

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2020/32**

**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 C**  
**Respondent**

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**TRIBUNAL DECISION DATED 18 MARCH 2021**

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**HEARING:** Held on the papers on 2 February 2021

**TRIBUNAL:** Theo Baker (Chair)  
Neta Sadlier and Nikki Parsons (members)

**REPRESENTATION:** Ms Oliver for the CAC  
Ms Flint for the respondent

1. The Complaints Assessment Committee (**CAC**) alleged that [REDACTED] [REDACTED] (**the respondent**):
  - a) Used unjustified and/or unreasonable physical force to move a child (Child A) from inside to an outside area of the Centre;
  - b) Excluded Child A from the inside area by shutting Child A outside;
  - c) Use unjustified and/or unreasonable physical force to restrain Child A by gripping Child A's arm; and
  - d) Unreasonably and/or unjustifiably restrained Child A by putting both hands on the wall so that Child A was trapped by her arms.
2. The respondent admitted the allegations and the parties filed an agreed summary of facts, signed by both representatives. The Tribunal must still consider the evidence and be satisfied that the factual allegations are substantiated by the agreed facts.
3. The respondent accepted that her behavior was not acceptable for a teacher but was at the lower end of the spectrum and did not warrant a finding of serious misconduct.

### **Summary of decision**

4. We found that paragraphs a), b) and d) of the charge were established, but found the evidence in support of paragraph c) was equivocal and so for the reasons outlined in paragraph 22, this aspect of the charge has not been proved.
5. Although at the lower end of the seriousness of conduct, for the reasons outlined in paragraphs 31 to 39, we found that the established conduct amounted to serious misconduct.
6. We directed annotation of the register under section 404(1)(e), and censured the respondent under section 404(1)(b) of the Act. We imposed the following conditions on her current and/or future practising certificate, under section 404(1)(c) and/or (j), should she return to practice:
  - a) She must complete the Incredible Years Programme within the 18 months of return to teaching.
  - b) For a period of two years from the time she returns to teaching she must show a copy of this decision to any prospective, current or future employer (in the education sector);

- c) For a period of one year from the time she returns to teaching, she must have a mentor approved by the Teaching Council. The mentor will support her with behavioural management and will provide quarterly reports to the Council on the respondent's engagement and progress.
7. We indicated that we would impose costs of 40% and invited submissions.
8. For the reasons outlined in paragraphs 67 and 68, we have made an order for non-publication of the name of the respondent and any identifying details. The names of the Centres are therefore redacted. There is also an order for nonpublication of the name of Child A.

### **Evidence and findings**

9. The evidence in support of the charge was in the form of an agreed summary of facts. The relevant facts in relation to each particular are set out below with our findings.

#### **Background**

10. The respondent became provisionally qualified in [REDACTED] and obtained her full practising certificate in August [REDACTED]. She started working at [REDACTED] (the Centre) in early [REDACTED].
11. Child A was a [REDACTED] year old child who attended the Centre. She was [REDACTED]. The parties agreed that although usually well-behaved, at times Child A demonstrated challenging behaviour.
12. On 29 July 2019, shortly before lunch, Child A was walking on the couches. After hearing another teacher tell Child A to put her feet on the ground, the respondent saw Child A continued to walk along the top of the couches. The respondent asked her to put her feet on the ground, but Child A replied, "No".
13. The respondent moved closer to the couches and Child A got down. The respondent knelt down and at eye level, explained to Child A why she should not walk across the couches. Child A became distracted and began looking around the room. She then began to scream and shout. The parties agreed that the respondent took hold of Child A's "hands/wrists" so she would focus on what the respondent was saying, but Child A's screaming got louder and focused on the respondent.
14. The respondent put her hand up between her and Child A's mouth to make a barrier and said, "I don't like screaming in my face." Child A then hit the respondent in the chest.

**Particular 1 a): Used unjustified and/or unreasonable physical force to move a child (Child A) from inside to an outside area of the Centre.**

**Particular 1 b): Excluded Child A from the inside area by shutting Child A outside;**

15. The respondent then took Child by the hand/wrist. She firmly placed her hand on Child A's back and guided her outside as Child A screamed and resisted. Once outside the respondent let Child A go and told her to play outside because of her behaviour. The respondent then closed the door.

*Finding*

16. We are required to find that the respondent moved Child A outside and that she used unjustified or unreasonable force. Holding a child's hand and accompanying or leading them outside is usually a reasonable and common activity. However, the parties agree that Child A was screaming and resisting. This is what leads us to the conclusion that the force was unreasonable.
17. Because the respondent shut the door, she restricted her access back inside. Although the child did make her way back in, the respondent's actions temporarily excluded her from the inside area.
18. Child A ran through the outside area and re-entered the building, took resources off a table by the science shelf and threw them on the floor.
19. Particulars 1 a) and b) are therefore established.

**Particular 1 c) Used unjustified and/or unreasonable physical force to restrain Child A by gripping Child A's arm;**

20. The respondent told Child A to stop throwing toys on the floor. Child A threw a toy at the respondent, who knelt down and held Child A's hand/wrists.

*Finding*

21. Holding Child A's hand's or wrists is the use of physical force. The charge requires us to find that the use of force was unjustified or unreasonable, that the respondent gripped Child A's arm, and that it was done in order to restrain the child.
22. For a charge of gripping a child's "arm" for the purposes of restraining a child, we would expect the evidence to be less equivocal than what we received. Based on the evidence before us, we are not satisfied on the balance of probabilities that the respondent gripped the child's arm or restrained her. Particular 1 c) is therefore not established. We considered whether we could amend the charge to be consistent with the agreed facts, that is, that the respondent held the child's hands/wrists, but we do not know which it

was. We consider holding a child's wrists is more likely to be a form of restraint, whereas holding child's hands might not be. We would require further information. We have not amended the charge, and particular 1 c) is not upheld.

***Particular 1 d) Unreasonably and/or unjustifiably restrained Child A by putting both hands on the wall so that Child A was trapped by her arms.***

23. On release, Child A went to the locker area and pulled other children's bags out of the cubby lockers. The respondent knelt beside Child A and told her it was not appropriate for her to behave like this. Child A started to wave her hands in front of the respondent before pulling bags and shoes from the lockers. The respondent then knelt and put her hands on either side of Child A against the lockers, blocking Child A.
24. Because this conduct occurred in an Early Childhood Centre, rather than a registered school, the law prohibiting restraint as found in section 139AC does not apply, but the wording is helpful. The term "*physically restrain*", is defined in section 139 AC(2) as "to use physical force to prevent, restrict, or subdue the movement of the student's body or part of the student's body." We agree that there was an element of restraint in the respondent's conduct.

**Further agreed facts**

25. The respondent lifted up her hand between their faces and said, "I don't like screaming in my face". She talked about whether Child A could behave like this when she went to school and explained the impact her behaviour was having on other children. Child A then kicked the respondent in her left knee. Another teacher came and said, "I am separating you two and took Child A's hand and led her away. Child A was still screaming and started to cry.
26. In response, the respondent stated that the staff at the centre had discussed Child A's challenging behaviour on several occasions and had developed an informal behaviour management strategy. This included:
  - a) Getting down to Child A's level and speaking clearly and calmly to her;
  - b) Telling Child A why her behaviour was not acceptable;
  - c) Asking Child A what the implications of her behaviour were;
  - d) Talking to Child A about more acceptable behaviour options; and
  - e) Telling Child A how she would be benefit if she managed her behaviour and how

staff would help her change her behaviour.

27. The respondent further stated:
- a) She had taken Child A outside to play in an effort to redirect her behaviour. When Child A resisted, the respondent released her and directed her to go outside and play.
  - b) At the cubbies, the respondent had taken Child A's hands/wrists in order to block the toy being thrown and protect herself.
  - c) In placing her hands on either side of Child A at the cubby lockers, the respondent's intention was to try to contain Child A's behaviour.
  - d) Child A did not cry during the interaction until another teacher came and separated Child A from the respondent. Child A's reaction was typical of her past behaviour when trying to play teachers off against one another

### **Serious misconduct**

28. The CAC alleges that the conduct separately or cumulatively amounted to serious misconduct, or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.
29. 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.*

30. 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 rules (9)(1)(a), (b), (d) and/or (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:*

*(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:*

*(b) emotional abuse that causes harm or is likely to cause harm to a child or young person:*

*...*

*(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.*

31. The CAC submitted that the respondent repeatedly used force to restrain Child A and that it met all three definitions in section 378(a), which is the first part of the test for serious misconduct, and was a serious breach of the Code of Professional Responsibility under rule 9 of the Teaching Council Rules, specifically rules 9(1)(a), (b), (d) and (k). The charge refers to those four rules.
32. The CAC has appropriately “particularised” the charge of serious misconduct by separating each action of the respondent during an interaction with Child A. The facts in support of each particular were brief. We accept Ms Flint’s statement in her submissions that the incident occurred in a short timeframe of less than 5 minutes. We have found that the respondent:
- a) took Child A outside while the child resisted and screamed;
  - b) shut the door, which meant that the child was temporarily excluded from inside;
  - c) restrained the child’s movement by placing her arms on either side of the child.
33. Ms Flint urged us to find that the conduct does not warrant a finding of serious misconduct. She referred to previous decisions where we have talked about the various degrees of physical force.<sup>1</sup>
34. We have also considered *CAC v Griffiths* NZTDT 2017/22<sup>2</sup> where a teacher had been

<sup>1</sup> *CAC v Haycock* NZTDT 2016/12, 22 July 2016; *CAC v Rowlingson* 2015/54, 9 May 2016;

<sup>2</sup> *CAC v Griffiths* NZTDT 2017/22, 5 February 2018

referred to us because she had not accepted that the conduct amounted to misconduct.<sup>3</sup> She had “dragged” a child to the head teacher’s office and pushed him to sit on the floor. In that case we did not consider the teacher’s actions (in particular the degree of force used), fell into the same category as cases such as *CAC v Simpson* NZTDT<sup>4</sup>, where a teacher carried a student out of class by his shoulder blades or *CAC v Leau*,<sup>5</sup> which involved a teacher pulling a student’s hair to remove them from under a table. We did not find the degree of force used does not amount to abuse or ill-treatment.

35. These decisions were all made before the Teaching Council Rules were amended. Rule 9(1)(a) used to require a finding of physical abuse, whereas since the 19 May 2018, the Rules have told us that using unjustified or unreasonable force under the current rule 9(1)(a) is a serious breach of the Code of Professional Responsibility and is therefore of a character or severity that meets the Teaching Council’s criteria for reporting misconduct under section 378(b). There is less scope for assessment of degree of force used in determining whether the conduct amounts to serious misconduct.
36. The first part of the test for serious misconduct is in paragraph (a) of the definition in section 378. We have decided that overall there was an episode of conduct that evolved into a power struggle, which was likely to adversely affect the child’s wellbeing and reflects adversely on the respondent’s fitness to be a teacher. She had more than one opportunity to redirect the child or seek help from a colleague.
37. We have already found that the respondent has used unreasonable force in the manner she took Child A outside and in her limitation of Child A’s movement. Therefore rule 9(1)(a) is met.
38. We do not find the fact that Child A was crying means that the conduct of itself is a breach of rule 9(1)(b). As we have said in some recent decisions, the fact that a student or learner has been distressed by a teacher’s conduct does not mean that the conduct is properly classified as emotional abuse. In *CAC v Teacher* NZTDT 2019-69<sup>6</sup> some students had been upset when tickled by a teacher. We said:

The fact that students were upset by this physical act does not mean that the conduct

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<sup>3</sup> Under section 401 of the Act, a finding of misconduct requires the consent of the complainant and the teacher

<sup>4</sup> *CAC v Simpson* NZTDT 2015/50, 15 April 2016

<sup>5</sup> *CAC v Leau* NZTDT 2014/75, 10 December 2014

<sup>6</sup> *CAC v Teacher* NZTDT 2019-69, 8 September 2020 (not yet published and subject to interim non-publication orders)



amounts to emotional abuse. There is merit in Ms Andrews' submission that emotional abuse is designed to humiliate, degrade, undermine and control, which is absent in this case. In our view, the reason for the inclusion of rule (1)(b) is to cover situations that do not involve physical force. In many cases the conduct will be verbal, or it may involve a student being singled out in some way.

39. The respondent's decision to shut the door on Child A is more likely to fall into the category of emotional abuse, but we think it is better considered as part of an episode from the time the respondent removed Child A from the sofa until she placed her hand on either side of the child. We also find that this conduct is likely to bring the teaching profession into disrepute under rule 9(1)(k). 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.<sup>7</sup> We agree that is the case here. Therefore the third definition in section 378 and rule 9(1)(k) are both met.

## Penalty

40. 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:*

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<sup>7</sup> The test for bringing discredit to the profession in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

- (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 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.*

41. 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) Condition on her practising certificate to undergo supervision/mentoring for a period of time and attend an appropriate professional development programme.
42. The CAC referred us to some similar cases and acknowledged that at the time of the incident the respondent was under substantial personal stress because of [a family member's] poor health.
43. We accept the following submissions on behalf of the respondent:
- a) Child A had a history of challenging behaviours, including kicking, hitting, screaming and crying in response to instructions, throwing and damaging items;
  - b) The respondent had asked the child to put her feet on the floor and got down to the child's eye level, explaining why her behaviour was unsafe, and attempting to have the child focus.
  - c) The respondent has, in hindsight, conceded, she could have dealt with the situation in a better way, including by involving another teacher.
  - d) There has been no demonstrable adverse effect on Child A.
44. In an affidavit in support of non-publication, the respondent told us that she had thought that she had been applying the agreed process with Child A and so was surprised when the matter was escalated. Her employment with the Centre ended, and on applying for another role, she discussed the incident openly with her prospective employer. She used it as a learning opportunity to clarify any expectations her new employer had. The respondent described this as being good for her professional development and her

employer provided great feedback and mentoring. However, the employer terminated her employment during the 90-day trial period because of worry that the Tribunal process would have a detrimental effect its reputation. She is currently supplementing the family income with taxi driving.

### **Discussion**

45. In determining penalty, we consider the purpose of professional disciplinary proceedings as summarised in *CAC v McMillan* NZTDT 2016/52<sup>8</sup> and the penalty principles outlined in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.<sup>9</sup> 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.<sup>10</sup>
46. 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.<sup>11</sup>
47. In *CAC v White*,<sup>12</sup> 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:<sup>13</sup>
- 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.
48. We accept that this conduct does not fall into the first category. We are also satisfied that

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<sup>8</sup> *CAC v McMillan* NZTDT 2016/52, 23 January 2017

<sup>9</sup> 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

<sup>10</sup> 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

<sup>11</sup> *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

<sup>12</sup> Above, note 4. See also *CAC v Lyndon* NZTDT2016/61 at [28].

<sup>13</sup> *CAC v Fulimakaua* NZTDT 2017/40, 5 June 2018; *CAC v Ormsby* NZTDT 2017/33, 24 October 2018

- the respondent has reflected on her conduct and is open to learning and guidance.
49. We agree this conduct is at the lower end of the scale, and under a previous regulatory regime. We appreciate that the entire episode of behaviour would have been concerning and needed to be addressed.
  50. The respondent, has said that she believed her actions to be necessary and permissible under the requisite centre policies and the informal behavioural management strategy staff had developed in relation to Child A. The strategy included redirecting Child A's behaviour and separating Child A from other children in order to protect her own and others' safety. We acknowledge that the child's behaviours may have raised some issues of safety, in walking the backs of the sofa and throwing some objects, but we did not see sufficient evidence of trying to distract or redirect the child's behaviour in a positive way; or failing that, to call for assistance.
  51. The respondent submitted that this was a single, brief incident. We think that is not quite accurate. We accept that it was a brief episode, but there were several problems with the respondent's behaviour, including raising her hand between their faces.
  52. The respondent has said that she did not act with the intent to exclude Child A, nor were her actions taken out of frustration. We query her decision to close the door if she did not intend to exclude Child A when she took her outside.
  53. The respondent has submitted that she has been willing to take constructive criticism in her handling of the event, demonstrating great insight, willingness and ability to alter her teaching practice. We have not been persuaded that is the case. If her employment had not been terminated, then she may have had an opportunity to demonstrate this, but she has also not told provided any evidence of how she has altered her teaching practice.
  54. We have found that the respondent erred in several respects and we are very critical of her judgment as a teacher in early childhood education.
  55. We mark our disapproval with a censure under section 404(1)(b) of the Act.
  56. We agree that if she returns to teaching, the respondent would benefit from some mentorship. We impose the following conditions on her current and/or future practising certificate under section 404(1)(c) and/or (j) that:
    - a) She must complete the Incredible Years Programme within the 18 months of return to teaching.

- b) For a period of two years from the time she returns to teaching she must show a copy of this decision to any prospective, current or future employer (in the education sector);
- c) For a period of one year from the time she returns to teaching, she must have a mentor approved by the Teaching Council. The mentor will support her with behavioural management and will provide quarterly reports to the Council on the respondent's engagement and progress.

57. The register will be annotated accordingly under section 404(1)(e).

**Non-publication**

58. The respondent<sup>14</sup> has applied for non-publication of her name and identifying details on the grounds that publication would cause irreparable damage to her and her family, including her teenage daughter [REDACTED]. In addition, the respondent has a [REDACTED].

59. The respondent provided a full affidavit in which she provided a detailed account of the stress and worry her family has been under for the last 18 months, [REDACTED]. She also carries a burden of guilt that her daughter has seen the impact of these events on her mother [REDACTED].

60. The respondent's GP has confirmed the medical matters and given an opinion that publication of her name would have an adverse effect [REDACTED]. We also received a letter from [REDACTED].

61. The CAC neither opposed nor consented to an order for non-publication.

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<sup>14</sup> Although she is the applicant in this aspect, for the sake of continuity we have continued to refer to her as "the respondent"

## **Principles**

62. Consistent with the principle of open justice, section 405(3) provides that hearings of this Tribunal are in public.<sup>15</sup>
63. 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 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.*
64. 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.
65. Open justice forms a fundamental tenet of our legal system and “exists regardless of any need to protect the public”,<sup>16</sup> 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.

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<sup>15</sup> Section 405 was inserted into the Act on 1 July 2015 by section 40 of the Education Amendment Act 2015.

<sup>16</sup> *CAC v MacMillan NZTDT 2016/52, 23 January 2017*

66. 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.<sup>17</sup>

### **Discussion**

67. [REDACTED]
68. There are several personal factors that go beyond the stress and anxiety that often accompany a disciplinary hearing and the respondent has provided a detailed affidavit and supporting evidence. Balancing the public interest against that, we have decided it is proper to make an order suppressing her name and identifying details. That includes the name of her employer and the town where these events occurred.

### **Costs**

69. The CAC seeks a 40% contribution to costs.
70. The respondent counsel submits that the respondent does not have the capacity to pay costs and if ordered, may impact her ability [REDACTED]
71. No evidence of financial means has been filed.
72. We are inclined to order 40% under section 404(1)(h) and (i) of the Act.
73. 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).
74. 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;

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<sup>17</sup> See *CAC v Jenkinson* above, note 11 at [34]; *CAC v Teacher NZTDT 2016/68*, at [46]; *R v W* [1998] 1 NZLR 35 (CA).

- b) The respondent may file a response (including evidence of financial means) within 14 days of receipt of the submissions;
- c) The Chair will then issue a decision on costs.



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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).