

**IN THE DISTRICT COURT
AT MANUKAU**

**CIV-2015-055-000483
[2016] NZDC 8283**

IN THE MATTER OF	an appeal against a decision of the Social Workers Registration Board
UNDER	Section 88 of the Social Workers Registration Act 2003
BETWEEN	CHRISTINE MARGARET CRAIG Appellant
AND	SOCIAL WORKERS REGISTRATION BOARD Respondent

Hearing: 11 May 2016

Appearances: Appellant in person
Mr La Hood for the Respondent

Judgment: 1 June 2016

JUDGMENT OF JUDGE J BERGSENG

Introduction

[1] Christine Craig (“the Appellant”) applied for registration as a Social Worker pursuant to s 13 of the Social Workers Registration Act 2003 (“the Act”). Her application was declined by the Social Workers Registration Board (“the Board”). She now appeals that decision.

Background

[2] The Appellant is employed as a supervisor by Family Start Manukau (“FSM”). She has been employed by FSM since April 2007. Her initial role was

that of a whanau advocate. She was subsequently promoted to team leader and then to her current role of supervisor.

[3] FSM is responsible for the delivery of the Ministry of Social Development's ("the Ministry") Family Start programme in the Manukau community. As a result of changes to the Ministry's Family Start policy, anyone in the role of supervisor is required to be a registered social worker.¹ It was because of this policy change that the Appellant made her application for registration.

How to become a registered social worker under the Act

[4] There are two means by which registration as a social worker can be achieved.

[5] The first is pursuant to s 6 of the Act. This allows for registration where the applicant has a recognised New Zealand educational qualification and meets the necessary competence and fitness requirements of Part 3 of the Act.²

[6] The second pathway to registration is pursuant to s 13 of the Act. Section 13 allows the Board to recognise practical experience in practising social work in New Zealand where there is no recognised qualification. A s 13 applicant is still required to meet the same Part 3 competency and fitness standards as a s 6 applicant.³

[7] The appellant does not have any recognised New Zealand qualifications and accordingly her application for registration was made pursuant to s 13 ("the application").

[8] On receipt the application was reviewed by the registrar of the Board, Dr Jan Duke. Following this review further information was sought from the Applicant before her application was placed before the Board for a decision.⁴

¹ This policy change was made after the appellant's promotion to supervisor at FSM.

² Section 2 of the Act defines 'recognised New Zealand qualification'.

³ Section 13(1)(b)(ii).

⁴ Affidavit of Janet Anne Duke dated 15 February 2016 exhibit JD14.

[9] The application was considered by the Board at its meeting on 16 October 2015. The Board declined the application on the basis that the Appellant did not fulfil the criteria for registration pursuant to s 13 of the Act. The advice from the Board to the Appellant was that she had failed to provide evidence that her practical experience in practising social work in New Zealand was enough to compensate for the lack of a social work qualification.⁵

[10] At the request of the Appellant the reasons for her application being declined were further explained in a detailed response provided by Dr Duke.⁶

[11] This appeal proceeds on the basis that the Board was wrong to find that she lacks sufficient practical experience in practising social work and that she does not meet the Part 3 competency standards.

[12] The Appellant submits that her employment with FSM over the past 9 years and her background practical experience in public health nursing means that she is competent to work with Māori and different ethnic and cultural groups in New Zealand. While she does not have a recognised New Zealand qualification in social work she submits that her comprehensive nursing qualification, her life experience, work within the community, her cultural experiences and her training and professional development with FSM are all supportive of her having sufficient practical experience in practising social work in New Zealand. She submits this competence compensates for her lack of a recognised New Zealand qualification.

The approach on appeal

[13] Section 88 of the Act provides a right of appeal against any decision or direction of the Board made under the Act that adversely affects the appellant.

[14] The procedure on appeal is prescribed by s 91. In addition to requiring the appeal to be heard as soon as reasonably practicable, s 91 provides:

...

⁵ Affidavit of Jane Anne Duke, above n 4, exhibit JD34.

⁶ Exhibit JD35.

- (2) On hearing the appeal, a District Court –
- (a) may confirm, reverse, or modify the decision or order appealed against; and
 - (b) make any other decision or order that the person or body that made the decision or order appealed against could have made.

[15] The Act is silent as to the nature of the appeal. In such a case r 18.19 of the District Courts Rules 2014 applies, which requires appeals to be by way of rehearing. This approach is consistent to that taken in the only decision I have been referred to regarding appeals from the Board.⁷

[16] The authoritative statement of law relating to such appeals is the Supreme Court's judgment in *Austin, Nichols & Co v Stichting Lodestar*.⁸ In a general appeal on fact and law the court should come to its own view of the merits and the weight given to the decision under appeal is a matter of judgment. The court must act on its own view.⁹

[17] The Supreme Court observed that the appellant bears the onus of satisfying the appeal court it should differ from the decision under appeal.¹⁰ While the court has to arrive at its own assessment of the merits of the case it noted:¹¹

The tribunal may have had a particular advantage (such as technical expertise or the opportunity to assess the credibility of witnesses, where such assessment is important). In such a case the appeal court may rightly hesitate to conclude that findings of fact or fact and degree are wrong. It may take the view that it has no basis for rejecting the reasoning of the tribunal appealed from and that its decision should stand. But the extent of the consideration an appeal court exercising a general power of appeal gives to the decision appealed from is a matter for its judgment.

[18] Adopting this approach on appeal I will consider the criteria the appellant is required to meet pursuant to s 13 of the Act and consider the Boards approach to these matters before reaching my own decision.

⁷ *Wood v Social Workers Registration Board* DC Tauranga CIV-2006-070-559, 10 October 2006.

⁸ *Austin, Nichols & Co, Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

⁹ At [3].

¹⁰ At [4].

¹¹ At [5].

Section 13 Applications

[19] The purpose of s 13 of the Act is to allow for registration as a social worker based on practical experience. Section 13(1) states:

(1) The Board may decide that the applicant should be registered fully if—

(a) he or she has neither a recognised New Zealand qualification nor an overseas qualification equivalent to a recognised New Zealand qualification; but

(b) the Board is satisfied that—

(i) his or her practical experience in practising social work in New Zealand is enough to compensate for the lack of such a qualification; and

(ii) his or her competence to practise social work has been found satisfactory under Part 3; and

(iii) he or she is a fit and proper person to practise social work; and

(iv) that (whether as a result of his or her satisfactory completion of a course or courses of training, or because his or her practical experience in practising social work in New Zealand is enough to compensate for not having completed such a course) he or she –

(a) is competent to practise social work with Māori; and

(b) is competent to practise social work with different ethnic and cultural groups in New Zealand.

Boards reasons for finding that the Appellant’s practical experience does not compensate for the lack of a recognised New Zealand qualification

[20] The Board, as required by the Act, has established and published criteria for applications pursuant to s 13 of the Act.¹² The Board requires a s 13 applicant to demonstrate the application of skills, knowledge and practise in a manner that is consistent with the International Federation of Social Work’s definition of ‘social work’ and the Code of Ethics of the profession.¹³

¹² Affidavit of Jane Anne Duke, above n 4, exhibit JD1.

¹³ Exhibit JD1.

[21] Factors that will be considered include the following:

- (i) The extent at which the applicant practised social work before the introduction of the Act.
- (ii) The extent to which the applicant has practised social work in New Zealand.
- (iii) The extent to which the applicant has practised social work internationally.
- (iv) The extent to which an applicant can demonstrate ongoing professional identity as a social worker.
- (v) The extent to which the applicant is able to demonstrate that their practical experience compensates for the lack of a social work qualification.
- (vi) The extent to which an applicant can demonstrate that their practise is based on social work theoretical knowledge.
- (vii) The extent to which an applicant has participated in regular training and professional development relevant to social work in the course of their practise and that this training and professional development has developed their social work practise.

[22] It was against those criteria that the application was considered.

[23] The Appellant has no international experience in social work.

[24] The Appellant's most relevant New Zealand work experience has been her employment with FSM.

[25] As noted earlier, FSM is an entity focussed on providing the Ministry's Family Start programme. The programme is a home visiting programme focused on improving children's growth and health, learning and relationships, family circumstances and environment and safety. It is designed to help those families and whanau who are struggling with challenges or problems that make it harder for them to care for their baby or young child.¹⁴

[26] Between 2007 and 2008 the Appellant's responsibilities as a whanau advocate included undertaking home visits in order to build on whanau strengths, providing the program Ahuru Mowai Born to Learn, networking within the local community and setting goals to promote positive family relationships for FSM clients.¹⁵

[27] Between November 2008 and 2013 the Appellant worked as a team leader. This role involved promoting team communication, dealing with internal relationships between the whanau advocates, clinical supervisors and management team, fostering a positive team culture, providing clinical support which included debriefing and management of critical incidences, performance planning and reviews, completing training plans, undertaking induction training support and coaching, identifying performance gaps and issues monitoring team productivity and service delivery, and monitoring files and records.¹⁶

[28] In 2013 the Appellant was promoted to the role of supervisor. The appellant describes this role as providing weekly clinical supervision to her team of seven, managing referrals from CYFs, police, GPs, midwives and community agencies, consulting with assigned social workers about family/whanau participation, making critical decisions as required, such as referrals to CYFs or the police, attending family group conference meetings to support her team members and FSM, managing work performance and ensuring adherence to FSM policies and developing and mentoring social workers.¹⁷

¹⁴ Ministry of Social Development "Working with Us -Programmes and Services" (accessed 11 May 2016) <www.msdc.govt.nz>.

¹⁵ Affidavit of Jane Anne Duke, above n 4, exhibit JD9.

¹⁶ Exhibit JD9.

¹⁷ Affidavit of Jane Anne Duke, above n 4, exhibit JD9.

[29] The Appellant has clearly been a valuable employee of FSM and this has been recognised by the promotions she has received. However, it is difficult to accurately assess how much of the work she has undertaken is based on sound social work practice as opposed to her life experience. This was clearly a concern of the Board when declining her application. The Board also noted the Appellant's practice as a social worker had been limited to one organisation, FSM, making the lack of range of practice an additional concern.¹⁸

[30] In the course of preparing material for this appeal the Appellant provided further background information in respect of her practical experience.¹⁹ The Appellant was concerned that the information she provided was only in respect of the ten years prior to her application. Her understanding was that this was the focus of the information being sought by the Board.

[31] The additional information includes curriculum vitae confirming that she commenced her training as a nurse in 1967. There were then a number of interruptions before she completed training in 1987 at the Manukau Institute of Technology.

[32] From 1988 she was employed as a district nurse. From 1989 to 2000 she was employed as a public health nurse in the Manurewa and Papakura areas. Her focus was on working with children up to 12 years of age and their families to identify and address health issues by facilitating access to health and social services. This work included being involved in family group conferences and at times coordinating the medical direction of such conferences and assisting qualified social workers.

[33] From 2000 to 2003 the appellant worked with the Mokopuna Ora team which consists of nurses and community health workers providing comprehensive care and support for children and family in the South Auckland area with the focus being on those up to five years of age.

¹⁸ Exhibit JD35.

¹⁹ Affidavit of Appellant dated 21 March 2016.

[34] Between 2004 and 2007 the Appellant was a family caregiver while at the same time waiting on knee surgery. In all, a significant amount of additional detail has been provided in respect of the Appellant's practical experience.

[35] The additional material from the appellant has been considered by the Board's registrar. She has confirmed that her recommendation to the Board would not have been any different given the additional material. She remains of the view that the Appellant has not established that she has sufficient practical experience to qualify for registration without a recognised qualification.²⁰

[36] In addition to work undertaken as a social worker there are other factors which the Board have considered when coming to its decision. This includes the Appellant's professional development.

[37] The Appellant's evidence regarding this aspect of her application is that since her employment with FSM she has attended in-house training and seminars. The specific detail of the Appellant's experience in terms of her s 13 application is set out in her application.²¹

[38] The Board's concern regarding the extent of her professional development is that the training, as with her employment, has been with the one organisation. The Board has identified that not all of the training was social work related.

[39] The application was reviewed with a view to assessing how the Appellant's practice is based on social work theoretical knowledge. In this regard the Board had significant concerns.

[40] Having reviewed the material provided by the Appellant the Board's concerns regarding the Appellant's practical experience practising social work were summarised as follows:²²

- (i) The appellant had no practical social work experience before the Act came into force.

²⁰ Affidavit of Jane Anne Duke dated 7 April 2016 at [51].

²¹ Affidavit of Jane Anne Duke, above n 4, exhibit JD10

²² Respondent's submissions dated 2 May 2016.

- (ii) At the most nine years work experience in the social service sector has been undertaken but all with the one service provider namely FSM. There is concern that the appellant does not have the breadth of experience required.
- (iii) The appellant did not submit any evidence of professional social work activities outside of her work place, nor is she a member of the Professional Association, the Aotearoa New Zealand Association of Social Workers.
- (iv) The appellant's social work practice framework failed to demonstrate that her practice was based on social work theoretical knowledge similar to that of a competent social work practitioner beginning practice on completion of a recognised qualification. There were concerns noted that the submitted framework was in some respects incomplete, included insufficient descriptions of knowledge, her practice examples did not demonstrate how she had applied this knowledge and specific examples of her own practice.
- (v) That the majority of the training undertaken has been internal arranged through her employer and was not specific to social work.

[41] It was this overall combination of concerns that led the Board to conclude the Appellant's practical experience practicing social work did not meet the s 13 threshold.

Competence

[42] In addition to the Appellant being required to satisfy the Board of her practical experience she is also required to satisfy the Board of her competence to practise social work in a satisfactory manner. To meet the competence standards an applicant is required to complete a competence assessment.²³

[43] The Appellant completed a competence assessment as part of her application.²⁴ The following 10 core competence standards published by the Board are required to be met:

1. competence to practise social work with Māori;

²³ Section 38.

²⁴ Affidavit of Jane Anne Duke, above n 4, exhibit JD12.

2. competence to practise social work with different ethnic and cultural groups in New Zealand;
3. competence to work respectfully and inclusively with diversity and difference in practice;
4. competence to promote the principles of human rights and social and economic justice;
5. competence to engage in practice which promotes social change;
6. competence to understand and articulate social work theories indigenous practice knowledge, other relevant theories and social work practice methods and models;
7. competence to apply critical thinking to inform and communicate professional judgements;
8. competence to promote empowerment of people and communities to enable positive change;
9. competence to practise within legal and ethical boundaries of the social work profession; and
10. represents the social work profession with integrity and professionalism.

[44] The competence assessment submitted by the appellant was assessed by a Board Competence Assessor (“the Assessor”). The Assessor was concerned in respect of seven of the core competence answers and accordingly sought further information from the Appellant.²⁵

²⁵ Affidavit of Jane Anne Duke, above n 4, exhibit JD17.

[45] The Appellant provided a revised competency assessment acknowledging that the original assessment had not been completed to “an acceptable standard”.²⁶

[46] The Assessor having received the revised competency assessment from the Appellant referred the assessment for a second opinion. The Assessor noted her concern in respect of seven competencies (3-9). She was also concerned about the standard of the revised assessment and again identified significant issues, which included challenges around professional and personal boundaries and also around the area of skills and theory.

[47] The second assessor agreed with the original assessment and was of the view that the Appellant should be declined registration.²⁷ The second assessor was of the view that none of the 10 competencies had been met.²⁸

[48] The Appellant has not sought a competence assessment from the Aotearoa New Zealand Association of Social Workers which is recognised by the Board as being able to complete competence assessments. No expert evidence has been called by the Appellant challenging the finding of the two assessors.

[49] The Appellant submits that based on her experience and the work that she has presented she is someone who has been able to meet the competency standards required by the Act in spite of the decisions of the assessors.

Discussion

[50] The purpose of the Act includes:²⁹

- (a) To protect the safety of members of the public through mechanisms to ensure that social workers are competent to practise and accountable for their practise;

²⁶ Exhibit JD19.

²⁷ Exhibit JD25.

²⁸ Exhibit JD26.

²⁹ Section 3.

- (b) To that end, create a framework for the registration of social workers;
and
- (c) To enhance the professionalism of social workers.

[51] It is clear from the purposes of the Act that protection of members of the public, by ensuring that social workers are competent to practise and are able to be held accountable in a professional sense, is one of the principal features of the Act. To that end the regime established by the Act allows for competence and fitness to be assessed. The Board is empowered to establish criteria to assist it in establishing whether applicants have the necessary skill and knowledge required to practise social work and to meet the professional standards reasonably expected of a social worker.

[52] The onus is on the Appellant to establish that this Court should differ from the decision being appealed. The specialist knowledge of the Board needs to be considered. The Board has established a clear set of criteria against which the issues of practical experience and competence are assessed.

[53] Taking account of those factors, I find that the Board in reaching its decision regarding the Appellant's lack of practical experience and competence was carefully considered. The Board relies on its own specialist knowledge of the area of social work. In the absence of any new information not taken into account or errors identified by the Appellant I am not satisfied the Appellant has established that the Board was wrong in its assessment of her lack of practical experience and competence.

[54] The Board, in declining the application, has identified significant concerns in relation to the limited nature of the Appellant's practical experience as a social worker and in relation to her competence as a social worker. Having considered all of the material that has been submitted by the Appellant in the course of this appeal and the responses from the Board, and acknowledging the specialist knowledge of the Board when it comes to the registration of social workers, I am satisfied that the Board's decision should stand.

[55] While providing further detail in terms of her practical experience I am satisfied that the Board has correctly identified those aspects of the application whereby it is established that the Appellant does not have sufficient practical experience as a social worker and those aspects in respect of her competence which are such that the Appellant does not meet the requisite criteria for registration as a social worker pursuant to s 13 of the Act.

[56] The appeal is dismissed. There is no order as to costs.

Signed at this day of at am/pm.

J Bergseng
District Court Judge