

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**DECISION NO:** NZTDT 2023/05

**UNDER THE** Education and Training Act 2020

**IN THE MATTER** of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **JUDITH RANGIMARIE BUDDY CORNELIUS** registered teacher (Registration Number 202186)

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**Hearing held on the papers on Monday, 27 November 2023**

**Tribunal:** Jo Hughson (Deputy Chairperson),  
Ross Brown and David Spraggs (registered teachers)

Shannon Hullett (Tribunal Coordinator)

**Appearances:** Evan McCaughan for the Complaints Assessment Committee

Ms Cornelius

**Decision:** 30 November 2023

## Summary

- [1] Ms Cornelius was first registered as a teacher in 1997.
- [2] At the time of the hearing Ms Cornelius did not hold a current practising certificate. Her last practising certificate had expired on 17 July 2020.
- [3] At the relevant time on 2 September 2020, Ms Cornelius was working as a relief teacher at ██████████ School (the School), a ██████████ ██████████ school ██████████ in South Taranaki with a roll at that time of approximately ██████████ pupils<sup>1</sup>.
- [4] A Complaints Assessment Committee (CAC) was established to investigate matters about the conduct of Ms Cornelius that were the subject of a mandatory report that the Principal of the School had made to the Teaching Council of Aotearoa New Zealand in December 2020. At the conclusion of its investigation, the CAC laid a charge<sup>2</sup> alleging that on 2 September 2020, Ms Cornelius had pushed a Year 7 child (Student A) out of the classroom.
- [5] This act was alleged to amount to serious misconduct. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020 (the Act).
- [6] The hearing proceeded on the papers. The evidence produced by the CAC was an agreed summary of facts which Ms Cornelius had signed on 4 September 2023<sup>3</sup>. Ms Cornelius accepted the Charge.
- [7] Written submissions were received from Counsel for the CAC and for Ms Cornelius addressing the issue of liability, penalty, and non-publication orders. Ms Cornelius indicated she did not wish to file written submissions, however, as discussed below, she provided a reflective statement and comments by email, which the Tribunal considered at the penalty stage of the hearing.

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<sup>1</sup> A registered teacher who does not hold a practising certificate may still work as a relief teacher for up to 20 half days per annum.

<sup>2</sup> Notice of Charge dated 20 January 2023 signed by the Chair of the Complaints Assessment Committee, Helen Kinsey-Wightman.

<sup>3</sup> Agreed Summary of Facts dated 4 September 2023 signed by Counsel for the CAC and Ms Cornelius.

- [8] The Tribunal found the Charge made out and that Ms Cornelius' act amounted to serious misconduct as that term is defined in section 10 of the Act.
- [9] For the reasons given below, the decision of the Tribunal is that penalties should be ordered against Ms Cornelius. The Tribunal is making an order of censure and an order directing the Teaching Council to impose a condition on any subsequent practising certificate that may be issued to Ms Cornelius that she must complete a professional development course relating to managing challenging classroom behaviours (with a focus on de-escalation and co-regulation) within six months of obtaining that certificate (if she has not already completed such a course); and provide evidence of completion to the satisfaction of the Teaching Council.
- [10] Ms Cornelius is also being ordered to contribute towards the costs of the CAC and the Teaching Council associated with these proceedings.
- [11] The Tribunal decided it would not be proper to exercise its discretion and make a permanent order prohibiting Ms Cornelius' name from publication. There was insufficient evidence of private grounds that tip the scales away from the public interest factors which favour name publication when a teacher is found guilty of a disciplinary offence. As the interim non-publication order that was made in October 2023 is not being made permanent<sup>4</sup> Ms Cornelius' name may be published.
- [12] To protect the privacy and wellbeing interests of the student involved, there is to be a permanent non-publication order in respect the student's name. To ensure this order is not undermined, there will also be a permanent non-publication order in respect of the name of the School and other identifying features of the School (limited to the location of the School [REDACTED], the [REDACTED] nature of the School, and the roll number given above). The fact that the School is located in South Taranaki is not to be suppressed and may be published.

### **Factual Findings**

- [13] The Tribunal made the following findings of fact based on the evidence in the Agreed Summary of Facts.
- [14] On 2 September 2020, Ms Cornelius was relieving in a Year 7/8 class. Another teacher and a teacher aide were also present. One of the students in the class was

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<sup>4</sup> Minute of Pre-Hearing Conference held on Tuesday, 22 August 2023 at [9]-[11].

Student A, who was in Year 7. Student A had previously been diagnosed with autism although Ms Cornelius was not aware of that at the time.

- [15] Towards the end of the school day, Student A became upset at some other students in the classroom. He told them to stop upsetting him, but they did not. Student A began swearing at them.
- [16] Ms Cornelius approached Student A, grabbed him by the shoulders, and forcefully pushed him out of the classroom. She was yelling at him, and Student A was becoming more distressed. Ms Cornelius shut the door behind him once she had pushed him out.

*Parent complaint and responses*

- [17] On 7 September 2020, Student A's mother made a written complaint to the School about the incident.
- [18] On 16 September 2020 Ms Cornelius met with the Principal and provided a written response, which stated:
- (a) She had not been given any "heads up" by Student A's regular teacher as to how she should work with Student A.
  - (b) She had not taught Student A before that day.
  - (c) She taught Student A in the first period of that day, and he did not appear to be happy in her class.
  - (d) She taught him again in the last period of that day. It appeared that "he instantly got his back up that I was in the room." She ignored him, but Student A got angrier and angrier.
  - (e) At the end of the day, she and another teacher got the students to tidy and pack up.
  - (f) Student A became angry and started "swearing and freaking out".
  - (g) "I did not react appropriately".
  - (h) She pushed him out the door from behind with her arm around his shoulders.
  - (i) "It had been a wet day, students cooped up inside for most of it due to the weather and like some of the students, I was over it".

- (j) The behaviour of some of the students that afternoon was “difficult to deal with and I was tired and grumpy”.
- (k) She “behaved inappropriately by pushing [Student A] out the door and telling him swearing was not cool”.
- (l) She acknowledged that her “behaviour, volume, and tone when speaking to him at the end of that day” was wrong and inappropriate.
- (m) She acknowledged that she should have used other strategies, such as asking why he was angry, and what happened before he started swearing; removing the rest of the students from around him; and asking the other teacher to step in (as the other teacher had more knowledge regarding Student A).
- (n) She had already apologised to Student A in person, but she intended to do so again, both to Student A and his family.

[19] On 18 September 2020 a restorative hui was held. Ms Cornelius, Student A, his mother, and the Principal attended the hui. According to the Principal:

- (a) Student A’s mother expressed her disappointment and concerns over the incident.
- (b) Ms Cornelius apologised, got down on the floor to where Student A was sitting, and explained what she had gotten wrong.
- (c) Ms Cornelius was ‘very remorseful and took responsibility for her actions’.

[20] The Principal filed a mandatory report on 2 December 2020.

[21] Ms Cornelius provided a response to the Teaching Council’s Triage Committee on 28 January 2021. Ms Cornelius stated:

I was inappropriate in my behaviour towards [Student A], a student with autism and severe needs. I definitely should have known better and with my vast experience this was not on. There is no excuse for what I did. I am a teacher – an experienced teacher – we lead by example. We lead with heart. We lead with professionalism. We provide a safe and nurturing environment for our students, no exceptions. In this instance, I did not. Not only did my actions affect [Student A], but also the other students who witnessed the incident, the other teacher and teacher aide in class and [Student A ‘s] whānau.

I was gutted with my behaviour and lack of handling the situation. I believe our restorative hui with [Student A], his Mum, [the Principal] and myself went well. I apologised with heart and sincerity [to Student A] and his Mum...After discussion with [the Principal] we both agree that I needed further professional development to better manage these situations in the future and [School] will support in this area. I know the inappropriate restraint of a student is serious misconduct.

...

I am a good teacher. I have never been like this in the 24 years I have been teaching. The stress of the day and other factors that were going on in my world got to me and I behaved badly. For that serious misconduct and behaviour, I have worked hard to mend that relationship with [Student A], his Mum and [School]. I was and still am sorry and very disappointed with my behaviour and actions.

[22] On 12 February 2021 Ms Cornelius advised the CAC that she was not currently teaching or attached to any school in any employment capacity.

[23] On 28 October 2022 Ms Cornelius advised the CAC that:

- (a) She had not undertaken the intended professional development in behaviour management, due to issues with the availability of the programme caused by COVID-19.
- (b) She had subsequently decided to let her practising certificate lapse.
- (c) “With over 24 years in the classroom it for me was a sad note to end a rewarding, fulfilling and magic teaching career on something that I do not agree and think students should ever be subjected to. For this, I am regretful but also know my contribution to students’ lives, their whānau and the education sector over the last 24 years has been significant.

[24] The Tribunal found, on the agreed evidence, that the CAC did not conclude its investigation until on or around 10 November 2022, which was 23 months after the Teaching Council first received the mandatory report. The length of time it took for the matter to reach the Tribunal was of concern to the Tribunal members.

### **Legal Principles - Liability**

[25] It was for the CAC to prove the Charge on the balance of probabilities.

[26] The definition of serious misconduct in section 10 of the Act is:

**Serious misconduct** means conduct by a teacher –

- (a) that-
  - (i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or
  - (ii) reflects adversely on the teacher's fitness to be a teacher; or
  - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

[27] This test is conjunctive<sup>5</sup>. That means that at least one of the criteria under (a) as well as limb (b) must be met for conduct to amount to serious misconduct.

[28] In relation to limb (1)(i)(a), "likely" means that the risk or possibility is one that must not be fanciful and cannot be discounted<sup>6</sup>.

[29] Previous Tribunal decisions demonstrate that "fitness to be a teacher" in limb (a)(ii) includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.<sup>7</sup>

[30] As for conduct that may bring the teaching profession into disrepute, the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and

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<sup>5</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

<sup>6</sup> *CAC v Marsom* NZTDT 2018/25 adopting the meaning of "likely" in the name suppression context as described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 – "real", "appreciable", "substantial" and "serious" are qualifying adjectives for "likely".

<sup>7</sup> This is the approach taken to "fitness to practise" for the purposes of the Health Practitioners Competence Assurance Act 2003, and the approach which has been taken to the test for "fitness to be a teacher", by this Tribunal in previous decisions.

good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.<sup>8</sup>

[31] As to the Teaching Council's criteria for reporting serious misconduct (limb (b)), broadly, a teacher's employer must immediately report to the Teaching Council if the employer has reason to believe the teacher has committed a serious breach of the Code of Professional Responsibility. The examples of conduct that is of the nature and severity to amount to a serious breach of the Code are set out in rule 9 of the Teaching Council Rules 2016.

[32] In this case, the CAC relied on rules 9(1)(a) and 9(1)(k). Rule 9(1)(a) relates to the use of unjustified or unreasonable physical force on a child or young person. Rule 9(1)(k) of the Teaching Council Rules 2016 is a "catch all" provision<sup>9</sup> in relation to both acts and omissions that bring or are likely to bring the teaching profession into disrepute.

[33] Subjective matters that are personal to the respondent teacher are not to be considered in any significant way when the Tribunal objectively assesses whether there has been serious misconduct. Personal factors raised by the teacher, including explanations for their conduct, may be considered at the penalty stage if a charge is found to have been established.<sup>10</sup>

### **Relevant standards**

[34] The Tribunal assessed Ms Cornelius' conduct against the relevant standards of ethical and professional conduct set out in the Code of Professional Responsibility, and as set and maintained by previous cases involving similar conduct.

[35] The high standards in the Code of Professional Responsibility are expected of every registered teacher, whether they hold a practising certificate or not.

[36] Clause 1 sets out the expectation that teachers are expected to demonstrate a high standard of professional behaviour and integrity (clause 1.3). By acting with integrity

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<sup>8</sup> *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 5 at [48].

<sup>9</sup> *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

<sup>10</sup> See *Martin v Director of Proceedings* [2010] NZAR 333 and *Cole v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130] applied in previous decisions of this Tribunal.



and professionalism, teachers, and the teaching profession, maintain the trust and confidence that learners, whānau, and the wider community place in them to guide their children and young people on their learning journey and keep them safe.<sup>11</sup>

[37] Clause 2.1 reads:

I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

[38] There are several previous cases where the Tribunal has considered similar conduct which has resulted in findings of “serious misconduct”. These cases are an indication of the professional standards that are expected of teachers when managing challenging classroom behaviour.

[39] In *van der Spuy*<sup>12</sup> the high school teacher was teaching a Year 11 technology workshop class. Before class, he entered a verbal altercation with a 15-year-old student in the classroom foyer. The student continued to reply “Yeah” to the teacher and the teacher became frustrated. He responded by using force to pin the student’s right arm on the wall, using his forearm against the student’s chest to pin his body against the wall and telling the student “Don’t you get in my face, don’t say that to me”. The incident occurred outside the entrance of the classroom in front of at least two other students. The Tribunal considered that the teacher had “lost control of the situation and acted unprofessionally and inappropriately.” It was concerned about the level of response to what appeared to be relatively minor misbehaviour and concluded that the conduct was serious misconduct.

[40] *Karklins*<sup>13</sup> involved a teacher who had learned with reasonably short notice that he had to provide relief cover for a class from 9am to 10.30am. In the class was a student that Mr Karklins found challenging and unknown to him, it was the student’s last day at the school before he was to be moved to a health/school camp the next day. The student behaved disruptively during class, and he disobeyed the three strikes system that applied to him at the time. At morning interval Mr Karklins sought advice from the Principal and was told to go and look for the student to get him to sit on the steps. Mr Karklins was unable to locate him. In a music lesson at 11.30am

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<sup>11</sup> *CAC v Teacher* NZTDT 2020/19 at [26].

<sup>12</sup> *CAC v van der Spuy* NZTDT 2018/82.

<sup>13</sup> *CAC v Karklins* NZTDT 2016/38.

the student was in the class and according to Mr Karklins, the “showing-off” behaviour continued, and he tried to continue teaching and ignore the boy. When this did not work, Mr Karklins lost his temper and forcibly removed the student from the classroom. He did this by walking up to the student, picking him up and taking him to the cloakroom, where he deposited him on the floor. The student was thrashing around and when being set down on the cloakroom floor, the student banged his head against the wall. Mr Karklins’ acknowledged he had acted inappropriately and that he was wrong to lose his temper. He admitted he was “heated up” and had lifted the student in anger. The Tribunal considered the combined conduct was serious misconduct.

### **Proof of allegation and findings on the Charge**

[41] The Tribunal was satisfied and found that the alleged act in the Charge was proved, on the evidence received. On 2 September 2020, Ms Cornelius pushed a Year 7 student out of the classroom.

[42] Ms Cornelius accepted that her conduct was serious misconduct. However, the Tribunal was itself, required to consider whether the conduct was serious misconduct for the purposes of the Act.

[43] The Tribunal concluded that considered objectively, Ms Cornelius’ conduct did meet the test for serious misconduct.

[44] Student A was autistic and therefore more vulnerable than a typical Year 7 student, although Ms Cornelius did not know that at the time. Ms Cornelius responded to Student A swearing at some other children by:

- (a) grabbing him by the shoulders,
- (b) forcefully pushing him out of the classroom, and
- (c) yelling at him.
- (d) Student A became more upset as a result.

[45] The Tribunal accepted the following submissions of Counsel for the CAC:

- (a) Ms Cornelius’ conduct was likely to adversely affect the wellbeing of Student A (and possibly, his learning), and possibly the other students who witnessed what occurred.

- (b) Rather than supporting Student A with his distress, Ms Cornelius made him even more distressed by the way she physically handled and responded to him.
- (c) A teacher who is fit to teach ought to be able to deal with a situation like this without grabbing the student and forcefully pushing him out of the classroom. Ms Cornelius' conduct was not an insignificant falling short of her professional responsibilities.
- (d) Ms Cornelius' conduct reflected adversely on her fitness to be a teacher and may bring the teaching profession into disrepute. The Tribunal considered that reasonable members of the public informed of the all the facts could reasonably conclude that the reputation and good standing of the profession was lowered by Ms Cornelius' conduct.
- (e) In terms of rules 9(1)(a) and (k):
  - a. Ms Cornelius' use of physical force on Student A was both unjustified and unreasonable in the circumstances. Her physical response to Student A was not an acceptable response from an experienced teacher. Ms Cornelius admitted that, and
  - b. Her conduct may bring the teaching profession into disrepute (as above).

[46] As the conjunctive test is met, it followed that the Charge of serious misconduct was established.

### **Penalty**

[47] Having made an adverse finding of serious misconduct, the Tribunal was entitled to exercise its powers under section 500 of the Act. The Tribunal could do one or more of the things set out in section 500(1).

[48] Because Ms Cornelius does not hold a current practising certificate, the Tribunal had more limited penalty options available to it under section 500(1); suspension of practising certificate and the imposition of conditions on her practice were not orders that could be imposed. However, the Tribunal could direct the Teaching Council to

impose conditions on any subsequent practising certificate that may be issued to Ms Cornelius<sup>14</sup>.

### *Penalty Principles*

- [49] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence are to protect the public through the provision of a safe learning environment, maintain professional standards (through general and/or specific deterrence so that the public is protected from poor practice and from people unfit to teach), and maintain the public's confidence in the teaching profession<sup>15</sup>.
- [50] Each purpose must be addressed in its own right; a particular case may not give rise to significant protection concerns but the maintenance of professional standards may require certain orders to be made.
- [51] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*<sup>16</sup>. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors are:
- (a) What penalty most appropriately protects the public.
  - (b) The Tribunal must be mindful of the fact that it plays an important role in setting professional standards.
  - (c) Penalties imposed may have a punitive function.
  - (d) Where it is appropriate, the Tribunal must consider rehabilitating the professional.<sup>17</sup>
  - (e) The Tribunal should strive to ensure that any penalty imposed is comparable to penalties imposed in similar circumstances.

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<sup>14</sup> Section 500(1)(j).

<sup>15</sup> As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

<sup>16</sup> [2012] NZHC 3354 at [44]-[51].

<sup>17</sup> *CAC v Teacher* NZTDT 2016/55 at [30].

- (f) It is important for the Tribunal to assess the practitioner's behaviour against the spectrum of sentencing options that are available. In doing so, the Tribunal must try to ensure that the maximum penalties are reserved for the worst offenders.
- (g) The Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- (h) It is important for the Tribunal to assess whether the penalty it is to impose is fair, reasonable, and proportionate in the circumstances presented to the Tribunal, or not.

### *Findings on Penalty*

#### *Relevant considerations*

- [52] The Tribunal considered the relevant penalty principles including previous comparable cases, as well as the evidence it received and the submissions that were made for the CAC and the written reflection and information provided by Ms Cornelius.
- [53] The Tribunal was satisfied that it was appropriate to exercise its discretion and impose a formal penalty.
- [54] The CAC acknowledged the following matters, which the Tribunal accepted were relevant to matters of penalty and took account of them:
- (a) When she was first spoken to about the incident by her Principal, Ms Cornelius immediately acknowledged that she had reacted inappropriately.
  - (b) Ms Cornelius acknowledged that her behaviour, volume, and tone when speaking to Student A at the end of the day, were wrong and inappropriate.
  - (c) Ms Cornelius acknowledged that she should have used other strategies, such as asking Student A why he was angry, and what happened before he started swearing; removing the rest of the students from around him; and asking the other teacher to step in because the other teacher had more knowledge about Student A.

- (d) She had already apologised to Student A in person, but she intended to do so again, both to Student A and his family.
- (e) Ms Cornelius participated in a restorative hui with Student A, his mother, and the Principal. Ms Cornelius apologised, got down on the floor to where Student A was sitting, and explained what she had gotten wrong.
- (f) The Principal remained supportive of Ms Cornelius working at the School.
- (g) Ms Cornelius has always cooperated with the Teaching Council's process and the CAC's investigation.
- (h) In her written response on 28 January 2021, Ms Cornelius acknowledged that she had acted inappropriately and that there was no excuse for what she did.
- (i) In her advice to the CAC in February 2021, Ms Cornelius indicated she is regretful that she conducted herself in the way she did and in a way that she does not think students should ever be subjected to.
- (j) In that advice, Ms Cornelius referred to her significant contribution to the education sector over the last 24 years and her contribution to the lives of students, and their whānau,
- (k) Ms Cornelius also provided a reflective statement to the Tribunal in which she stated:
  - a. The incident had a huge impact on her confidence as a teacher.
  - b. She still feels deep remorse and guilt more than 3 years later.
  - c. "I can only say I am still really sorry for the young student and his Mum that I did not provide a good and protective environment for him".
  - d. She had subsequently left teaching and her heart is no longer in it.
  - e. "The impact of a wet day, over 60 students in a classroom with a reliever, two young teacher aides, another teacher and minimal behaviour management plans in place and me not feeling the best took its toll and I reacted inappropriately".

[55] The Tribunal did not have the benefit of any character references as Ms Cornelius did not seek to produce any. In her reflective statement she indicated that she is too

embarrassed to even tell other colleagues about her conduct and therefore had not sought to obtain any references noting “I am too whakamaa.”

[56] There was no evidence that Ms Cornelius has a prior disciplinary history or that the incident that was the subject of the mandatory report was part of a pattern of behaviour. The incident was a one-off instance of inappropriate professional behaviour that amounted to serious misconduct.

#### *Discussion*

[57] Cancellation of registration was not sought by the CAC, and the Tribunal did not consider that cancellation was a fair, reasonable, and proportionate penalty here.

[58] The Tribunal had regard to the penalties that were imposed in the comparable cases referred to above. The penalties imposed in those cases, which the Tribunal considered involved more serious conduct, were a combination of censure, conditions on practice, and costs.

[59] Since the incident occurred, Ms Cornelius has demonstrated a high degree of insight into her offending and the causes of her behaviour, and the Tribunal’s assessment was that she has high rehabilitative prospects. She has expressed remorse in ways which the Tribunal considered indicated she is genuinely remorseful. To her credit, Ms Cornelius participated in a restorative hui with Student A and his mother, and she apologised for her behaviour at the earliest opportunity and then has continued to apologise subsequently (to the Teaching Council, the CAC, and the Tribunal).

[60] The Tribunal concluded that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal’s obligations to the public and the teaching profession, are as follows:

- (a) An order of censure.
- (b) The Teaching Council is directed to impose a condition on any subsequent practising certificate that may be issued to Ms Cornelius requiring Ms Cornelius to complete a professional development course on managing difficult classroom behaviours, with a focus on de-escalation and co-regulation, within 6 months. Ms Cornelius is to provide evidence of completion of the course, to the satisfaction of the Teaching Council.

- [61] The order of censure is being made under section 500(1)(b) to mark the Tribunal's disapproval of Ms Cornelius' act of serious misconduct, and to maintain professional standards.
- [62] The order directing the Teaching Council to impose a condition on any subsequent practising certificate that is issued to Ms Cornelius, is being imposed pursuant to section 500(1)(j) for the primary purpose of supporting Ms Cornelius to be confident about her rehabilitation, and to reassure the public about Ms Cornelius' ability to manage challenging classroom behaviours appropriately and to protect the health and safety of learners. The Tribunal understands that Autism New Zealand runs a course on de-escalation and co-regulation that provides a tool kit that applies to the behaviour management of children, whether they are on the autism spectrum or not.
- [63] The CAC noted through Counsel that "*it is regrettable that [Ms Cornelius] no longer wishes to be a teacher*". The Tribunal shares this sentiment and encourages Ms Cornelius to renew her practising certificate. The Tribunal considers that Ms Cornelius would be a loss to the teaching profession given her significant (24 years') experience as a teacher, and her prior unblemished record. There is a public interest in an experienced teacher like Ms Cornelius returning to teach, given the current teacher shortages, and the Tribunal hopes that when she has completed the professional development she will be required to undertake as above, Ms Cornelius can put this unfortunate matter behind her and move forward.

#### Costs

- [64] It is usual for an award of costs to be made against a teacher once a charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred. Otherwise, the teaching profession (as a whole) would need to meet all the costs of a proceeding that has been brought about by the teacher own making. Ms Cornelius, in her reflective statement, acknowledged that costs will have been incurred.
- [65] Costs are at the discretion of the Tribunal and may be awarded under section 500(1)(h) (any party to pay costs to any other party) and (1)(i) (Teaching Council costs of conducting the hearing).



- [66] The CAC sought costs noting the general rule that where a charge is found proved, the starting point is 50% of the CAC's costs.<sup>18</sup>
- [67] In cases where the charge has been heard on the papers, these typically attract a costs order of 40% of the costs and expenses incurred by the CAC (exclusive of GST).
- [68] The CAC's costs were indicated to be \$3,743.94 exclusive of GST, which the Tribunal considered were reasonable.
- [69] In her reflective statement Ms Cornelius stated that her financial situation is that she is a single mother of three teenagers, and she has significant rental, petrol, and kai costs at present. She stated that she and her children are living week to week. Her indication was that any more financial burden will be an "absolute strain" on her whaanau.
- [70] In this case, the Tribunal considered that an order of \$1000.00, which is just under 30% contribution to the CAC's costs as claimed, would be reasonable and appropriate. This takes account of Ms Cornelius' acceptance of liability and agreement to proceed with a liability hearing on the papers with the benefit of an agreed summary of facts, as well as the indication she has given of her current financial situation (albeit that this was not in the form of a declaration of financial means or affidavit, which is the Tribunal's usual expectation).
- [71] Accordingly, the Tribunal is making an order pursuant to section 500(1)(h) that Ms Cornelius is to pay the sum of \$1,000 (exclusive of GST) to the CAC<sup>19</sup>.
- [72] As for the costs of conducting the hearing, the Tribunal is making an order that Ms Cornelius make a 40% contribution towards those costs (estimated to be \$1,455 exclusive of GST<sup>20</sup>), being payment of the sum of \$582.00 to the Teaching Council. This order is made under section 500(1)(i).

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<sup>18</sup> Practice Note of the Teachers Disciplinary Tribunal, Practice Note 1: Costs, 1 April 2022 at [4].

<sup>19</sup> Costs Schedule of the CAC at paragraph [9.3] of Submissions on behalf of the Complaints Assessment Committee.

<sup>20</sup> Schedule of Teaching Council's Costs for the hearing.

## Non-publication orders

- [73] In her reflective statement, Ms Cornelius sought a permanent order prohibiting the publication of her name and identifying particulars.
- [74] Prior to the hearing an interim order was in effect in respect of the name of Student A.
- [75] No application was received from the Board of Trustees of the School in respect of the School's name.

### *Summary of relevant law*

- [76] The starting point when considering applications for non-publication orders is the principle of open justice. In a professional disciplinary context, the principle of open justice maintains public confidence in the relevant profession through the transparent administration of the law.<sup>21</sup> In previous cases, the Tribunal has endorsed the statement of Fisher J in *M v Police*<sup>22</sup> at [15]:

In general, the healthy winds of publicity should blow through the workings of the Court. The public should know what is going on in their public institutions. It is important that justice should be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present a defendant with an opportunity to reoffend.

- [77] The Tribunal's jurisdiction to make non-publication orders is found in section 501(6) of the Act. An order can only be made under section 501(6) (a) to (c) if the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.
- [78] When considering whether it is proper for the open justice principle to yield, the Tribunal needs to strike a balance between the public interest factors and the private interests advanced by the applicant. A two-step approach is usually followed by the Tribunal the first step of which is a threshold question, requiring deliberative judgement by the Tribunal whether, having regard to the various interests, it is

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<sup>21</sup> *CAC v Teacher* NZTDT 2016/27 at [66].

<sup>22</sup> *M v Police* (1981) 8 CRNZ 14 at [15] cited in *CAC v Howarth* NZTDT 2019/87, January 2021 at [57].

“proper” to make a non-publication order. If the Tribunal concludes it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.<sup>23</sup>

[79] “Proper” sits below “exceptional” which is required in the criminal jurisdiction in the Courts and is more aligned with “desirable” which is what is required under the Health Practitioners Competence Assurance Act 2003.

[80] When deciding whether it is “proper” to make a non-publication order, the Tribunal must carefully evaluate the respective interests (private and public). The Tribunal’s principal objectives of protecting the public, maintaining professional standards, and maintaining public confidence in the teaching profession, are relevant to the balancing exercise. Suppression of the name of a teacher who has been found guilty of serious misconduct has the potential to erode public trust and confidence in the teaching profession.

[81] The relevant public interests to be evaluated are:

- (a) Openness and transparency of disciplinary proceedings
- (b) Accountability of the disciplinary process. The disciplinary process needs to be accountable so that members of the public and the profession can have confidence in it.
- (c) The public interest in knowing the identity of a teacher charged with a disciplinary offence.
- (d) The importance of freedom of speech and the right enshrined in section 14 of the New Zealand Bill of Rights Act 1990.
- (e) Unfairly impugning other teachers.

[82] The public interest in knowing the identity of a teacher charged with a disciplinary offence includes the right to know about proceedings affecting a teacher, but also the protection of the public and their right to make an informed choice about the extent to which they engage with or interact with the teacher.

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<sup>23</sup> *CAC v Teacher NZTDT 2016/27* at [61]; recently referred to in *CAC v Howarth* (above).

[83] In *Dr Tonga v Director of Proceedings*<sup>24</sup> the High Court, on the issue of permanent name suppression under the Health Practitioners Competence Assurance Act 2003 following an adverse disciplinary finding, made the following point:

[F]ollowing an adverse disciplinary finding more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the practitioner be published in a preponderance of cases. Thus, the statutory test of what is 'desirable' is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interest of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established.

[84] The Tribunal considered those same points can be made in respect of what is "proper" where a charge of serious misconduct by a teacher has been established.

[85] As for private interests, Gendall J in *Anderson v PCC*<sup>25</sup> agreed with Panckhurst J's statement in *Dr Tonga* as follows:

[36] Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests such as protection of the public, maintenance of professional standards, both openness and 'transparency' and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors' reputations being affected by suspicion, are all factors to be weighed on the scales.

[37] Those factors were also referred to at some length in the Tribunal. Of course, publication of a practitioner's name is often seen by the practitioner to be punitive, but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It reflects also the principles of openness of such proceedings, and freedom to receive and impart information.

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<sup>24</sup> High Court, 21 February 2006, CIV-2005-409-002244, Panckhurst J.

<sup>25</sup> *Anderson v PCC of the Medical Council of New Zealand* CIV 2008-485-1646, 14 November 2008, Gendall J.

### *Ms Cornelius' application*

- [86] Ms Cornelius did not identify any particular grounds for her application for permanent name suppression, in her reflective statement or otherwise. She did not file an affidavit in support of her application.
- [87] The Tribunal considered that there is no proper basis, evidential or otherwise, to displace the principle of open justice and order that Ms Cornelius' name is not to be published.
- [88] The incident involved a Year 7 student and was witnessed by other students, another teacher, and a teacher aide. The details are likely to already be out in the School community, which will be a small and possibly tight knit one given the School's location [REDACTED]. People in the community are likely to know already that Ms Cornelius was the teacher involved in the incident.
- [89] In the Tribunal's view, there are no grounds over and above the expected level of whakamaa and discomfort for Ms Cornelius that follows having been found guilty of serious misconduct.
- [90] Members of the profession and the public reading this decision in its entirety will be made aware of all the circumstances of the incident, as well as Ms Cornelius' approach to the matter subsequently including at the restorative hui and in these proceedings which approach the Tribunal considered was admirable. The Tribunal believed that it is not likely there will be adverse consequences for Ms Cornelius beyond the expected level of embarrassment or discomfort were her name to be published more widely.
- [91] There are insufficient private reasons at play, either alone or in combination, which outweigh the public interest factors which favour publication of Ms Cornelius's name now that she has been found guilty of serious misconduct and censured.
- [92] For those reasons the Tribunal did not consider it proper to make a permanent order. Ms Cornelius' name may be published.

### *Student A*

- [93] The Tribunal considered the interests of Student A. The Tribunal considered it would be proper to permanently suppress the name of Student A to protect his privacy and wellbeing interests. There is no public interest in his name being published in connection with Ms Cornelius' offending. Accordingly, the interim order will be made

permanent, and Student A's name cannot be published. That the student was in Year 7 at the time, and has autism, may be published as they are relevant details that place the offending in its proper context. The Tribunal did not consider that publication of those details would likely risk identifying the student beyond those who are already aware of the incident, particularly when the name of the School is to be suppressed, as discussed below.

### *The School*

[94] The Tribunal considered the interests of the School. On its own motion, the Tribunal decided it would be proper to suppress the name of the School and its location [REDACTED], as well as the [REDACTED] nature of the School and its roll at the time of the incident (as referred to in this decision).

[95] This order is not being made to protect the reputation or perception of the School in the eyes of the public (which are very rarely grounds for name suppression for a School); or because the Tribunal considers it likely that the School will suffer adverse effects beyond general disruption or fallout for the School which would displace the principle of open justice. Rather, the order is being made to ensure that the permanent order in respect of the name of Student A is not undermined.

[96] That the School is located in South Taranaki, is not to be the subject of the order and may be published.

### **Conclusion and Orders**

[97] The Charge is established. Ms Cornelius is guilty of one charge of serious misconduct.

[98] The Tribunal's formal orders under the Education and Training Act 2020 are:

- (a) Ms Cornelius is censured, pursuant to section 500(1)(b).
- (b) The Teaching Council is directed to impose a condition on any subsequent practising certificate issued to Ms Cornelius that Ms Cornelius is required to complete a professional development course on managing difficult classroom behaviours, with a focus on de-escalation and co-regulation, within 6 months. Ms Cornelius is to provide evidence of completion of the course, to the satisfaction of the Teaching Council. This order is made pursuant to section 500(1)(j)

- (c) Ms Cornelius is to pay \$1,000 to the CAC as a contribution to its costs, pursuant to section 500(1)(h),
- (d) Ms Cornelius is to pay \$582.00 to the Teaching Council in respect of the costs of conducting the hearing, pursuant to section 500(1)(i).
- (e) There are to be permanent orders under section 501(1)(6) prohibiting from publication:
  - a. the name of Student A.
  - b. the name of [REDACTED] School, its location in [REDACTED], its [REDACTED] nature, and the roll of the School as stated in paragraph [3] of this decision. That the School is located in South Taranaki may be published.

**Dated at Wellington this 30<sup>th</sup>  
day of November 2023**



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**Jo Hughson**  
Deputy Chairperson

## **NOTICE**

- 1 The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
- 3 An appeal under section 504 must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows (section 504(3)).
- 4 Clause 5(2) to (6) of Schedule 3 applies to an appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.