

IN THE MATTER

of the Education Act 1989

AND

IN THE MATTER

charges brought by the Complaints
Assessment Committee of the New
Zealand Teachers Council

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Complainant

AND

MYRTLE LAUDER

Respondent

DECISION OF TRIBUNAL

Dated 9 June 2021

Tribunal:	Sam Wimsett (Deputy Chair) Nikki Parsons Kiri Turketo
Hearing:	22 April 2021
Decision:	9 June 2021
Counsel:	C Paterson for the Committee
	Respondent: Self-represented

1. **INTRODUCTION AND SUMMARY OF DECISION**

- 1.1. In November 2019, Myrtle Lauder, a registered teacher, was employed by Small Poppies, Ruakaka. Approximately 30 – 40 children attend Small Poppies. Ms Lauder worked there from 2013 until November 2019.
- 1.2. Ms Lauder is a teacher who is respected and valued by her peers. During her time working at Small Poppies, she demonstrated leadership qualities and provided mentorship to young teachers. Unfortunately, personal issues led to Ms Lauder being unusually stressed in the second half of 2019. Her mental health suffered. This undoubtedly contributed to the incident referred to below.
- 1.3. On 27 November 2019, a group of approximately 12 children, including Child B, were sitting at a table eating lunch. Child B was [REDACTED] years old. Ms Lauder approached the table and said in a loud voice that “no-one is to leave the table until they have eaten all their food.” At the time, Ms Lauder was writing in a book and recording which children had eaten their food. Child B was being disruptive. He was playing with his food and did not want to sit at the table. Ms Lauder took the book that she was holding and hit Child B on the head. She told him to stop mucking around and to eat his lunch. Child B was shocked but not injured.
- 1.4. This incident led to an investigation by Small Poppies. That revealed an earlier incident on 22 November 2019. On that day, Ms Lauder and another teacher were sitting on the mat with several children, including Child A, who was [REDACTED] years old. Child A was not listening to Ms Lauder and was walking over the other children and crawling all over the mat area. Child A grabbed another child’s hair and fell over onto the other children. When he fell, Ms Lauder grabbed Child A by the lower leg and pulled him across the mat towards her. She placed Child A at her feet and told him to sit still. Child A responded by putting his feet on Ms Lauder’s leg. Ms Lauder then put her foot on Child A’s leg and said “How do you like it?”
- 1.5. As a result of the incidents described above, Ms Lauder was charged with serious misconduct.
- 1.6. Almost all facts relating to both incidents were admitted by Ms Lauder. The hearing proceeded primarily based on an agreed facts document. A hearing, involving oral evidence, was required only on the issue as to the way the respondent hit Child B on the back of the head with the book on 27 November 2019.
- 1.7. While the Tribunal accepts that Ms Lauder was suffering from personal issues at this time and was unhealthily stressed, it finds that the force used by Ms Lauder against Child B on 27 November 2019 amounts to serious misconduct.

- 1.8. The Tribunal finds that it has insufficient evidence to determine whether the incident on 22 November 2019 requires a disciplinary sanction.
- 1.9. In terms of penalty, the Tribunal proceeds having regard to only the 27 November 2019 incident, which on its own amounts to serious misconduct.
- 1.10. The following penalties are imposed:
 - a) Censure.
 - b) Annotation of the Register for a period of two years.
 - c) There is to be a condition on Ms Lauder's practising certificate that requires her to inform any employer of this decision. This condition is to remain in force for a period of 12 months from the date of this decision.
 - d) It is a condition of Ms Lauder's practising certificate that she is not to hold a position of responsibility at any education provider. This condition is to remain in force for a period of two years from the date of this decision. For clarity, this condition allows Ms Lauder to obtain a teaching position, but not a position of responsibility.
- 1.11. Pursuant to section 405(6)(c) of the Education Act 1989, the names of the children and any identifying particulars are suppressed and may not be published. No other suppression orders are made.
- 1.12. Ms Lauder is ordered to pay 40% of the Committee's costs and 40% of the Tribunal's costs.

2. HEARING AND EVIDENCE

- 2.1. An in-person hearing was held in Whangarei on 22 April 2021. In advance of the hearing, an agreed bundle of documents was filed. That bundle contained the charge, briefs of evidence, written submissions, and relevant documents such as photographs and character references. The bundle was received and read by the Tribunal in advance of the hearing.
- 2.2. The bundle included an Agreed Facts document which had been signed and agreed by both parties. It read as follows:

AGREED FACTS

Introduction

1. *Myrtle Lauder (respondent) is a registered teacher with a full practising certificate (registration 252234).*

2. *At the relevant time, the respondent was employed by Small Poppies Ruakaka (Centre). The Centre is an early childhood centre. Around 30-40 children attend the Centre.*

3. *The respondent worked at the Centre from 2013 to November 2019.*

Conduct

22 November 2019 incident

4. *On or about 22 November 2019, the respondent and another teacher were sitting on the mat at mat time with a number of children including Child A. Child A was [REDACTED] years old at the time.*

5. *Child A was not listening to the respondent. Child A was walking over the other children and was crawling/climbing all over the mat. Child A grabbed another child's hair and fell over onto the other children.*

6. *When he fell, the respondent grabbed Child A by the lower leg/ankle and pulled him across the mat towards her. The respondent placed Child A at her feet to sit with her. The respondent told him to sit still. Child A lay down on the floor and put his feet on the respondent's leg.*

7. *The respondent put her foot on Child A's leg and said "how do you like it" to him.*

27 November 2019 incident

8. *On 27 November 2019, a group of around twelve children, including Child B, were sitting at a table eating lunch. Child B was around [REDACTED] years old.*

9. *The respondent came over to the table and said in a loud grumpy tone to the group of children that "no one is to leave the table until they have eaten all their food".*

10. *The respondent was writing in a book, recording which children had eaten their food and which had been served lunch by the Centre.*

11. *While eating his lunch, Child B was playing with his food and did not want to sit at the table.*

12. *The respondent took the book in both hands and hit Child B on the back of the head with the book that she had been writing in. The respondent told Child B to stop mucking around and to eat his lunch.*

13. *Child B was shocked and startled but was not injured.*

Teacher's comments

14. *The Centre investigated the incidents. In response to the Centre's investigation, the respondent:*

a. *Did recall the incident on 22 November 2019. The respondent denied dragging Child A by the ankle, but accepted that she had grabbed Child A under the arms to stop him from running away, and that she had told him off. The respondent also accepted that she had put her foot on Child A's legs as a response to him kicking her, and said "how do you like it".*

b. *Denied that she had hit Child B over the head with a book.*

15. *The respondent provided a response to the Committee's investigator on 6 February 2020. The respondent accepted "all responsibilities and actions that I have caused" and stated that she is "truly sorry for [her] actions". The respondent acknowledged she was "not in the right head space", that "something was not right" and that this was affecting her work.*

16. *The respondent participated in a voluntary impairment process before the Committee. The Impairment Report is attached to this summary of facts at Tab 1.*

2.3. In advance of the hearing, the parties informed the Tribunal that the sole evidential issue in dispute was the extent and nature of the force used by Ms Lauder when she hit Child B on the back of the head with the book. The purpose of the hearing was therefore to hear evidence in relation to that issue only.

2.4. The CAC called three witnesses. Each read aloud those parts of their briefs of evidence that related to the issue in dispute. Subsequently, they were questioned by Ms Lauder and the Tribunal.

2.5. The first witness for the CAC was Jennifer Clements. She was a teacher at Small Poppies. Her brief of evidence, so far as 27 November 2019 was concerned, stated:

On 27 November we were finishing lunch, some children were finished eating but others weren't.

I went to the bathroom to get toilet children and get them ready for bed. One staff member was still at the tables and another staff member was sitting on the floor with the lunch box children.

I looked out of the bathroom to see if any other children were finished eating or needed to be toileted. I could clearly see out to the lunchroom. Myrtle had the A5 communication book and was writing down how many children had eaten the food served for lunch. [Child B] was at the table playing with his food as he had done throughout lunch time. I saw Myrtle hit [Child B] over the head with the book that was in her hand (the communication book) and tell him to stop mucking around and to eat.

It was quite a hard hit, especially as the book was quite hard. She had both hands on the book for it. The hit was to the back of [Child B's] head as he was sitting low down. I'd rate it a 6 or 7 out of 10, it was quite hard. I heard it because it was a hard book.

The teacher that was with the lunchbox children, Chanel Scott, looked at me to see if I had seen the incident.

[Child B] looked quite shocked, he turned around and looked like "ooh" like he didn't expect it.

[Child B] can be difficult, but he was acting normally for children, just playing with his food, nothing out of the ordinary.

- 2.6. In supplementary evidence in chief, Ms Clements was shown a photograph of an A5 communication book and asked whether that was the book used by Ms Lauder to hit Child B. Ms Clements stated that the book was similar, but not the same as the one used.
- 2.7. Under cross-examination, Ms Clements was quizzed about her line of sight and whether she was accurate and truthful when she said she had heard the book hit Child B's head. Ms Clements stated that she had a clear view to the area of the hit from just outside the bathroom area. She described the noise that was made when the book hit Child B as being a "thump."
- 2.8. Ms Clements, under questioning from the Tribunal, referred to several Ms Lauder's positive qualities. These included that she:
 - a) Is a fantastic teacher.

- b) Is helpful.
- c) Is open to others' ideas.

2.9. So far as Ms Clements was concerned, this incident was out of character.

2.10. The second witness for the CAC was Chanel Scott. Ms Scott was employed as a teacher at Small Poppies and was present on 27 November 2019. Her brief of evidence stated as follows in relation to the incident:

On 27 November 2019, at lunch time, I was sitting on the floor, on the mat with the lunchbox children while they ate their lunch.

I could see all the tables in the eating area.

Myrtle came over to the end table on the right-hand side. I heard and saw Myrtle say to the children at that table, in a yelling/grumpy voice, "you can't leave the table until you have eaten all your food". Myrtle also yelled something like "sit down and eat at the table".

A couple of seconds after that, [Child B] was restless and not wanting to eat all of his food or not sit at the table. Myrtle got grumpy and I saw Myrtle go up to [Child B] and hit him over the head with a book. She said, "eat your food" loudly.

Myrtle had been writing something in this book and it was quite thick. I don't remember if it was hardcover, but it was thick and had a cardboard cover. It was a diary from 'Kids Art Works Calendars'. I am pretty sure she used two hands to hit [Child B] over the head. It was on top of his head. It was pretty hard, about a 7/10.

I was shocked and could not believe what I saw. The volume and the yelling of her voice was too loud. If I was a child, I would have been scared.

Myself and two other staff members witnessed this incident. I was sitting with the lunch box tamariki on the mat facing the tables. Nicky was sitting between the tables, and Jen was by the changing table.

Afterwards, I looked at Jen and was thinking "oh my gosh I can't believe it".

2.11. In her evidence at the hearing, Ms Scott confirmed that the book included in the bundle was similar, but not the same as the book used by Ms Lauder.

2.12. During cross-examination, Ms Lauder questioned Ms Scott regarding the positioning of Child B, Ms Lauder and Ms Scott. Ms Scott drew a diagram showing where everyone was

sitting/standing. We are satisfied that Ms Scott was able to see all that she has set out in her brief of evidence.

- 2.13. Ms Lauder stated to Ms Scott that she did not dispute that the hit was with force that could be described as a 7 out of 10. Given all the evidence we heard, and having regard to contemporaneous reports, this was a proper concession by Ms Lauder.
- 2.14. The bundle of documents included a handwritten note made by Ms Scott on 27 November 2019. It included the statement that Ms Lauder made her feel nervous and it made her feel like she could not talk to her, as she would yell. Under questioning from the Tribunal, it seems that these criticisms related specifically to the two months before this incident. When answering questions in relation to Ms Lauder generally, Ms Scott stated that she “really admired Myrtle” and that she was a teacher that Ms Scott would ask for feedback and/or advice. Up until the two months prior to this incident, Ms Lauder was the best person to go to in that regard. It was obvious to Ms Scott, she said, that Ms Lauder was going through a “rough patch” at this time.
- 2.15. The final witness for the CAC was Sheree Wheeler, who was the Centre Manager at Small Poppies. Ms Wheeler did not witness any alleged misconduct but the incident on 27 November 2019 was reported to her by Ms Scott and a teacher named Nicole Berryman. This reporting obviously led to an investigation and eventually the matter being before the Tribunal.
- 2.16. The Tribunal asked Ms Wheeler several questions regarding Ms Lauder’s personal issues around this time. Unfortunately, Ms Wheeler either did not keep, or did not have available, any written records of discussions that had taken place with Ms Lauder. Her evidence on the following topics was therefore from memory only.
- 2.17. Ms Lauder had made it known to Ms Wheeler that she had some personal issues that were affecting her mental health from around the middle of 2019. There was an informal conversation between the two of them about Ms Lauder not feeling well or normal. As a result, Ms Lauder was given some time off and she was also taken off the centre floor on a few occasions.
- 2.18. Ms Wheeler saw the incidents as being out of character.
- 2.19. Ms Lauder gave evidence. It began by way of her reading a brief of evidence/statement. It read:

Throughout this process I have tried to recall the tap/hit issue as I have been in an emotion state of mind (health). This is by no means an excuse but it is part of the problem for me. It's simply my perception of what I recall.

What I remember of tapping/hitting the child on the head:

- *Child was standing on the chair and teacher next to him asked my assistance as his behaviour of defiance towards staff member was shocking.*
- *I used a firm voice with the child (which may have come across as loud and grumpy) this could perhaps be why he was shocked (as I don't often raise my voice to gain attention).*
- *Child was fooling around on the chair and could have fallen and hurt himself.*
- *I recall standing in front of the child as I spoke to him, and used my voice to gain his attention on his behaviour towards the reliever.*
- *I remember carrying a small notebook with me as the manager needed to know how many children had eating (the meals were new to the children and many were not eating at all).*
- *I do recall tapping the child on the head, but I don't think I hit him as they say (if it was hard as they say, the child in question always tells mum about what happened to him during the day).*
- *I do not think I used two hands as the notebook was small.*
- *The classroom was very noisy that day as it was after lunch eating and the children were restless. I do recall asking the team to help calm the children down as it was far too loud to hear anything.*

2.20. Ms Lauder was cross-examined by Counsel and then questioned by the Tribunal. She confirmed that she was suffering from some mental health and/or stress related issues at the relevant time.

2.21. Ms Lauder agreed that she was holding a notebook of the kind depicted in the photograph that had been referred to. She accepted that her violent act was a reaction to child B "playing up." He had been misbehaving and was defiant and rude. Ms Lauder accepted that she was "stressed out" that day, and that she was upset and frustrated. She did not accept that she was angry.

- 2.22. Ms Lauder accepted that she had hit child B with the exercise book, but she was not sure whether she was holding the book with one hand or two hands. When asked to describe the incident, Ms Lauder said that she had “unprofessionally hit him.”
- 2.23. In answering questions from the Tribunal, Ms Lauder was questioned regarding important concepts in Te Ao Māori relating to the sacredness of tamariki. Child B had a [REDACTED] father and a [REDACTED] mother. Ms Lauder had a good relationship with the mother and understood that there were important cultural factors relevant to the care of child B.
- 2.24. Ms Lauder accepted that her “cultural capital” was not present when she dealt with child B in the way that she did. She acknowledged that certain parts of the body are Tapu and that by hitting child B on the head she had violated something sacred. When questioned about this and these concepts, Ms Lauder stated that “I happened to stuff that one up.”
- 2.25. Ms Lauder was questioned about her desire to return to teaching and her belief that she can make a difference to the lives of children. In this regard, she was asked about support systems in place and whether she was receiving appropriate medical care. We accept that Ms Lauder has taken positive steps in this regard.

3. **SUBMISSIONS**

- 3.1. The Tribunal received written submissions from Counsel for the Complaints Assessment Committee and Ms Lauder. Both have been reviewed considering the evidence given at the hearing on 22 April 2021.

4. **CHARGE AND LEGAL FRAMEWORK**

- 4.1. The wording of the charge is as follows:
1. The CAC charges that Myrtle Wilhelmina Lauder, registered teacher of Ruakaka, on 27 November 2019, while at the centre:
 - a. Hit a [REDACTED] child [Child B] on the head with a book, and/or on 22 November 2019;
 - b. Pulled a [REDACTED] child [Child A] towards her and placed her foot on the child’s leg.
 2. The conduct alleged in paragraph 1 amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and Rule (1)(a) and/or (j) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which

otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.

4.2. Section 378(1) 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 well-being or learning of 1 or more students; or
- (ii) reflects adversely on the teacher's fitness to be a teacher; or
- (iii) may bring the teaching profession into disrepute; and

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

4.1. The test for serious misconduct is conjunctive.¹ As well as having one or more of the three adverse professional effects or consequences described in section 378(1)(a), the conduct must also be of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct, contained in Rule 9 of the Education Council Rules 2016.

4.2. Rule 9(1) states that a teacher's employer must immediately report to the Council if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility which was introduced in June 2017. Rule 9(1) also states that serious breaches of the Code include, but are not limited to, examples of conduct set out in rule 9(1)(a) to (k). Rules 9(1)(a), (j) and (k) are relevant in this case and state as follows:

9 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 or encouraging another person to do so:*

...

¹ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

(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.*

5. **DECISION ON DISPUTED FACTS**

5.1. The Tribunal is satisfied, to the requisite standard, that on 27 November 2019, Ms Lauder hit child B over the head with an A5 communication book that had a cover that was harder than a standard student exercise book. We are satisfied that Ms Lauder was holding the book in both hands and that the hit was with significant force. It did not cause injury but was shocking to the child and fellow staff members. Nothing that child B did justified the force used. Ms Lauder described it as unprofessional. We are of the view that this downplays the seriousness of the incident. It was completely inappropriate.

6. **DECISION ON LIABILITY**

6.1. We make our decision in relation to the charge of serious misconduct, based solely on the incident on 27 November 2019.

6.2. We do not have enough information to determine the incident of 22 November 2019. We acknowledge that the parties, in particular the CAC, attempted to be efficient in proceeding by way of an agreed summary of facts, however, we are left in a position where we do not have sufficient context and cannot make a proper determination.

6.3. The Tribunal finds that Ms Lauder's conduct on 27 November 2019, in which she hit child B over the head with a book, meets each definition of serious misconduct at section 378(1)(a). It was clearly likely to adversely affect the wellbeing of child B, it reflects adversely on her fitness to be a teacher, and it risked bringing the teaching profession into disrepute.

6.4. Further, Ms Lauder's conduct is of a character and severity that meets the criteria for reporting serious misconduct contained in rule 9 of the rules. Specifically:

a) Rule 9(1)(a): Unjustified or unreasonable physical force on a child. Unreasonable physical force in this case relates to the hit with the book on the child's head.

b) Rule 9(1)(j): An act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more. The conduct in this

case could be the subject of a prosecution for the offences of common assault or assault on a child. Both carry sentences of imprisonment that exceed three months.

- c) Rule 9(1)(k): An act or omission that brings, or is likely to bring, the teaching profession into disrepute. The Tribunal has no difficulty accepting that physical violence against a young child is likely to bring the profession into disrepute.

- 6.5. There is a degree of overlap between the criteria, particularly once it was found that there was unjustified/unreasonable physical force that adversely effected the wellbeing of child B. The short point is that the Tribunal is satisfied that there was serious misconduct and points out that it could have been reached by several different routes.

7. **PREVIOUS DECISIONS RELEVANT TO PENALTY**

CAC v Carmen²

- 7.1. The teacher picked up a child, who was around two years old, by the back of her sweatshirt with one hand and let her go, causing the child to drop to the floor. The child was not injured.
- 7.2. The Tribunal considered that the teacher's actions were not a case of carelessness. Rather, the Tribunal found that the teacher was feeling frustrated with the child for not getting out of bed. The Tribunal concluded that the teacher's conduct amounted to serious misconduct, though it considered that the conduct was not at the most serious end of the scale.
- 7.3. The Tribunal considered that the teacher's conduct appeared to have been influenced by her ill health at the time. This was an isolated incident and the teacher was otherwise someone who cared about the children in her care, understood her obligations and took them seriously.
- 7.4. The Tribunal censured the teacher, ordered annotation of the register for one year, and imposed conditions on the teacher's practising certificate requiring her to inform employers of the Tribunal's decision and to undergo mentoring.

CAC v Griffiths³

- 7.5. The teacher, a part-time early childhood teacher, was trying to get a child to sit down on the floor. In doing so, the teacher pushed the child forcefully down to a seated position. When the child stood up, she took his arm tightly and led him forcefully into the office. Once in the

² *CAC v Carmen* NZTDT 2018/21, 5 February 2019.

³ *CAC v Griffiths* NZTDT 2017/22, 5 February 2018.

office, she, again, pushed the child to the floor. The teacher stated that she moved the child towards the office because the child was violent towards her.

- 7.6. The Tribunal considered that the teacher's use of force was inappropriate and warranted an adverse finding. The use of force was not necessary to prevent harm to anyone, including the child. There were alternative ways of managing the child's behaviour in the circumstances. The Tribunal did not consider the force used to be extreme, however, it was not at all necessary and was accompanied by anger and emotion.
- 7.7. The Tribunal imposed cancellation as a penalty, on the basis that the teacher continued to maintain that she had done nothing wrong and had been a victim of violence herself. The teacher had also indicated that she wished to be removed from the register, so a penalty with a rehabilitative focus would serve little purpose.

CAC v Williams⁴

- 7.8. There were two instances of conduct in this case that occurred at an early childhood centre. On the first occasion, the teacher called the children to the mat, but student K did not come. Student K was four years old. When the teacher moved towards him, he moved away by dodging and running, weaving his way around other children and away from the teacher. The teacher grabbed him by the arm and pulled him towards her, lifting him onto her knee. Student K squirmed and kicked, and the teacher put her arms around him and pulled him into a secure hold. Student K continued to kick, and the teacher continued to pull him in and sat down to stop him kicking her.
- 7.9. The second incident occurred eight months later. Student K reacted when another child snatched a block away from him. Student K got up and yelled at Student C and threw blocks at other children. The teacher took Student K by his arm/wrist and dragged him out of the room to the outside area. She told him she would not put up with his behaviour, that he did not deserve to come in if he was going to behave this way, and he would not be allowed back inside. Student K cried and yelled "No". A short time later, when Student K stood up to say a sentence in te reo Māori, the teacher brought up the earlier incident and told him she would not put up with his behaviour and that it needed to stop or he would have to stop coming to kindergarten.
- 7.10. The Tribunal agreed that the teacher's behaviour was not appropriate, but was not satisfied that the conduct amounted to serious misconduct. This was because the Tribunal did not consider that this conduct reflected adversely on the respondent's fitness to practise or that reasonable members of the public would consider it brought discredit to the profession, so

⁴ *CAC v Williams* NZTDT 2019/24, 19 October 2019.

the second limb of the serious misconduct test was not met. The Tribunal made a finding of misconduct, rather than serious misconduct.

- 7.11. The Tribunal ordered that the teacher complete a suitable programme or professional development relating to managing children who have serious behavioural issues.

CAC v Kaufasi⁵

- 7.12. In this case, the teacher had on at least two occasions in 2018 pulled the ears of two four-year-old children. The explanation for this conduct was that he was tired, and the children were running around and he tried to call them back. The teacher said he did not mean to hurt the children.

- 7.13. The Tribunal found that the conduct of ear-pulling was in contravention of s 139A of the Act and met all three limbs of the definition of serious misconduct in s 378. The Tribunal found that while the conduct was not the most serious category of physical abuse, the conduct also met the criterion of the purposes of r 9(1)(a) and amounted to unjustified or unreasonable physical force on a child, along with r 9(1)(k). In particular, the Tribunal found that reasonable members of the public could reasonably conclude that the reputation and standing of the profession was lowered by the teacher's behaviour. The Tribunal observed that both incidents together gave an impression that this may have been a pattern of behaviour on behalf of the teacher.

- 7.14. The Tribunal ordered a censure, annotation on the register, and the following conditions were imposed on the teacher's practising certificate for two years:

- a) Further training to be completed before full registration was granted.
- b) Was to provide a copy of the Tribunal's decision to any current, future or prospective employer.
- c) The teacher was to inform the Teaching Counsel of the name of a mentor or supervisor with whom he could talk and receive support from.

8. PENALTY

- 8.1. In imposing the penalties below, the Tribunal has considered the previously decided cases referred to above. It also acknowledges that the violence did not cause injury to the child and that the act was committed at a time when Ms Lauder was unhealthily stressed and suffering from mental health issues.

⁵ *CAC v Kaufasi* NZTDT 2019/58, 15 October 2019.

8.2. The Tribunal considers that the following factors aggravate the incident:

- a) Child B was very young and therefore vulnerable.
- b) The violence was directly to the head. Such an act has potential to cause lasting injury to a child's brain and also violates the sacredness of this part of the body.

8.3. By way of mitigating features, the Tribunal acknowledges that Ms Lauder has no previous disciplinary history and that she has cooperated with the disciplinary process and acknowledged her actions. During the hearing, she expressed remorse, which we accept is genuine. Ms Lauder has shown proper insight as to the causes of her behaviour and has taken steps to address these. We also acknowledge the many positive things that her former colleagues said about her.

8.4. Filed with the agreed summary of facts was an impairment assessment report from Dr Kristin Good. It has been considered by the Tribunal and, with other medical documents, has influenced the decision to impose penalties that have a rehabilitative purpose.

8.5. The Tribunal imposes the following penalties:

- a) Censure.
- b) Annotation of the register for a period of two years.
- c) There is to be a condition on Ms Lauder's practicing certificate that requires her to inform any employer of this decision. This decision is to remain in force for a period of 12 months from the date of this decision.
- d) It is a condition of Ms Lauder's practicing certificate that she is not to hold a position of responsibility at any education provider. This condition is to remain in force for a period of two years from the date of this decision. For clarity, this condition allows Ms Lauder to obtain a teaching position, but not a position of responsibility.

9. **NAME SUPPRESSION**

9.1. Ms Lauder has applied for name suppression.

9.2. The application of the principle of open justice to proceedings before the Tribunal is contained in section 405(3) of the Act. The Tribunal has previously stated that the primary

purpose behind open justice in a disciplinary context, is the maintenance of public confidence in the profession concerned through transparent administration of the law.⁶

- 9.3. Section 405(6)(c) of the Act provides that the Tribunal may make an order prohibiting publication of the name or particulars of the affairs of any person if the Tribunal “is of the opinion that it is proper to do, having regard to the interest of any person ... and to the public interest.”
- 9.4. We have considered the grounds advanced by Ms Lauder carefully, but we are not persuaded that there should be suppression in this case. The charge has been proven and serious misconduct found. Suppression should only be granted if there are sufficient and proper reasons that outweigh the principle of open justice.
- 9.5. Ms Lauder says that publication will cause embarrassment to her and her whānau. She also submits that it will impact on her ability to gain future employment. Ms Lauder suggests that these would be unfair consequences given that the incident was a “one off” and happened at a time when she was impaired by mental health issues.
- 9.6. The Tribunal rejects the argument that relates to difficulties in finding future employment. As part of its decision, the Tribunal has ordered that any future employer must be informed of this decision for a period of 12 months. It is the Tribunal’s view that future employers are entitled to know of this matter. For that reason, we have gone to some length to refer to Ms Lauder’s personal issues that could be seen as mitigating the serious misconduct or putting it in context. A future employer is entitled to know of this matter.
- 9.7. Regarding embarrassment to Ms Lauder and her whānau, we accept that there will be some embarrassment or loss of face, but we do not accept that this is out of proportion to the expected consequences of serious misconduct of this kind.
- 9.8. Ms Lauder has also referred to her ill health and effects that publication might have on this. This is a stronger argument and one which has been given full deliberation. The Tribunal has considered Dr Good’s report and letters from Ms Lauder’s counsellor and GP. The letters plead for name suppression. Neither refers to specific consequences that might result following publication that would outweigh the principle of open justice.
- 9.9. Overall, on the evidence before the Tribunal, the suggested consequences of publication are simply what might be expected in a matter involving serious misconduct. They are not sufficient to order non-publication. Further, the public is entitled to know when those charged with educating their children have acted in this way. Indeed, it would be improper

⁶ *Complaints Assessment Committee v Teacher NZTDT 2016/27* @ [66] citing *X v Standard Committee (No.1) of the New Zealand Law Society* [2011] NZCA 676 @ [18].

for members of the public to be denied access to this information when placing their children into the care of others.

9.10. The application for suppression is therefore declined.

10. **COSTS**

10.1. The Committee seeks a contribution to its costs pursuant to section 404(1)(h) of the Act.

10.2. A contribution of 50% is standard where a matter has been defended and a charge of serious misconduct proven. A contribution of 40% is common where a matter has been determined “on the papers.” This is because of the savings in time and cost to those involved in the proceedings. Despite that the fact that this matter required an in-person hearing, the Tribunal is prepared to reduce the costs contribution and treat Ms Lauder as though this matter had been determined entirely on the papers.

10.3. The Tribunal orders Ms Lauder to pay a contribution of 40% of the Committee’s costs. The Tribunal has reviewed the Committee’s costs and determined that they are reasonable.

10.4. The Tribunal also orders that Ms Lauder pay a contribution of 40% to its own costs.

Dated at Auckland this 9th day of June 2021



S N B Wimsett
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).