

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2019/18**

**WĀHANGA**                    the Education Act 1989  
*Under*

**MŌ TE TAKE**                of a charge referred by the Complaints Assessment  
*In the matter of*            Committee to the New Zealand Teachers Disciplinary  
Tribunal

**I WAENGA I A**            **COMPLAINTS ASSESSMENT COMMITTEE**  
*Between*                    **Kaiwhiu**  
   *Prosecutor*

**ME**                                **THERESA MANIHIRA COLDSTREAM**  
*And*                              **Kaiurupare**  
   *Respondent*

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**TE WHAKATAUNGA Ā TE TARAIPUNARA**

*Decision of the Tribunal*

**10 February 2021**

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**NOHOANGA:**                28 o Haratua 2019

**TE TARAIPUNARA:**        Rachel Mullins (Tiamana Tuarua)  
David Spraggs raua ko David Hain (Ngā mema o te Taraipunara)

**NGĀ ROIA ME NGĀ**

**KAIARUPARE:**              E Mok (Meredith Connell) mo te Komiti  
Te Kaiurupare – self represented

## **Hei timatanga kōrero – Introduction**

1. The Complaint Assessment Committee ("CAC") has charged the respondent with engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers, following the receipt of a mandatory report.
2. It is alleged that the respondent stole almost \$5,000.00 from the Learning Adventures Centres between 2017 and 2018.
3. The CAC alleges that this conduct amounts to serious misconduct pursuant to section 378 of the Education Act 1989 ("the Act") and rule 9(1)(h) and/or (o) of the Education Council Rules 2016 (as drafted prior to the amendments on 18 May 2018) ("the Rules") or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.
4. An Agreed Summary of Facts ("ASOF") had been reached between the parties and the only matter for consideration by the Tribunal was penalty. The respondent sought to be heard on the issue of penalty and this hearing was conducted on 28 May 2019.

## **Ko te hātepe ture o tonono nei – Procedural History**

5. A Prehearing Conference was held 28 March 2019 where timetabling orders were issued.
6. The CAC filed submissions on penalty on 15 April 2019 along with the ASOF.
7. The respondent filed letters in support from colleagues in the profession.
8. On 7 May 2019, the CAC sought leave to appear via audio visual link rather than in person as the hearing a-tinana was to deal with the issue of penalty only, as the respondent did not intend to call any witnesses or give evidence at the hearing. Leave was granted.
9. The hearing on penalty was heard on 28 May 2019 and an oral decision was delivered on the day, followed by a result decision on 29 May 2019 and a costs decision on 8 January 2020.

## **Kōrero Taunaki - Evidence**

### *Agreed Summary of Facts*

10. The ASOF is set out in full below:

### **Introduction**

1. *The respondent, **THERESA MANIHIRA COLDSTREAM**, is a registered teacher with a full practising certificate.*
2. *At the time of the conduct, the respondent was employed by Learning Adventures Levin (**Centre**) as Centre Manager.*
3. *The respondent admitted to keeping all of the cash received by the Centre between September 2017 and April 2018.*
4. *A table is attached at **Tab 1**<sup>1</sup> setting out a record of receipts for cash payments received by the Centre between 1 July 2017 and 30 April 2018. The table does not comprise the total funds retained by the respondent.*
5. *On or about 15 May 2018, the respondent signed an agreement with her employer that she would repay a sum of \$4,735.00 to the Centre. This comprised of:*
  - (a) *\$3,871.00 of unbanked money recorded on cash inwards sheet and receipt book;*
  - (b) *\$814.00 of unbanked money recorded in the receipt book only; and*
  - (c) *\$50.00 of vouchers purchased with company money and used personally.*
6. *By engaging in this conduct, the respondent breached clause 1.3 of the Code of Professional Responsibility, which requires teachers to demonstrate a high standard of professional behaviour and integrity.*

### **School Investigation**

#### *Events on 27 April*

7. *On or before 27 April 2018, Ms Kaya Broughton, a staff member at the Centre, advised Ms Justina Hart-Scott, the Area Manager, on the phone that she believed the respondent had taken some money left in an envelope by parents for purchasing books.*

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<sup>1</sup> Not reproduced in this decision.

*First Meeting*

8. *Ms Hart-Scott called for a meeting with the respondent at 9.30am on 27 April 2018.*
9. *At the meeting, the respondent provided Ms Hart-Scott with a typed record of her version of events. In her response, the respondent explained that Sheena Williams, a teacher in training at the Centre, thought the respondent had stolen money because she had pulled cash from her bra for a teacher's farewell gift.*
10. *Ms Hart-Scott advised the respondent that Ms Broughton had also spoken to her about stealing money.*
11. *The respondent stated that taking the money was an "honest mistake", and that she had shut the money into her laptop for safekeeping and taken it home accidentally. The respondent stated that she had forgotten about the money, and that it had stayed in her bedside drawer the whole time.*

*Second Meeting*

12. *A second meeting was held at 12.30pm that day. Ms Broughton, Ms Hart-Scott and the respondent were present at this meeting.*
13. *Ms Broughton confirmed that Ms Williams had seen the credit card with the book order form and noticed that the order form showing cash paid by parents had been replaced with one showing the Centre was purchasing the same items on the credit card. Ms Williams had also been the one to notice that the cash was missing from the envelope.*
14. *Ms Broughton became upset during the meeting and said, "I can't do it T, I can't lie for you, just tell Justina that truth."*
15. *The respondent subsequently admitted at the meeting that she had spent some of the money but that she had replaced it in the envelope and always intended to do so.*
16. *Ms Broughton also asked the respondent about \$200.00 given by a parent for a student's fees. The respondent stated the money had been banked three weeks ago.*

17. *The respondent then admitted that she had lied to Ms Hart-Scott earlier that day, and that she had spent the \$30.00 for the teacher's farewell gift and paid it back.*

#### *Third Meeting*

18. *At 1.20pm that same day, a third meeting was held. Ms Hart-Scott, Ms Broughton and the respondent were present.*
19. *The respondent told Ms Hart-Scott that she has an addiction to online gambling. The respondent apologised for lying, explaining that she was disappointed in herself and needed help.*
20. *The respondent also admitted that she had not banked the student's school fees received from the parents. The respondent stated she had justified her actions by telling herself that she was not ripping off families, but that she was ripping off the Centre.*
21. *The respondent then admitted that she had not banked any of the cash received by the Centre since September 2017, which she thought amounted to around \$1,200.00. The respondent explained that she had receipted the amount and scanned it to the Centre accounts to enter as a received payment against the accounts so that the accounts were not in arrears.*
22. *At the end of the meeting, Ms Hart-Scott stood the respondent down while a formal investigation was carried out.*

#### *Subsequent Events*

23. *The school investigation established that the respondent had stolen money totalling \$4,735.00 from the Centre.*
24. *On 4 May 2018, the respondent attended a disciplinary meeting with the Centre. At the meeting, the respondent was dismissed immediately.*
25. *The respondent also signed an agreement to repay the above amount to the Centre by 15 May 2018. The Centre later confirmed that the respondent repaid this amount in full.*
26. *On 30 May 2018, Ms Hart-Scott filed a mandatory report with the Education Council (as it was then called) regarding the respondent's conduct.*

*Teacher's Response to the Council*

27. *In her letter to the Council investigator dated 16 July 2018, the respondent explained that she feels "very deep shame and regret" in her actions and that she had attended counselling sessions. The respondent stated that she had repaid the full amount owing to the centre on 15 May 2018.*
28. *The respondent states that she "would never again want to work in a senior teaching position with the responsibilities that it brings", such as handling of fees, but that she wishes to continue teaching. The respondent states that she takes "full responsibility" for her actions and is "prepared to accept the consequences".*
29. *The respondent is currently employed with Totally Tamariki in a role as Programme Manager. She informed the Council that her employer is aware of the circumstances of her termination from the Centre.*

**Ngā Kōrero a te Kōmiti – CAC Submissions**

11. The CAC submits that the respondent's conduct is a clear-cut example of serious misconduct. The dishonesty involved in the respondent's behaviour reflect adversely on her fitness to be a teacher and risks bringing the teaching profession into disrepute. The CAC submits that conduct involving dishonesty on the part of a teacher has been held by the Tribunal previously to reflect adversely on the teacher's fitness to teach and is capable of amounting to serious misconduct.<sup>2</sup>
12. Further, it is the CAC's submission that reasonable members of the public could conclude that the reputation and good standing of the profession was lowered by the respondent's conduct in the present case and that the public have a right to expect that teachers will act honestly and with integrity.<sup>3</sup>
13. In relation to whether the respondent's conduct is of a nature and severity captured by the Rules, the CAC submits that rules 9(1)(h) and 9(1)(o) are relevant in this case.
14. Although not referred to in the Notice of Charge, the CAC submit the respondent's conduct will also fall under rule 9(1)(n) of the Rules which relates to conduct that could be the

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<sup>2</sup> See for example *CAC v Teacher* [2008] NZTDT 12 (15 October 2018); *CAC v Teacher* NZTDT 2012-29, 11 December 2012.

<sup>3</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC).

subject of a prosecution for an offence punishable for a term of imprisonment of three months or more.<sup>4</sup>

15. Further, the CAC submits that the respondent's conduct breached the Code of Professional Responsibility, specifically clause 1.3 of the Code which requires teachers to demonstrate a high standard of professional behaviour and integrity.

#### *Penalty*

16. In relation to penalty, the CAC submit that the following aggravating factors need to be taken into account:
  - (a) The conduct was prolonged and involved the respondent taking all the money received by the Centre over a period of at least eight months including funds received from parents of children at the Centre. In total \$4,735.00 was taken by the respondent;
  - (b) The respondent was the Centre Manager at the time of her conduct and was therefore in a position of trust and responsibility. The CAC submits that the respondent's conduct involved a significant breach of trust; and
  - (c) Although the respondent eventually admitted her conduct, when initially confronted with the allegations during the Centre investigation, she attempted to conceal the extent of her conduct, saying that she had taken some of the cash due to "*an honest mistake*". The CAC submits that this indicates a persistent course of dishonest conduct on the respondent's part which reflects adversely on her fitness to be a teacher.
17. The CAC acknowledges the following mitigating factors:
  - (a) The respondent has repaid the money she took from the Centre in full;
  - (b) The respondent has expressed remorse for her actions and is undertaking counselling sessions to address her gambling addiction, which she says was the reason for her conduct;

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<sup>4</sup> For example, theft of property over \$1,000.00 is punishable by imprisonment for a term not exceeding seven years: Crimes Act 1961, sections 219 and 223(b).

- (c) The respondent has no previous disciplinary history; and
  - (d) The respondent has co-operated during the CAC investigation and the present Tribunal proceedings.
18. The CAC submits that the respondent's conduct is comparable to that in NZTDT 2008/12<sup>5</sup> where a teacher who was a centre manager advanced herself money from payments made by families to the centre. In total, she took approximately \$7,026.20.
19. The Tribunal found that the teacher's conduct was calculated, and she had stolen the money to the detriment of her employer, the parents and caregivers of the children attending the centre and the centre themselves. Further, the Tribunal held that the conduct was a serious breach of trust. The Tribunal was also concerned that the teacher did not appear to have indicated she would repay the money taken.
20. The Tribunal ordered a censure together with a suspension of the teacher's practising certificate for a period of nine months.
21. However, the CAC acknowledged that in this case the respondent has fully repaid the cash taken and like the case of *CAC v Fa'amausili*<sup>6</sup> the respondent has notified her current employer of her conduct and has co-operated in the course of the present disciplinary proceedings.
22. The CAC notes that the respondent also appears to have a supportive employer who has implemented a centre plan requiring the respondent to attend regular meetings to assess whether she is coping in her new role.
23. Taking into account the nature of the conduct and the mitigating factors, the CAC submits the following would be appropriate in terms of penalty:
- (a) Censure;
  - (b) Annotation of the Register;
  - (c) The imposition of the following conditions on the respondent's practising certificate:

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<sup>5</sup> *CAC v Teacher* NZTDT 2008/12, 15 October 2008.

<sup>6</sup> *CAC v Fa'amausili* NZTDT 2014/22, 7 October 2014.



- (i) A condition requiring the respondent inform her current employer and any prospective employer of the Tribunal's decision, and to provide them with a copy of the Tribunal's decision; and
- (ii) A condition requiring the respondent not undertake any professional role involving the management of finances without the approval of the Manager of Teaching Practice at the Teaching Council.

24. The CAC also suggests that the Tribunal may want to consider a condition requiring the respondent to undergo mentoring.

### **Ngā kōrero a te Kaiurupare – Respondents' submissions**

25. Whilst the respondent did not file written submissions, we did have the benefit of hearing directly from the respondent at the hearing. The respondent acknowledged the seriousness of her actions and accepts that her behaviour amounts to serious misconduct.
26. She acknowledged that she did deny the conduct initially and that she is *"forever remorseful for that"*. She explained that she had a gambling addiction and when confronted, went into fight or flight mode.
27. The respondent explained that she is receiving counselling and has proactively taken steps to change her behaviour and routine. The examples she shared with us is that she has cut up her credit card, has cancelled subscriptions on various online gambling sites and blocked all incoming notifications. She puts down her phone a lot more and engages in conversations with people rather than on her phone.
28. She explained that she has strong whānau support and lives at home with her Nan and Koro just over the road. She is very close with her Godparents and told them first about what she was going through. She has the support of her partner who she has shared everything with and continues to do so. She is adamant that she does not want to put temptation in her way so is very open about how she is feeling with those in her support network.
29. The respondent was supported at the hearing by the Manager at the centre she was currently working at.

## Te Ture - The Law

30. The CAC allege that the respondent's conduct amounts to serious misconduct pursuant to section 378 of the Act and rule 9(1)(h) and/or (o) of the Teaching Council Rules (as drafted prior to the May 2018 amendments) or alternatively amounts to conduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant section to section 404 of the Act.
25. The respondent accepts full responsibility for her actions and accepts that her conduct amounts to serious misconduct.
31. Section 378 of the Act defines serious misconduct:
- 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.*
32. The test under s 378 is conjunctive<sup>7</sup>, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.
33. Rule 9 sets out the criteria for reporting serious misconduct and lists behaviour that amounts to serious misconduct:
- (a) Rule 9(1)(h) – theft or fraud;
- (b) Rule 9(1)(o) – any act or omission that brings, or is likely to bring, discredit to the teaching profession.
34. In *CAC v Leach*<sup>8</sup> it was accepted by the Tribunal that it could be assisted in cases involving alleged dishonesty, by comparing a respondent's conduct against the elements of the offence of obtaining by deception under s 240 Crimes Act 1961. This section provides:

<sup>7</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018 at [64]

<sup>8</sup> *CAC v Leach*, NZTDT 2016/66, 26 April 2017

**240 Obtaining by deception or causing loss by deception**

- (1) *Everyone is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right,—*
- (a) *obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or*
  - (b) *in incurring any debt or liability, obtains credit; or*
  - (c) *induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or*
  - (d) *causes loss to any other person.*
- (1A) *Every person is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered.*
- (2) *In this section, **deception** means—*
- (a) *a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—*
    - (i) *knows that it is false in a material particular; or*
    - (ii) *is reckless as to whether it is false in a material particular; or*
  - (b) *an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or*
  - (c) *a fraudulent device, trick, or stratagem used with intent to deceive any person.*

35. Further, in the recent decision of *CAC v Jenkinson*<sup>9</sup> we agreed with submissions from the CAC that a professional practitioner is expected to be honest and candid when faced with conduct allegations. The Tribunal went on to say that “*there is not a material distinction between the duty of candour that teacher owes his or her professional body vis-à-vis that*

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<sup>9</sup> *CAC v Jenkinson* NZTDT 2018/14

*in respect to an employer. Moreover, we accept that this expectation of cooperation and honesty applies notwithstanding that the practitioner considers the allegation to be spurious.*<sup>10</sup>

### **Kōrerorero – Discussion**

36. We delivered an oral decision on the day and expand further here the comments that we made.
37. We recognise that the reason that the respondent appeared before the Tribunal is not because of her teaching practice. By all accounts that is exemplary. However, by the respondent's own admission, she stole from whānau and from her employer. She stole from people that trusted her and that whakama is something that she must carry with her forever. Having said that, she also accepted very quickly that her conduct amounts to serious misconduct and is willing to accept the consequences for her actions.
38. The Tribunal acknowledges that the conduct was prolonged and initially the respondent denied the allegations to her employer. She was in a managerial position and therefore her actions amount to a serious breach of trust. This type of behaviour is unacceptable.
39. That said, we note that the respondent has no previous disciplinary history, that she has repaid the money in full, that she has been open and upfront with her whānau and her current employer and that she has taken steps to deal with her gambling addiction. She is doing everything she can to change her behaviour.
40. We felt the respondent was very genuine when she engaged with the panel, and it was clear that she had a love of teaching and wanted to continue to be a member of the profession and add value to the lives of our tamariki/mokopuna. That level of passion is something we would want to remain in the profession.
41. The respondent assured us that her support network was solid, and we were encouraged by the presence of her current manager at the hearing.

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<sup>10</sup> Above at [22]

## Kupu Whakatao – Decision

42. We have no hesitation in determining that the respondent's conduct amounts to serious misconduct and meets all three limbs of section 378 as well as rule 9(1)(h) and (o) of the Rules.
43. Having determined that this case is one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

### **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.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*

(3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

44. The primary motivation regarding penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met:
- (a) To protect the public through the provision of a safe learning environment for students;
  - (b) To maintain the profession's standards; and
  - (c) To maintain the public's confidence in the profession.
45. Further, we are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances discharging our responsibilities to the public and the profession.<sup>11</sup>
46. The respondent has reflected on her conduct and taken steps to change her behaviour. She has been open, transparent and upfront with her whānau and current employer who are all very supportive of her. On that basis we make the following orders:
- (a) Censure under s 404(1)(b) of the Act;
  - (b) Pursuant to s 404(1)(c) of the Act, the following conditions are to be placed on the respondent's practising certificate:
    - (i) The respondent is to inform her employer or prospective employer of the Tribunal's decision and provide them with a copy of the full decision for a period of three years from the date of the results decision (29 May 2019);
    - (ii) The respondent is not to undertake any role involving the handling of any money or the management of any finances for a period of three years from the date of the results decision (29 May 2019); and
    - (iii) The respondent is to enrol in a gambling support service to receive counselling support for a period of 18 months at a service provider approved by the Manager, Professional Responsibility at the Teaching

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<sup>11</sup> *Roberts v Professional Conduct Committee of the Nursing Council* [2012] NZHC 3354.

Council and a certificate of completion is to be sent to the Manager on the completion of the programme.

- (c) The condition at 46(b)(iii) may have already commenced following the release of the result decision. For clarity, the 18-month time period is from the date of commencement of the support; and
- (d) Annotation of the register of all the above for two years from the date of the oral decision under s 404(1)(e) of the Act.

### **He Rāhui tuku panui – Non-publication**

- 47. No application was sought for name suppression though for completeness, interim name suppression remained in place from the date of the oral decision (28 May 2019) until 8.00am, Wednesday 29 May to allow the respondent to advise her whānau and employer of the Tribunal's decision.

### **Utu Whakaea – Costs**

- 48. A costs decision was previously issued on 8 January 2020 and the respondent was ordered to pay 40% of the costs of the CAC costs as per the schedule provided and 40% of the Tribunal costs pursuant to ss 404(1)(h) and 404(1)(i) of the Act.



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Rachel Mullins  
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).

COLDSTREAM TDT DECISION