

**BEFORE THE NEW ZEALAND
TEACHERS DISCIPLINARY TRIBUNAL**

NZTDT 2021/39

**COMPLAINTS ASSESSMENT
COMMITTEE**

V

**SONYA KAY COSTELLO
Respondent**

Hearing: 20 April 2022
Appearances: E Mok for the CAC
No appearance for Ms Costello
Decision: 5 August 2022
Tribunal: T Mackenzie, R McInerney, D Spraggs

DECISION OF THE TRIBUNAL

Introduction

[1] The Complaints Assessment Committee (CAC) charges the respondent with serious misconduct, or in the alternative, conduct entitling the Tribunal to exercise disciplinary powers. The particulars of the charge are as follows:

Particulars of the Charge

- 1 The CAC charges that **Sonya Kay Costello**, registered teacher, of **Whangarei**, on various dates while working at the Centre, engaged in any or all of the following conduct:
 - (a) Between around February 2015 and around September 2016, Ms Costello:
 - (i) grabbed a toddler by the arm and tugged her to the table; and/or
 - (ii) lifted the toddler up by the arm and placed her in a chair; and/or
 - (b) Between around February 2015 and around September 2016, Ms Costello said a Māori child at the Centre was “thick”, and that this was “what happens when your people are raped and pillaged”; and/or
 - (c) In or around early 2017, Ms Costello forcefully tried to push a spoonful of food into the mouth of a child aged under two years (**Child A**) as Child A turned his head away from the food; and/or
 - (d) In or around August 2017, Ms Costello:
 - (i) roughly fed a child aged two years (**Child B**) a piece of broccoli; and/or
 - (ii) told Child B, who by this stage was crying and had coughed up the food, to go to bed in a belittling manner; and/or
 - (iii) talked about Child B and his behaviour, and the parenting he was receiving, in a belittling way in front of children and teachers; and/or

- (e) In or around August 2017, Ms Costello:
 - (i) forcefully pushed a silicone biting necklace into the mouth of a child aged approximately 21 months (**Child C**) as Child C tried to turn her face away; and/or
 - (ii) told Child C in an angry tone “if you are going to bite something, bite this”; and/or
- (f) Between around 2017 and August 2018 (inclusive), Ms Costello:
 - (i) roughly dropped a toddler (**Child D**) on the ground; and/or
 - (ii) grabbed Child D’s arms and used her (Ms Costello’s) foot to push Child D to sit down; and/or
- (g) Between around May 2017 and around November 2017, while trying to get a child aged approximately two years (**Child E**) to go to sleep, Ms Costello placed her hand over the child’s ear and held the child down while the child was wriggling and trying to get up; and/or
- (h) In or around late 2017, Ms Costello said to a child aged approximately two years (**Child F**), “Oh, you’re just pathetic with all this crying” in a gruff voice; and/or
- (i) Between around 2017 July and around December 2017, on at least one occasion, Ms Costello told children who were crying or upset that they were “just a sookie” (or words to that effect) and/or then left the children while they were crying or upset; and/or
- (j) On or about 6 April 2018, Ms Costello yelled loudly in an angry way at two related children at the Centre, one aged four years (**Child G**) and one aged three years (**Child H**); and/or
- (k) On or about 30 July 2018, Ms Costello said “well that was dumb” in an irritated tone to a child aged four (**Child I**) after Child I spilled a glass of water; and/or
- (l) In addition to the specific incidents above at paragraphs 1(a) to (k), Ms Costello acted unprofessionally and/or inappropriately towards the children at the Centre on other occasion(s), including by:
 - (i) Between around 2009 and around June 2015, dragged or pulled children by the arm or hand if they were not complying and/or if they were in trouble; and/or
 - (ii) Between around 2009 and around June 2015, pushed children down with her hands on their shoulders to get them to sit; and/or
 - (iii) Between around 2009 and around December 2017, forced children; and/or

- (iv) Between around May 2017 and between around December 2017, forced children to drink water when they did not want to.

[2] The respondent has been served with these proceedings and is aware of them, however has not taken an active role.

[3] The Tribunal heard this proceeding on 20 April 2022 to consider the charge and evidence, and any orders that would be imposed if the charge was proven.

[4] Despite the absence of the respondent, the Tribunal must still be satisfied on the balance of probabilities that the alleged factual incident's occurred.

Discussion of charges and evidence

[5] The charge contains 11 specific incidents regarding the respondent's alleged conduct towards children at the Centre she worked at. The date range for these charges is between February 2015 and July 2018.

[6] There is also a representative allegation of unprofessional and inappropriate conduct towards children at the Centre. The date range for this is between 2009 and 2017.

[7] We agree with the CAC that the charged conduct falls into three broad categories, as follows:

- Inappropriate uses of force – particulars 1(a), (e), (f), (g), (l)(i) and (l)(ii);
- Force-feeding incidents – particulars 1(c), (d), (l)(iii) and (l)(iv);
- Inappropriate comments towards and about children; yelling at children – particulars 1(b), (h), (i), (j) and (k).

[8] The evidence records that the respondent was the Centre Manager at the time the majority of the incidents took place. The majority of the above incidents were reported during an organisational review conducted by the directors of the Centre in late 2018. Additional incidents were disclosed in the course of the Committee's investigation following the Centre submitting a mandatory report about the respondent to the Teaching Council.

[9] The evidence is presented via signed briefs of evidence (and one affidavit) from a number of current former staff members. Given the extent of evidence, its similarities, and the spread across various witnesses, the Tribunal is content to proceed on the basis of the unsworn statements.

[10] Similarly, having considered the evidence in its entirety the Tribunal does not need to hear further from any particular witnesses.

Evidence in support of charge

[11] Having reviewed the evidence, we accept as accurate the summary provided by the CAC, and will include it below:

Particular 1(a) – Grabbing and lifting a toddler by the arm

- 1 The first particular of the charge relates to an occasion between February 2015 and September 2016 where the respondent grabbed a child by the arm and tugged her to a table, and then lifted the child by the arm and placed her in a chair.
- 2 [REDACTED], a teacher at the Centre at the time, witnessed the incident. [REDACTED] worked at the Centre between February 2015 until September 2016. In her brief of evidence, she says that a little girl (whose name she could not recall) was going slowly to the lunch table, so the respondent grabbed the girl by the arm and tugged her to the table. [REDACTED] recalls that the tugging “lasted about 5 or 10 seconds”, and she described the level of force used as between 4 and 5 out of 10, because the respondent was “pulling the girl along”.
- 3 In terms of the second aspect of the respondent’s conduct – the lifting of the child by the arm – this happened after the respondent went to sit the child down, but accidentally missed the chair, causing the child to end up on the floor. [REDACTED] says the respondent then lifted the girl up by the arm, holding her just below her wrist, and placed her on the chair. She says the child was picked up high enough by the arm that her feet were off the ground, and that the force used was between 7 and 8 out of 10 (given the level of force was enough to pick the child up off the floor).
- 4 [REDACTED] further says in her brief that the child began to get upset during the interaction, and that the respondent’s response was to tell her there was nothing to cry about. She recalls exchanging a glance with another teacher, [REDACTED].

Particular 1(b) – Racist comments towards a Māori child at the Centre

5 Particular 1(b) of the charge alleges that, between February 2015 and September 2016, the respondent said a Māori child at the Centre was “thick” and that this was “what happens when your people are raped and pillaged”.

6 This conduct was also witnessed by [REDACTED]. In her brief of evidence, [REDACTED] states that the respondent made these comments to her while the child was playing outside, and that she and the respondent were standing at the doors that opened to the outside area at the time. [REDACTED] says that she cannot remember the name of the boy, however she recalls what the respondent said, and that her comments “did not sit well with me, because I considered that it was racist”.

Particular 1(c) – Force-feeding Child A

7 This particular of the charge alleges that, in early 2017, the respondent forcefully tried to push a spoonful of food into the mouth of a toddler aged under two years, **Child A**, as Child A went to turn his head away.

8 [REDACTED], a teacher at the Centre at the time, witnessed the incident. She was with a group of children at lunchtime. Child A was sitting at the kai table, but did not want to eat (which [REDACTED] did not see as an issue). [REDACTED] then describes the incident happening as follows:

Sonya came in and came over to the table...She asked me if Child A had eaten, and I told her that he hadn't.

Sonya then picked up a spoon, scooped up some vegetable mash, and tried to coax Child A to try it. She was waving the spoon in his face but he turned away. Then, Sonya tried to forcibly push the spoon into Child A's mouth, but the spoon did not go in his mouth because he turned away again.

9 [REDACTED] recalled Child A getting upset and starting to cry immediately after this happened. She says that, while she could not remember if the spoon made contact with Child A's mouth, even if it had not made contact, it would have been close to his mouth, as she recalled her own reaction at the time to what the respondent was doing. She says that the respondent stopped what she was doing after seeing that [REDACTED] disapproved of what was happening. After putting down the spoon, she says the respondent said something along the lines of “oh well, [Child A], if you're not going to eat, you'll go hungry”. [REDACTED] reported the incident during the Centre's organisational review the following year.

- 10 Similar incidents involving the respondent trying to force children to eat or to drink water when they did not want to were also later reported by other staff members, supporting that the respondent was engaging in a pattern of behaviour. These incidents are detailed below.

Particular 1(d) – Force-feeding Child B; speaking to Child B in a belittling manner

- 11 Particular 1(d) of the charge alleges that, in or around August 2017, the respondent:
- roughly fed a two year old child, **Child B**, a piece of broccoli;
 - told Child B to go to bed in a belittling manner (when Child B was crying and after he had coughed up his food); and
 - talked about Child B’s behaviour, and his parenting, in a belittling way in front of other children and teachers at the Centre.
- 12 [REDACTED], a teacher at the Centre who worked with infants and toddlers under three years old, describes this incident in her witness brief. [REDACTED] said that the incident happened around lunchtime at the kai table. She says she was with Child B, who was sitting at the table. Child B was refusing to eat his food, a piece of broccoli. [REDACTED] states that the respondent picked up the broccoli with a spoon and shoved the spoon in Child B’s mouth. [REDACTED] characterises the incident as “rough”. She states that Child B started crying and coughed up a mouthful of chewed food. Despite Child B being visibly and “clearly” upset, [REDACTED] states that the respondent told Child B to go to bed in a belittling way, and then proceeded to make disparaging comments about Child B and his parents in front of others.
- 13 [REDACTED] states that she felt uncomfortable with the respondent’s conduct, and that she reported the incident as part of the Centre’s organisational review. A copy of notes taken by [REDACTED] of her observations at the Centre (prepared in August 2018, around the time of the review), which were provided to the directors of the Centre, also mentioned this incident. She also referred to this incident in her interview with the Committee investigators.
- 14 In her brief, [REDACTED] says she did not report the incident at the time it happened because she had only been working at the Centre since May that year, and had already experienced issues with the respondent, so she did not believe that she would be listened to if she spoke up. As with the Committee’s other witnesses, [REDACTED] cites the overall culture at the Centre, and the fact that people did not feel safe bringing up issues to the respondent at the Centre, as part of the reason why she did not report the incident when it happened.

Particular 1(e) – Biting necklace incident with Child C

- 15 [REDACTED] also witnessed an incident involving the respondent forcing a biting necklace (a necklace with hard beads and a silicon ring attached) into the mouth of a 21-month year old toddler, **Child C**, in August 2017 – an incident which forms particular 1(e) of the charge.
- 16 [REDACTED] states that Child C often bit other children. She says that she disagreed with the respondent’s suggestion to use a biting necklace to manage this behaviour.
- 17 On the morning of the incident in question, [REDACTED] says she was in the Under 2 classroom with the respondent. She says that the respondent went and got a biting necklace after informing [REDACTED] that Child C had been biting. The respondent put the necklace on Child C, and then “shoved the silicone part of the necklace in Child C’s mouth and said, ‘if you are going to bite something, bite this’”, in what [REDACTED] says was an “angry, growling tone”. [REDACTED] described the respondent’s action in shoving the necklace in Child C’s mouth as a quick, “ramming” action, with “force involved in the interaction”. She further states that Child C became upset during the incident, and took 20 minutes to settle down afterwards.
- 18 As with the incident involving Child B, [REDACTED] did not report the incident at the time, but raised it in an incident report provided following the Centre’s organisational review in 2018.
- 19 This incident (or a similar one) appears to have been overheard by another staff member at the time. [REDACTED], who at the time worked in the kitchen (before later becoming a student teacher), states that she overheard the respondent trying to get a child to bite onto a biting necklace, using a loud and angry tone to speak to the child (loud enough that [REDACTED] could hear from the kitchen). Another former staff member, [REDACTED], also refers to the respondent’s use of biting necklaces to manage children’s behaviour in her brief– a strategy that [REDACTED] and other staff members disagreed with.

Particular 1(f) – Rough handling incident with Child D

- 20 This particular of the charge alleges that, between 2017 and August 2018, the respondent roughly dropped a toddler, **Child D**, on the ground, and then grabbed Child D’s arms and used her foot to push the child to sit down.
- 21 In her brief of evidence, [REDACTED] describes the incident in the following way:

Child D had done something at the kai table...Sonya got upset and physically grabbed him by the arms and lifted him out of his chair. Child D started getting quite aggressive and was

kicking out at her, hitting her round the legs. Sonya did not let go, and took him over by the window. Once she got over there, she dropped him roughly onto the ground. Child D got up again quickly, so she grabbed his arms again and used her foot to push his legs out so that he would sit down. The whole interaction was rough in my view...Child D was pretty emotional after this. He was crying. Sonya told him firmly to be quiet...

- 22 [REDACTED] says that she did not intervene at the time because she was afraid of the respondent's reaction, and did not feel it was her place to say anything because she only worked in the kitchen at the time.

Particular 1(g) – Incident involving Child E

- 23 Particular 1(g) of the charge alleges that, between around May 2017 and around November 2017, while trying to get a child aged approximately two years (**Child E**) to go to sleep, Ms Costello placed her hand over the child's ear and held the child down while the child was wriggling and trying to get up.
- 24 The evidence in support of this particular is contained in the brief of [REDACTED]. [REDACTED] says that she was putting children to sleep in the Centre's sleep area. Child E, who was lying down, did not want to go to sleep. [REDACTED] says the respondent told her that Child E liked her ear covered before going to sleep. The respondent proceeded to place her hand over Child E's ear, but Child E still did not want to sleep. [REDACTED] says this was clear to her because Child E was wriggling and kicking out, trying to get up, but was not able to because the respondent was holding Child E down with one hand on her ear – with enough force to keep Child E lying down. [REDACTED] states that Child E got upset while this was happening. She says that Child E eventually fell asleep.
- 25 [REDACTED] says she did not report the incident at the time because she was new to the Centre at the time (having started in May 2017), and was not familiar with many of the practices at the Centre.
- 26 While this specific incident was not witnessed by any other staff members, another teacher, [REDACTED], also describes having had concerns around the respondent's practices when putting children to sleep. For example, she describes the respondent shouting at children when they were not going to sleep, and the respondent putting children to sleep abruptly without them being given the choice or time to settle. In addition, [REDACTED] refers to the respondent covering children's faces with sheets to get them to sleep.

Particular 1(h) – Inappropriate comments towards Child F

- 27 Particular 1(h) relates to the respondent making inappropriate comments towards a toddler at the Centre, **Child F**. Specifically, that she told Child F, who was crying at the time, “Oh, you’re just pathetic with all this crying”.
- 28 The evidence in support of this allegation is set out in [REDACTED] brief of evidence. [REDACTED] states that the incident would have happened mid- morning, a short time after Child F had been dropped off, but had still not settled. She recounts that Child F had only recently started at the Centre, and so would still be unsettled after being dropped off. She said that the respondent’s tone of voice when making the above comment to Child F was “gruff”. She says that Child F did not react and continued crying. [REDACTED] says she did not do anything at the time because she was worried about “comeback” from the respondent, who was the Centre Manager by this stage.

Particular 1(i) – Inappropriate comments to various children

- 29 Similar to particular 1(h), particular 1(i) of the charge relates to the respondent making inappropriate remarks towards various children when they were upset or crying between around July and December 2017. In particular, it is alleged that, on at least one occasion, the respondent told children who were crying or upset that they were “just a sookie”.
- 30 [REDACTED] witnessed this conduct, and describes this in the following way in her brief:
- Sonya would also belittle children for crying. She would tell children to stop crying and told them to put their tears away. Sonya also said things to children such as “you’re just a sookie, I bet your mum gives into you at home. Well, that won’t work here”. She would then leave the children crying and upset.
- ... This was a usual phrase Sonya would use with any crying child and it would happen at least once a day whenever a child cried...
- 31 [REDACTED] also recorded the respondent making these kinds of comments in her notes documenting her observations prepared shortly after the Centre’s organisational review in 2018.

Particular 1(j) – Yelling at Child G and Child H

- 32 The next particular of the charge relates to an incident on 6 April 2018 which was witnessed (at least in part) by two staff members at the Centre, and which involved two sisters, **Child G** (aged four) and **Child H** (aged three).
- 33 [REDACTED], a teacher at the Centre at the time, states in her affidavit that she was pregnant at the time, and was kicked in the stomach by Child G while kneeling next to her (Child G having been upset after being dropped off by her father for the day). [REDACTED] states that she left other staff to deal with Child G, and overheard the respondent raising her voice at Child G from some distance away. She states that the respondent's tone was "not pleasant" and made her concerned, but she did not respond because there were other staff present.
- 34 [REDACTED], an administrator at the Centre, similarly states in her brief of evidence that she overheard the respondent raising her voice at Child G and Child H, after Child G had been misbehaving. She says that the respondent told the children that "we don't want children at the Centre who behave like you", and had yelled at both children. She describes seeing Child H upset after this happened.
- 35 [REDACTED] further says that the respondent made it clear to staff that she did not like Child G and Child H, and that the respondent had called the children and their father names. [REDACTED] reported the incident during the Centre's organisational review.

Particular 1(k) – Inappropriate comments to Child I

- 36 The final specific incident alleged in the charge relates to the respondent's conduct on 30 July 2018 in telling a child aged four, **Child I**, "well that was dumb", in an irritated tone, after Child I accidentally spilled a glass of water.
- 37 This incident was witnessed by [REDACTED]. In her brief of evidence, [REDACTED] says that the incident happened at lunchtime in the preschool classroom. She says that the respondent was in a bad mood that day. The respondent was handing out lunches. Child I accidentally spilled a glass of water at the kai table. [REDACTED] says that the respondent told Child I "well that was dumb", in an irritated tone, and that Child I appeared upset afterwards, as she put her head down. She says that, after the respondent made the comment, two other children at the kai table repeated the respondent's comment that Child I's actions were dumb.
- 38 Although she did not report the incident at the time because she did not feel comfortable doing so, [REDACTED] submitted an incident report following the Centre's review.

Particular 1(l) – Acting unprofessionally and inappropriately towards other children (dragging, pulling, force-feeding)

- 39 This particular of the charge, which is representative in nature, relates to other instances of the respondent using unnecessary or inappropriate force towards children at the Centre and forcing children to eat or drink water, in addition to the specific incidents set out above.
- 40 Various staff members witnessed other occasions where the respondent engaged in inappropriate and unprofessional conduct. In particular:
- **Dragging and pulling children by the arms/hands (particular 1(l)(i))** – [REDACTED], a teacher who worked at the Centre from 2011 until June 2015, states in her brief of evidence that the respondent's interactions with children were "very rough". She states that sometimes

the respondent would “grab or drag children by the arm or hand if they didn’t comply with what she wanted them to do or if they were in trouble”. She also referred to the respondent taking children by the wrist and walking quickly, meaning the children would struggle to keep up and were effectively being dragged along. Although not specifically encompassed in the charge, ██████ observed the respondent engaging in similar practices ██████ states in her brief that the respondent would use two hands on a child’s wrists and pull them from the table, describing the respondent’s actions as “rough”.

- **Pushing children down by shoulders (particular 1(l)(ii))** – ██████ also refers in her brief to the respondent pushing children down with her hands on their shoulders to get them to sit down. She says that the children would comply and would not struggle.
- **Force-feeding (particular 1(l)(iii))** – ██████, ██████ and ██████ each witnessed other instances of the respondent force-feeding children by shoving spoons in their mouths where children did not want to eat. ██████ said this happened with children aged between three and four. ██████ recalled seeing this happening regularly with toddlers aged between two and three. ██████ said that she saw this happening on “numerous occasions” with children, particularly those over two years old. These witnesses each state that they could tell the children did not want to eat because they would turn their heads away, or would have their mouths closed. ██████ recalled that some children would get upset after this happened, or would be kept at the table for a long time until they had finished their food. Various staff (████████, █████████, █████████) also referred to the respondent making children stay at the kai table until they finished their meals, and shouting at or speaking in a loud and aggressive tone towards children who did not finish their food.
- **Forcing children to drink water (particular 1(l)(i)(v))** – ██████, who started working at the Centre in May 2017, states that she also witnessed the respondent forcing children to drink water when they did not want to. This included an incident with Child B, where he refused to drink water – she said that the respondent forced a cup of water up to his mouth, and the water went everywhere down his shirt because his mouth was closed. She says this kind of conduct occurred regularly, and as with food, the children would turn their heads away or shut their mouths. The “observations” document ██████ prepared in 2018 refers to this conduct happening in 2017.

Our findings on the facts

[12] If there had been only one or two alleged incidents, and only one or two witnesses, then the Tribunal might have been more circumspect as to any personal issues or biases, and perhaps wanted to hear from witnesses in person.

[13] Here though we are presented with a pattern of very similar conduct and behaviour over several years, through multiple witnesses.

[14] We are really presented with two options. Either multiple professional teaching staff have conspired and colluded to bring these allegations, which would be extraordinarily coincidental and bad luck. Or, the allegations are truthful.

[15] We consider it appropriate to consider the similarity between the allegations as lending support to their truth.

[16] Given the breadth of allegations and their similarity, and the lack of any plausible motives to lie or collude etc by any of the witnesses, we have no hesitation in finding all particulars proven on the balance of probabilities.

Our findings on charge liability

[17] It is somewhat inevitable that a finding of serious misconduct must now be made. The behaviour seriously infringes on all three respective limbs of the test at s 378(a) of the Act.

[18] In terms of s 378(b), it is also, and easily so, of a character and severity that meets the criteria for reporting serious misconduct across all iterations of the rules. The behaviour breaches rules requiring reporting of physical abuse, psychological abuse, neglect or ill-treatments, and is conduct that likely brings the profession into disrepute.

Penalty

[19] 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.

[20] In *CAC v McMillan* this Tribunal summarised the role of disciplinary proceedings in this profession as:¹

... 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 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.

[21] The primary motivation is to ensure that three overlapping purposes are met. These are:

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.²

[22] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.³

[23] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case

¹ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

² The primary considerations regarding penalty were discussed in *CAC v McMillan* NZTDT 2016/52.

³ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

presents. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[24] In *CAC v Fuli-Makaua* this Tribunal has noted that cancellation may be required in two overlapping situations:⁴

- 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.

[25] We have considered other cases that have gone before, as referred to by the CAC in their submissions. Ultimately though this case can be assessed on its own facts. The nature of the conduct, its breadth, and the lack of any engagement by the respondent lead us to the conclusion that the only appropriate outcome is cancellation of registration and censure.

Non-publication orders

[26] Under s 405(6) of the Act we make an order prohibiting from publication the name of the Early Childhood Centre where the respondent worked/where the conduct occurred, and the names of any of the children involved.

[27] We also make an order prohibiting from publication the names of any of the witnesses/other staff members at the Centre that are mentioned in this decision, as naming them may lead to identification of the centre and any of the children involved.

Costs

[28] Tribunal costs are \$1145. We will order a 40% contribution from the respondent in accordance with the current costs practice.

[29] The CAC seeks a costs contribution of 50% of actual costs. The CAC relies in part on the lack of engagement by the respondent.

[30] The CAC has produced a schedule of costs, with a total sum of \$19,873.40 is sought (GST and disbursement exclusive).

[31] If the respondent wishes to oppose or argue any issues on costs, submissions

⁴ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

should be filed and served within ten working days of this decision. If a response is filed, the CAC may respond within a further ten working days. A final decision on costs will then be issued. If the respondent does not file anything on costs, the order of the Tribunal will be that 40% of costs (of the amount above) must be paid by the respondent.



T J Mackenzie

Deputy Chair