BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2020-28

IN THE MATTER	of the Education Act 1989
AND	
IN THE MATTER	of a charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
BETWEEN	**COMPLAINTS ASSESSMENT COMMITTEE**
AND	**TEACHER J** **Respondent**

TRIBUNAL DECISION DATED 22 FEBRUARY 2021

HEARING: Held on the papers

TRIBUNAL: Theo Baker (Chair)
David Spraggs and Dave Turnbull(members)

REPRESENTATION: Mr E McCaughan for the CAC
Ms J Martin for the respondent

1. In a Notice of Charge dated 8 July 2020, the Complaints Assessment Committee (**CAC**) alleged that the Teacher K (**the respondent**) shoplifted on 7 specified dates between 9 September 2019 and 20 October 2019 and this conduct amounts to serious misconduct under the definition in section 378 of the Education Act 1989 (**the Act**) and rules (9)(1)(g) 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.

2. The respondent admitted the allegations and the parties filed a fulsome summary of facts, signed by Mr McCaughan as the CAC's representative and Ms Jo Martin for the respondent. The respondent also accepted that the conduct amounted to serious misconduct. The Tribunal must still consider the evidence and be satisfied that the factual allegations are substantiated by the agreed facts and that the conduct meets the definition of serious misconduct in section 378 of the Act.

Summary of decision

3. We found that the factual allegations were established and that the conduct amounted to serious misconduct.

4. For the reasons outlined in paragraphs 61 and 62 we censured the respondent and placed a condition on her practising certificate for a period of 2 years that she have a mentor. We imposed costs of 40%.

5. We ordered non-publication of the names of the respondent, her health providers, the schools, and the location of the events, including the supermarkets and airport and the agencies involved with the respondent's diversion.

6. We did not suppress medical information that was relevant to our decision, but leave is granted to the parties to address us further on this issue, as outlined in paragraph 80.

Evidence

7. The evidence in support of the charge was in the form of an agreed summary of facts outlined below.

Background

8. The respondent was first fully registered in 1999. Her practising certificate expires on 31 July 2021.

9. The respondent began working at High School A in 2003, first as a relief teacher and

then on fixed-term contracts. She became a permanent member of staff in 2009. She was employed variously as a Special Needs teacher, a mainstream English teacher and a Reader/Writer Coordinator.

10. The respondent resigned from School A on 11 November 2019, effective on 16 November 2019.

11. On 24 October 2019, after being served with a trespass notice from New World, Town A, the respondent voluntarily went to the Town A Police Station, where she admitted various shoplifting offences at these supermarkets.

12. Following a Police investigation the respondent was charged in the District Court with seven charges of theft (under $500) under sections 219 and 223(d) Crimes Act 1961. The maximum penalty for a charge of theft (under $500) is 3 months' imprisonment.

Particular 1(a): on 9 September 2019 shoplifted from New World, Town A

13. In the afternoon of 9 of September 2019, while at the Town A New World Supermarket, the respondent placed her groceries on the counter but put a can of wine in her recycle shipping bag. She left the supermarket without paying for the wine, valued at $6.99.

Particular 1(b): on 12 September 2019 shoplifted from New World Town A

14. On the 12 September 2019 the respondent was again at New World Town A. At the self-scanning checkout, she put a packet of cheese up her sleeve. She scanned and paid for other items but left the store without paying for the cheese, priced at $13.99.

Particular 1(c): on 14 September 2019 shoplifted from New World Town C

15. On 14 September 2019, the respondent was at the Town C New World Supermarket. She took some face cream out of its box and placed the container up the sleeve of a jacket she was wearing. At the self-service checkout she paid for other items but not the face cream that was valued at $44.99.

Particular 1(d): on 15 September shoplifted from New World Town A

16. On 15 September 2019, the respondent was at the Town A New World Supermarket. Among other things, she put a packet of fish in her trolley. She also filled a snap-lock back with Brazil nuts, but she wrongly recorded the code for peanuts. At the self-service checkout she did not pay for the fish, which she placed under a recycle bag in her trolley and paid for the nuts at the rate of peanuts. The price of the fish was $10.00 and the difference outstanding on the nuts was $8.66.

Particular 1(e): on 21 September 2019 shoplifted from New World Town A

17. On the 27 September 2019, while at the Town A New World Supermarket, the respondent hid a box of face cream, valued at $44.99 in her clothing and did not pay for it when she scanned other grocery items.

Particular 1(f): on 25 September 2019 shoplifted from The Store at Town B Airport

18. On the 25 September 2019, while at the Town B airport waiting to catch a flight, the respondent went to the bookstore, removed the cover of a book and placed it in her bag. She then paid for a newspaper at the counter and left the store with the book, priced $48.

Particular 1(g): on 20 October 2019 shoplifted from New World Town A

19. On the 20 October 2019, while at the Town A New World Supermarket, the respondent filled a ziplock bag with 510gms of brazil nuts, which she labelled with the code of Rice grain medley.

20. The value outstanding for the Brazil nuts is $24.77, the property of Town A New World.

21. The respondent admitted the facts and was referred to the [Te Pae Oranga Iwi] Community Panel for diversion, which she successfully completed and the charges were dismissed on 24 January 2020. As part of her diversion she completed the following tasks:

    a) Payment of reparation to New World Town A, New World Town C and Town B Airport Bookshop, totalling $156.11.

    b) Completion of a leadership course at [Whenua Iti].

    c) Undertaking counselling sessions.

    d) Preparing an apology letter to the Police.

22. Also included in the ASF was a statement from the respondent, which we have referred to below in our consideration of penalty.

Findings

23. The CAC must prove the charge on the balance of probabilities. There is one minor gap in the evidence in support of particular 1(g). The respondent's actions after she had mislabelled the brazil nuts have not been included. It is implicit that she then proceeded to leave the store without paying the correct price for the brazil nuts, given the amount outstanding was $24.11.

24. We find that the CAC has proved the particulars of the charge. The respondent has shoplifted on 7 occasions.

Serious misconduct

25. The CAC contends that the established conduct amounts to serious misconduct. Although the respondent has accepted this the Tribunal must still be satisfied that the established conduct reaches that threshold.

26. Serious misconduct is defined in section 378 of the Act as follows:

> ***serious misconduct*** *means conduct by a teacher –*
>
> *(a) that –*
>
> *(i) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;*
>
> *(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.*

27. The criteria for reporting serious misconduct referred to in section 378 (b) are found in rule 9 of the Rules and the CAC relies on rule 9(1)(g) and (k):

> ***9 Criteria for reporting serious misconduct***
>
> *(1) A teacher's employer must immediately report to the Teaching 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*:
>
> *(g) acting dishonestly in relation to the teacher's professional role, or committing theft or fraud*:
>
> *…*
>
> *(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute*.

CAC submissions

28. The CAC submitted that the conduct reflects adversely on the respondent's fitness to be a teacher (section 378 (a)(ii) because it raises questions about her general

reliability and trustworthiness. The fact that the conduct occurred outside of the school setting does not mitigate the respondent's conduct or remove it from the question of appropriate professional conduct. This Tribunal stated in 2009/05:[1]

> The legislation is simply not structured in such a way as to draw a line between a teacher's private and professional life. The principal question is never whether some incident took place in a teacher's private or professional capacity. The principal question is always whether the teacher's actions, wherever and whenever they took place, reflect adversely on his or her fitness to be a teacher.

29. The CAC referred to other cases involving dishonesty where we found serious misconduct.[2]

30. It was further submitted that the conduct meets the third definition of serious misconduct in section 378 and may bring the teaching profession into disrepute. The conduct can be categorised as deliberate and repeated thefts occurring over a period of time, albeit occurring at a time when the respondent was subject to various stressors. The admission to the number of instances would mean a reasonable member of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent's behaviour. At the very least, the conduct raises concerns around the respondent's general reliability and trustworthiness.

31. The respondent has not demonstrated a high standard of professional behaviour and integrity, undermining the public trust and confidence in the teaching profession.

Discussion

32. We have not been asked to make a finding of serious misconduct on each of these matters. Rather, the charge reads that the conduct in paragraph 1 of the charge (which is each of the 7 allegations of shoplifting) amounts to serious misconduct.

33. The respondent has accepted that her conduct amounts to serious misconduct.

34. We accept the CAC submissions. We agree that the 7 incidents of theft reflect adversely on the respondent's fitness to be a teacher and may bring the teaching profession into disrepute. Two definitions of serious misconduct in section 378 are therefore met. Further, this is a clear case of theft and rule 9(1)(g) is met.

---

[1] *CAC v Teacher* NZTDT 2009/05, May 11 2009.

[2] *CAC v Teacher A* NZTDT 2018/36,(6 March 2019; *CAC v Wilson* NZTDT 2019/14, 19 June 2019; *CAC v Hill* NZTDT 2015/59, 20 July 2016.

35. On the question of whether the conduct is likely to bring the profession into disrepute we have repeatedly applied the test for bringing discredit to the profession under the Nurses Act 1977, in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28], that reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and standing of the profession is lowered by the behaviour of the practitioner.[3] We agree that is the case here. Therefore the third definition in section 378 and rule 9(1)(k) are both met.

36. We might have also found that the conduct meets rule 9(1)(j), that is "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," but the CAC did not pursue that rule in the Notice of Charge or in submissions.

37. In conclusion, the conduct amounts to serious misconduct.

Penalty

38. 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:*

[3] The test for bringing discredit to the profession in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

(h) require any party to the hearing to pay costs to any other party:

(i) require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:

(j) direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.

CAC submissions

39. The CAC submitted the following penalty was appropriate:

a) Censure.
b) Annotation of the censure and conditions (for a period of up to 2 years).
c) Conditions:
    i. To provide a copy of the Tribunal's decision to any prospective educational employer.
    ii. Not to hold any position as a teacher which involves any financial responsibility.
    iii. Mentoring.

40. The CAC acknowledged that the offending was not as serious *Wilson*, where the conduct itself may have justified cancellation in the absence of steps taken by Ms Wilson. Ms Wilson abused a position of trust when she unlawfully used four cheques to steal a far greater quantity of money ($3,280). Rather than being offered diversion, Ms Wilson had been sentenced to six months' supervision in the District Court.

41. Mr McCaughan submitted that based on the information provided by the respondent to date, the respondent has already demonstrated a level of insight into the cause of her behaviour and appears to have meaningful rehabilitative prospects. She acknowledged her guilt at an early opportunity and completed her diversion programme.

Respondent submissions

42. Ms Martin advised that the respondent is agreeable to any form of mentoring programme and would be willing to constructively engage fully with an order that mentoring occur. Ms Martin referred to the considerable evidence to show that the respondent has taken ownership of her actions, has shown insight into the reasons for her behaviour and that she is engaging with the multi-disciplinary therapeutic and rehabilitative plans that are in place and that are proving successful.

43. That evidence was in the form of the following:

a) The respondent's response to the Council's investigation, as produced in the ASF;

b) A letter dated 4 October 2020 from the respondent's GP of 10 years;

c) A letter dated 2 October 2020 from the respondent's psychologist;

d) Confirmation from a sexual abuse support service of the respondent's attendance at 25 appointments between December 2019 and September 2020;

e) A letter from the respondent's ACC registered Sensitive Claims Counsellor.

44. In her statement to the Council, the respondent said she began to compulsively shoplift from September 2019. This was against a background of frustration with her employment where she had felt bullied. She described being also side-lined and overlooked for permanent part-time roles, including work as a Teacher Aide. One senior teacher accused her of stealing some tests, which another teacher remembered months later she had filed. The same teacher excluded the respondent from social events and refused to let her join a staff table at a school music and dance evening. She felt lonely and isolated. It was an agreed fact that in the course of the CAC investigation, the Principal of the school did not accept that the respondent was subject to poor treatment and this triggered her offending.

45. The respondent acknowledged that this situation did not excuse her conduct, but as a result of her counselling she had realised that her years of "sucking it up" and "putting on a brave face" had taken their toll as she suppressed her anger and sadness. Her shoplifting was a way of releasing this. She said that she didn't steal anything she wanted or needed and she felt invisible at the time.

46. The respondent visited her GP twice during this period, confessing her shoplifting and seeking help. She wanted to go to the police or supermarket and confess her offending. In her letter, her GP confirmed this and that she advised the respondent not to do that as the reason for her shoplifting was a result of troubled mental health.

47. The respondent said that as her despair with school became more pronounced she continued to shoplift in a more blatant way, hoping to be caught. On the last occasion she made her actions very obvious, hiding the stolen product up her sleeve and then

down her front and then in her waistband, all in front of a camera. She said she waited outside by the trolleys for 15 minutes for someone to apprehend her. She thought if she got caught she could do community service and feel as though she was at least somehow contributing to society. Instead the New World staff came to the school the following day and issued her with a trespass notice. She went straight to the police and to her great relief, confessed all.

48. The respondent said, “I have always understood it is a privilege to be a teacher. I know my actions were appalling and inexcusable. I also understand that my confusing behaviour arose from my frustration at the way I was being treated at school. I continue to feel remorse for how my actions may have impacted on students who work at New World. I have asked the police and others for suggestions as to what I can do to compensate or redeem the situation at New World - write a letter, pick up rubbish, talk to the staff, but there doesn't seem to be an answer.”

49. The respondent obtained temporary work as a Pastoral Care Coordinator and had been offered relief teaching work at another College which she would dearly like to pursue.

50. The respondent concluded by saying, “I love teaching and I am deeply ashamed of how my actions might have reflected upon the teaching profession. I hope you might give me a second chance to redeem myself.”

51. The comprehensive reports from the respondent’s health service providers confirmed that she has been committed to addressing the underlying issues that contributed to this unfortunate episode of dishonest behaviour.

52. Ms Martin submitted that the Tribunal might consider a referral to the Council’s impairment process as an alternative to the outcomes proposed by the CAC. Under section 404(1)(a) we may do any of the things that the CAC could have done under section 401(2), which includes referral to an impairment process, which may involve an assessment and/or assistance with an impairment. As the respondent’s treatment is still in the early stages, it may be that having her matter addressed through the impairment processes would be a more appropriate outcome.

Discussion

53. In determining penalty, we consider the purpose of professional disciplinary

proceedings as summarised in *CAC v McMillan* NZTDT 2016/52[4] and the penalty principles outlined in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.[5] In particular, we are mindful of the overlapping purposes of protection of the public, the maintenance of professional standards and accountability and the maintenance of public confidence in the profession.[6]

54. In particular, in imposing a penalty, we must also consider the appropriateness of rehabilitation, the need for a consistent approach, and the range of penalties available, and impose the least punitive that is fair, reasonable and proportionate. [7]

55. In *CAC v White*,[8] we said that whether cancellation is required "almost inevitably" turns on, *inter alia*, the practitioner's rehabilitative prospects. We have also previously said that cancellation is required:[9]

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.

56. We accept that this conduct does not fall into the first category. Although there were 7 separate incidents of theft, they occurred over a relatively short 6-week period and were for small amounts. Even without the benefit of the reports from the three health providers, this sudden episode of behaviour raises a question of some underlying personal condition or circumstance.

57. There is also no doubt that the respondent has demonstrated insight and the prospects of rehabilitation are favourable.

---

[4] *CAC v McMillan* NZTDT 2016/52, 23 January 2017
[5] Summarised as: Protecting the public; Setting standards for the profession; The role of punishment; Rehabilitation; Consistency across decisions; Range of sentencing options; Least restrictive; Fair, reasonable and proportionate. And further discussed in *CAC v Cook* 2018/50, 11 April 2019
[6] As summarised in *CAC v McMillan*, above, note 4, at paragraph 21 citing *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 and *Young v PCC* Wellington HC, CIV 2006-485-1002, 1 June 2007, Young J
[7] *Roberts v Professional Conduct Committee*, above, note 8; *Patel v The Dentists Disciplinary Tribunal* HC AK AP 77/02 8 October 2002; *B v B* HC Auckland HC4/92, 6 April 1993, [1993] BCL 1093
[8] Above, note 4. See also *CAC v Lyndon* NZTDT2016/61 at [28].
[9] *CAC v Fulimakaua* NZTDT 2017/40, 5 June 2018; *CAC v Ormsby* NZTDT 2017/33, 24 October 2018

58. Although there is provision to refer the respondent to an impairment process under section 404(1)(a) and 401(2)(c), that is not necessarily to the exclusion of any of the other powers available. A referral to impairment does not end the disciplinary process. We have decided not to refer her for two reasons:

    a) The respondent has already undergone an assessment and has her rehabilitation and support underway;

    b) The conduct itself is sufficiently serious to warrant a disciplinary response.

59. That said, we have considerable sympathy for the respondent. We do not need to make a finding that she was being bullied at her school. We are satisfied that she felt excluded and lonely and that this was against a background of historical personal issues which were clearly having a huge impact on her life at this time. These were petty thefts of things that she could afford and had no particular need of. We recognise them as symptomatic of her poor emotional wellbeing at that time.

60. We accept that the respondent was hoping to be caught. She tried to get help from her doctor, (although consultation with a lawyer might have been more appropriate for advice on whether she should approach the Police). The respondent's prompt attendance at the Police Station on being served with a Trespass Notice is also evidence of her desire to address her conduct and get help.

61. We are satisfied that the respondent is truly remorseful and ashamed of her actions and that she has strongly engaged in support services. We will impose a penalty that supports and enables her to pursue her teaching career and we hope that she can obtain a role a with some permanence. We therefore impose the following penalty:

    a) The respondent is censured under section 404(1)(b);

    b) Under section 404(1)(c), it is a condition of the respondent's practising certificate that she engage in mentoring for a period of two years from the date of this decision. The mentor is to be approved by the Council within 6 weeks of the date of this decision. The role of the mentor is to enable and support the respondent to continue to address her underlying health issues and develop professional and mature collegial relationships.

62. We have decided that it is not necessary for the respondent to notify a prospective employer of this decision or for the register to be annotated. We have marked our

disapproval with a censure. We have placed an emphasis on the respondent's rehabilitation in imposing a mentoring condition. She has had an unhappy time with a previous employer and informing a new or prospective employer of this may not be conducive to future harmonious relationships. The conduct had no impact on her school or students and we do not consider a prospective employer needs to know about it.

Non-publication

63. The respondent has requested non-publication of her name and all details relating to her personal health and wellbeing and medical information.

64. Ms Martin referred to the respondent's GP's opinion that "there is a very real risk that publication of the respondent's name would cause considerable harm to the respondent's ongoing treatment that is currently occurring."

65. The respondent's psychologist reported that there is a risk that publication will have a negative effect on the respondent's rehabilitation and mental health. His working diagnosis is dysthymia with intermittent major depressive episodes, social anxiety, alcohol dependence and some impulse control. He provided further opinion on the background issues which have led to her sense of disconnection, critical self-talk and have led to thoughts of self-harm and suicide.

66. The respondent's counsellor says that the respondent "ticks the box for being in a high risk category", as a result of a number of factors including previous suicide attempts, history of substance abuse, depression, anxiety, loneliness, isolation and job loss.

67. The CAC provided legal submissions and adopted a neutral position on this case. In other words, the application was not opposed.

Principles

68. Consistent with the principle of open justice, section 405(3) provides that hearings of this Tribunal are in public.[10]

69. Section 405(3) is subject to the following subsections (4) to (6) which provide:

> *(4) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of*

[10] Section 405 was inserted into the Act on 1 July 2015 by section 40 of the Education Amendment Act 2015.

the complainant (if any)) and to the public interest, it may hold a hearing or part of a hearing in private.

(5) The Disciplinary Tribunal may, in any case, deliberate in private as to its decision or as to any question arising in the course of a hearing.

(6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:

(a) *an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:*

(b) *an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:*

(c) *an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*

70. Therefore if we are to make an order for non-publication, we must first have regard to:

- the interest of any person;
- the privacy of the complainant;
- the public interest.

71. Open justice forms a fundamental tenet of our legal system and "exists regardless of any need to protect the public",[11] but the public interest in publication of a teacher's name may include the need to protect the public. This is an important consideration where a profession is brought into close contact with the public. It should be known that based on a teacher's previous conduct, that teacher may pose a risk of harm. The public is entitled to know about conduct that reflects adversely on a person's fitness to teach.

72. Conversely, in certain instances, the public interest may include the suppression of information such as witness names (usually alleged victims of conduct) to ensure that they are prepared to come forward and give evidence in court proceedings.[12]

73. In *CAC v Jenkinson* NZTDT 2018-14[13] we summarised the principles on non-publication in this Tribunal. We referred to CAC v Teacher NZTDT 2016-27, where we

[11] *CAC v MacMillan* NZTDT 2016/52, 23 January 2017
[12] *Y v Attorney-General* [2016] NZCA 474
[13] *CAC v Jenkinson* NZTDT 2018-14

acknowledged what the Court of Appeal had said in *Y v Attorney-General* [2016] NZCA 474: While a balance must be struck between open justice considerations and the interests of a party who seeks suppression, "[A] professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure". [14]

74. In *J v New Zealand Institute of Chartered Accountants Appeals Council* where the term "appropriate" in the context of name suppression of an accountant was considered. Gwynn J stated:

> [85] Publication decisions in disciplinary cases are inevitably fact-specific, person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error). Nonetheless, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.
>
> [86] I do not consider the use of the word "appropriate" in r 13.62 adds content to the test usually applied in the civil jurisdiction or sets a threshold lower than that applying in the civil jurisdiction. The rule is broad and sets out neither a specific threshold nor mandatory specific considerations. The question will simply be, having regard to the public interest and the interests of the affected parties, what is appropriate in the particular circumstances.

75. Where a person argues that harm would be caused by publication of a name, we must be satisfied that the consequence(s) relied upon would be "likely" to follow if no order was made. In the context of s 405(6), this simply means that there must be an "appreciable" or "real" risk.[15]

Discussion

76. The respondent has not been convicted in the District Court. Diversion in the criminal jurisdiction does not mean that a defendant's name is automatically suppressed. That does not mean that we cannot suppress the whole or any part of our decision.

77. We are satisfied that having balanced the public interest against the respondent's

---

[14] *Y v Attorney-General* [2016] NZCA 474, at [32]
[15] See C*AC v Jenkinson* above, note 11 at [34]; CAC v Teacher NZTDT 2016/68, at [46]; *R v W* [1998] 1 NZLR 35 (CA).

personal interests it is proper to make non-publication orders. The respondent has provided evidence from suitably qualified professionals about her current mental health and the risk of harm that might result from publication.

78. We also agree with the statement provided from the Principal of School A that naming the school would likely lead to identification of the respondent. This is not a large community.

79. We make an order under section 405(6) for non-publication of the names of:

a) The respondent

b) Her GP, psychologist and counsellor and the organisations who employ them

c) The schools

d) The location of these events, including the supermarkets and Airport

e) The community panel who dealt with the respondent's diversion and the leadership course she attended.

80. The respondent also applied to have medical information suppressed. We would prefer to leave some detail in as it provides the basis for our decisions on penalty and non-publication. Leave is granted to address us further on that matter within one month of the date of this decision. If no further submissions are received by that date, the decision will be issued in its present form.

Costs

81. The CAC seeks a 40% contribution to costs, which is not opposed by the respondent.

82. In accordance with our usual practice where the charge is admitted and dealt with on the papers, we order 40% under section 404(1)(h) and (i).

83. The Tribunal delegates to the Chairperson the authority to determine the final quantum of costs on receipt of schedules and submissions as directed below:

a) The CAC and the Tribunal Secretary will file costs schedules, and if appropriate, submissions on costs within 14 days of the date of this decision;

b) The respondent may file a response within 14 days of receipt of the submissions;

c) The Chair will then issue a decision on costs.

Theo Baker
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).