

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2019-83

IN THE MATTER of the Education Act 1989

AND

IN THE MATTER of a charge referred by the Complaints Assessment
Committee to the New Zealand Teachers
Disciplinary Tribunal

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **CARWYN JAMES ADIE-CROPLEY**
Respondent

DECISION OF TRIBUNAL
DATED 31 JULY 2020

HEARING: Held on the papers on 29 October 2019

TRIBUNAL: Theo Baker (Chair)
Simon Walker and Neta Sadlier (members)

REPRESENTATION: Mr D LaHood and Ms Kós for the CAC
The respondent represented himself

1. On 22 July 2019 the Complaints Assessment Committee (CAC) referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. The charge is that on 5 March 2019 Carwyn James Adie-Cropley (**the respondent**) dragged a three-year-old child along the floor by the child's hand or wrists.
2. The parties filed a Summary of Facts, signed by counsel for the CAC and the respondent, and agreed the matter could be determined on the papers, without the need for appearances. It was set down for hearing on 29 October 2019 and following the Tribunal's deliberation we asked for further clarification of the facts. A joint memorandum was duly filed on 22 November 2019.
3. The Tribunal considered:
 - a) The agreed Summary of Facts
 - b) The joint memorandum clarifying the facts
 - c) Submissions dated 11 September 2019 from the CAC on liability, penalty and costs
 - d) An email dated 23 September 2019 from the respondent to Mr La Hood advising that he had read the information provided by Mr La Hood and noting that he had nothing more to add.

Facts

4. According to the agreed Summary of Facts, the respondent became a fully registered teacher on 16 October 2012. At the time of the conduct alleged in the Notice of Charge the respondent was an early childhood education teacher at Wee Nippers Childcare Centre (**the Centre**). Student L was a child who attended the Centre and at that time he was 3 years and 7 months old.
5. At about 11.50am on 5 March 2019 Student L was sitting at the table in the Centre's Pukeko room. The respondent asked Student L to go to the bathroom and wash his hands before eating lunch. Student L refused. The respondent repeated his request and again the boy refused.
6. The respondent took Student L by the hand, causing him to stand up. At the same time, Student L attempted to bite the respondent, who took a step back to avoid the bite. This pulled Student L off balance and caused him to fall to the floor. The parties

confirmed that the respondent continued to hold Student L's hand throughout. We also asked what part of this body Student L landed on, but the parties advised there was no evidence to establish how he landed.

7. The respondent then proceeded to drag Student L by his wrist and hand on his back for a distance of about three to four metres towards the sleep room. At the same time the respondent shouted, "That's it. You can go to bed with no lunch". A staff member then entered Pukeko room and the respondent asked her to deal with Student L. The parties clarified that the respondent was not on his feet when he was dragged. He was on his back.
8. On 5 March 2019 the respondent provided a written statement to the Centre. He admitted that he had dragged the boy away from the table but said that he explained to Student L that he could return to the table once Student L had washed his hands. The respondent acknowledged that his actions were inappropriate, and he apologised.
9. On 13 March 2019 the respondent emailed the Council investigator and said that he had no intention to seek employment in the teaching profession in the future and he felt terrible about the incident. On 18 March 2019 he resigned. His practising certificate was due to expire in October 2019.

Factual finding

10. Although the parties have agreed the facts, we must still be satisfied that the factual allegation in the charge is established. The respondent is charged with dragging a three-year-old child along the floor by his hand or wrists.
11. Because of the range of actions that can be encompassed by the word "drag" that we sought further clarification of what was meant by "drag". In *CAC v Griffiths NZTDT 2017/22*¹ the teacher was described as "dragging" a child to the office. We noted that the term "dragging" implies the child did not have the soles of his feet on the ground, or at best was resisting so much that he had to be pulled forcefully. In that case we found that teacher took the child by the arm and led him forcefully, but not that she "dragged".
12. There is no doubt that the conduct described in paragraph 7 above meets the charge of dragging a three-year-old boy along the floor by his hand or wrists. The factual

¹ *CAC v Griffiths NZTDT 2017/22*, 5 August 2018

allegation is established.

Serious misconduct

13. Section 378 of the Act provides:

serious misconduct means conduct by a teacher—

(a) that—

(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

(ii) reflects adversely on the teacher's fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

14. The criteria for reporting serious misconduct are found in r 9 of the Teaching Council Rules 2016 (**the Rules**). The CAC relies on rr 9(1)(a) and/or (k):

Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:

...:

(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

15. The CAC submitted that the conduct reflects adversely on the respondent's fitness to practise, demonstrates a serious lapse in judgement and brings the profession into disrepute. For the second part of the definition, the CAC's case was that the conduct met the two criteria above.

16. The CAC made further submissions on the Code of Professional Responsibility and submitted that the respondent's inappropriate physical contact with the child clearly breached professional boundaries.

17. The CAC also referred to section 139A of the Act, which prohibits the use of force, by way of correction or punishment, towards any student or child enrolled at or attending

the school, institution, or service.

Discussion

18. The CAC referred to a number of cases involving the use of force against children and young people of all ages. Cases where we have found serious misconduct in the early childhood sector or on the basis of dragging a child are the most relevant.

19. The general principle that we view the use of physical force very seriously has been repeated many times:

[We] repeat as we have said in a number of cases in the past that the use of physical force – even at a lower level such as evident in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to section 139A puts his or her status as a teacher in peril.²

20. We find that all three definitions of serious misconduct in paragraph (a) of the definition in section 378 are met. This is conduct that was clearly likely to adversely affect the wellbeing (physical and emotional) of Student L. We also find it was likely to adversely affect the wellbeing of other children who would have witnessed it. This type of conduct has no place in any place of learning and most people would be horrified to witness it.

21. We think the conduct is not merely a lapse of professional judgment; there is no apparent exercise of judgment at all. The conduct reflects adversely on the respondent's fitness to be a teacher and may bring the profession into disrepute. Therefore, the other two definitions in paragraph (a) in section 378 are also met.

22. The conduct must also be of a character and severity to meet one of the criteria in rule 9 of the Rules. This is a clear case of the unreasonable use of force under rule 9(1)(a). We do not need to consider the more general provisions of the Code of Professional Responsibility. We also find that it is likely to bring the teaching profession into disrepute. The test for discredit to profession as stated in relation to nurses in *Collie v Nursing Council of New Zealand* [2001] NZAR 74³ applies. We are satisfied that reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession is lowered by

² *CAC v Teacher* NZTDT 2014/49, 20 May 2014 at paragraph 6

³ The test for bringing discredit to the profession in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

the behaviour of the practitioner.

23. In conclusion both parts of the definition under section 378 are met. The respondent's actions in dragging a child on his back while holding his wrist or hand amount to serious misconduct.

Penalty

24. Section 404 (1) of the Act provides:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

25. The CAC submitted that in light of the decisions cited, and in terms of the actual force used, the respondent's conduct was not at the most serious end of the scale. The CAC also accepted that the respondent immediately acknowledged what he had done and expressed remorse. The CAC submitted that an appropriate penalty is censure,

annotation and conditions that the respondent attend an appropriate anger management or other professional development course.

Discussion

26. In determining penalty, we consider the purpose of professional disciplinary proceedings as summarised in *CAC v McMillan* NZTDT 2016/52⁴ and the penalty principles outlined in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.⁵ In particular, there are overlapping purposes of protection of the public, the maintenance of professional standards and accountability and the maintenance of public confidence in the profession.⁶
27. Although the purpose of professional disciplinary proceedings is not punishment of the professional, the decision of the Tribunal may have a punitive effect.⁷
28. In imposing a penalty, we must also consider the appropriateness of rehabilitation, the need for a consistent approach, and the range of penalties available, and impose the least punitive that is fair, reasonable and proportionate.⁸
29. In *CAC v White*, we said that whether cancellation is required “almost inevitably” turns on, *inter alia*, the practitioner’s rehabilitative prospects.⁹ We have also previously said that cancellation is required:¹⁰
- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher’s fitness to teach and/or its tendency to lower the reputation of the profession; and
 - b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

⁴ *CAC v McMillan* NZTDT 2016/52, 23 January 2017

⁵ And further discussed in *CAC v Cook* 2018/50, 11 April 2019

⁶ As summarised in *CAC v McMillan*, above, note 4, at paragraph 21 citing *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 and *Young v PCC* Wellington HC, CIV 2006-485-1002, 1 June 2007, Young J
⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA). In *CAC v Cook* (above, note 5) at paragraph 45 we noted that the cases where this has been emphasised have involved referrals of convictions, rather than professional misconduct.

⁸ *Roberts v Professional Conduct Committee*, above, note 8; *Patel v The Dentists Disciplinary Tribunal* HC AK AP 77/02 8 October 2002; *B v B* HC Auckland HC4/92, 6 April 1993, [1993] BCL 1093

⁹ See also *CAC v Lyndon* NZTDT2016/61 at [28].

¹⁰ *CAC v Fulimakaua* NZTDT 2017-40, 5 June 2018; *CAC v Ormsby* NZTDT 2017-33, 24 October 2018

30. Each case turns on its own facts, including not only the seriousness of the offending, but the attitude and motivation for rehabilitation of the teacher. The conduct in the case of *CAC v Griffith*¹¹ would not ordinarily attract a penalty of censure, but we found the absence of any evidence of reflection on the events and consideration of alternative ways in which she might have reacted unsatisfactory. That teacher continued to maintain that she had done nothing wrong, and that she had been the victim of violence and had said she wanted to be removed from the register, and so we imposed a penalty of cancellation.
31. In the present case, although we agree that the conduct is not the most violent use of force that has come before the Tribunal, we do not wish to minimise the seriousness of dragging a child along the floor. This is worse than many of the “rough handling” cases we see.
32. The importance of ensuring the protection and safety of children in educational settings has been reinforced by the enactment of the Children’s Act 2014,¹² and the amendments in 2015. The Tribunal in *CAC v Mackey* NZTDT 2016-60 found that statute reinforced the importance of closely scrutinising the ongoing fitness to teach of any practitioner who faces a disciplinary charge for behaviour of a type that may pose an ongoing risk to students.¹³
33. We accept the respondent’s actions immediately following the incident were appropriate. He asked another staff member to take over. He has not denied the conduct and seems to have assisted with investigations by providing statements and recognising the wrongfulness of his actions. The difficulty we have with the penalty proposed by the CAC is that we simply have no understanding of what led the respondent to act in such a disturbing way. The CAC has proposed that the respondent attend an anger management course, but we have no appreciation of whether he has a problem with anger or what triggered this unacceptable behaviour.
34. The respondent has expressed no interest in returning to teaching. If he had done so, we would want to know more about his motivation and aptitude. We would expect at least a statement from him outlining what actions he has taken and his strategy to prevent a recurrence. We would also want to see some references from other teachers

¹¹ Above, note 1

¹² Formerly the Vulnerable Children’s Act 2014

¹³ *CAC v Mackey* NZTDT 2016-60, 24 February 2017

who could vouch for his commitment to change and his engagement in reflective practice. Without that information, we are not satisfied that we can discharge our responsibility to the public. We do not think he should return to the classroom until he has provided further evidence.

35. Without the respondent's full engagement in this process we do not have confidence that the conditions would be effective. We also considered suspension of his practising certificate, but at the expiry of the term of suspension, the situation would not have changed. The proper penalty is cancellation. We therefore cancel the respondent's registration under section 404(1)(g) of the Act. Should he decide to return to teaching, the Council will be able to undertake its usual processes for determining his suitability to hold a practising certificate in light of this serious misconduct finding. The respondent is also censured under section 404(1)(b).

Costs

36. The CAC sought costs of 40%, which is the amount usually ordered for a hearing on the papers where there is agreement on the facts. The respondent did not file any submissions. We order the respondent to pay costs of 40% under section 404(1)(h).
37. The CAC will file a schedule of costs and send it to the respondent no later than **16 August 2020**. If the respondent objects to any aspect of the schedule, he must file a reply by **30 August 2020**.
38. The Tribunal delegates to the Chairperson the authority to determine the final amount of costs.
39. Ordinarily we would also order a contribution to the Tribunal's costs, but in recognition of the length of time since this matter was heard, we will waive that in this instance.

Non-publication

40. According to the CAC submissions, the respondent was due to file an application for permanent name suppression but did not do so.
41. Accordingly, any interim orders for name suppression lapse.



Theo Baker, Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).