

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/79

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Prosecutor/Referrer | Kaiwhiu

AND
ME

DANIELLE KONINGSVELD
Respondent | Kaiurupare

Hearing | Te Rongonga

7 October 2024 (on the papers)

Representation | Hei Māngai

J Ah Koy for the CAC
Respondent self-represented

Tribunal panel | Pae Taraipiunara

T Mackenzie (Deputy Chair), C Harrington,
D Spraggs

**DECISION OF THE TRIBUNAL ON CHARGE, PENALTY, COSTS AND
PUBLICATION**

31 March 2025

Introduction

[1] Ms Koningsveld is a registered teacher. She is charged with Serious Misconduct. Three separate incidents of physical force occurred. These involved pre-school children in a kindergarten, where Ms Koningsveld was working.

[2] Ms Koningsveld has not accepted liability for the charge but has accepted an agreed summary of facts.

[3] The (amended) charge and the agreed facts are attached to this decision.¹

Serious misconduct - law

[4] We will first set out the general legal principles which apply to the serious misconduct test.

[5] The test for serious misconduct is set out at s 10 of the Education and Training Act 2020. Section 10 defines “serious misconduct” 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

[6] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.² The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[7] The second limb (fitness) has been described by the Tribunal as follows:³

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher’s

¹ The amendment by the CAC was granted.

² *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

³ *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[8] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.⁴ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[9] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁵ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

This conduct - is the charge proven?

[10] There is no doubt that unreasonable physical force on children like this – three acts of it – will meet the tests for serious misconduct.

[11] It could be said that the physical force is at the lower end of the scale, if there is a scale. It is, fortunately, rare however to be dealing with more sustained or serious assaults in these settings.

[12] We also note that the conduct saw several incidents over several weeks. Each child was also very vulnerable, being aged under two. The conduct was a significant breach of the trust placed by parents in kindergarten teachers.

[13] There was no justification for the conduct. Ms Koningsveld suggests she was tired (from pregnancy) and the centre was busy and under resourced. These factors do not mitigate the conduct. They can be common for many teachers and centres.

[14] At the least the conduct was likely to adversely affect the children's wellbeing. It also clearly reflects on fitness to be a teacher, and brings the reputation of the profession into disrepute.

[15] We also consider that the reporting rules test is made out, particularly rule 9(1)(a) (unjustified physical force on a child); rule 9(1)(j) (an act that may be an offence punishable by a term of 3 months imprisonment or more, of which assault on a child is), and rule 9(1)(k) (disrepute).

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

[16] We therefore conclude that the proven conduct would amount to serious misconduct.

Penalty – law

[17] We will first set out the applicable principles. In *CAC v McMillan* the Tribunal summarised the role of disciplinary proceedings in this profession as:⁶

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

[18] The Tribunal in *McMillan* noted that there are three primary purposes when imposing penalty. These are:

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[19] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.⁷

[20] In *CAC v Fuli-Makaua* this Tribunal noted that cancellation may be required in two overlapping situations:⁸

- 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.

[21] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents to us. Penalties can range from taking no steps, to cancellation of a teacher's registration.

⁶ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

⁷ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

⁸ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

[22] Although the penalty range can appear somewhat linear, our real task is to impose the appropriate penalty considering the purposes of this regime, all of the facts of the conduct, and all of the features of the respondent. The nuances involved mean that attempts at like for like comparisons of end results in other cases may not yield more than general patterns.

What is the appropriate penalty here?

[23] We have considered the various cases and submissions advanced by the parties. In cases of physical violence towards children in a kindergarten setting the starting point will generally be cancellation.

[24] Typically an assessment of the features of the respondent would then occur. In this case however there has been little engagement by the respondent. Whilst she has written a brief letter to us, and has accepted the facts, we have no further information in which to assess her insight, responsibility and remorse. She also advises that she does not wish to teach again.

[25] As the respondent does not have a practising certificate and has indicated that she will not be returning to teaching, there is also no ability to consider whether any on-going conditions might have been an appropriate outcome.

[26] In all the circumstances of this conduct and the respondent's position we consider that cancellation is the appropriate remedy. We so order.

Non-Publication

[27] We consider it proper to order non-publication of the names of the children involved and any identifying particulars.

Costs

[28] The respondent is liable to contribute to the reasonable costs of this disciplinary case. A contribution of 40% of reasonable CAC costs is appropriate.

[29] The CAC legal costs were \$7235.10. This was a relatively simple matter conducted on the papers with agreed facts, well known law (given it was a physical force case) and little further engagement of substance from the respondent. In those circumstances we consider that reasonable costs are \$5000. We order a 40% contribution to that sum, being \$2000 payable to the CAC.

[30] Tribunal costs are set at \$1500. A 40% contribution is \$600. We order that amount payable to the Teaching Council.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa

IN THE MATTER OF the Education and Training Act 2020
AND
IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary Tribunal of
the Teaching Council of Aotearoa New Zealand into the conduct
of **Danielle Joy Koningsveld**, of **Tauranga**, Teacher (Registration
Number 317765).

NOTICE OF CHARGE

TAKE NOTICE that a Complaints Assessment Committee (the **CAC**) has determined that in accordance with section 497 of the Education and Training Act 2020:

- (a) Information received from the mandatory report provided by **OPEYS All Day Kindergarten** about the conduct of **Danielle Koningsveld** should be considered by the New Zealand Teachers Disciplinary Tribunal (the **Tribunal**).
- (b) The CAC charges that the teacher has engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.

Particulars of the Charge

- 1. The CAC charges that **Danielle Koningsveld**, registered teacher, of Tauranga:
 - a. On or about 28 September 2022, threw Child R (aged under 2 years) onto a couch;
 - b. On or about 3 October 2022, lifted Child E (aged 18 months) by one arm; and
 - c. On or about 4 October 2022, lifted Child S (aged 14 months) by one arm and swung Child S.
- 2. The conduct alleged in paragraph 1, and its subparagraphs, separately or cumulatively, amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and any or all of rule 9(1)(a), (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.

Penalties

Your attention is drawn to the penalties as set out in section 500 of the Education and Training Act 2020 and which sets out the powers of the Tribunal, a copy of which is **attached**.

Practice Note

Your attention is also drawn to the Practice Note that came into force on 1 July 2014 regarding the public hearings of the Tribunal, a copy of which is **attached**.

Dated the 8th day of November 2023

A handwritten signature in black ink, appearing to read 'Lynda Harris', with a stylized flourish at the end.

Lynda Harris
Chair, Complaints Assessment Committee

IN THE MATTER OF

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AND

IN THE MATTER OF

an inquiry by the New Zealand Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand into the conduct of **Danielle Joy Koningsveld**, of **Tauranga**, Teacher (Registration number 317765)

AGREED SUMMARY OF FACTS

Background

- 1 Danielle (Dani) Koningsveld is a registered teacher of Tauranga who was first registered as a teacher in April 2012. At the relevant time, Ms Koningsveld was employed at OPEYS All Day Kindergarten (**Kindergarten**).
- 2 On 5 December 2022, Peter Monteith, the principal of the Kindergarten made a mandatory report to the Teaching Council about Ms Koningsveld's conduct.
- 3 The mandatory report was made following Ms Koningsveld's resignation, effective immediately, on 18 November 2022, after the Kindergarten began investigating the matters that are the subject of the charge.
- 4 In summary, the allegations that had been investigated by the Kindergarten were that Ms Koningsveld had:
 - (a) Lifted a child, A, by one arm forcibly and took her outside;
 - (b) Thrown a child, B, onto a couch; and
 - (c) Swung a child, C, by one arm.
- 5 At the time of the notice of charge being filed, Ms Koningsveld was not teaching.

Incident 1: Child A

- 6 On 3 October 2022, Ms Koningsveld was working at the Kindergarten. She was pregnant and had been observed by other teachers to have been less tolerant of the tamariki than previously. The other teachers who had observed this had put it down to Ms Koningsveld being tired due to her pregnancy, and needing more rest.

- 7 That morning, at around 11am, the tamariki were transitioning from their activities to kai time. Several of the children were being loud as they gathered at the table.
- 8 Ms Koningsveld was at the kai table, helping children. She was lifting babies into seats or assisting older ones into their chairs.
- 9 Child A, an 18 month old girl, contributed to the noise in a way that was observed by another teacher to have been the “last straw” for Ms Koningsveld. Ms Koningsveld grabbed Child A by one arm and slung her out of her chair. She then took Child A by one arm out to the deck area and put her down suddenly and roughly onto some soft matting which was outside the double doors that led onto the deck.
- 10 Ms Koningsveld then said to Child A words to the effect that she was not welcome at the kai table. She then turned around and walked inside to organise the other children for kai, leaving Child A upset and crying outside on the deck.

Incident 2: Child B

- 11 On another occasion in September or October 2022, Ms Koningsveld was in the sleep room with several children, including Child B, who was in the process of transitioning from two naps per day to one. Ms Koningsveld was putting other children to sleep.
- 12 Child B woke up and screamed, as she always does when she wakes from a nap. Ms Koningsveld picked her up quickly and stormed quickly out of the sleep room, carrying Child B. She walked up to the couch and threw Child B onto the couch from four or five steps away. Child B landed headfirst on the couch, with her legs in the air, inside her sleep sack. Child B began crying.
- 13 At that point Ms Koningsveld turned and walked quickly back into the sleep room.
- 14 Child B was not hurt, as the couch was soft. However, she was upset by the incident.

Incident 3: Child C

- 15 On 4 October 2022, Ms Koningsveld was exiting the sleep room with a pēpi in one arm. Child C was outside on the veranda. She was upset and crying. When she saw Ms Koningsveld leave the sleeping room, Child C went towards Ms Koningsveld. Using her free hand, Ms Koningsveld stepped towards Child C and grabbed her aggressively by the arm. She then swung her around, lifting Child C’s feet off the floor, and growling at her as she did so. Ms Koningsveld put Child C down, facing out towards the door to the sleep room.

16 As another teacher stepped in towards Child C, Ms Koningsveld said, “no, leave her”. Child C was crying harder than she had been before because of Ms Koningsveld’s actions.

Ms Koningsveld’s response to the Kindergarten’s investigation

17 Ms Koningsveld participated in an interview as part of the Kindergarten’s investigation into the three allegations.

18 In relation to Child A, Ms Koningsveld said that Child A was being disruptive and she took the child outside because she was screaming. She acknowledged that the way Child A was moved was not professional.

19 In relation to Child B, Ms Koningsveld acknowledged bringing Child B out of the sleep room. She did not remember how Child B was placed on the couch but felt she did not do it well. She was not sure exactly how it happened but recognised that it was not professional behaviour. She stated it was stressful trying to put Child B to sleep, and she felt hurried and under pressure to put the children to sleep.

20 In relation to Child C, Ms Koningsveld did not recognise the incident. She believed that if there was an incident involving Child C, it would have been Child C needing a cuddle, and Ms Koningsveld would have put down the other child to cuddle her.

Committee investigation

21 On 30 August 2022, the Teaching Council investigator sent the draft investigation report to Ms Koningsveld. On 5 September 2023, Ms Koningsveld responded to say that she did not wish to make any response to the draft report.

22 The Committee met on 20 October 2023. Ms Koningsveld was invited, but did not attend the Committee meeting.

Date: 18 April 2024



Danielle Koningsveld
Respondent (self- represented)



Claire Paterson
Counsel for the Committee