

IN THE MATTER

of the Education and Training Act 2020

AND

IN THE MATTER

a charge brought by the Complaints
Assessment Committee of the New
Zealand Teachers Council

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Complainant

AND

████████████████████

Respondent

DECISION OF TRIBUNAL

Dated 14 December 2022

Tribunal:	Sam Wimsett Rose McInerney Nichola Coe
Hearing:	25 November 2022
Decision:	14 December 2022
Counsel:	Milan Djurich for the Committee Mark Beech for the Respondent Richard Harrison for ████████████████████

1. INTRODUCTION AND SUMMARY OF DECISION

- 1.1. ██████████ is the ██████████ at ██████████. He is an experienced and well-respected teacher. Despite the incident that is the subject of this matter, he continues to have the support of the College Leadership Team and the Board of Trustees.
- 1.2. On 6 May 2021, ██████████ was at home with his wife and 15-year-old daughter. ██████████ was having a discussion with his daughter regarding her behaviour. This was an issue that had been ongoing and had placed considerable stress on all family members. During the discussion, ██████████ put his hands around his daughter's neck. He shook her neck and head vigorously for approximately 5 seconds and yelled, "I want to kill you, I want to fucking kill you." ██████████ released his daughter and left the room. Part of the incident was witnessed by ██████████ wife. She observed that their daughter was in shock and upset. There were no injuries. Later that evening, ██████████ contacted the Police and reported his conduct. The Police went to his home and arrested him. He was charged with assault on a person in a family relationship.¹ ██████████ was offered diversion by the Police. This is a scheme whereby a person completes agreed conditions, and the charge is ultimately withdrawn or dismissed. That is what happened in this case. Pursuant to his diversion conditions, and, by his own initiative, ██████████ has taken a number of rehabilitative steps to address issues that led to his behaviour.
- 1.3. ██████████ has admitted both, pursuant to the Court process and before the Tribunal, that he assaulted his daughter as alleged. He has provided relevant background to the incident which is set out below.
- 1.4. The Complaints Assessment Committee has charged ██████████ with serious misconduct or conduct otherwise entitling the Tribunal to exercise its disciplinary powers.
- 1.5. The Tribunal determines that the charge of serious misconduct has been proven.
- 1.6. The following penalties are imposed:
 - a) Censure.
 - b) There is to be a condition on ██████████ practising certificate requiring him to notify any current or prospective employer in the teaching profession of the Tribunal's decision for at least one year.
- 1.7. ██████████ is ordered to pay 40% of the Committee's costs and 40% of the Tribunal's costs.

¹ Section 194A of the Crimes Act 1961, maximum penalty of two years' imprisonment.

1.8. The Tribunal suppresses the names and identifying particulars of the following parties:

- a) [REDACTED] daughter.
- b) [REDACTED].
- c) [REDACTED].
- d) Other teachers referred to in the agreed summary of facts.

2. HEARING AND EVIDENCE

- 2.1. An AVL hearing took place using Microsoft Teams on 25 November 2022. In advance of the hearing, an agreed bundle of documents was filed. That bundle contained the charge, written submissions, and other relevant documents such as 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 by both parties. It stated as follows:

SUMMARY OF FACTS

Background

- 1. The respondent, [REDACTED], is a registered teacher. He holds a practising certificate valid until 22 December 2024.
- 2. At all material times, the respondent worked as a teacher at [REDACTED], a secondary school in [REDACTED] (College). The respondent continues to work as the [REDACTED] at the College as at the date of this summary of facts.
- 3. On 13 June 2021, the Teaching Council received a self-report from the respondent disclosing that he had assaulted his teenage daughter and was completing the Police Adult Diversion Scheme.

Assault incident

- 4. On 6 May 2021 at approximately 6pm, the respondent was with his 15year old daughter at their family home. The respondent was having a discussion with his daughter regarding the impact that her behaviour was having on the family and his career. During the course of the discussion, the respondent put his hands around his daughter's neck. His fingers were tip to tip around her neck but were not interlaced. While the respondent's hands were around his daughter's neck, he shook her neck and head vigorously for approximately five seconds while yelling, "I want to kill you, I want to fucking kill you." He then released his hands from around his daughter's neck and left the room.
- 5. The respondent's wife saw the last few seconds of this incident. The respondent's wife saw that her daughter appeared to be in shock and was upset as a result of the respondent's actions but was not hysterical. She did not sustain any injuries.

6. Later that evening, the respondent's daughter made it clear she was very unhappy with what the respondent had done. The respondent offered to report himself to the Police, to which his daughter agreed that he should.
7. That same evening, the respondent phoned the Police 105 number to self-report his conduct. The Police visited the respondent's home and arrested him. He was charged with assault on a person in a family relationship (pursuant to section 194A of the Crimes Act 1961, an offence carrying a maximum penalty of two years' imprisonment).

Criminal proceedings

8. On 10 May 2021, the respondent appeared in the [REDACTED] District Court and intimated a guilty plea to the charge of assault on a person in a family relationship. The Police summary of facts in relation to the offending, which was accepted when the respondent pleaded guilty, is attached at Tab 1 and forms part of this summary of facts.
9. On 7 December 2021, the Police informed the [REDACTED] District Court that the respondent had completed a diversion programme in respect of the offending and therefore recommended that the charge against him be dismissed. The conditions of the diversion programme which the respondent completed included him self-referring and completing parenting counselling with Families Achieving Balance at his own cost, engaging in a restorative justice conference with his daughter, and self-referring and completing anti-violence counselling with [REDACTED] Living without Violence at his own cost. The letter from Police confirming that the respondent had complied with these conditions, and recommending that the charge be dismissed, is attached at Tab 2 and forms part of this summary of facts. The charge was ultimately dismissed.

College involvement and reports to the Teaching Council

10. On 7 May 2021 (the day following the assault), the respondent emailed the Principal of the College, [REDACTED], seeking an off-site meeting to discuss the incident that had occurred the night before. The respondent disclosed to [REDACTED] that he had assaulted his daughter and had reported himself to the Police.
11. On 4 June 2021, the respondent informed [REDACTED] that he was going to self-report the fact that he had been charged with assault on a person in a family relationship to the Teaching Council, which he subsequently proceeded to do on 13 June 2021.
12. On 14 June 2021, the College also submitted a mandatory report to the Teaching Council about the respondent.
13. The respondent's self-report described in detail the background circumstances leading up to his conduct. In summary, the respondent explained in the self-report that:
 - a. His daughter had been engaging in challenging behaviours of a sexual nature since November 2019, which placed considerable stress and pressure on the respondent's family and personal life. The behaviour included the daughter sending nude photographs and videos (including videos of her masturbating) and meeting up with a number of boys over the age of 18 for sex.
 - b. Her behaviour had resulted in a caution from the Police Youth Aid division for making objectionable digital material.
 - c. The respondent and his wife had continuously tried to seek help for their daughter's negative behaviours through the College counsellor, family therapy

and other social service agencies (including SAFE, MICAMHS, Net Safe, Oranga Tamariki).

- d. On the day of the incident, the respondent had told his daughter about a conversation he overheard that day between students in his classroom that he believed was about his daughter's sexual activities. When she shrugged in response to hearing this, it was the catalyst that caused him to lose control of his own behaviour.
 - e. He immediately expressed remorse for his behaviour and told his daughter he would take full responsibility for his actions, which is why he reported himself to the Police.
 - f. He was deeply ashamed of his behaviour and his conduct was completely out of character; he has never been violent in his life.
 - g. He had sought help from counselling services to understand the triggers for his outburst and to develop strategies to manage his feelings and behaviours.
14. ██████████ outlined the same background circumstances as above in the mandatory report and provided a letter of support for the respondent. ██████████ described the respondent as a man of integrity and beyond reproach. He also said that "self-protection" was the least of the respondent's concerns when disclosing the charge to the College.
15. The Teaching Council referred the respondent's self-report and the College's mandatory report to a Complaints Assessment Committee to investigate (Committee).

Teacher's response

16. The respondent provided written responses to the Committee and attended a meeting with the Committee.
17. In his responses, the respondent accepted full responsibility for his actions and expressed sincere remorse for his conduct. He reiterated that he was deeply ashamed by his actions and that it was a completely out of character response to a highly stressful and ongoing familial situation.
18. In addition to the Police Diversion Scheme, the respondent stated that he had been engaging in regular counselling since the incident, which he explained had helped him to identify the triggers for his actions and to develop strategies for managing his feelings and behaviours. He stated that he continued to seek support from the College counsellor and Principal.
19. The respondent also expressed his strong desire to remain in the teaching profession. He explained that teaching ██████████ was all he ever wanted to do; it was a core part of his identity and without it he will struggle to feel valued.

3. CHARGE AND LEGAL FRAMEWORK

3.1. The charge states:

1. The CAC charges that [REDACTED], Registered Teacher, of [REDACTED], whilst at his home address on 6 May 2021:
 - a) Assaulted his daughter, aged 15 years old; and
 - b) Whilst assaulting his daughter, told his daughter twice that he wanted to kill her.
2. The conduct alleged in paragraph 1 separately and/or cumulatively amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and 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 Education and Training Act 2020.”

3.2. [REDACTED] admits that his behaviour amounts to serious misconduct. The Tribunal, however, must undertake its own assessment and determine whether the charge has been made out.

3.3. Serious misconduct is defined in section 10 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 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.

3.4. Section 10, in essence, sets out a two-stage test:

- a) First, the conduct must have one or more of the adverse effects or consequences described in subsection (a)(i) - (iii); and
- b) The conduct must meet the Teaching Council’s criteria for reporting misconduct. The relevant criteria are set out in Rule 9 of the Rules.

3.5. 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.

- 3.6. Rule 9(1) also states that serious breaches of the code include, but are not limited to, examples of conduct set out in Rules 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:'*

...
(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."*

4. DECISION ON LIABILITY

- 4.1. The Tribunal finds that [REDACTED] conduct, in assaulting his daughter and threatening to kill her, meets the definition of serious misconduct in that it reflects adversely on his fitness to be a teacher and it risked bringing the teaching profession into disrepute.
- 4.2. Physical and threatened violence of this kind obviously reflects adversely on [REDACTED] fitness to be a teacher. The violence was against his daughter, who was a similar age to those students that he teaches. The violence itself raises concerns about his ability to moderate his emotions if faced with a stressful situation in the context of being a teacher.
- 4.3. We have no doubt that the incident risked bringing the teaching profession into disrepute. The reputation of the profession is clearly lowered by an incident of violence by an adult teacher against his teenage daughter.
- 4.4. Further, [REDACTED] 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 – the force in this case was both unreasonable and unjustified. Whatever the background to the matter, there is no justification for acting in the manner that has been admitted.
- 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 – there was a prosecution in this matter and the charge laid met the threshold.

- c) Rule 9(1)(k): an act or omission that brings, or is likely to bring, the teaching profession into disrepute – we have already determined that the reputation of the profession is undermined by this incident.

4.5. Accordingly, we find the charge of serious misconduct to be proven.

5. PENALTY

5.1. In imposing the penalties below, the Tribunal has considered the previously decided cases referred to by the parties.²

5.2. The Committee submitted that [REDACTED] conduct was moderate in terms of seriousness. In making that submission, it noted that the force was accompanied with a serious threat and that there was a breach of trust involved given the father/daughter relationship. Against that, the Committee accepted that the assault was a one-off incident that did not involve the sustained use of force. The Committee also noted that [REDACTED] did not suffer physical injuries. The Tribunal accepts that the conduct itself can be described as moderate in terms of its seriousness.

5.3. The following mitigating factors are relevant to the issue of penalty:

- a) [REDACTED] immediately self-reported his conduct to the Police, his employer, and the Teaching Council.
- b) [REDACTED] fully cooperated during the criminal and disciplinary processes.
- c) [REDACTED] successfully completed the Police Adult Diversion Scheme which included a restorative justice conference with his daughter and completing the Living Without Violence course. This course involved 20 sessions, each of two and a half hours duration. The Tribunal accepts that the course requires commitment and discipline to see it through to completion.
- d) [REDACTED] has engaged in counselling.
- e) There is extreme remorse and insight into the offending in this case. [REDACTED] was questioned by the Tribunal, and we found his remorse and insight to be genuine and impressive.
- f) [REDACTED] has no previous criminal or disciplinary history.

5.4. Having regard to all of the above factors, the Tribunal imposes the following penalties:

² *CAC v Teacher X* NZTDT 2020/9, *CAC v Teacher* NZTDT 2017/16, *CAC v Teacher A* NZTDT 2018/53

- a) Censure.
- b) There is to be a condition on [REDACTED] practising certificate that requires him to inform any current or prospective employer in the teaching profession of this decision. This condition is to remain in force for a period of 12 months from the date of this decision.

5.5. The Committee submitted that there should be an additional order for the annotation of the register for a period of at least one year. We deemed this to be an unnecessary addition given the requirement for [REDACTED] to inform any current or prospective employer of this matter. We also take a cautious approach to annotation given the suppression orders that are made below. Finally, we note that pursuant to the criminal process, [REDACTED] has undertaken a number of rehabilitative steps that might ordinarily be ordered by the Tribunal. We are mindful of avoiding the double punishment of him and ensuring that the penalties are necessary in the circumstances.

6. NAME SUPPRESSION

- 6.1. The parties seek an order suppressing the name of [REDACTED] daughter and any details capable of identifying her pursuant to section 510(6) of the Act.
- 6.2. Further suppression orders are sought on the basis that the publication of [REDACTED] name and the name of the college will lead to the identification of [REDACTED] daughter.
- 6.3. The starting point in proceedings before the Tribunal is the principle of open justice. 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.³ The Tribunal can only make a non-publication order if it is of the opinion that it is proper to do so having regard to the interests of any person and also to the public interest.
- 6.4. The Tribunal accepts that the name of [REDACTED] daughter should be suppressed. She was the victim of the violence in this matter. She is also a teenage school student and as stated in the agreed summary of facts, has had some issues of a highly personal nature. Publication of her name will lead to hardship to her. This includes emotional distress, unwarranted comment, and ridicule. Further, there is little public interest in her name and details. On that basis, any balancing exercise favours suppression being granted. We therefore suppress [REDACTED] daughter's name and any identifying particulars.

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

- 6.5. Reaching the conclusion that we have regarding [REDACTED] daughter, affects [REDACTED] application for suppression of his name. That application is primarily based on the need to protect his daughter. We accept that it is necessary to suppress [REDACTED] name in order to ensure that his daughter is not identified. The reasons for this are obvious. Both share the same surname and [REDACTED] works at the same school that his daughter attends. Publication of his name will inevitably lead to the consequences we seek to avoid by suppressing her name. Accordingly, we suppress [REDACTED] name and any identifying particulars.
- 6.6. [REDACTED] has sought suppression of its name. It submits that permitting publication of the school's name would risk the identification of [REDACTED] and his daughter. This could lead to the detrimental effects referred to for [REDACTED] daughter. The Committee is neutral regarding the application. [REDACTED] supports it.
- 6.7. The Tribunal received submissions on this issue from Stuff Limited. On its behalf, Annemarie Quill, a journalist, submitted that Stuff wanted to publish particulars of the charge and the Tribunal's decision without naming [REDACTED] or his daughter. It did, however, wish to name the school. It was submitted that it was possible to report on this case and to name the school without breaching the suppression orders made in relation to [REDACTED] and his daughter (which Ms Quill accepted were properly made). Ms Quill referred to the principle of open justice and the right of the public to know that a teacher in a school has engaged in serious misconduct. It was suggested that suppression of the name of the school in this case could cause the public to speculate as to the school involved and that this could negatively impact other schools in the [REDACTED] area.
- 6.8. We have considered all submissions made and determined that the name of the school should be suppressed. Our primary concern is to ensure that the victim in this matter is not identified. Her wellbeing is paramount and based on the information before the Tribunal, we are satisfied that it is imperative that other students and the general public should not learn that she is the victim in this matter. We are of the view that if the school is identified in reporting, there is a risk that could lead to [REDACTED] being identified and subsequently his daughter. In the specific circumstances of this case, we see this risk as outweighing the principle of open justice. We acknowledge the fair points made by Ms Quill but note that it is not at all uncommon for suppression orders to be made in criminal cases where the victim is related to the offender. There, as with here, the safety of the victim is the overriding consideration.
- 6.9. Finally, we suppress the names of the other teachers referred to within the agreed summary of facts. Publication of their names could also breach the suppression orders made above.

7. **COSTS**

- 7.1. The Committee seeks a contribution to its costs pursuant to section 500(1)(h) of the Act.
- 7.2. 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. This matter did require a brief in-person hearing via AVL, however, the Tribunal is prepared to reduce the costs contribution and treat [REDACTED] as though the matter had been determined entirely on the papers. This is because he readily admitted the charge of serious misconduct and did not dispute the factual background to the charge. The hearing was a brief one and dealt only with the issue of penalty and name suppression.
- 7.3. The Tribunal orders [REDACTED] 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.
- 7.4. The Tribunal also orders [REDACTED] pay a contribution of 40% to its own costs.

Dated at Auckland this 14th day of December 2022



S N B Wimsett
Deputy Chair

NOTICE

- 1: A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 498(2) or 500 of the Education and Training Act 2020 may appeal to a District Court under section 504 of the said Act.
- 2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
- 3 Section 356(3) to (6) of the Education Act 1989 apply to every appeal as if it were an appeal under section 356(1).