

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**DECISION NO:** NZTDT 2022/52

**UNDER THE** Education Act 1989

**IN THE MATTER** of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **TRACEY CIANNAJANE BROWN** registered teacher (Registration Number 339125), of Porirua

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**Hearing held on the papers on Wednesday, 31 May 2023**

**Tribunal:** Jo Hughson (Deputy Chairperson),  
David Spraggs, Simon Walker (registered teachers)  
  
Shannon Hullett (Tribunal Coordinator)

**Appearances:** Mr J Garden for the Complaints Assessment Committee  
  
Ms Brown (no submissions filed by or for her)

**Decision:** 14 June 2023

## Summary

- [1] Ms Brown was a fully registered teacher from May 2015. At the relevant times between 2019 and July 2020, Ms Brown worked as a teacher at All About Children Childcare in Titahi Bay, Porirua (the Centre). The Centre is an early childhood education and care service caring for children aged from 0 to five years-old. Kids' World Education Group is the parent group for the Centre.
- [2] At the time of the hearing Ms Brown did not hold a current practising certificate. Her last practising certificate had expired on 7 November 2021. In August 2020, Ms Brown had signed a voluntary undertaking not to teach after Kids' World Education Group made a mandatory report to the Teaching Council of Aotearoa New Zealand (the Teaching Council) and the Council appointed a Complaints Assessment Committee (CAC) to investigate the matters alleged in the report.
- [3] At the conclusion of its investigation, the CAC charged that Ms Brown engaged in any or all of the following conduct between 2019 and July 2020 (inclusive) while working at the Centre:
- (a) On or about 3 July 2020, while at the Centre's sleep room, grabbed a child aged two, Child A, by the arm, lifted him off the ground, and put him down forcefully on a bed.
  - (b) On or about 3 July 2020, while in the Centre's sleep room, told a child aged four, Child D, that she wanted to slap him in the face.
  - (c) On at least one occasion, placed and/or left Child D in an upturned tunnel, which he could not get out of by himself.
  - (d) Told another staff member at the Centre that she was "about to punch [the staff member] in the face", or words to that effect.
  - (e) On at least one occasion, locked children outside (including Child G (age unknown)).
  - (f) On various occasions, yelled and/or shouted at other staff and children at the Centre; and
  - (g) On at least one occasion, grabbed Child G, by the arm and dragged him inside.

- [4] This conduct was alleged to amount to serious misconduct when each of those acts are considered on their own, and cumulatively (two or more of them together). Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989 (the Act).
- [5] The Charge was heard on the papers. The evidence produced by the CAC was an agreed summary of facts which Ms Brown had signed on 8 February 2023<sup>1</sup>.
- [6] Ms Brown accepted the Charge.
- [7] Written submissions were received from Counsel for the CAC addressing the issues of liability, and separately, penalty and non-publication orders. Ms Brown provided information that was relevant to the application she made for permanent name suppression, but she did not otherwise make any submissions or provide any information or additional evidence.
- [8] The Tribunal found the Charge made out and that Ms Brown's actions amounted to serious misconduct as that term is defined in section 378 the Act.
- [9] The decision of the Tribunal is that penalties should be ordered against Ms Brown for her acts of serious misconduct. Ms Brown is censured, and her registration is being cancelled.
- [10] Ms Brown is also being ordered to contribute towards the costs of the CAC and the Tribunal associated with these proceedings.
- [11] The Tribunal decided it would not be proper to make a permanent order prohibiting from publication Ms Brown's name, for the reasons discussed later in this decision. The interim non-publication order that was made in February 2023 is not being made permanent.<sup>2</sup> Accordingly, Ms Brown's name and identifying features, including the name of the Centre, may be published. The public interest in her being named outweigh the private interests Ms Brown (health matters) raised in support of her application.
- [12] Although the children whom Ms Brown offended against are not named in the charge or the agreed statement of facts, there is to be a permanent order suppressing from

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<sup>1</sup> Agreed Summary of Facts dated 19 December 2022 signed by both Counsel for the CAC and Ms X.

<sup>2</sup> Minute of Pre-hearing Conference and Interim Suppression Orders, Wednesday, 1 February 2023.

publication any reference to the names of the children in documents that are held by the Tribunal. The names of the staff members of the Centre who are named in the evidence are also to be permanently suppressed. Those permanent orders are being made under section 405(6) to protect the privacy, welfare, and learning interests of the children and the privacy and welfare interests of the staff members. The Tribunal considered that there is no public interest in any of them being named in connection with these proceedings, and that it would be proper to make permanent non-publication orders.

### **Factual Findings**

[13] The Tribunal made the following findings of fact based on the evidence in the Agreed Summary of Facts.

#### *Rough handling of Child A – particular a.*

[14] On 3 July 2020, between 12.30pm and 1pm, Ms Brown was in the sleep room at the Centre with Ms X, another teacher, and at least 3 children, each of whom were in beds.

[15] Ms Brown was seated between Child A (aged 2 years) and Child D (aged 4 years). Ms X was seated between Child A and another child.

[16] Child A was moving around and would not go to sleep in the sleep room.

[17] Ms Brown grew angry and raised her voice to Child A and told him to go to sleep. She then threw his toy dog across the room and told Child A he could not have it. Child A tried to get up and Ms Brown grabbed Child A by the forearm and lifted him up by the forearm about 40 to 50 centimetres off the ground. She then put him down forcefully on the bed. Child A cried out in pain. When Child A was in bed, Ms Brown told him that he needed to go to sleep and stop being silly.

[18] After the incident, Child A was crying and rubbing the arm by which Ms Brown had lifted him up.

#### *Threat to slap Child D and leaving Child D in tunnel – particulars b. and c.*

[19] At the time of this incident with Child A, Ms Brown told Child D to go to sleep and be a good boy. Child D would not go to sleep. He was giggling at Ms Brown, moving the blankets off himself, and trying to take his clothes off. Ms Brown told Child D she wanted to slap him in the face but was not allowed to. Child D responded, telling Ms Brown to “shut up”.

[20] Prior to that incident, on an occasion between 2019 and July 2020 Ms Brown was outside on the grass in the backyard of the Centre, along with Child D. Ms Brown placed Child D in an upright mobile tunnel. She told Child D that he could not come out until he had calmed down. Ms Brown positioned the tunnel so that the opening was facing upwards, trapping Child D in there, as he was too small to climb out of the top. Child D was kept in the tunnel for approximately 5 minutes until Ms Brown let him out. Child D screamed while he was trapped inside.

*Threats to punch teacher Ms Z – particular d.*

[21] Between 2019 and July 2020, Ms Z prepared weekly rosters for the whole Centre as she was the second in command teacher. The Centre is divided into two separate areas, one room for infants and one room for the pre-school. Instead of preparing one roster for the whole Centre, as had previously occurred, Ms Z separated the rosters out into an infant roster and a pre-school roster to identify where staff were required or were in surplus.

[22] One afternoon, Ms Z was about to head home from the Centre for the day when Ms Brown asked to look at the roster Ms Z had prepared. Ms Brown looked at a printed copy of the rosters and threw the paper on the ground, as she was angry at Ms Z because of how she had prepared the roster. Ms Z asked Ms Brown whether she was going to pick up the rosters, and, when she did not do so, Ms Z picked them up off the ground. Ms Brown walked away from Ms Z.

[23] Ms Z walked outside to where Ms Brown was standing. Ms Brown told Ms Z that she had walked away from Ms Z earlier because she was going to punch her in the head.

[24] As a result of the incident, Ms Z was terrified and cried when she got into her car at the end of the day.

*Locking children outside – particular e.*

[25] From time to time between 2019 and July 2020, Ms Brown took misbehaving children by the hand and led them outside, before locking the Centre's doors, to force the child to stay outside, as a means of behaviour management.

[26] On one occasion between 2019 and July 2020, Ms Brown shouted at Child G (unknown age) to get outside. She chased him outside. Child G ran outside, and Ms Brown shouted at him not to come back inside. She then slammed the door of the ranch slider shut behind him, locked the door and walked inside, away from him.

*Shouting at staff and children at the Centre – particular e.*

[27] On an occasion in the period between 2019 and July 2020, Ms Brown came into the office and yelled at Ms U about Ms U being responsible for fixing issues at the Centre.

[28] From time to time in that same period, Ms Brown acted aggressively towards children at the Centre. She shouted at misbehaving children and yelled at them to go outside, as a means of behaviour management. On those occasions, the children looked scared when Ms Brown raised her voice at them.

*Child G – particular f.*

[29] On at least one occasion between 2019 and July 2020, Ms Brown grabbed Child G by the wrist and dragged him outside.

*Ms Brown's responses*

[30] As to Ms Brown's various responses prior to her admitting the conduct:

- (a) During an employment investigation conducted by the Centre in July 2020, Ms Brown denied that at any point had she grabbed or pulled Child A's arm. She said that Ms X said to her when they were walking out of the sleep room that Child A's arm was "really sore". Ms Brown said she did not know how Child A's arm got hurt. Ms Brown confirmed that account in her written response to the mandatory report.<sup>3</sup>
- (b) Ms Brown told the Centre investigation that she put multiple children in the upright tunnel and either put a ladder in the tunnel so they could climb out or she held onto their arms so they could use their feet to climb out. Ms Brown denied that any child ever cried when she put them in the tunnel. She described it as a game and denied it was used for disciplinary purposes. Ms Brown confirmed that account in her response to the mandatory report.<sup>4</sup>
- (c) During the Centre investigation, Ms Brown denied threatening to punch Ms Z but she also accepted the comment may have been made because

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<sup>3</sup> ASF at [26]-[27].

<sup>4</sup> ASF at [28]-[29].

of the frustration that she was feeling. In her response to the mandatory report, Ms Brown said the incident did not happen.

- (d) Ms Brown accepted that shouting at children and staff was something she could work on. She said she was struggling and felt like she had come to a brick wall as she had been asking for help with certain children's behaviours that had become "quite hard".

### **Legal Principles - Liability**

[31] It was for the CAC to prove the charge on the balance of probabilities.

[32] The definition of serious misconduct in section 378 of the Education Act 1989 (this Act has been repealed and replaced by the Education and Training Act 2020 which contains an identical definition) was:

**Serious misconduct** means conduct by a teacher –

- (a) that-
- (i) adversely affects, or is likely to adversely affect, the wellbeing 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.

[33] The test is conjunctive<sup>5</sup>. That means that as well as being behaviour by a teacher that has one (or more) of the adverse professional effects or consequences described in subsection (a) (i)-(iii), the conduct must also have been of a "character or severity" that meets the Teaching Council's criteria for reporting serious misconduct.

[34] Rule 9(1)(a), (b), (j), and (k) in Part 3 of the Teaching Council Rules 2016 (the Rules) were relied on by the CAC<sup>6</sup>:

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<sup>5</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

<sup>6</sup> CAC Submissions on Liability at [2].

## 9 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):<sup>1</sup> 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:
- (b) emotional abuse that causes harm or is likely to cause harm to a child or young person:  
....  
...
- (j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more.
- (k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[35] The criteria for reporting serious misconduct in these rules are given as examples of conduct that is of the nature and severity to amount to a serious breach of the Teaching Council's Code of Professional Responsibility.

[36] The Rules provide that misconduct described in (a), (b), and (k) may be a single act or several acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial.<sup>7</sup>

[37] Rule 9(1)(k) is a "catch all" provision<sup>8</sup>. In *Teacher Y v Education Council of Aotearoa New Zealand*, the Court of Appeal held in relation to the predecessor Rule 9(1)(o):<sup>9</sup>

... Sub-rule (o) was clearly designed to be a catch-all provision in recognition of the fact that it was impossible to categorise or capture in specific wording all forms of serious misconduct. The sub-rule is necessarily and deliberately broader than what goes before and of course expressly includes the word "omission".

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<sup>7</sup> Rule 9(2), Teaching Council Rules 2016.

<sup>8</sup> *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

<sup>9</sup> Above fn.6.



- [38] In relation to whether an act or omission brings or is likely to bring the teaching profession into disrepute, the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.<sup>10</sup>
- [39] That approach reflects the fact that whether there has been serious misconduct (or misconduct simpliciter<sup>11</sup>), or not, and the severity of any such misconduct, is to be assessed by objective standards.
- [40] Previous Tribunal decisions demonstrate that “fitness to be a teacher” in the definition of serious misconduct includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.<sup>12</sup>
- [41] Subjective matters that are personal to the respondent teacher are not to be considered in any significant way when the Tribunal objectively assesses whether there has been serious misconduct. Personal factors raised by the teacher, including explanations for their conduct, are to be considered at the penalty stage if a charge is found to have been established.<sup>13</sup>

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<sup>10</sup> *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 15 at [48].

<sup>11</sup> The District Court on appeal, has ruled that if any one of the matters under limb (a) of the definition of serious misconduct are made out, the teacher’s conduct will amount to misconduct, whereas if the conduct also meets limb (b), the conduct will meet the conjunctive test for serious misconduct; *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64]. *Evans v Teachers Disciplinary Tribunal* [2020] NZDC 20062, 8 October 2020, at [42].

<sup>12</sup> This is the approach taken to “fitness to practise” for the purposes of the Health Practitioners Competence Assurance Act 2003, and the approach which has been taken to the test for “fitness to be a teacher”, by this Tribunal in previous decisions.

<sup>13</sup> See *Martin v Director of Proceedings* [2010] NZAR 333 and *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130] applied in previous decisions of this Tribunal.

## Relevant standards

[42] The Tribunal assessed Ms Brown’s conduct against the following standards set in the Code of Professional Responsibility. The Tribunal also had regard to section 139A(1) of the Act (and previous comparable cases).

[43] Section 139A(1) of the Act prohibits a teacher at an early childhood service using force, by way of correction or punishment, towards any child enrolled at or attending the service.

### *Code of Professional Responsibility*

[44] The high standards for ethical behaviour that are expected of every registered teacher are contained in the Teaching Council’s Code of Professional Responsibility (the Code). The Code states that teachers must “respect [their] trusted position in society”. By acting with integrity and professionalism, teachers, and the teaching profession, maintain the trust and confidence that learners, whānau, and the wider community place in them to guide their children and young people on their learning journey and keep them safe.<sup>14</sup>

[45] Clause 1 sets out the expectation that teachers are expected to demonstrate commitment to high-quality and effective teaching (clause 1.1), engage in professional, respectful, and collaborative relationships with colleagues (clause 1.2), and demonstrate a high standard of professional behaviour and integrity (clause 1.3),

[46] Clause 2.1 reads:

I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

[47] Clause 2.5 refers to the expectation that teachers will promote inclusive practices to support the needs and abilities of all learners.

[48] The Code was issued with ‘Examples in Practice’. The examples include behaviours that are unacceptable and in breach of the Code.<sup>15</sup> An example given of failing to demonstrate engaging in professional, respectful, and collaborative relationships

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<sup>14</sup> *CAC v Teacher ZNZTDT 2020/19* at [26].

<sup>15</sup> Code of Professional Responsibility, ‘*Examples in Practice*’ (Education Council, Wellington, June 2017).

with colleagues (clause 1.2) is communicating to or about a colleague in a disrespectful or inappropriate manner; and acting in a way that may be intimidating, humiliating, or harassing to a colleague. Examples of behaviour that does not promote learners' wellbeing and may cause harm (clause 2.1) include:

- Inappropriate handling such as physically grabbing, shoving, or pushing, or using physical force to manage a learner's behaviour; and
- Using verbal or body language that is unreasonable and inappropriate (for example, using aggressive, threatening, or humiliating language, or using an intimidating stance or demeanour; and
- Inappropriate or unreasonable exclusion (for example, from a physical space, an activity, or opportunity or attention.

### **Findings on the Charge**

[49] The Tribunal was satisfied that the alleged acts in the Charge were proved, on the evidence received.

[50] As to whether the established conduct was serious misconduct, the Tribunal accepted the following submissions that were made for the CAC:

- (a) The established acts may be grouped thematically and in respect of each category, the test for serious misconduct is made out.

#### *Inappropriate uses of force – particulars a. and g.*

- a. As to particulars (a) and (g) which relate to the inappropriate use of force, the Tribunal has considered similar examples of inappropriate uses for force on previous occasions including:
- b. *CAC v Leary*<sup>16</sup>: the teacher grabbed a 4-year-old child who was behaving badly, by the wrist, and pulled her across and out of the classroom. The child stumbled but did not fall. There was no evidence of the effect on the child and the Tribunal declined to find the child's

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<sup>16</sup> *CAC v Leary* NZTDT 2021/49, 30 June 2022.

wellbeing was affected. However, the Tribunal did find that the incident involved a momentary loss of control which reflected adversely on the teacher's fitness.<sup>17</sup>

- c. *CAC v Rizo*<sup>18</sup> the teacher had, among other things, roughly handled one-year-old children on three separate occasions. On the first occasions she dragged a child by the arm up off the ground and then pushed them over. On the second occasion, she grabbed a child by the leg and pulled her towards her. On the third occasion, she picked up a child under the armpits and roughly placed them on the ground. The Tribunal accepted that all three of the adverse consequences in limb (a) of the definition of serious misconduct were met and the conduct amounted to "physical abuse" for the purposes of the former rule 9.
- d. *CAC v Teacher C*<sup>19</sup> involved an ECE teacher who responded to a child's poor behaviour by placing her hand on the child's back, guiding her outside as the child screamed and resisted, and then shut the door to prevent the child coming back inside. Later, the same child began pulling bags from cubby locker. In response, the teacher knelt down in front of the child and positioned her arms on the locker on either side of the child (trapping the child between her arms). The Tribunal characterised what had happened as a power struggle which adversely affected the child's wellbeing and reflected adversely on the teacher's fitness to be a teacher<sup>20</sup>.

(b) In Ms Brown's case, each of the grounds of limb (a) of the definition are established because:

- a. Ms Brown's use of force adversely affected the wellbeing of Child A and was likely to adversely affect the wellbeing of Child G. Child A cried out in pain as a result of the force Ms Brown used. After the incident,

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<sup>17</sup> At [112]. The Tribunal declined to find the wellbeing of the learner was affected or the reputation of the profession lowered at [11] and [16].

<sup>18</sup> *CAC v Riza* NZTDT 2019-33, 29 August 2019.

<sup>19</sup> *CAC v Teacher C* NZTDT 2020/32.

<sup>20</sup> *CAC v Teacher C* at [36].

Child A was seen crying and rubbing the arm by which Ms Brown had lifted her up. Ms Brown's use of force on Child G by grabbing him and dragging him by the arm would likely have had an adverse effect on Child G's wellbeing.

- b. Ms Brown's use of force is a clear departure from the standards expected of a teacher. The use of force against Child A, either in anger or for correctional purposes, was a breach of section 139A, was a serious lapse of professional judgement that demonstrates a lack of self-control, and adversely affects Ms Brown's fitness to teach.
- c. Teachers are expected to act professionally when faced with challenging behaviour from children in stressful situations. Members of the public would be disturbed by the use of force to manage the behaviour of the child.
- d. As for limb (b) rule 9(1)(a), (j) and (k) are engaged such that the second limb of the definition of serious misconduct is met. The use of physical force against a student is rarely justified or reasonable and was not in this case. Ms Brown's use of force against Child A was either her lashing out in anger (demonstrated by throwing a toy across the room) or attempting to correct his behaviour, in breach of section 139A. The use of force against Child G was likely to be a momentary loss of control comparable to *CAC v Leary*. Ms Brown's use of force against Child G was neither justified nor reasonable. Ms Brown's use of physical force on Child A arguably amounted to an assault on a child and could have been the subject of a criminal prosecution.<sup>21</sup> Rule 9(1)(k) is met for the same reasons limb (a)(iii) is engaged.
- e. It follows that each incident involving Ms Brown's use of force, separately and cumulatively amounted to serious misconduct.

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<sup>21</sup> Rule 9(1)(k) does not require a criminal prosecution to be brought. The possibility of a prosecution is sufficient.

*Inappropriate comments towards and about children and yelling at children – particulars b. and f.*

- (c) The Tribunal has considered shouting by teachers on several occasions. An example in the ECE context is *CAC v Gilmour*<sup>22</sup> where the teacher yelled words to the effect of “don’t be silly” during an incident where she also used unjustified force against a child. The Tribunal acknowledged that an individual act of yelling at a child might not amount to serious misconduct but yelling at a toddler when close to them and handling roughly has no place in any setting; even if not accompanied by the physical contact, the conduct was likely to adversely affect the wellbeing or learning of the child and others around her, it reflects adversely on the teacher’s fitness to be a teacher and likely brings the profession into disrepute.
- (d) Having regard to the Code, Ms Brown’s use of inappropriate, threatening, and aggressive language and yelling in response to misbehaving children was unprofessional, exposed the children, particularly Child D, to a risk of harm and detracted from the profession’s culture of trust. Threatening to slap Child D, who by his reaction demonstrated that he understood the threat, was likely to scare him and adversely affect his wellbeing. Limb (a)(i) met. Limb (a)(ii) is also met. The behaviour reflects adversely on Ms Brown’s fitness to be a teacher. Her outburst of verbal abuse against Child D and Ms Brown’s general use of yelling in an aggressive manner displayed a loss of self-control and is indicative of Ms Brown’s inability to control her temper. The standing of the teaching profession would be lowered in the eyes of reasonable members of the public informed of the threat of violence against Child D, particularly in the context of Ms Brown’s pattern of conduct which involved aggressive yelling at children when they were misbehaving. For that reason, limb (a) (iii) is also met.
- (e) As to the second limb, rule 9(1)(b) is engaged in relation to Ms Brown’s verbal threat against Child D. The threat was serious and unacceptable. Ms Brown used her threat in the context of behaviour management in a

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<sup>22</sup> *CAC v Gilmour* NZTDT 2020-08

clear attempt to control Child D and was therefore, emotional abuse. Rule 9(1)(k) is engaged for the same reasons as limb(a)(iii) is met.

- (f) Considered individually and cumulatively with the general pattern of yelling at children (particular f.), Ms Brown's conduct was serious misconduct.

*Verbal abuse of staff and yelling at staff – particulars d. and f.*

- (g) With reference to the Code, Ms Brown's use of aggressive language and yelling at colleagues at the Centre detracted from the requirement to engage in professional and respectful relationships with colleagues.
- (h) Assessed against that standard, the behaviour was serious misconduct because:
  - a. The implied threat of violence to Ms Z, and to a lesser extent the shouting at Ms U, reflects adversely on Ms Brown's fitness to be a teacher. The incident displayed Ms Brown's apparent inability to maintain control of herself and her temper. Limb (a)iii is met. Members of the public could reasonably conclude that threatening violence against a colleague brings or is likely to bring the teaching profession into disrepute.
  - b. Rule 9(1)(k) is engaged for the same reasons limb (a)iii is engaged particularly when the behaviour is viewed in the context of Ms Brown's inappropriate comment and yelling at both children and staff. The conduct was therefore of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct such that limb (b) is also established.
  - c. Ms Brown's behaviour towards Ms Z, viewed together with her behaviour towards Ms U, was serious misconduct.

*Inappropriate behavioural management techniques and exclusion of children from a space -particulars c. and e.*

- (i) As noted, one of the Examples in Practice given in respect of the obligation in Clause 2.1 of the Code that teachers must promote the wellbeing of learners and protect them harm, is inappropriate or unreasonable exclusion, for example from a physical space.

- (j) Counsel for the CAC was unable to identify a comparable case where the Tribunal had assessed conduct where a child was secluded in an object akin to a tunnel. However, some assistance can be gained from the following two recent cases:
- a. In *CAC v Teacher* the respondent grabbed a child by the wrist during a wider incident, and shut her outside to manage her behaviour (as discussed above). The Tribunal considered this conduct “temporarily excluded [the child] from the inside area, and that this aspect of the conduct resembled emotional abuse in terms of rule 9(1)(b), although a firm finding was not reached on that point. The Tribunal found that as a whole, the conduct involved the unjustified use of force in terms of rule 9(1)(a).
  - b. In *CAC v Trow*<sup>23</sup> the teacher secluded children several times. On two occasions she carried the child to a back room and held the door shut with the child inside. The Tribunal accepted this was “seclusion”<sup>24</sup>. An instance where a child was left in a cot for an hour with the door shut, or other children were held in a room with the door shut, also appeared to meet the definition of “seclusion” (in section 139AB), although there was a lack of factual details which made that less certain. In any event, both limbs of the definition of serious misconduct were met (in respect of limb (b) the Tribunal found that the conduct amounted to ill-treatment under former rule 9(1)(f) and was likely to bring discredit to the professional under the former rule 9(1)(o)).
- (k) In this case, Child D was held in an upturned mobile tunnel rather than a “room”. His conduct was a brief period of seclusion and an example of immobilisation which breached the spirit of section 139AB and the substance of regulation 56 which requires ECE providers to exclude any employee who “has in guiding or controlling a child...subjected the child

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<sup>23</sup> *CAC v Trow* NZTDT 2019-95, 5 December 2019.

<sup>24</sup> At the relevant time, section 139AB of the Act provided that children were not to be secluded, a term which was defined as follows: “**seclude**, in relation to a student or a child, means not to place the student or child involuntarily alone in a room from which he or she cannot freely exit or from which the student or child believes that he or she cannot freely exit.”



to solitary confinement, immobilisation, or deprivation of food, drink, warmth, shelter, or protection”.

- (l) A similar issue arises in relation to the children, including Child G, who were locked outside the classroom to manage their behaviour. Even if the conduct did not meet the definition of seclusion in the Act, it was conduct that could cause harm, for the purposes of the Code.
- (m) Both limbs (a) and (b) of the definition of serious misconduct are met because:
  - a. The wellbeing and learning of Child D were likely to have been adversely affected by Ms Brown having trapped him in a tunnel for about 5 minutes. Child D screamed when he was trapped inside the tunnel. The practice of locking children outside to manage their behaviour was also likely to cause harm. Limb (a)(i) is met. Limb (a)(ii) is met because the fact that Ms Brown believed it was acceptable to use this type of treatment against Child D as a means of behaviour management, calls into question her fitness to be a teacher. Members of the public would be troubled by Ms Brown’s use of exclusion, and the use of a piece of play equipment, to control a young child. Therefore, limb (a)(iii) is also met, in the Tribunal’s objective opinion.
  - b. As for limb (b), rule 9(1)(b) is engaged in relation to Ms Brown’s conduct against Child D. The use of a moveable play tunnel to trap and control Child D meets the criteria for emotional abuse. Rule 9(1)(k) is engaged for the same reasons that limb (a)(iii) is met.
  - c. For those reasons, Ms Brown’s conduct towards Child D was serious misconduct and when that conduct and her general practice of locking children outside as a means of behaviour management, is considered cumulatively her conduct was serious misconduct.

[51] It was for those reasons that the Tribunal’s opinion was that considered objectively, in respect of each broad category of particulars, the test for serious misconduct is met. Accordingly, when viewed separately and cumulatively, Ms Brown’s conduct was serious misconduct. The Charge is established. Ms Brown is guilty of serious misconduct.

## Penalty

- [52] Having made adverse findings of serious misconduct, the Tribunal was entitled to exercise its powers under section 404 of the Act. The Tribunal could do one or more of the things set out in section 404(1).
- [53] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence are to maintain professional standards (through general and/or specific deterrence, so that the public is protected from poor practice and from people unfit to teach), to maintain the public's confidence in the teaching profession, and to protect the public through the provision of a safe learning environment for students<sup>25</sup>.
- [54] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*<sup>26</sup>. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors are:
- (a) What penalty most appropriately protects the public.
  - (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.
  - (c) Penalties imposed may have a punitive function.
  - (d) Where it is appropriate, the Tribunal must consider rehabilitating the professional.<sup>27</sup>
  - (e) The Tribunal should strive to ensure that any penalty imposed is comparable to penalties imposed in similar circumstances.
  - (f) It is important for the Tribunal to assess the practitioner's behaviour against the spectrum of sentencing options that are available. In doing so, the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.

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<sup>25</sup> As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

<sup>26</sup> [2012] NZHC 3354 at [44]-[51].

<sup>27</sup> *CAC v Teacher* NZTDT 2016/55 at [30].

- (g) The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) It is important for the Tribunal to assess whether the penalty it is to impose is fair, reasonable, and proportionate in the circumstances presented to the Tribunal, or not.

[55] In *Fuli-Makaua*<sup>28</sup> the Tribunal identified that cancellation of a teacher's registration may be required in two overlapping situations:

- (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.

#### *Submissions for the CAC*

[56] With reference to several previous cases where the Tribunal has considered a teacher's rough handling or mistreatment of young children, it was submitted for the CAC that this is a "relatively bad case" of rough handling and poor behaviour management at an ECE Centre. The Tribunal agreed. As was submitted for the CAC:

- (a) Aspects of the conduct, such as the use of force on Child A, the threat to slap Child D, and the threat to punch Ms Z, demonstrate a complete lack of understanding of how to interact with children and colleagues. In combination, these incidents suggest that Ms Brown was prepared to use physical force to correct behaviour and intimidate both children and staff at the Centre.
- (b) The fact that Child A was seen crying and rubbing his arm demonstrates that Ms Brown's conduct caused actual harm and raises serious concerns about whether Ms Brown will pose a risk to the safety of other students if she renews her practising certificate and returns to work as a teacher.

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<sup>28</sup> *CAC v Fuli-Makaua* NZTDT 2017/40 at [54] citing *CAC v Campbell* NZTDT 2016/35 at [27].

- (c) The number of incidents in which Ms Brown used force, threatened to use force, or excluded children demonstrates a pattern of conduct. These were not momentary lapses. The conduct must also be viewed against a wider background of Ms Brown shouting and yelling at children as a means of behaviour management.
- [57] The Tribunal accepted that these factors mean that Ms Brown's conduct was considerably more serious than the conduct of *Teacher C*, *Chen*<sup>29</sup>, and *Adie-Cropley*<sup>30</sup>.
- [58] In *Teacher C*<sup>31</sup>, discussed above, when considering the matter of penalty, the Tribunal accepted this was a "brief episode", the teacher had reflected on her conduct and conditions were imposed.
- [59] In *Chen* Ms Chen grabbed a student's arm out of a set of drawers and angrily pulled the student away from the drawers by the hand. The student appeared hurt and cried for 20 minutes. On another occasion, Ms Chen grabbed a student lingering outside, forcefully by the hand and pulled them inside, causing the child to cry. When considering penalty, the Tribunal noted the support from Ms Chen's current employer, and her professionalism in her new role.<sup>32</sup> The Tribunal made orders of censure, annotation of the register, and imposed conditions on practice.
- [60] In *Adie-Cropley*, Mr Adie-Cropley was trying to convince a child who attended the ECE Centre he worked in, to wash their hands before lunch. When the student refused, Mr Adie-Cropley dragged them by the wrist for about 3-4 metres, shouting "that's it. You can go to bed with no lunch". The Tribunal considered the case was "worse than many of the 'rough handling' cases we see" and referred to the importance of ensuring the protection and safety of children in educational settings, as is reinforced by the Children's Act 2014.<sup>33</sup> In that case, the teacher had expressed no interest in returning to teaching. Without information from him as to his motivation and aptitude, the Tribunal could not be satisfied that it could discharge its

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<sup>29</sup> *CAC v Chen* NZTDT 2020/54, 16 July 2021.

<sup>30</sup> *CAC v Adie-Cropley* NZTDT 2019-83, 31 July 2020

<sup>31</sup> Above fn. 19.

<sup>32</sup> *CAC v Chen* at [46]-[47].

<sup>33</sup> *CAC v Adie-Cropley* at [32].

responsibility to the public and considered that Mr Adie-Cropley should not return to the classroom until he had provided further evidence. Also, because Mr Adie-Cropley had not engaged fully in the Tribunal process, the Tribunal expressed a lack of confidence that any conditions on practice would be effective. It was likely that the situation would not have changed at the expiry of the term of a period of suspension. For those reasons the Tribunal concluded that the proper penalty was cancellation (and censure).

[61] The Tribunal also accepted the submission for the CAC that Ms Brown's threats of violence render this case more serious than *CAC v Tregurtha*.<sup>34</sup> In that case, Ms Tregurtha had used force to control four children in several different contexts, including by holding them down for 30 minutes at nap time and keeping them seated for up to 40 minutes during kai time. On another occasion, Ms Tregurtha pulled forcefully another child's hand down to pick up a toy, and in doing so, injured the child. The Tribunal considered that Ms Tregurtha's conduct raised issues of child safety and the appropriate starting point was cancellation.<sup>35</sup> Ms Tregurtha was not currently teaching, and she had not provided any evidence to establish she better understood her responsibilities as a teacher. Nor had she accepted her conduct may have been harmful, and she appeared to lack an understanding of the needs of young children. For those reasons, the Tribunal cancelled Ms Tregurtha's registration.

[62] The Tribunal agreed with the CAC that the most comparable case is *CAC v Costello*.<sup>36</sup> In that case, the Tribunal found 11 particulars established including allegations of dragging and yelling at children, shaking children hard, yanking children out of chairs, restraining children in blankets or sheets, and acting aggressively towards other staff members. The Tribunal considered the established conduct was very serious and had the potential to cause harm to the children involved.<sup>37</sup> The Tribunal was also concerned that Ms Costello had not demonstrated "any meaningful remorse or insight into her behaviour or taken any rehabilitative or remedial steps". For that reason, the Tribunal was not satisfied that children in Ms

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<sup>34</sup> *CAC v Tregurtha* NZTDT 217-39, 21 June 2018.

<sup>35</sup> *CAC v Tregurtha* at [[50].

<sup>36</sup> *CAC v Costello* NZTDT 2020/29, 14 Hakihea 2021.

<sup>37</sup> [at 15].

Costello's care would be safe moving forward, and even though Ms Costello did not have a disciplinary history, her registration ought to be cancelled.

[63] It was submitted for the CAC that the appropriate disciplinary response to Ms Brown's established conduct was censure, and cancellation of her registration as a teacher. The CAC pointed to the nature of the established conduct, and what was said to be Ms Brown's disengagement in these proceedings (other than acknowledging the conduct and signing an agreed summary of facts). Also, she had demonstrated little insight into her behaviour and did not provide any evidence of her rehabilitative prospects or interest in rejoining the profession. As noted, Ms Brown had been the subject of a voluntary undertaking not to teach and her last practising certificate expired on 7 November 2021.

#### *Findings on Penalty*

[64] The Tribunal considered the relevant penalty principles including the previous comparable cases, as well as the submissions that were made for the CAC.

[65] Taking all relevant matters into account, the Tribunal was satisfied that it was appropriate and necessary to impose a formal penalty. The Tribunal formed the view that there could be no doubt her conduct was of sufficient severity as to warrant the imposition of disciplinary penalties to maintain professional standards and protect the public. There is a need also to send a message to members of the teaching profession that misconduct of the nature the Tribunal has found here is very serious will likely almost always justify the imposition of a penalty.

[66] The Tribunal considered that Ms Brown's conduct was grave and agreed with the CAC that the appropriate starting point was cancellation of registration. The Tribunal was concerned that Ms Brown's conduct, which was a pattern of inappropriate behaviour over a period of 18 months, indicated she has an inability to manage herself and considered that because of this she poses a risk to children in her care, and to adults with whom she works. The Tribunal was troubled by Ms Brown's failure to provide a statement of reflection, or information that outlined what actions she has taken, if any, and her strategy to prevent her behaviour occurring again. She did not provide any references from other teachers who could vouch for her commitment to change her behaviour and engagement in reflective practice. Without that evidence, the Tribunal was not satisfied that Ms Brown should be permitted to return to teach in an ECE setting on a registered basis (assuming she successfully applied for a practising certificate). The Tribunal could not be satisfied the risk it considers Ms

Brown poses to children in her care, and staff with whom she works, in those circumstances, would be lowered by the imposition of a penalty less than cancellation.

[67] The Tribunal considered that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal's obligation to the public and the teaching profession is a censure of Ms Brown to express the Tribunal's disapproval of, and disquiet about, her conduct, and the cancellation of her registration.

[68] A censure is required not only to mark the seriousness of the conduct but also to send a message to Ms Brown, and to the profession, that conduct of this nature is not acceptable, in any educational setting.

[69] It is noted that the Tribunal considered the two components of the penalty it is imposing, together, to ensure that the overall penalty was assessed against the *Roberts* factors and was a fair and reasonable penalty in all the circumstances.

[70] If Ms Brown decides she wishes to return to teaching, the Teaching Council will be able to determine if she is suitable to be registered and hold a practising certificate. At that time the Teaching Council would need to have regard to nature of the conduct the Tribunal has made adverse findings about in this case, and any information Ms Brown may provide as to her fitness and suitability for registration, which may include evidence of rehabilitative steps she may have taken to demonstrate there would be no repeat of the behaviours the Tribunal has reviewed.

[71] The Tribunal wishes to record that it did not accept the CAC's submission about Ms Brown's engagement in these proceedings. The Tribunal was of the view that Ms Brown deserves some credit for having admitted her behaviour (albeit after the charge was laid) and for signing an agreed summary of facts. She also had her mother attend a pre-hearing conference in February 2023 on her behalf, and she provided two letters from GPs in relation to her application for permanent name suppression. This was not one of those cases where there has been a complete lack of engagement with the Tribunal. Ms Brown's admission of the conduct does point to at least some acceptance by Ms Brown that her conduct fell below accepted and acceptable professional standards.

## Costs

- [72] It is usual for an award of costs to be made against a teacher once a charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred.
- [73] The matter has been able to be heard on the papers which typically attracts a costs order of 40% of the costs and expenses incurred by the CAC and the Tribunal<sup>38</sup>.
- [74] In this case, the Tribunal considered that an order of 30% contribution to the CAC's costs as claimed, would be reasonable and appropriate. A reduced order of 30% takes account of Ms Brown's acceptance of liability and agreement to proceed with a hearing on the papers with the benefit of an agreed summary of facts. It also factors in that the cancellation of Ms Brown's registration will likely have financial implications for her as she will be unable to practise as a registered teacher. While the Tribunal recognised that it will still be possible for Ms Brown to work in an ECE-setting on an unregistered basis, her unregistered status would likely be reflected in her remuneration.
- [75] Accordingly, the Tribunal is making an order pursuant to section 404(1)(h) that Ms Brown is to pay the sum of \$3,132.00 to the CAC which is 30% of the total CAC costs (\$10,443.00 excluding GST) as at the hearing date (including the investigation and legal costs and disbursements for these proceedings)<sup>39</sup>.
- [76] As to the costs of conducting the hearing, the Tribunal is making an order that Ms Brown make a 40% contribution towards those costs (estimated to be \$1,455.00), being payment of the sum of \$582.00 to the Teaching Council. This order is made under section 404(1)(i).

## Non-publication orders

### *Applications*

- [77] Ms Brown has had the benefit of an interim non-publication order in respect of her name since February 2023. At that time interim orders were also made in respect of the Centre, and the children. The orders were to remain in effect until further order of the full Tribunal.

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<sup>38</sup> Costs Schedule filed by Counsel for the CAC on 24 May 2023.

<sup>39</sup> Costs Schedule of the Tribunal for Hearing on the Papers.



- [78] Ms Brown sought a permanent order prohibiting the publication of her name.
- [79] The CAC sought that the interim order in respect of the names of the children be made permanent, and for the interim orders in respect of the names of Ms Brown and the Centre to be discharged.
- [80] The Tribunal was informed by Counsel for the CAC that the Centre had advised him that it did not seek a permanent non-publication order (in respect of its name).

*Summary of relevant law*

- [81] The starting point when considering applications for non-publication orders is the principle of open justice. In a professional disciplinary context, the principle of open justice maintains public confidence in the profession through the transparent administration of the law.<sup>40</sup> In previous cases, the Tribunal has endorsed the statement of Fisher J in *M v Police*<sup>41</sup> at [15]:

In general, the healthy winds of publicity should blow through the workings of the Court. The public should know what is going on in their public institutions. It is important that justice should be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present a defendant with an opportunity to reoffend.

- [82] The Tribunal's jurisdiction to make non-publication orders is found in section 405(6) of the Act. An order can only be made under section 405(6) (a)-(c) if the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.
- [83] When considering whether it is proper for the open justice principle to yield, the Tribunal needs to strike a balance between the public interest factors and the private interests advanced by the applicant. A two-step approach is usually followed by the Tribunal the first of which is a threshold question, requiring deliberative judgement by the Tribunal whether, having regard to the various interests, it is "proper" to make

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<sup>40</sup> *CAC v Teacher* NZTDT 2016/27 at [66].

<sup>41</sup> *M v Police* (1981) 8 CRNZ 14 at [15] cited in *CAC v Howarth* NZTDT 2019/87, January 2021 at [57].

a non-publication order. If the Tribunal concludes it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.<sup>42</sup>

- [84] “Proper” sits below “exceptional” which is required in the criminal jurisdiction in the Courts and is more aligned with “desirable” which is what is required under the Health Practitioners Competence Assurance Act 2003.

*Ms Brown’s application*

- [85] Ms Brown sought a permanent order on health grounds. Prior to the conference on 1 February 2023, Ms Brown submitted a letter from a GP<sup>43</sup> [REDACTED]

- [86] In a letter dated 22 May 2023, from the same Surgery, a second GP confirmed she had had a phone consultation with Ms Brown that day and Ms Brown had been experiencing [REDACTED]” related to the charges and the hearing. The GP reported that Ms Brown was actively seeking support for this [REDACTED]. The GP asked the Tribunal to consider continuing name suppression for Ms Brown, given her [REDACTED] distress.

- [87] The Tribunal balanced the public interest factors which favour open justice and Ms Brown being named, against the competing private interests she raised in relation to her health.

- [88] The Tribunal was not satisfied that there are sufficiently strong private grounds that outweigh the relevant public interest factors that are at play in this case which favour the publication of Ms Brown’s name. The Tribunal fully accepts that name publication will be stressful for Ms Brown [REDACTED]. However, stress and anxiety associated with name publication will arise in most cases that come before the Tribunal. Here there was not sufficiently strong evidence, for example, from a medical practitioner, detailing the impact that publication may have on Ms Brown over and above the general stress and anxiety that the Tribunal

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<sup>42</sup> *CAC v Teacher* NZTDT 2016/27 at [61]; recently referred to in *CAC v Howarth* (above).

<sup>43</sup> Letter dated 27 January 2023.

accepted (based on the GP letters) has been created by the proceedings and the possibility of Ms Brown being named in connection with them. There was evidence that Ms Brown's symptoms are being managed by her GP and the Tribunal had no reason to believe that those symptoms could not continue to be managed.

[89] The Tribunal was concerned that were Ms Brown's name to be the subject of a non-publication order, and the Centre's name to be published, other staff at the Centre may be unfairly impugned. Further, the Tribunal considered that the public and potential future employers of Ms Brown have the right to know that she has been found guilty of serious misconduct for multiple acts over a period of 18 months, for which she has lost her registration. The Tribunal considered that it would not be discharging its obligation to learners and the wider public were Ms Brown's name to be prohibited from publication.

[90] For those reasons, in the Tribunal's opinion it would not be proper to make a permanent non-publication order in respect of Ms Brown's name. Accordingly, the interim non-publication order in respect of Ms Brown's name is not being made permanent. Her name may be published in connection with these proceedings.

[91] However, the Tribunal considered that it would be proper to make an order under section 405(6) permanently suppressing from publication the references in paragraph [86] to [REDACTED], to Ms Brown [REDACTED] [REDACTED] and the word [REDACTED] in that paragraph. The Tribunal considered it would be proper to make this order having regard to Ms Brown's privacy interests.

*Orders in respect of child A, Child D and Child G and the staff members*

[92] There will be permanent orders suppressing the names of each of the children and also the staff members who are referred to in the charge and the evidence.

[93] The Tribunal considered it proper to suppress the names of these people to safeguard their privacy and wellbeing interests. There is no public interest in any of these people being identified in connection with these proceedings, in the Tribunal's opinion.

[94] In respect of the children, a permanent non-publication in respect of their names is considered proper to protect their privacy, wellbeing, and learning interests. There is no public interest in these young children being named.

[95] Although people who are already aware of the matters which gave rise to these proceedings may be able to identify the three staff members who were subjected to

Ms Brown's behaviour, by making a non-publication order in respect of their names, the Tribunal considers there will be a degree of protection of the privacy and wellbeing interests of the staff members. As with the children, there is no public interest in the names of the staff members being published. For those reasons, the Tribunal considered that it is proper to suppress from publication the names of the three staff members.

[96] Non-publication orders are made accordingly.

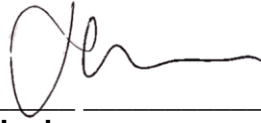
### **Conclusion**

[97] The Charge is established. Ms Brown is guilty of serious misconduct.

[98] The Tribunal's formal orders under the Education Act 1989 are:

- (a) Ms Brown is censured, pursuant to section 404(1)(b).
- (b) Ms Brown's registration at a teacher is cancelled, pursuant to section 404(1)(g).
- (c) Ms Brown is to pay \$3,132.00 to the CAC as a contribution to its costs, pursuant to section 404(1)(h),
- (d) Ms Brown is to pay \$582.00 to Teaching Council in respect of the costs of conducting the hearing, pursuant to section 404(1)(i).
- (e) There are orders under section 405(6) permanently suppressing from publication the names and identifying particulars of:
  - a. Child A, Child D, and Child G; and
  - b. Ms X (██████████), Ms Z (██████████) and Ms U (██████████)
- (f) There is an order under section 405(6) permanently suppressing from publication the references in paragraph [86] to ██████████, to Ms Brown being on ██████████ and the word ██████████ in that paragraph.

Dated at Wellington this 14th day of  
June 2023



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**Jo Hughson**  
Deputy Chairperson

## **NOTICE**

- 1 A teacher who is the subject of a decision by the Disciplinary Tribunal made under section 404 of the Education Act 1989 may appeal against that decision to the District Court (section 409(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 404 (section 409(2)).
- 3 An appeal must be made within 28 days of receipt of written notice of the decision, or any longer period that the District Court allows.
- 4 Schedule 356(3) to (6) applies to every appeal under section 409 as if it were an appeal under section 356(1).