

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2020/47**

**IN THE MATTER** of the Education Act 1989

**AND**

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

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

**AND** **PRAKESH CHANDRA**

Respondent

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**TRIBUNAL DECISION**

**27 July 2021**

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**HEARING:** Held at Wellington on 13 April (on the papers)

**TRIBUNAL:** Ian Murray (Deputy Chair)  
Neta Sadlier  
Lyn Evans

**REPRESENTATION:** E McCaughan for the referrer  
J Brown for the respondent

1. The Complaints Assessment Committee (**CAC**) has referred a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers to the Tribunal.

### **Charge**

2. The Notice of Charge is dated 19 November 2020 and in that notice the CAC alleges that the respondent kicked two students on 30 May 2019.
3. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (**the Act**) and rules 9(1)(a) and (k) of the Education Rules 2016 (**the Rules**); or alternatively it is conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

### **Evidence**

4. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**), signed by both counsel for the CAC and respondent. The ASF is set out in full below:

#### **SUMMARY OF FACTS**

##### Introduction

1. Mr Prakash Chandra was first registered in New Zealand 'subject to confirmation' in 1995 having previously taught as a primary school teacher in Fiji since 1971. He was granted full registration in 1996 and his current full practising certificate will expire on 8 June 2022.
2. Takanini School is a co-educational, full primary school in Takanini, South Auckland.
3. Mr Chandra was working as a casual reliever, employed through Oasis Education Ltd, in a Year [REDACTED] class at Takanini School on 30 May 2019 when the incidents occurred.

##### **Allegation: That Mr Chandra on 30 May 2019 (a) kicked the feet of Student A and/or (b) kicked the feet of Student B**

4. On 30 May 2019 Mr Chandra kicked the feet of two students, Student A and Student B, while the two students were sitting outside at lunchtime eating their lunch.
5. Student A, who was [REDACTED] years old at the time, described the kick as a "hard one", which "really hurt me" and caused [REDACTED] to cry a lot. Mr Chandra told [REDACTED] that the [REDACTED] was in his way.

6. Student B, who was ■ years old at the time, said that Mr Chandra kicked ■.
  7. The incident was observed by three other students:
    - a. Student Q described Mr Chandra kicking Student B "hard" on the foot. Student Q also described Mr Chandra kicking Student A "hard", causing Student A to cry.
    - b. Student M also described Mr Chandra kicking Student B "hard" on the foot. Student M said that it was a kick, not a tap.
    - c. Student G also described Mr Chandra kicking Student B "hard" on the foot. Student G also said that it was a kick, not a tap.
  8. Student A subsequently reported the incident to a teacher, who noted that Student A was visibly distressed. After speaking with Student A and some of the other students, the teacher got the Principal and Deputy Principal involved. The Principal and Deputy Principal proceeded to speak with all of the students involved.
  9. Student B's mother subsequently complained to the school about Mr Chandra's conduct.
  10. On 25 June 2019 the school's Board of Trustees discussed the complaint, and recommended that a mandatory report be made to the Teaching Council.
  11. On 17 September 2020 the CAC met to consider the matter. Mr Chandra was invited but did not attend the CAC meeting. The CAC considered that the conduct may possibly amount to serious misconduct, and therefore referred the matter to the Tribunal under s 401(4) of the Education Act.
5. We must be satisfied on the balance of probabilities that the CAC has proved the charge. It is clear from paragraphs 4 to 7 of the ASF that the respondent accepts that he kicked the two students. As a result, we find that the charge is proved.

### **Serious misconduct**

6. The respondent has accepted that his conduct amounts to serious misconduct. Nevertheless, we must still consider whether the conduct that we have found established does in fact amount to serious misconduct or alternatively conduct otherwise entitling the Tribunal to exercise its powers.
7. Serious misconduct is defined in section 378 of the Act which 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 Education Council’s criteria for reporting serious misconduct.

8. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on rr 9(1)(a) and (k) which provide:

***Criteria for reporting serious misconduct***

- (1) A teacher’s employer must immediately report to the Education 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
  - ...
  - (k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

***Discussion***

9. We must be satisfied that the respondent’s conduct meets at least one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in rule 9.
10. Starting with the impact on the students. Student A described the kick as a "hard one" which "really hurt " and caused ■■■ to cry a lot. After the incident, a teacher noted that student A was “visibly distressed”. The kick to student B was described by three students who witnessed it as “hard”.
11. In those circumstances, we are satisfied that the respondent’s conduct was likely to adversely affect the wellbeing or learning of the two students that he kicked and the other students who witnessed it.

12. We also find that this conduct reflects adversely on the respondent's fitness to be a teacher. It is not clear from the ASF exactly why the respondent kicked out at the two students. More context to the respondent's actions would certainly have assisted us in drawing conclusions about his motivations for his actions but we have inferred that it was driven by a degree of frustration at the students. It is difficult to understand how a teacher in 2019, especially one who has been teaching for as long as the respondent has been, could think it was acceptable to kick not one but two students. In our view, the fact that he behaved in this way clearly reflects adversely on his fitness to be a teacher.
13. We have no hesitation in finding that the respondent's behaviour had the tendency to bring the teaching profession into disrepute.<sup>1</sup> It is an objective test and requires consideration of whether reasonable members of the public informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession is lowered by the respondent's actions. Lashing out at two students aged ■■■ and ■■■ is the type of behaviour, in our view, that could lower the reputation and good standing of the teaching profession in the eyes of reasonable members of the public.
14. Turning to the grounds for reporting serious misconduct, we have no hesitation in finding that the respondent used unjustified or unreasonable physical force. There is simply no justification for kicking the two students in the way that the respondent did.
15. We consider the respondent's conduct was likely to bring the teaching profession into disrepute for the reasons we have already articulated.

### Penalty

16. In *CAC v McMillan*<sup>2</sup> we summarised the role of disciplinary proceedings against teachers as:

*... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of*

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<sup>1</sup> Applying the test in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

<sup>2</sup> NZTDT 2016/52, 23 January 2017, paragraph 23.

*failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.*

17. Section 404 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.*

18. We agree with the CAC that the misconduct is not sufficiently serious to require cancellation of the respondent's registration and that the Respondent has shown an appropriate level of insight into his misconduct as evidenced by his reflective statement. In that statement he accepts that he made a mistake, acted unprofessionally, and that there was no need to use physical contact. He has also set out various different approaches which he could have used if faced with similar

circumstances in the future.

19. However, we are concerned that the respondent as a reliever has lashed out at two students with very little if any provocation. We consider that the penalty we impose should be one that will assist the respondent to continue with his rehabilitative efforts.
20. The Tribunal considers it is appropriate to make the following orders:
  - a) That he is censured (section 404(1b));
  - b) That his registration be annotated with the result of this charge for a period of two years (s 404(1)(e));
  - c) That the following conditions are imposed on his practising certificate for a period of 2 years following the Tribunal's decision (s 404(1)(c));
    - i. the Respondent is required to provide a copy of the Tribunal's decision to his current employer and to any future employer (s 404(1)(c)).
    - ii. the Respondent undertake further training related to positive behavioural management techniques. He is to seek advice as to appropriate courses in this area and to enrol in such a course within 12 months of the decision.
  - d) That he is to provide a copy of the Tribunal's decision to any current or prospective employer for two years;
21. Relievers must show the same high standards as regular classroom teachers and they must follow all of the rules in the Code of Professional Responsibility. We want to make it clear to the respondent that he is expected to behave in an exemplary way from now on and any further breach of his professional responsibility will put his registration in jeopardy.

### **Costs**

22. The CAC sought a contribution of 40% of its costs under s 404(1)(h).
23. The Tribunal has previously indicated that such a level of costs will ordinarily be appropriate in cases determined on the papers. We see no reason to depart from our usual approach.
24. Therefore, the Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i).
25. The Tribunal delegates to the Deputy Chair authority to determine the quantum of

those costs and issues the following directions:

26. We direct that within 10 working days of the date of this decision, the CAC is to file and serve on the respondent a schedule of its costs; and
27. Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions he wishes to make in relation to the costs of the Tribunal or CAC.
28. The Deputy Chair will then determine the total costs to be paid

**Non-publication**

29. The respondent did not seek suppression and so we make no order suppressing his name but in order to prevent identification of the child involved, we suppress the student's name, age, gender and their year group at school. We consider that this will provide adequate protection of the identity of the victim.



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Ian Murray  
Deputy 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).