

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL
I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

I RARO I TE MANA O TE | UNDER THE

Education and Training Act 2020

MŌ TE TAKE | IN THE MATTER OF

a charge of serious misconduct referred by the
Complaints Assessment Committee of the New
Zealand Teachers Disciplinary Tribunal

I WAENGA I A | BETWEEN

Complaints Assessment Committee
Referrer

ME | AND

██████████ (Registration Number ██████████)
Respondent

TE WHAKATAUNGA MŌ TE WHIU, TE HERENGA ME NGĀ UTU
DECISION ON PENALTY, LIABILITY AND COSTS

TE RĀ: 5 September 2023
TE RONGONGA: Audio-visual link (Microsoft Teams), 25 June 2023
PAE TARAIPUNARA: Rachael Schmidt-McCleave (Deputy Chair), David Spraggs/Kura Tuhura
(Members)
HEI MĀNGAI: Ms A G McCluskey for the CAC
The respondent, self-represented

Whakataki – Introduction

1. Pursuant to section 497 of the Education and Training Act 2020 (the “Act”), the Complaints Assessment Committee (“CAC”) has determined that:
 - (a) Information received from the mandatory report provided by [REDACTED] (“the Centre”) about the conduct of the respondent should be considered by the New Zealand Teachers Disciplinary Tribunal (“the Disciplinary Tribunal”).
 - (b) The CAC charges that the respondent has engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
2. The charge alleges that the respondent, a registered teacher of [REDACTED], at the Centre in [REDACTED], on or about 15 October 2021, did grab hold of a three year old child (“Child A”) by his leg/ankle and pulled him out of a play tunnel.
3. The CAC alleges that the conduct above amounts to serious misconduct pursuant to section 10 of the Act and any or all of Rules 9(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 500 of the Act.
4. The matter was heard on the papers via Teams on 25 June 2023.

Te tukanga i mua i te kēhi – Procedural History and Preliminary Matters

5. A pre-hearing conference was held on 23 February 2023, where timetabling orders were agreed, including towards progression of an agreed summary of facts.
6. At that pre-hearing conference, the Tribunal ordered interim suppression of the respondent’s name and identifying details, and those of Child A, to stay in place until the end of the hearing. The Tribunal ordered that, if the respondent wishes the Tribunal to consider a permanent suppression order, an application must be filed in accordance with the timetabling directions made. The Tribunal also directed the CAC to communicate the timetable to the Centre, so that, if the Centre wished to make any application for suppression, it would do so in accordance with the timetable.
7. Permanent suppression orders are addressed at the conclusion of this decision.

Te taunaki - Evidence

Whakarāpopoto whakaae o ngā meka - Agreed Summary of Facts

8. The ASoF is set out in full below:

“Background

1. The respondent, ██████████, is a registered teacher. Ms ██████ was first registered in 2018. She currently holds a provisional practicing [sic] certificate, which is due to expire on 26 June 2024.
2. At the time of the incident on 15 October 2021 (which is detailed below), Ms ██████ was employed as a teacher at ██████████ (the Centre), an early childhood education centre in ██████████. Ms ██████ was dismissed from the Centre on 27 October 2021 after a period of suspension following the incident.

The incident

3. On 15 October 2021, Ms ██████ was supervising children playing in at [sic] outdoor area at the Centre at lunchtime.
4. Ms ██████ saw Child A (three years and two months old) behaving disruptively towards Child B. Child A then entered a play tunnel. Ms ██████ approached Child A, reached into the tunnel and took hold of Child A’s lower leg from behind. Ms ██████ pulled Child A out of the tunnel by his leg.
5. Ms ██████ then verbally reprimed Child A for his behaviour towards Child B. Child A was visibly angry and upset.
6. Another teacher witnessed the incident. She spoke to Ms ██████ at the time, explaining her concerns with the way Ms ██████ had handled Child A. The teacher who witnessed the event described the event in two ways – in her written statement that the child was dragged out of the tunnel by Ms ██████ in a quick forceful manner and in an interview she described that Ms ██████ pulled Child A in a fast, jerking motion, which she described as an aggressive forceful movement.
7. The teacher addressed Ms ██████ and noted that Ms ██████ was immediately visibly upset and embarrassed, Ms ██████ explained that Child A had pushed Child B and said that “no one is watching them”. The other teacher told Ms ██████ that her behaviour was still not okay. Ms ██████ said “I’m not okay, I think I just need to leave.”

Teacher’s response

8. Initially:
 - a. Ms ██████ gave a statement on the day of the incident. She said that Child A had spat towards her and pushed Child B. She saw him shoving Child B who was trying to hold onto the tunnel so as not to fall, trying to make him fall. Ms ██████ was upset about this because Child B was new and just starting to settle in, Ms ██████ stated that “I let my emotions get to me and I reacted irrationally by grabbing [Child A’s] ankle, keeping in mind to be gentle but was not thinking about the actions afterward and pulled him out the tunnel when he tried to crawl away”.
 - b. Ms ██████ also responded to the Teaching Council investigation. She outlined that Child B was new to the centre and anxious. She explained that for approximately two weeks prior to the incident, Child A had been bullying Child B. She said the trigger for her grabbing hold of Child A was that she had just witnessed Child A engaging in bullying behaviour again. She felt that the Centre had failed to respond to Child A’s behaviour towards Child B. Regarding the incident itself, she said she was trying to stop Child A “from carrying on as he was in a destructive mood it appeared. He tried to go into a tunnel and I reached down attempting to stop him.” She disagreed that she used excessive force and jerked the child. She stated that she did not consider that she posed a risk to any child or the centre.

9. Once the matter was before the Tribunal, Ms [REDACTED] said that the reason for her statement "I should leave" was because she felt unsupported in the workplace."

Te Ture - The Law

9. Section 10 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.

10. As confirmed by the District Court in relation to the identical test under section 378 of the Education Act 1989 (the "former Act"),¹ the test under section 10 is conjunctive, 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, pursuant to Rule 9 of the Teaching Council Rules 2016.

11. The criteria for reporting serious misconduct are found in the Teaching Council Rules 2016 (the "Rules"). The Tribunal accepts the CAC's submission that, if established, the respondent's conduct would fall within the following sub-rules of Rules 9(1):

(a) Rule 9(1)(a): using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so;

(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 3 months or more; and

(c) Rule 9(1)(k): an act or omission that that brings, or is likely to bring, the teaching profession into disrepute.

12. The Tribunal accepts that the test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably

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

conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.²

13. The following clauses of the Code of Professional Responsibility are also relevant:
 - (a) Clause 1.3: *"I will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity."*
 - (b) Clause 2.1: *"I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm."*
14. As noted by the CAC, the Code was issued with *"Examples in Practice"*³ which provide positive examples of what the principles look like in practice and include behaviours that are unacceptable and breach the Code.
15. An example of demonstrating a high standard of professional behaviour and integrity as required by clause 1.3 is *"behaving in ways that promote a culture of trust, respect and confidence in me as a teacher and in the profession as a whole"*. Conduct that damages this trust and confidence breaches clause 1.3.⁴
16. Examples of promoting the wellbeing of learners and protecting them from harm, as required by clause 2.1, are *"Creating learning environments (including online spaces) that are safe and inclusive, and that promote the dignity and emotional wellbeing of all learners; fostering trust, respect and cooperation with and among learners; showing respect, for example, using a respectful tone of voice."*
17. An example of behaviour that does not promote learners' wellbeing and may cause harm is *"inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour."*

Ngā tāpaetanga a te kaiwhiu – CAC Submissions

18. In summary, the CAC submitted that each part of the serious misconduct definition in section 10 of the Act is met:
 - (a) There is a real possibility that the well-being of Child A was adversely affected by Ms █████ use of force. The act of grabbing Child A's leg and pulling him from the play tunnel presented a risk of injury. Further, this act and the fact she verbally

² *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

³ *The Code of Professional Responsibility, Examples in Practice* (Education Council, Wellington, June 2017).

⁴ At 7.

reproved Child A after physically handling him is likely to have negatively impacted Child A's well-being and undermined the trust, respect and cooperation between a teacher and student. As set out in the ASOF, Child A was visibly angry and upset after the incident. The CAC accepts that this may have related to him being told off by Ms ■■■■, but the CAC submits it was likely a combination of the forceful manner of the act and the reprimand.

- (b) Ms ■■■■ use of force is a clear departure from the standards expected of a teacher, because she was using force to move a child, as a response to the child being disruptive. Considering the prohibition in section 24 of the Act on using force toward a child by way of correction or punishment, the CAC submits that this act impacts on Ms ■■■■ fitness to teach.
- (c) ECE teachers are expected to face challenging behaviour from children and stressful situations within the workplace as a result of that challenging behaviour. Their position requires that they are capable of maintaining composure and acting professionally when they face those stresses in the workplace. Members of the public must be taken to think less of a profession which tolerates a teacher's resort to the use of force as a way of moderating the behaviour of a child.

19. The CAC further submitted that Rules 9(1)(a), (j) and (k) of the Rules are made out, such that the second limb of the serious misconduct test is made out:

- (a) Rule 9(1)(a) is engaged because unjustified physical force was used, although there is no suggestion that the respondent was being deliberately physically aggressive. Unlike in *Billingsley* (see discussion of cases below), there is no evidence that Ms ■■■■ conduct in this case was an explicable use of force, incident to ordinary acts in an ECE context. Neither was she trying to remove the child from a situation where they were being disruptive, like the teacher in *Leary*. Although she had concerns about him bullying Child B, her actions were not to take him away from Child B. The use of force can be seen as punitive.
- (b) Rule 9(1)(j) is engaged because Ms ■■■■ use of force amounted to an act that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more, namely assault.
- (c) Rule 9(1)(k) is likewise engaged for the same reasons as the CAC submits that the third part of the serious misconduct definition is met. Reasonable members of the public, informed that a teacher in the position which Ms ■■■■ occupied had

behaved in this way, would very likely think less of a profession which tolerates that conduct.

20. The CAC submitted with reference to the Code that Ms [REDACTED] conduct was unprofessional, exposed Child A to a risk of harm, detracted from the profession's culture of trust, and was altogether inappropriate.
21. The CAC therefore submitted that Ms [REDACTED] conduct amounts to serious misconduct.

Ngā tāpaetanga a te kaiurupare - Respondent submissions

22. The respondent did not make any submissions on substantive liability, or on penalty, but only on her application for permanent suppression (addressed below).

Whakataunga – Decision

23. The Tribunal finds the particular as set out in the notice of charge are established to the requisite standard.
24. The Tribunal considers that, for the reasons discussed below with respect to the legal position, the established conduct amounts to serious misconduct pursuant to section 378 of the Act, and rules 9(1)(a), (j) and (k) of the Rules.
 - (a) adversely affected, or was likely to adversely affect, the well-being or learning of the children involved (section 10(a)(i) definition);
 - (b) reflects adversely on her fitness to be a teacher (section 10(a)(ii) definition);
 - (c) may bring the teaching profession into disrepute (section 10(a)(iii) definition and Rule 9(1)(k));
 - (d) constituted unreasonable and unjustified physical force (Rule 9(1)(a); and
 - (e) amounted to what could have been a crime punishable by imprisonment of three months or more, namely assault (Rule 9(1)(j)).
25. This Tribunal has commented many times that the use of force for corrective purposes, even where they may be no aggression or anger involved, will typically amount to serious misconduct, while acknowledging that each case must be determined on its facts and having regard to the nature of the force used and the surrounding circumstances.⁵ For instance,

⁵ CAC v Haycock NZTDT 2016/2, 22 July 2016.

in *CAC v Haycock*,⁶ the Tribunal confirmed that the use of force for a corrective purpose, even in the absence of aggression or anger, will typically amount to serious misconduct.

26. It is acknowledged that the Tribunal has previously observed that any use of force contrary to the predecessor provision to section 24, will not automatically comprise serious misconduct, and that to constitute serious misconduct “*the behaviour concerned must satisfy the character and severity threshold established in the Rules. This is an assessment that must be undertaken on a case by case basis to determine if the charge is proven.*”⁷
27. However, here, the Committee considers that the respondent’s conduct involved did meet this threshold. Child A was of a vulnerable age. The respondent used force as a punitive measure and there was likely an adverse impact on Child A, demonstrated by his anger and level of upset. The respondent’s actions were reactive and punitive and, in some of her responses through the process, show a lack of self-awareness and the taking of responsibility for her actions which concerns the Tribunal.
28. The Tribunal considers its decision to be supported by analogous cases.
29. In *CAC v Teacher C*,⁸ the Tribunal found serious misconduct to be established when a teacher used force in multiple ways to deal with a child with a history of challenging behaviour (pulling the child, shutting the child outside, gripping the child’s wrists, and restraining the child by trapping them against a wall). The Tribunal in that case considered the conduct was at the lower end of the scale but that the entire (albeit brief) episode was concerning and needed to be addressed.
30. In *CAC v May*,⁹ the Tribunal found serious misconduct to be established after a teacher (with no intention of causing harm to the child) had forcefully grabbed an 18-month-old child by the arm and swung him into the air. The Tribunal in that case said there was no doubt that the teacher’s behaviour risked lowering the profession’s standing in the eyes of the public, and further stated that it was incumbent on all in the profession to have a clear appreciation of the express statutory prohibition on the use of corrective and disciplinary force in the Act.¹⁰
31. In *CAC v Hutchinson*,¹¹ the Tribunal found serious misconduct after a teacher grabbed a child by the forearm and put him in the corner. When the child went to stand up, the teacher

⁶ Ibid.

⁷ NZTDT 2016-50, 6 October 2016 at [26].

⁸ *CAC v Teacher C* NZTDT 2020/32, 18 March 2021.

⁹ *CAC v May* NZTDT 2019/96, 9 January 2020.

¹⁰ Citing *CAC v Rangihau* NZTDT 206/18, 7 July 2016.

¹¹ *CAC v Hutchinson* NZTDT 2020/1, 14 September 2020.

pushed him backwards causing his head to hit the bottom of a mirror on the wall, and telling him “that’s what happens when you don’t listen.” The teacher also picked up another young child by the arms and threw him back down on the ground.

32. In *CAC v Leary*¹², the teacher grabbed a 4 year old child who was behaving badly by the wrist, and pulled her across and out of the classroom. The child stumbled but did not fall. There was no evidence of the effect on the child. The Tribunal considered that “*the incident involved a momentary loss of control, nonetheless the respondent used physical force against a student. This kind of loss of self-control reflects adversely on the respondent’s fitness to be a teacher*”, so this conduct was found to be serious misconduct.
33. In *CAC v Billingsley*¹³, there were four incidents of physical restraint of children at an ECE by Mr Billingsley. The Tribunal considered that these occasions were not accurately described as unreasonable or unjustified use of force. Mr Billingsley gave explanations that, for example, he was trying to pick a child up so that she wasn’t sitting on his lap, but she fell over. However, the Tribunal said it was clear that some force was used on each occasion, and the Tribunal was satisfied that there were other more appropriate ways in which Mr Billingsley could have achieved the outcomes he wished, short of physically handling them. It was also relevant that Mr Billingsley was a relatively inexperienced teacher and had not been spoken to in any detail about the incidents. For these reasons, the Tribunal found the conduct constituted misconduct (rather than serious misconduct).

Whiu - Penalty

34. Having determined that this case is one in which we consider serious misconduct to be established, the Tribunal must now turn to consider what is an appropriate penalty in the circumstances:

500 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):*

¹² *CAC v Leary* NZTDT 2021/49, 30 June 2022.

¹³ *CAC v Billingsley* NZTDT 2021/21.

- (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 493 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.*

35. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.¹⁴ We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.¹⁵

¹⁴ *CAC v McMillan*, NZTDT 2016/52.

¹⁵ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

36. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers¹⁶:
- (a) Protecting the public;
 - (b) Setting the standards for the profession;
 - (c) Punishment;
 - (d) Rehabilitation;
 - (e) Consistency;
 - (f) The range of sentencing options;
 - (g) Least restrictive;
 - (h) Fair, reasonable and proportionate.
37. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
38. In its submissions on penalty, the Committee, after referring to comparable cases, submitted that Ms [REDACTED] is a provisionally registered teacher, who has not previously been subject to disciplinary proceedings. The Committee also submitted that Ms [REDACTED] actions appear to have been spontaneous reactions in a time of stress, and the violence was at the lower end of the scale. The Committee does not consider that a penalty of suspension or cancellation is required, and proposed a penalty comprising a combination of censure and conditions (relying on similar penalties imposed in *Leary*, *Billingsley*, and *CAC v Teacher C*¹⁷).
39. The Tribunal has taken into account the CAC's submissions and considered the cases referred to.
40. The Tribunal has already commented on the serious manner in which it regards this conduct (when force is used in a punitive way), and the reactive manner in which the respondent acted (as well as little evidence of insight and responsibility shown afterwards). The Tribunal also notes that the respondent is not currently teaching.

¹⁶ Above n 16 at [40] – [62]

¹⁷ *CAC v Teacher C* NZTDT 2020/32

41. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:
- (a) Censure of the respondent under section 500(1)(b) of the Act.
 - (b) Annotation of the register for a period of two years under section 500(1)(e) of the Act.
 - (c) Under section 404(1)(c) of the Act the following conditions to be placed on the respondent's current, and any future, practising certificate for a period of two years:
 - (i) The respondent must tell any future employer of the decision and provide them with a copy of the full decision with evidence to the Teaching Council of this disclosure.
 - (ii) The respondent to attend a behaviour management course for teachers dealing with difficult behaviour in children (such as Incredible Years or the like) prior to returning to teaching and to provide evidence of this to the Teaching Council.
 - (iii) The respondent to maintain a mentor for one year after returning to teaching, with the mentor to provide a report to the Teaching Council at the conclusion of the arrangement.

Ngā utu – Costs

42. The CAC submits that a 40% contribution to the CAC's overall costs is appropriate. This reflects a discount from the starting point of 50% to acknowledge the respondent's cooperation.
43. The Tribunal sees no reason to depart from the usual principles. The Tribunal therefore orders 40% costs in favour of the CAC. The CAC has provided a Schedule of Costs which shows its total costs as \$7,566.94, 40% of which amounts to **\$3,026.76**.
44. The respondent is also ordered to pay 40% of the Tribunal's costs pursuant to section 500(1)(i). The Tribunal's costs amounted to \$1455, with 40% of that sum being **\$582**.

Ngā Whakahau whakaputanga-kore pūmau – Permanent non-publication orders

45. Permanent non-publication of Child A's name is ordered.

46. With respect to the respondent, there is an interim order for non-publication. The respondent has made an application for name suppression pursuant to section 405 of the Act. This is based on the following (email to the Tribunal:

“I believe that I should be granted permanent name suppression for this case because if not, it may have an effect on my mental health and hinder any progress I am making and/or made so far through current counselling and therapy I have received during my pregnancy and after the birth of my son. Any extra stress may cause detrimental affects [sic] on my ability to continue to provide my son with the best possible care. My son, who is currently six months old, solely depends on me daily as his father works most days during the week, sometimes everyday and so to cause more stress on me and my mental health would hinder not only myself, but my son and partner’s mental and physical health. I also would not want the long term affect [sic] of my name being made public as this could have a negative affect [sic] on my son and his future relationships or opportunities within the ECE sector as he will attend daycare or kindergarten in the near future. As he carries my last name as well, I worry that there could be a link made and for him to be judged based on this case.”

47. Ms [REDACTED] also provided a letter from mental health services, detailing her mental health challenges during and after her pregnancy and the extent to which further stress may be detrimental to Ms [REDACTED] mental wellbeing and that of her son and partner.
48. The application is not opposed by the Committee, who note that ordinarily stress and anxiety as a result of disciplinary proceedings is not in itself sufficient to displace the principle of open publication, but it is accepted that in some cases orders for non-publication have been made where it can be shown that publication of a teacher’s name will be detrimental to their mental health, such as the evidence shows here.
49. There has been no application for suppression of the name of the Centre.
50. The application of the principle of open justice to proceedings before the Tribunal is contained in section 405(3) of the Act. The primary purpose behind open justice in a disciplinary context is the maintenance of public confidence in the profession concerned through the transparent administration of the law.¹⁸
51. The Tribunal’s powers to prohibit publication is found in section 405(6) of the Act. It can only make one of the non-publication orders in (a) to (c) of section 405(6) if it is of the opinion that it is “proper” to do so having regard to the interests of any person, including but not limited to, the privacy of the complainant and to the public interest.
52. The Tribunal has adopted a two-step approach to applications for non-publication orders. First, it considers whether it is proper to make a non-publication order having regard to the various interests identified in section 405(6); and, secondly, it decides whether to exercise

¹⁸ *CAC v Teacher NZTDT 2016/27* at [66] citing *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

its discretion to make the orders sought.¹⁹ Bare assertions will not suffice for displacing the principle of open justice and nor will the “ordinary” hardships or expected consequences of a proceeding involving allegations of serious professional misconduct.²⁰

53. Here, the Tribunal is satisfied that a permanent order for non-publication of Ms [REDACTED] name and identifying details is justified. Discomfort and stress caused by disciplinary proceedings are seen as an ordinary consequence of such proceedings, and do not justify disruption of the presumption of open justice which this Tribunal must apply. However, here, there is medical evidence as to the likely impact of publication upon Ms [REDACTED] mental health and this is accepted by the Tribunal.
54. Accordingly, the Tribunal grants the respondent’s order for non-publication of her name and identifying details.

R. C. Schmidt-McCleave

Rachael Schmidt-McCleave
Deputy Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by the 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).

¹⁹ Ibid at [61].

²⁰ *Y v Attorney-General* [2016] NZCA 474 citing *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 approved by the Supreme Court declining leave to appeal in *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4.

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(Members)
HEI MĀNGAI: Ms A G McCluskey for the CAC
The respondent, self-represented

Whakataki – Introduction

1. By decision dated 5 September 2023, the Tribunal found the respondent's conduct in the notice of charge to be established and to be serious misconduct.
2. In that decision, the Tribunal made an order for 40% of the CAC and Tribunal costs to be paid by the respondent.
3. Evidence has now been brought to the attention of the Tribunal showing the respondent's financial situation, being on a sole parent benefit which would mean she would be struggling to pay costs, given the high cost of living and need to care for her son.
4. The CAC filed a memorandum indicating it would abide the Tribunal's decision in relation to costs.
5. The Tribunal considers it has a need to be consistent in its decision-making with respect to costs, particularly when it has made a finding of serious misconduct. Nonetheless, the Tribunal accepts that the respondent in her current financial situation will struggle to pay an award of costs. The Tribunal therefore amends its 40% costs decision to allow a further discount to the respondent to recognise her cooperation with the bringing of the charge, and her current financial situation.
6. The respondent is therefore to pay 25% of the CAC's costs of \$7,566.94, being **\$1,891.74** and 25% of the Tribunal costs of \$1455, being **\$363.75**.
7. The Tribunal encourages the respondent to contact the Council in relation to an arrangement to be able to pay those costs.

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