BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/23

KEI RARO I TE MANA O *Under*	of the Education Act 1989 (**the Act**)
I TE TAKE O *In the Matter of*	charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
KO *Between*	**COMPLAINTS ASSESSMENT COMMITTEE** *Kaiwhiu* | *Prosecutor/Referrer*
ME *And*	**VICTORY DISCIPLE (Registration Number 334331)** *Kaiurupare* | *Respondent*

TE WHAKATAUNGA Ā TE TARAIPIUNARA

DECISION ON PENALTY, LIABILITY AND COSTS

Dated 29 August 2023

NOHOANGA: *Hearing*	14 and 25 August 2023 on the papers via Teams
TE TARAIPIUNARA: *The Tribunal*	Ian Murray (Tiamana Tuarua) Rose McInerney raua ko Gael Ashworth (Ngā mema o te Taraipiunara)
NGĀ ROIA ME NGĀ KAIAWHINA: *Representation*	L. van der Lem and J Garden for Complaints Assessment Committee Respondent- self represented C. Shannon and J. Gunn for the School

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee (CAC) has referred a charge to the New Zealand Teachers Disciplinary Tribunal (the Tribunal) alleging serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. In the Amended Notice of Charge dated 5 July 2023 the charges are set out as follows:

> *"TAKE NOTICE that a Complaints Assessment Committee (CAC) has determined that in accordance with section 497(4) of the Education and Training Act 2020, to refer to the Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand:*
>
> (a) *Information received from the New Zealand Police in a Police notification about the conduct of Victory Disciple should be considered by the New Zealand Teachers Disciplinary Tribunal (the Disciplinary Tribunal).*
>
> (b) *The CAC refers part of the matter to the Disciplinary Tribunal on the basis that the teacher has engaged in misconduct or serious misconduct entitling the Disciplinary Tribunal to exercise its powers.*
>
> Reasons for Referral
>
> 1. On 23 February 2023, the CAC considered the Police notification and found that, with respect to the teacher's conduct in or around 2014-2015, the teacher had:
>
> a. Smacked children on the hand with a ruler."

2. The CAC contends that this conduct amounts to serious misconduct pursuant to s 139AB of the Education Act 1989 (the Act)[1] and Rules 9(1)(e) of New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (the Rules); or alternatively it is conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 139AW of the Act.

Whakarāpopoto o te whakataunga – Summary of decision

3. The Tribunal considered the charge and concluded the conduct amounted to serious misconduct. We imposed a condition that if the respondent returns to teaching, she must teach under the supervision of a mentor for her first year teaching. We made no costs order. We suppress the name of child, PS (the only student referred to in the agreed summary of facts) but make no other suppression orders.

[1] Given the historical nature of the alleged misconduct, an earlier version of the Act applies rather than the more recent Education and Training Act 2020

Ko te hātepe ture o tono nei – Procedural History

4. The CAC initially filed the Notice of Charge dated 10 May 2023. Following a pre-hearing conference on 14 June 2023, the case was set down for a hearing on the papers on 14 August 2023. After the pre-hearing conference, the CAC filed a proposed amended Notice of Charge along with an application to amend the original charge. That amendment was made without opposition. That is the charge referred to in paragraph 1 of this decision.

5. Immediately prior to the hearing of the charge, the school made an application for suppression of its name. We continued with the papers hearing and considered liability, penalty and costs at that hearing but delayed the final decision on suppression until the parties had had an opportunity to make submissions on the application. Following the receipt of those submissions we reconvened the hearing to determine the school's application for suppression.

Kōrero Taunaki - Evidence

6. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**), signed by the respondent and counsel for the CAC. The ASF is set out in full below:

> *"**Background***
>
> 1. *The respondent, **VICTORY DISCIPLE**, is a fully registered teacher.*
>
> 2. *Mrs Disciple was born in 1989 and first began working as an assistant in Gloriavale Christian School when she was 15 years old. After completing her teacher training, she was first registered in January 2012. Her practising certificate expires on 28 January 2024.*
>
> 3. *At the time of the incidents detailed below, Mrs Disciple worked as a teacher at Gloriavale Christian School (**the School**). She commenced work as a qualified teacher at the School in January 2012, where she taught Grade 1, where students were aged 5-6 years. Prior to leaving the School, she worked for 3 years as the Head Teacher of Grade 1.*
>
> 4. *In September 2021, after concerns were raised regarding the treatment of children in the Gloriavale community, Police and Oranga Tamariki conducted screening interviews of children within that community.*
>
> 5. *On 1 October 2021, Police interviewed Mrs Disciple in relation to allegations she had smacked children's hands within the classroom. On 11 November 2021 the Police informed the Teaching Council the investigation had been closed without charge.*

6. *On 4 February 2022 the Teaching Council commenced an own-motion investigation into the matter.*

Conduct at the School

7. *From time to time after Mrs Disciple's registration as a teacher, she smacked children on the hand using a ruler as a means of behaviour correction.*

8. *For example, in 2014 or 2015 Mrs Disciple was the Grade 1 teacher for a child, PS. Mrs Disciple would smack a child, PS, on the hand with a ruler from time to time as a means of behaviour management.*

Teacher's Response

9. *Mrs Disciple stated in her Police interview that:*

   (a) *She accepted that she had used a ruler to smack children on the hand when she worked at Gloriavale Christian School about 10 years ago. She may have hurt the children, but that was not her intention.*

   (b) *When she had started at Gloriavale Christian School, there was no training or help with behavioural issues. She had grown up in Gloriavale and seen smacking or physical force used to discipline children.*

   (c) *At the time, she had felt that it was right to treat children the same as she had been treated.*

   (d) *She was not proud of what had taken place and had wanted to change the culture at Gloriavale.*

10. *After commencing its investigation, the Teaching Council invited a response from Mrs Disciple to the allegations. On 2 February 2022, she informed the Council that:*

   (a) *The allegations made against her were true.*

   (b) *Her mindset had completely changed since that time. In 2020 and 2021, she was one of a handful of teachers in the school to research positive behaviour management strategies. This had included working to support other teachers, including a teacher whose behaviour she considered was negatively impacting her son, a student at the school.*

   (c) *She ultimately came to the view that the culture in Gloriavale Christian School was linked to the culture of the community generally. She and her husband believed that bullying, abuse and lack of empathy were used by members of the community to get what they wanted.*

   (d) *After she and her husband spoke to a community leader, their concerns were acknowledged but they were told to keep their heads down and carry on as best she could.*

(e) *Mrs Disciple and her husband were unsatisfied with that response and ultimately chose to leave Gloriavale with their children.*"

7. To find that a charge has been established, the Tribunal must be satisfied on the balance of probabilities that the CAC has proved the particulars of the charge. In this case, Mrs Disciple accepts that used physical discipline in the way alleged. Accordingly, we find that the particulars of the charge are proved.

8. However, finding the particulars of the charge established does not end our enquiry into the nature of the misconduct. We must still move on and consider whether or not the established conduct amounts to serious misconduct.

Hīanga Nu - Serious Misconduct

9. The respondent accepts that her conduct amounts to serious misconduct but nonetheless we must still independently decide whether the conduct we found to be established does amount to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).

10. Because of the time period of the alleged misconduct, we need to consider the version of the Education Act 1989 that was in force in 2014 and 2015. During that period section 139AB of the Act provided:

> ***"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*
> *(b) that is of a character or severity that meets the Education Council's criteria for reporting serious misconduct*."

11. The criteria for reporting serious misconduct were found in r 9 of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 ("the Rules"). The CAC relied on rr 9(1)(a) and (n).

> *"**9 Criteria for reporting serious misconduct***
> *(1) The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*
> *(a) the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):*
>
> *(n) any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more"*

CAC submissions

12. The CAC referred to the relevant versions of the Act and the Rules in making submissions as to why the test for serious misconduct has been established. The CAC referred to authorities which concluded that the inappropriate smacking or use of force was serious misconduct.[2]

13. The CAC submitted that the use of physical force could hurt the children even though that may not have been the respondent's intention and therefore this type of behaviour had the likelihood of adversely affecting the student's well-being or learning.

14. The CAC also submitted that the departure from the standards expected of a teacher through use of force demonstrated a misunderstanding of appropriate professional standards and methods of teaching. This adversely reflected on the respondent's fitness to teach.

15. The CAC further submitted that s 139A breaches typically constitute physical abuse and that the conduct involved could have been prosecuted as a charge of assault on a child.

16. As a result, the CAC submit that serious misconduct has been established.

Respondent's submissions

17. The respondent accepted that her conduct amounted to serious misconduct.

Analysis

18. We must be satisfied that the respondent's conduct meets at least one of the two criteria for serious misconduct in s 139AB of the Act and is of a character or severity that meets the criteria for reporting serious misconduct.

19. The Tribunal has considered the use of force by teachers many times before. Cases such *CAC v Teacher H,*[3] *CAC v Astwood,*[4] and *CAC v Taylor*[5] are representative of the orthodox approach we have taken in previous cases. Ordinarily such behaviour is serious misconduct.

20. We now turn to assess the behaviour in this case against the two-stage test in s

[2] *CAC v Papuni* NZTDT 2016/30, 20 October 2016 and *CAC v Haycock* NZTDT 2016/2, 22 July 2016
[3] *CAC v Teacher H* NZTDT 2019/119.
[4] *CAC v Astwood NZTDT 2018/6*
[5] *CAC v Taylor* (NZTDT 2017-41).

139AB and the reporting criteria in rule 9.[6]

21. Starting first with the effect of the misconduct on students. We agree with the CAC that the behaviour is likely to affect the wellbeing and learning of the students involved. That is the underlying premise under which s 139A of the Education Act 1989 was implemented. It is accepted that physical disciplining of children has a likelihood of adversely impacting them and therefore was prohibited from schools. As a result, we find the first criteria for serious misconduct made out.

22. While we accept that there is some force in the CAC's submissions that the misconduct affects the respondent's fitness to be a teacher, in the end, we did not make a finding that this was established for the following reasons:

    (a) The respondent grew up in Gloriavale and her views and attitudes were shaped by those experiences. The thought control processes prevalent in her upbringing had clearly coloured the way she saw the world and made her resistant to learning from the information she received during her teaching education.

    (b) Given her background and the huge strides that she has made both in the latter period at the school and since she has left Gloriavale, ultimately, we were not satisfied that this criterion had been established.

23. Turning to the reporting criteria in Rule 9, we accept that the use of physical discipline amounts to physical abuse of the children and therefore this reporting criteria is established.

24. However, given that the Police investigated and did not take any enforcement action and given that the conduct occurred almost ten years ago (the limitation period for prosecuting behaviour of this kind is five years[7]), ultimately, we concluded in all the circumstances that we were not satisfied that Rule 9(1)(n) had been established.

25. However, because we have found one of the criteria in the Act and one of the criteria in the Reporting Rules established, that is all that is required for a finding of serious misconduct.

26. As a result, we conclude the respondent's conduct amounts to serious misconduct.

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[6] See analysis in *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].
[7] See section 25(2)(a) of the Criminal Procedure Act 2011.

Whiu – Penalty

27. In *CAC v McMillan*,[8] we summarised the role of disciplinary proceedings against teachers as:

> *"… 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."*

28. Our powers on a finding of serious misconduct (or an adverse finding) are contained in section 139AW of the Act which provides:

> *"**139AW Powers of Disciplinary Tribunal***
> *(1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:*
> *(a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2):*
> *(b) censure the teacher:*
> *(c) impose conditions on the teacher's practising certificate or authority for a specified period:*
> *(d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
> *(e) annotate the register or the list of authorised persons in a specified manner:*
> *(f) impose a fine on the teacher not exceeding $3,000:*
> *(g) order that the teacher's registration or authority be cancelled (see section 129(1)):*
> *(h) require any party to the hearing to pay costs to any other party:*
> *(i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing."*

Ngā Kōrero a te Kōmiti – CAC Submissions

29. The CAC made reasonable and responsible submissions on penalty. They noted the Tribunal's findings in *CAC v Fuli-Makaua*[9] of the criteria for the Tribunal to consider cancellation of a teacher's registration. They acknowledge that this was not such a case and noted there were unusual and significant mitigating features. They noted that the respondent had learned to teach within the Gloriavale community, that she was unhappy about the culture at Gloriavale School, that she

[8] *CAC v McMillan* NZTDT 2016/52, 23 January 2017, at [23].
[9] *CAC v Fuli-Makaua* NZDTD 2017/40 at [54]

admitted her conduct immediately to the Police and the CAC, remained engaged in the disciplinary process and was remorseful, reflective and had insight into her past behaviour. As a result of those mitigating features the CAC submitted that a censure was all that was required in this case.

Ngā kōrero a te Kaiurupare – Respondent's submissions.

30. Mrs Disciple made insightful and remorseful submissions on penalty. She acknowledged her previous wrongdoing and outlined her attitude to corporal punishment at the school and that she tried to change the culture at the school but those attempts were unsuccessful and she ultimately left the community. She expressed a desire to continue to teach in the future if possible and sought a penalty that would allow that to occur.

Kōrerorero – Discussion

31. We have great sympathy for the position that Mrs Disciple finds herself in. She clearly grew up in a community that had distorted attitudes to teaching and discipline. Those have coloured her world view and the community's resistance to outside influences made it difficult for her to see beyond the teachings of the community. Despite that, she had the courage and foresight to ultimately adopt the teachings she received as part of her teacher training and she endeavoured to push for transformational change in the way in which the school disciplined children. That was resisted by the school leaders, ultimately with the effect that she left the community.

32. She is clearly insightful as to the potential impact of her behaviour on the students and of the appropriateness of the physical force that she used.

33. We have no doubt that she now would be a valuable asset to the teaching community, and we want to make sure that she has the opportunity to return to teaching if she wants.

34. Given the very unusual circumstances that strongly mitigate the misconduct, we do not consider a censure is required and rather we are focused on assisting her transition back to teaching if that is what she wishes to do.

35. To that end, we will only impose one condition that if she were to return to teaching, she would need to teach under the supervision of a mentor for the first year of her return to teaching. This is so that the gains that she has made can be cemented in place.

Utu Whakaea – Costs

36. The CAC sought a contribution of 40% of its costs under s 404(1)(h). The respondent asks that we make no costs order given her difficult financial circumstances.

37. Ordinarily, we would agree with the CAC's position on costs as that is the conventional approach to costs in a case dealt with on the papers. However, this is a far from ordinary case and we are going to take an approach that is not the ordinary one. Mrs Disciple set out in detail her family's financial circumstances: with seven children and one income they are in very difficult financial circumstances.

38. Given the significant mitigating features in this case and given her difficult financial circumstances, we do not consider a costs award is necessary or appropriate. We have real sympathy for Mrs Disciple and the circumstances she is in. We acknowledge that our decision means that the teaching profession as a whole will cover all of this disciplinary proceeding, however, ultimately that is what we have concluded is fair and reasonable in this case. For that reason, we make no order for costs.

He Rāhui tuku panui – Non-publication

39. The respondent does not seek name suppression.

40. While the misconduct involved children in her care, there is only one individual student, child PS whose is individually identified in the summary of facts. We will suppress their name but do not make any other suppression orders to protect the students.

41. Immediately prior to the hearing of the charge, the school made an application for suppression of its name. We continued with the papers hearing and considered liability, penalty and costs at that hearing but delayed the final decision on suppression until the parties had had an opportunity to make submissions on the application. Following the receipt of those submissions we reconvened the hearing to determine the school's application for suppression.

42. The school seeks suppression of its name. The basis on which the school applied for name suppression was as follows:

    (a) The adverse effect on the school community including the impact on the

current children at the school and the ability of the school to attract and retain teaching staff;

(b) The real risk that publication of the school's name, particularly in the context of the classroom setting may lead to identification of the complainants; and

(c) To avoid the real risk of unfair suspicion falling on other female teachers at the school aside from the respondent if the school is named but her name is suppressed.

43. We do not need to consider the latter ground for suppression as Mrs Disciple has not made an application for her own name to be suppressed.

Ngā Kōrero a te Kōmiti – CAC Submissions

44. The CAC are essentially neutral on the name suppression application but do point out reasons why the Tribunal may not consider suppressing the name of the school is appropriate.

45. The CAC noted the causal relationship between the misconduct alleged against Mrs Disciple and the attitudes of the school. They note that if the Tribunal accepts Mrs Disciple's conduct was mitigated by her upbringing in the Gloriavale community (as we have done) then that may be a valid reason to decline name suppression. They also noted reasons why the school and the wider Gloriavale community may be identified inevitably by the publishing of Mrs Disciple's name.

46. The CAC also noted that there is significant material already out in the community regarding the Gloriavale community including television documentaries and the Employment Court decision in *Pilgrim v The Attorney-General*.[10] Given the extensive unrelated publicity, a non-publication order would be of limited effect.

Ngā kōrero a te Kaiurupare – Respondent's submissions

47. Mrs Disciple opposes name suppression on the basis that the school only wants non-publication to save face and maintain their fundamental belief that the school is the best place for parents in the community to educate their children. She argues that if the name of the school is suppressed then there will be a risk of people being unaware of the potential dangers within the school.

48. She pointed towards an ongoing risk to the children at the school and that

[10] *Pilgrim v The Attorney-General* [2023] NZEmpC 105

publication was necessary to help inform members of the wider community as to the dangers of the Gloriavale community and its school. Suppression will help the school silence and cover up the truth, she said.

49. She also pointed to the extent of existing media coverage and her own involvement in television documentaries. This pointed against suppression.

50. She argued that the children involved will be protected sufficiently with name suppression and non-publication of the school is not required. She noted that suppressing the name of the school will not provide any protection for the children and that there was no risk of suspicion around the other teachers as she was not seeking suppression herself.

Ngā kōrero a te Kura – *Schools's submissions*

51. The school referred to the applicable principles set out in *CAC v Taylor*[11] as follows:

> *"30. In order to justify a conclusion that it is proper to order name suppression for a school there must be some evidence of a real risk that publication will cause real adverse effects which are at least more than speculative. It must be clear that such potential effects are likely to go beyond the normal embarrassment or disruption a school might suffer where one of its teachers is found to have engaged in professional misconduct. A bare assertion by a school, without evidence, that it will suffer beyond the norm will not usually be enough, although that possibility cannot be excluded."*

52. The school submitted that the publication of the school's name will inevitably invite public scrutiny, particularly in the form adverse social media comments. The school noted in this context the allegation was historical and related to a teacher who was no longer at the school. They argued that the level of media attention and public scrutiny would be disproportionate to the allegations in this case and would cause distress to the students at the school and potentially affect the ability to attract and retain staff.

53. The school also argued that there was a risk of identifying the complainants and the children involved, noting that in 2014 and 2015 there were only 27 students in the respondent's class and that the incident involved events in the classroom setting. They further argued that the children in the respondent's class will be able to identify the children involved and further the children could still be identified by anyone in the wider community due to the overall small number of students

[11] *CAC v Taylor* NZTDT 2019/92

attending the school. The school also noted that there could have been only a small number of people making the complaint in this case.

Te Ture - The Law

54. In deciding if it is proper to make an order prohibiting publication, we must consider the relevant individual interests as well as the public interest.

55. As we noted in *CAC v Finch*,[12] we apply a two-stage approach. The first stage involves an assessment of whether the particular consequence is "likely" to follow. This simply means an "appreciable" or "real" risk. If we are so satisfied, our discretion to forbid publication is engaged and we must determine whether it is proper for the presumption in favour of open justice to give way to the personal circumstances on which suppression is sought.

56. There is no onus on the applicant and the question is simply whether the circumstances justify an exception to the fundamental principle.[13] In essence we must strike a balance between the open justice considerations and the interests of the party who seeks suppression.[14]

Kōrerorero – Discussion

57. We do not accept any of the School's arguments.

58. As the Tribunal has previously noted, there is always an impact on the school when a teacher is found to have committed serious misconduct while at the school. In this case, we have reached the firm conclusion that the school and its attitude to discipline played a significant role in Mrs Disciple being before the Tribunal. In our view, it would be unfair on Mrs Disciple to have her name published but the school suppressed, given the strong causal link between the school and its attitudes to discipline and her being charged with serious misconduct.

59. While there is likely to be some impact on the children at the school, that is unfortunately inevitable in cases like this but does not reach a level where we consider suppression of the school's name is justified. Further there has obviously been considerable publicity about Gloriavale and we do not want to unnecessarily add to that, but equally we do not consider that in the context of all of the previous

[12] *CAC v Finch* NZTDT 2016/11
[13] *ASB Bank Ltd v AB* [2010] 3 NZLR 427 (HC) at [14]
[14] *Hart v Standards Committee (No. 1) of the New Zealand Law Society* [2012] NZSC4 at [3]

publicity, any additional publicity from this decision will have an appreciable impact. The same applies to the school's concern about its ability to attract and retain teachers. In our view, those difficulties, if they do exist, will exist independent of this case.

60. We also reject the argument that somehow naming the school will potentially lead to the identification of the complainants. Given the passage of time since the events occurred, we do not consider that there is any real risk of identification of the students. Only one child was identified in the agreed summary of facts and their name is suppressed. It is purely speculative to say that almost a decade after this misconduct has occurred, that simply naming the school and the context of what is alleged in this case will identify any students involved. The argument that the students in the classroom may be able to identify the children involved in the misconduct is also purely speculative. If they were present, they would have witnessed the physical discipline being used so it would be their memories of their childhood which would identify the victims not publicity about this decision.

61. We also note, although it was not particularly determinative in our decision, that Mrs Disciple's name, if published, will in all likelihood be a clear indicator that it was Gloriavale School involved. There is media coverage involving Mrs Disciple and if her name were published that would link the misconduct back to Gloriavale School. So, the only way we would be able to suppress the school's name would be to suppress Mrs Disciple's name. We do not consider in all the circumstances, especially because she has not sought that type of suppression, we should make such an order.

62. Having rejected all of the grounds for suppression in support of the application for suppression, there is no basis on which we could make an order under s 405(6) for non-publication of the school's name.

Ian Murray
Deputy Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by the 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).

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NZTDT 2023/23

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TE WHAKATAUNGA Ā TE TARAIPIUNARA

REISSUED DECISION ON PENALTY, LIABILITY AND COSTS

Dated 6 November 2023

NOHOANGA: *Hearing*	14 and 25 August 2023 on the papers via Teams
TE TARAIPIUNARA: *The Tribunal*	Ian Murray (Tiamana Tuarua) Rose McInerney raua ko Gael Ashworth (Ngā mema o te Taraipiunara)
NGĀ ROIA ME NGĀ KAIAWHINA: *Representation*	L. van der Lem and J Garden for Complaints Assessment Committee Respondent- self represented C. Shannon and J. Gunn for the School

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> a. Smacked children on the hand with a ruler."

2. The CAC contends that this conduct amounts to serious misconduct pursuant to s 139AB of the Education Act 1989 (the Act)[1] and Rules 9(1)(e) of New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (the Rules); or alternatively it is conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 139AW of the Act.

Whakarāpopoto o te whakataunga – Summary of decision

3. The Tribunal considered the charge and concluded the conduct amounted to serious misconduct. We imposed a condition that if the respondent returns to teaching, she must teach under the supervision of a mentor for her first year teaching. We made no costs order. We suppress the name of child, PS (the only student referred to in the agreed summary of facts) but make no other suppression orders.

[1] Given the historical nature of the alleged misconduct, an earlier version of the Act applies rather than the more recent Education and Training Act 2020

Ko te hātepe ture o tono nei – Procedural History

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5. Immediately prior to the hearing of the charge, the school made an application for suppression of its name. We continued with the papers hearing and considered liability, penalty and costs at that hearing but delayed the final decision on suppression until the parties had had an opportunity to make submissions on the application. Following the receipt of those submissions we reconvened the hearing to determine the school's application for suppression.

6. The Gloriavale school and community was not a party to the original hearing except in relation to their application for name suppression. Accordingly, they were not able to comment on allegations by Mrs Disciple about her upbringing and how the school operated during the time she taught there.

7. After we issued this decision, the Gloriavale School and Community sought recall of the decision, while that application was not ultimately pursued, we nonetheless concluded it was proper to recall the decision and make clear the limited role that the school and community played in this hearing.

Kōrero Taunaki - Evidence

8. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**), signed by the respondent and counsel for the CAC. The ASF is set out in full below:

> *"**Background***
>
> 1. *The respondent, **VICTORY DISCIPLE**, is a fully registered teacher.*
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> 2. *Mrs Disciple was born in 1989 and first began working as an assistant in Gloriavale Christian School when she was 15 years old. After completing her teacher training, she was first registered in January 2012. Her practising certificate expires on 28 January 2024.*
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> 3. *At the time of the incidents detailed below, Mrs Disciple worked as a teacher at Gloriavale Christian School (**the School**). She commenced*

work as a qualified teacher at the School in January 2012, where she taught Grade 1, where students were aged 5-6 years. Prior to leaving the School, she worked for 3 years as the Head Teacher of Grade 1.

4. *In September 2021, after concerns were raised regarding the treatment of children in the Gloriavale community, Police and Oranga Tamariki conducted screening interviews of children within that community.*

5. *On 1 October 2021, Police interviewed Mrs Disciple in relation to allegations she had smacked children's hands within the classroom. On 11 November 2021 the Police informed the Teaching Council the investigation had been closed without charge.*

6. *On 4 February 2022 the Teaching Council commenced an own-motion investigation into the matter.*

Conduct at the School

7. *From time to time after Mrs Disciple's registration as a teacher, she smacked children on the hand using a ruler as a means of behaviour correction.*

8. *For example, in 2014 or 2015 Mrs Disciple was the Grade 1 teacher for a child, PS. Mrs Disciple would smack a child, PS, on the hand with a ruler from time to time as a means of behaviour management.*

Teacher's Response

9. *Mrs Disciple stated in her Police interview that:*

   (a) *She accepted that she had used a ruler to smack children on the hand when she worked at Gloriavale Christian School about 10 years ago. She may have hurt the children, but that was not her intention.*

   (b) *When she had started at Gloriavale Christian School, there was no training or help with behavioural issues. She had grown up in Gloriavale and seen smacking or physical force used to discipline children.*

   (c) *At the time, she had felt that it was right to treat children the same as she had been treated.*

   (d) *She was not proud of what had taken place and had wanted to change the culture at Gloriavale.*

10. *After commencing its investigation, the Teaching Council invited a response from Mrs Disciple to the allegations. On 2 February 2022, she informed the Council that:*

    (a) *The allegations made against her were true.*

    (b) *Her mindset had completely changed since that time. In 2020 and 2021, she was one of a handful of teachers in the school to research positive behaviour management strategies. This had*

included working to support other teachers, including a teacher whose behaviour she considered was negatively impacting her son, a student at the school.

(c) *She ultimately came to the view that the culture in Gloriavale Christian School was linked to the culture of the community generally. She and her husband believed that bullying, abuse and lack of empathy were used by members of the community to get what they wanted.*

(d) *After she and her husband spoke to a community leader, their concerns were acknowledged but they were told to keep their heads down and carry on as best she could.*

(e) *Mrs Disciple and her husband were unsatisfied with that response and ultimately chose to leave Gloriavale with their children.*"

9. To find that a charge has been established, the Tribunal must be satisfied on the balance of probabilities that the CAC has proved the particulars of the charge. In this case, Mrs Disciple accepts that used physical discipline in the way alleged. Accordingly, we find that the particulars of the charge are proved.

10. However, finding the particulars of the charge established does not end our enquiry into the nature of the misconduct. We must still move on and consider whether or not the established conduct amounts to serious misconduct.

Hīanga Nu - Serious Misconduct

11. The respondent accepts that her conduct amounts to serious misconduct but nonetheless we must still independently decide whether the conduct we found to be established does amount to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).

12. Because of the time period of the alleged misconduct, we need to consider the version of the Education Act 1989 that was in force in 2014 and 2015. During that period section 139AB of the Act provided:

> ***"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*
> *(b) that is of a character or severity that meets the Education Council's criteria for reporting serious misconduct*."

13. The criteria for reporting serious misconduct were found in r 9 of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 ("the Rules"). The CAC relied on rr 9(1)(a) and (n).

> *"**9 Criteria for reporting serious misconduct***
> *(1) The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*
> *(a) the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):*
>
> *(n) any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more"*

CAC submissions

14. The CAC referred to the relevant versions of the Act and the Rules in making submissions as to why the test for serious misconduct has been established. The CAC referred to authorities which concluded that the inappropriate smacking or use of force was serious misconduct.[2]

15. The CAC submitted that the use of physical force could hurt the children even though that may not have been the respondent's intention and therefore this type of behaviour had the likelihood of adversely affecting the student's well-being or learning.

16. The CAC also submitted that the departure from the standards expected of a teacher through use of force demonstrated a misunderstanding of appropriate professional standards and methods of teaching. This adversely reflected on the respondent's fitness to teach.

17. The CAC further submitted that s 139A breaches typically constitute physical abuse and that the conduct involved could have been prosecuted as a charge of assault on a child.

18. As a result, the CAC submit that serious misconduct has been established.

Respondent's submissions

19. The respondent accepted that her conduct amounted to serious misconduct.

Analysis

20. We must be satisfied that the respondent's conduct meets at least one of the two

[2] *CAC v Papuni* NZTDT 2016/30, 20 October 2016 and *CAC v Haycock* NZTDT 2016/2, 22 July 2016

criteria for serious misconduct in s 139AB of the Act and is of a character or severity that meets the criteria for reporting serious misconduct.

21. The Tribunal has considered the use of force by teachers many times before. Cases such *CAC v Teacher H,*[3] *CAC v Astwood,*[4] and *CAC v Taylor*[5] are representative of the orthodox approach we have taken in previous cases. Ordinarily such behaviour is serious misconduct.

22. We now turn to assess the behaviour in this case against the two-stage test in s 139AB and the reporting criteria in rule 9.[6]

23. Starting first with the effect of the misconduct on students. We agree with the CAC that the behaviour is likely to affect the wellbeing and learning of the students involved. That is the underlying premise under which s 139A of the Education Act 1989 was implemented. It is accepted that physical disciplining of children has a likelihood of adversely impacting them and therefore was prohibited from schools. As a result, we find the first criteria for serious misconduct made out.

24. While we accept that there is some force in the CAC's submissions that the misconduct affects the respondent's fitness to be a teacher, in the end, we did not make a finding that this was established for the following reasons:

    (a) The respondent grew up in Gloriavale and she told us that her views and attitudes were shaped by those experiences. She told us that the thought control processes prevalent in her upbringing had clearly coloured the way she saw the world and made her resistant to learning from the information she received during her teaching education.

    (b) Given her background and the huge strides that she has made both in the latter period at the school and since she has left Gloriavale, ultimately, we were not satisfied that this criterion had been established.

25. Turning to the reporting criteria in Rule 9, we accept that the use of physical discipline amounts to physical abuse of the children and therefore this reporting criteria is established.

26. However, given that the Police investigated and did not take any enforcement

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[3] *CAC v Teacher H* NZTDT 2019/119.
[4] *CAC v Astwood NZTDT 2018/6*
[5] *CAC v Taylor* (NZTDT 2017-41).
[6] See analysis in *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].

action and given that the conduct occurred almost ten years ago (the limitation period for prosecuting behaviour of this kind is five years[7]), ultimately, we concluded in all the circumstances that we were not satisfied that Rule 9(1)(n) had been established.

27. However, because we have found one of the criteria in the Act and one of the criteria in the Reporting Rules established, that is all that is required for a finding of serious misconduct.

28. As a result, we conclude the respondent's conduct amounts to serious misconduct.

Whiu – Penalty

29. In *CAC v McMillan*,[8] we summarised the role of disciplinary proceedings against teachers as:

> *"… 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."*

30. Our powers on a finding of serious misconduct (or an adverse finding) are contained in section 139AW of the Act which provides:

> *"**139AW Powers of Disciplinary Tribunal***
> *(1) Following a hearing of a charge of serious misconduct, or a hearing into the conduct of a teacher, the Disciplinary Tribunal may do any 1 or more of the following:*
> *(a) any of the things that the Complaints Assessment Committee could have done under section 139AT(2):*
> *(b) censure the teacher:*
> *(c) impose conditions on the teacher's practising certificate or authority for a specified period:*
> *(d) suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
> *(e) annotate the register or the list of authorised persons in a specified manner:*
> *(f) impose a fine on the teacher not exceeding $3,000:*
> *(g) order that the teacher's registration or authority be cancelled (see section 129(1)):*
> *(h) require any party to the hearing to pay costs to any other party:*
> *(i) require any party to pay a sum to the Teachers Council in respect of the costs of conducting the hearing."*

[7] See section 25(2)(a) of the Criminal Procedure Act 2011.
[8] *CAC v McMillan* NZTDT 2016/52, 23 January 2017, at [23].

Ngā Kōrero a te Kōmiti – CAC Submissions

31. The CAC made reasonable and responsible submissions on penalty. They noted the Tribunal's findings in *CAC v Fuli-Makaua*[9] of the criteria for the Tribunal to consider cancellation of a teacher's registration. They acknowledge that this was not such a case and noted there were unusual and significant mitigating features. They noted that the respondent had learned to teach within the Gloriavale community, that she was unhappy about the culture at Gloriavale School, that she admitted her conduct immediately to the Police and the CAC, remained engaged in the disciplinary process and was remorseful, reflective and had insight into her past behaviour. As a result of those mitigating features the CAC submitted that a censure was all that was required in this case.

Ngā kōrero a te Kaiurupare – Respondent's submissions.

32. Mrs Disciple made insightful and remorseful submissions on penalty. She acknowledged her previous wrongdoing and outlined her attitude to corporal punishment at the school and that she tried to change the culture at the school but those attempts were unsuccessful and she ultimately left the community. She expressed a desire to continue to teach in the future if possible and sought a penalty that would allow that to occur.

Kōrerorero – Discussion

33. We have great sympathy for the position that Mrs Disciple finds herself in. She told us that she grew up in a community that had distorted attitudes to teaching and discipline. Those, she said, have coloured her world view and she told us that the community's resistance to outside influences made it difficult for her to see beyond the teachings of the community. Despite that, from what she told us she had the courage and foresight to ultimately adopt the teachings she received as part of her teacher training and she endeavoured to push for transformational change in the way in which the school disciplined children. That, she said,was resisted by the school leaders, ultimately with the effect that she left the community.

34. She is clearly insightful as to the potential impact of her behaviour on the students and of the appropriateness of the physical force that she used.

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[9] *CAC v Fuli-Makaua* NZDTD 2017/40 at [54]

35. We have no doubt that she now would be a valuable asset to the teaching community, and we want to make sure that she has the opportunity to return to teaching if she wants.

36. Given the very unusual circumstances that strongly mitigate the misconduct, we do not consider a censure is required and rather we are focused on assisting her transition back to teaching if that is what she wishes to do.

37. To that end, we will only impose one condition that if she were to return to teaching, she would need to teach under the supervision of a mentor for the first year of her return to teaching. This is so that the gains that she has made can be cemented in place.

Utu Whakaea – Costs

38. The CAC sought a contribution of 40% of its costs under s 404(1)(h). The respondent asks that we make no costs order given her difficult financial circumstances.

39. Ordinarily, we would agree with the CAC's position on costs as that is the conventional approach to costs in a case dealt with on the papers. However, this is a far from ordinary case and we are going to take an approach that is not the ordinary one. Mrs Disciple set out in detail her family's financial circumstances: with seven children and one income they are in very difficult financial circumstances.

40. Given the significant mitigating features in this case and given her difficult financial circumstances, we do not consider a costs award is necessary or appropriate. We have real sympathy for Mrs Disciple and the circumstances she is in. We acknowledge that our decision means that the teaching profession as a whole will cover all of this disciplinary proceeding, however, ultimately that is what we have concluded is fair and reasonable in this case. For that reason, we make no order for costs.

He Rāhui tuku panui – Non-publication

41. The respondent does not seek name suppression.

42. While the misconduct involved children in her care, there is only one individual student, child PS whose is individually identified in the summary of facts. We will suppress their name but do not make any other suppression orders to protect the

students.

43. Immediately prior to the hearing of the charge, the school made an application for suppression of its name. We continued with the papers hearing and considered liability, penalty and costs at that hearing but delayed the final decision on suppression until the parties had had an opportunity to make submissions on the application. Following the receipt of those submissions we reconvened the hearing to determine the school's application for suppression.

44. The school seeks suppression of its name. The basis on which the school applied for name suppression was as follows:

    (a) The adverse effect on the school community including the impact on the current children at the school and the ability of the school to attract and retain teaching staff;

    (b) The real risk that publication of the school's name, particularly in the context of the classroom setting may lead to identification of the complainants; and

    (c) To avoid the real risk of unfair suspicion falling on other female teachers at the school aside from the respondent if the school is named but her name is suppressed.

45. We do not need to consider the latter ground for suppression as Mrs Disciple has not made an application for her own name to be suppressed.

Ngā Kōrero a te Kōmiti – CAC Submissions

46. The CAC are essentially neutral on the name suppression application but do point out reasons why the Tribunal may not consider suppressing the name of the school is appropriate.

47. The CAC noted the causal relationship between the misconduct alleged against Mrs Disciple and the attitudes of the school. They note that if the Tribunal accepts Mrs Disciple's conduct was mitigated by her upbringing in the Gloriavale community (as we have done) then that may be a valid reason to decline name suppression. They also noted reasons why the school and the wider Gloriavale community may be identified inevitably by the publishing of Mrs Disciple's name.

48. The CAC also noted that there is significant material already out in the community regarding the Gloriavale community including television documentaries and the

Employment Court decision in *Pilgrim v The Attorney-General*.[10] Given the extensive unrelated publicity, a non-publication order would be of limited effect.

Ngā kōrero a te Kaiurupare – Respondent's submissions

49. Mrs Disciple opposes name suppression on the basis that the school only wants non-publication to save face and maintain their fundamental belief that the school is the best place for parents in the community to educate their children. She argues that if the name of the school is suppressed then there will be a risk of people being unaware of the potential dangers within the school.

50. .

51. She pointed towards an ongoing risk to the children at the school and that publication was necessary to help inform members of the wider community as to the dangers of the Gloriavale community and its school. Suppression will help the school silence and cover up the truth, she said.

52. She also pointed to the extent of existing media coverage and her own involvement in television documentaries. This pointed against suppression.

53. She argued that the children involved will be protected sufficiently with name suppression and non-publication of the school is not required. She noted that suppressing the name of the school will not provide any protection for the children and that there was no risk of suspicion around the other teachers as she was not seeking suppression herself.

Ngā kōrero a te Kura – *Schools's submissions*

54. The school referred to the applicable principles set out in *CAC v Taylor*[11] as follows:

> *"30. In order to justify a conclusion that it is proper to order name suppression for a school there must be some evidence of a real risk that publication will cause real adverse effects which are at least more than speculative. It must be clear that such potential effects are likely to go beyond the normal embarrassment or disruption a school might suffer where one of its teachers is found to have engaged in professional misconduct. A bare assertion by a school, without evidence, that it will suffer beyond the norm will not usually be enough, although that possibility cannot be excluded."*

55. The school submitted that the publication of the school's name will inevitably invite

[10] *Pilgrim v The Attorney-General* [2023] NZEmpC 105
[11] *CAC v Taylor* NZTDT 2019/92

public scrutiny, particularly in the form adverse social media comments. The school noted in this context the allegation was historical and related to a teacher who was no longer at the school. They argued that the level of media attention and public scrutiny would be disproportionate to the allegations in this case and would cause distress to the students at the school and potentially affect the ability to attract and retain staff.

56. The school also argued that there was a risk of identifying the complainants and the children involved, noting that in 2014 and 2015 there were only 27 students in the respondent's class and that the incident involved events in the classroom setting. They further argued that the children in the respondent's class will be able to identify the children involved and further the children could still be identified by anyone in the wider community due to the overall small number of students attending the school. The school also noted that there could have been only a small number of people making the complaint in this case.

Te Ture - The Law

57. In deciding if it is proper to make an order prohibiting publication, we must consider the relevant individual interests as well as the public interest.

58. As we noted in *CAC v Finch*,[12] we apply a two-stage approach. The first stage involves an assessment of whether the particular consequence is "likely" to follow. This simply means an "appreciable" or "real" risk. If we are so satisfied, our discretion to forbid publication is engaged and we must determine whether it is proper for the presumption in favour of open justice to give way to the personal circumstances on which suppression is sought.

59. There is no onus on the applicant and the question is simply whether the circumstances justify an exception to the fundamental principle.[13] In essence we must strike a balance between the open justice considerations and the interests of the party who seeks suppression.[14]

Kōrerorero – Discussion

60. We do not accept any of the School's arguments.

[12] *CAC v Finch* NZTDT 2016/11
[13] *ASB Bank Ltd v AB* [2010] 3 NZLR 427 (HC) at [14]
[14] *Hart v Standards Committee (No. 1) of the New Zealand Law Society* [2012] NZSC4 at [3]

61. As the Tribunal has previously noted, there is always an impact on the school when a teacher is found to have committed serious misconduct while at the school. In this case, we have accepted for the purposes of this decision that the school and its attitude to discipline played a significant role in Mrs Disciple being before the Tribunal. In our view, it would be unfair on Mrs Disciple to have her name published but the school suppressed, given the causal link between the school and its attitudes to discipline and her being charged with serious misconduct.

62. While there is likely to be some impact on the children at the school, that is unfortunately inevitable in cases like this but does not reach a level where we consider suppression of the school's name is justified. Further there has obviously been considerable publicity about Gloriavale and we do not want to unnecessarily add to that, but equally we do not consider that in the context of all of the previous publicity, any additional publicity from this decision will have an appreciable impact. The same applies to the school's concern about its ability to attract and retain teachers. In our view, those difficulties, if they do exist, will exist independent of this case.

63. We also reject the argument that somehow naming the school will potentially lead to the identification of the complainants. Given the passage of time since the events occurred, we do not consider that there is any real risk of identification of the students. Only one child was identified in the agreed summary of facts and their name is suppressed. It is purely speculative to say that almost a decade after this misconduct has occurred, that simply naming the school and the context of what is alleged in this case will identify any students involved. The argument that the students in the classroom may be able to identify the children involved in the misconduct is also purely speculative. If they were present they would have witnessed the physical discipline being used so it would be their memories of their childhood which would identify the victims not publicity about this decision.

64. We also note, although it was not particularly determinative in our decision, that Mrs Disciple's name, if published, will in all likelihood be a clear indicator that it was Gloriavale School involved. There is media coverage involving Mrs. Disciple and if her name were published that would link the misconduct back to Gloriavale School. So, the only way we would be able to suppress the school's name would be to suppress Mrs Disciple's name. We do not consider in all the circumstances, especially because she has not sought that type of suppression, we should make

such an order.

65. Having rejected all of the grounds for suppression in support of the application for suppression, there is no basis on which we could make an order under s 405(6) for non-publication of the school's name.

Ian Murray
Deputy Chair