) in the relevant time period, notwithstanding that her job title was "Case manager" not "Social Worker", and notwithstanding that Ms Lourie may also have been using her training skills as a counsellor.

[53] Ms Lourie's role as a Case manager as set out in Success profile, Mr Dale's evidence with reference to this and the similarities between the accountabilities of a Case Manager and a Probation role, and Ms Lourie's own evidence about her performance of the role satisfied that Tribunal that she was involved in working directly with prisoners via case management and was involved in or informed decisions regarding individual prisoners through interview and assessment particularly for parole purposes. The Tribunal considered that the key accountabilities described in the Success Profile describe tasks which fall into the realm of social work and the essentially the Profile set out a social work role, the case management aspects of which Ms Lourie performed to the extent that time and resources enabled her to do so.

[54] The Tribunal was satisfied that on the balance of probabilities the totality of the evidence established that in the relevant period Ms Lourie was applying her social work skills and knowledge and that the degree of responsibility and professional judgement which she was required to exercise in her role as a Case Manager was consistent with the role being a social work role. The Tribunal considered that in order to prepare parole reports, Ms Lourie was drawing not only upon information which she obtained from prisoners during interviews, but also her theoretical knowledge and her past experience in social work; that by virtue of her training and registration as a social worker, she was applying her knowledge and skills in the case management processes she was involved in and as such was engaged as a social worker for the purposes of the regulatory regime under the Act.

[30] The Tribunal concluded that given Ms Lourie was registered and had been found by it to have engaged in social work, she was then required under s 25 of the Act to have an APC. It was not in dispute that she did not have an APC.

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<sup>6</sup> *CAC v Lourie RSWI/D1/SWDT/2017* paragraph [37].



### **Appellant's Position**

[31] The Appellant is critical of the fact that the Tribunal did not seem to adopt the two-step approach it referred to arising out of the Crown Law opinion. It was submitted that the Tribunal did not find Ms Lourie was engaged in casework (which was not defined), nor did the Tribunal find she expressly or implicitly held herself out as a registered social worker or was so held out by her colleagues or employer.

[32] The Appellant was further critical of whether there was an evidential basis to find that she was in fact working as a social worker when employed by Serco. That criticism then extended to the evidence of Dr Dale which it was submitted "did not establish what Ms Lourie actually did, nor was it premised on accepted evidence of what she actually did".

[33] The Appellant was very critical of the fact the Tribunal placed reliance on what Dr Dale referred to as Ms Lourie using her foundational social work training which were so broad and imprecise, they could describe the skills of many occupations and professions such as lawyers, counsellors, probation officers, doctors and the like.

[34] Finally the Appellant makes the point that Ms Lourie's fourteen other colleagues performing the same role as her were not trained social workers is significant and not given any weight by the Tribunal.

### **Respondent's Position**

[35] The Respondent submits that the Crown Law opinion used in previous Tribunal decisions referred to casework. It was annexed as exhibit one to an affidavit of Paul Kirby filed by the Respondent for the purposes of the appeal. The Crown Law opinion stated in relation to casework (set out at paragraph 6.3 of the Respondent's submissions in response to Appeal):

27. In our view, the core meaning of the phrase concerns positions and roles in which registered social workers are engaged with casework decisions in some way. That is not to say that a registered social worker needs to be the primary casework decision-maker to be "employed or engaged as a social worker". Nor does it suggest that direct contact with clients is required. In order to fall within this core meaning, some engagement with casework

decisions made about individual clients is necessary, be that engagement in the contact of a “front-line” role, or in a supervisory, mentoring or managerial capacity. Interpreting the concept in this way ensures that it has a direct nexus with the Act’s purpose of protecting the safety of members of the public.

28. We acknowledge that the competence and fitness of people not involved in casework decisions can affect individuals’ safety. For instance, those people in training or policy positions can make decisions, or adopt positions, that affect or influence casework decisions down the line. However, we consider that the concept of being “employed or engage as a social worker” will become too nebulous if it is extended as a matter of definition to all people with any involvement in matters relating to social work practice.

[36] The Respondent submitted that it was clear from paragraphs [51] to [54] of the Tribunal’s decision that although they had not referred directly to the two-step and / or test in its decision, they had turned their minds to those considerations as a specialist body. In any event they did consider evidence of Ms Lourie’s role as a Case Manager, Mr Dale’s expert evidence on her role and her own evidence about her role.

[37] The Respondent submits it is irrelevant that the social work skills used by Ms Lourie could equally be used by other professions because she was to some extent engaged in casework and the tasks described fitted the description of social work.

[38] Further the Respondent submits it is also irrelevant that her other colleagues were not charged by the board because at that time registration was voluntary and non-registered social workers were outside the jurisdiction of the Board.

**Second and third grounds of appeal – Did Ms Lourie’s conduct amount to conduct unbecoming of a social worker and whether that conduct adversely reflected on her fitness to practise as a social worker?**

[39] The Tribunal’s findings of its decision as follows:

[58] The Tribunal considers that when viewed objectively, Ms Lourie’s conduct in continuing to be engage in social work over the period of ten months despite not holding a current practising certificate represents a significant departure from the standards which are reasonably expected for a registered social worker who acts in compliance with the standard normally observed by those who are fit to practise as a registered social worker. The Tribunal is satisfied therefore that the conduct was ‘conduct unbecoming’ of a registered social worker.



[59] The Tribunal is also satisfied that Ms Lourie's conduct in practising social work in breach of this mandatory legal requirement reflects adversely on her fitness to practise as social worker. The conduct was not an acceptable discharge of Ms Lourie's professional obligations notwithstanding the reliance Ms Lourie placed on the position of her employer. As the Tribunal has stated in all of its previous decisions, the requirements for practitioners who have chosen to register to apply in time for the renewal of their APC is fundamental to the professionalism of a registered social worker. This is a requirement that is one of the cornerstones of the regulatory regime which registered social workers choose to participate in to assure employers, clients and the public that they are professional and fit and competent to practice. The fact that the regime is voluntary does not remove the personal responsibility for registered social workers to comply with the legal requirement to hold a current practising certificate if they are continuing to practise social work. Lack of employer support does not obviate the practitioner's personal responsibility. For these reasons, the Tribunal determines that an objective assessment of Ms Lourie's conduct lead to the conclusion that the conduct was sufficiently serious to warrant discipline.<sup>7</sup>

#### *Appellant's Case*

[40] The Appellant argues that the Tribunal's reasoning was if Ms Lourie had been working as a social worker for 10 months without an APC during that time, then that would amount to conduct unbecoming of itself.

[41] The Appellant argues this overlooks the fact that there was no legal prohibition on practising social work unregistered (this is expressly permitted under section 13 of the Act) and consequentially no need to apply for and hold an APC. There was limited guidance to what "social work" was and genuine ambiguity as to what amounted to social work.

[42] No criticism is taken of the Tribunal that if the conduct in issue is significant enough to warrant disciplinary sanction, the conduct must reflect adversely on the practitioner's fitness to practise.

[43] The submission is made that on any objective view any departure on her part was not significant enough to attract sanction for the purposes of protecting the public.

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<sup>7</sup> *CAC v Lourie RSWI/DI/SWDT/2017* paragraph [58] and [59].



### *Respondent's Case*

[44] The Respondent submits that the Tribunal correctly identified the test required of its decision and correctly found Ms Lourie's conduct unbecoming and that conduct reflected adversely on her fitness to practise as a social worker:<sup>8</sup>

[19] As for the test of conduct that is unbecoming of a social worker and which reflects adversely on a practitioner's fitness to practise as a social worker, there are a number of decisions of this Tribunal where s 82(1)(b) has been considered. In those cases the Tribunal adopted the approach of the Medical Practitioners Disciplinary Tribunal and High Court appeals from that Tribunal in which a charge of conduct unbecoming which reflects adversely on a practitioner's fitness to practice was considered under the Medical Practitioners Acts 1995. The Tribunal as presently constituted has no reason to depart from that approach.

[20] In *B v Medical Council*<sup>9</sup>, Elias J discussed the test as follows:

"There is little authority on what comprises 'conduct unbecoming'. The classification requires assessment of degree. But it needs to be recognised that conduct which attracts professional discipline, even at the lower end of the scale, must be conduct which departs from acceptable professional standards. That departure must be significant enough to attract sanction for the purposes of protection the public...

"The structure of the disciplinary processes set up the Act, which rely in part upon judgment by a practitioner's peers, emphasises that the best guide to what is acceptable professional conduct is the standards applied by competent, ethical and responsible practitioners. But the inclusion of lay representatives in the disciplinary process and the right of appeal to this court indicates that usual professional practice, while significant, may not always be determinative: the standards applied must ultimately be for the court to determine, taking into account all the circumstances including not only usual practice but also patient interests and community expectations, including the expectation that professional standards not be permitted to lag. The disciplinary process in part is one of setting standards"

[21] The Court of Appeal in *F v Medical Practitioners Disciplinary Tribunal*<sup>10</sup> endorsed the earlier statements which has been made by Elias J in *B v Medical Council* where Her Honour made the important point that the threshold (in cases of professional misconduct and conduct unbecoming under the Medical Practitioners Act 1995) is "inevitably one of degree". The Court of Appeal expressed the issue in this way at paragraph [80]:

"In cases of both professional misconduct and conduct unbecoming it will be necessary to decide if there has been a departure from acceptable standard and then to decide whether the departure is significant enough to warrant sanction."

[22] Importantly in *F v Medical Practitioners Disciplinary Tribunal* the Court of Appeal went on at paragraph [80] to hold that in order to determine that the conduct is significant enough to warrant disciplinary sanction the

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<sup>8</sup> *CAC v Lourie RSWI/DI/SWDT/2017* paragraphs [19], [20], [21] and [22].

<sup>9</sup> *B v Medical Council* [2005] 3 NZLR 810.

<sup>10</sup> *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774.

Tribunal must satisfy itself that he conduct reflects adversely on the practitioner's fitness to practise.

## **Discussion**

### *First Ground of Appeal*

[45] Two matters that were required to prove the charge were not in issue, namely that at the relevant time Ms Lourie was a registered social worker and did not have an APC.

[46] This is an appeal under Part 5 of the Act. Section 91 provides that this Court may on appeal confirm, reverse, or modify the decision or make any other decision or order the Tribunal could have made. As a further provision under s 93 this Court has the option instead of determining the appeal, it may direct the Tribunal to reconsider the whole or any part of its decision.

[47] Under r 18.19 of the District Court Rules 2014 ("Rules") the appeal is by way of a rehearing. Under r 18.20 the Court has discretion to hear and receive further oral and or affidavit evidence on issues of fact. I allow and receive the two affidavits filed by the Appellant herself and the further affidavit filed by the Respondent in respect of Paul Brian Kirby.

[48] The Act has now been repealed but must be determined under the old legislation. The position now under the new legislation is that social workers must now be registered and that is a mandatory requirement. Perhaps an ironical twist is that presently Probation Officers and Corrections Officers fall outside the mandatory registration requirement, at least for the time being. It is somewhat now, and as the Appellant would maintain was in the past, a "grey area".

[49] I am persuaded that the Appellant has not shown the findings of the Tribunal on the first ground of appeal to be flawed or based on inadequate evidence. I accept that the two-step approach referred to by the Tribunal was not directly applied by it. In my view it is unlikely it could have found the second step to apply. I do think there would have been insufficient evidence to conclude that Ms Lourie held herself out as



a “**registered**” social worker and certainly there is no evidence her colleagues did and her employer was decidedly against any suggestion of holding her out as a registered social worker.

[50] I do however consider there was an evidential foundation for the Tribunal to find that the Appellant was “engaged in casework decisions at any level” and therefore “employed or engaged as a social worker” requiring a registered social worker to hold an APC. I accept the Respondent’s submissions that from paragraphs [51] to [54] of their decision they clearly identify an evidential basis for this conclusion. There they refer to the evidence of Ms Lourie’s role as a Case Manager, Mr Dale’s expert evidence on her role and her own evidence about her role.

[51] The affidavit of Paul Kirby in reference to the Crown Law opinion as to what amounts to casework, adds strength to the Tribunal’s decision. Although the Tribunal did not express it directly, they clearly considered based on the evidence she was employed or engaged as a social worker and I consider she was clearly engaged in casework on the basis of the Crown Law opinion which I find persuasive.

[52] On the second and third grounds of appeal which are closely intertwined, I come to a different view. I adopt the approach and test set out by then Elias J in *B v Medical Council* as set out above. Obviously the assessment undertaken is a matter of degree and the departure must be significant enough to attract sanction for the purposes of protecting members of the public.

[53] The decision to find Ms Lourie’s conduct was unbecoming and reflected adversely on her fitness to practise as a social worker was based solely on the time elapsed from the date her APC was due to be renewed until the date she resigned from her employment which was 10 months.

[54] The Tribunal stated, “There was no suggestion that Ms Lourie was unfit to practise as a registered social worker at the time of the conduct the Tribunal has reviewed”.<sup>11</sup> Then later “As counsel for the CAC submitted, there is no suggestion

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<sup>11</sup> *CAC v Lourie RSWI/DI/SWDT/2017* paragraph [25].



that Ms Lourie has conducted herself unethically or has harmed clients in any way. Nor does the charge relate to Ms Lourie's competence".<sup>12</sup>

[55] It is clear that Ms Lourie buried her head in the sand when the issue of renewal of her APC arose. As the Tribunal observed in paragraph [61]:

The CAC does not dispute that Ms Lourie did not understand she was in fact required to keep up her annual practising certificate in her new role as a Case Manager but submitted these are matters relevant to penalty, rather than to the issue of whether or not the charge was proved".<sup>13</sup>

[56] In applying Elias J's test in *B v Medical Council* it is a matter of degree and in also considering whether the departure is significant enough to attract sanction for the purposes of protecting the public. On a time alone basis one day or one month alone would not be sufficient to meet the test of conduct unbecoming and which reflects adversely on the social worker's fitness to practise. What then is the position with 10 months bearing in mind there are no other adverse factors affecting the social worker?

[57] One important difference when considering the test as enunciated by Elias J is that she was dealing with practitioner's coming under the Medical Practitioners Act 1995. There registration was and is mandatory. Social workers registration at this time was purely voluntary although there were advantages no doubt if a social worker held an APC and held themselves out as a registered social worker. I have found that is not the case here. There is no evidential basis to find that Ms Lourie or anyone held her out as a registered social worker. In fact the evidence pointed to the contrary.

[58] I also infer that it was unknown to Ms Lourie that at the time she was in telephone discussions with the investigator and Principal Adviser or at any time earlier she could simply have written to the Board and asked for her registration to be cancelled and carried on with her work at Serco. Section 127 of the Act provided:

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<sup>12</sup> *CAC v Lourie* citation paragraph [108].

<sup>13</sup> *CAC v Lourie* citation paragraph [61].

**127 Social worker may ask for registration to be cancelled**

- (1) On the written application of a registered social worker, the Board may cancel the social worker's registration.
- (2) The Board must not cancel a social worker's registration under subsection (1) if disciplinary action against the social worker under this Act has begun or is pending.
- (3) The Registrar must make reasonable efforts to give a copy of the direction to the social worker.

[59] If the time period had been much longer, if she had refused outright to renew her APC, if there had been issues with her competence, if the scheme had been a mandatory scheme or she was gaining an advantage by misleading her employer or public that she was registered, then that would have justified the Tribunal in finding that the conduct was unbecoming and reflected adversely on her on her fitness to practise as a social worker. I do not consider that finding was open to the Tribunal on the conduct proved bearing in mind it was not in my view significant enough to attract a sanction for the purposes of protecting the public in the absence of any other factors on a time factor of 10 months alone.

**Result**

[60] The appeal is granted as to grounds two and three of the appeal. The decision of the Tribunal is reversed as to its findings that the Appellant's conduct was unbecoming and reflected adversely on her fitness to practise as a social worker. The charge is therefore not proved and the fine of \$400 is set aside.

**Costs**

[61] My initial view on costs is that this appeal is well out of time although I am aware that the Appellant's personal circumstances have explained the clear and good reasons for that delay. The Respondent has at all times acted very responsibly and has been neutral on important steps taken by the Appellant in a refreshingly non-adversarial approach which is to be commended. The Appellant is legally aided.

[62] It would seem to me that this would be an appropriate case in which costs should not be awarded. It is clear that is the stance of the Respondent. If the Appellant

differs from that view, then submissions on costs are to be filed and served within seven working days and the Respondent will have seven working days to file and serve a reply.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a long horizontal flourish.

R G Marshall  
District Court Judge