

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-53

RARO TE MANA O TE
UNDER THE

the Education and Training Act 2020
(**the Act**)

MŌ TE TAKE
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A
BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

ME
AND

MALACHI FAITHFUL
(Authorisation 335791)

Kaiurupare / Respondent

Hei Māngai | Appearance

K Eskildsen, S Marin,
Luke Cunningham Clere for the CAC
Respondent self-represented.

MINUTE ALLOWING APPLICATION BY COMPLAINTS ASSESSMENT COMMITTEE TO WITHDRAW CHARGE

Background | Tāhuhu kōrero

[1] The Complaints Assessment Committee laid a notice of charge dated 23 August 2023 alleging that Mr Faithful hit a learner over the knuckles with a ruler, and that this conduct amounts to serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers.

History of the proceeding | Kōrero whanui

[2] A pre-hearing teleconference was held on 29 February 2024, at which time the

matter was confirmed to require a defended hearing and orders were made for the exchange of evidence. The evidence for the CAC was scheduled to be filed on or before 11 April 2024.

Application to withdraw charge

[3] On 2 April 2024 the CAC filed a memorandum seeking leave to withdraw the charge against Mr Faithful. The CAC has advised that in the course of briefing witnesses, the learner who Mr Faithful is alleged to have hit “*has no desire to be further involved in the disciplinary process.*” The CAC advises that they do not intend to issue a witness summons, or to make an application for any hearsay evidence from the learner to be admitted.

[4] The CAC advises that in the absence of evidence from the learner they consider there is insufficient evidence to support the charge.

Discussion | Whakawhiti kōrero

[5] The jurisdiction of the Tribunal to grant leave to withdraw a charge arises from the Teaching Council Rules 2016. Rule 24 provides that the Tribunal may regulate its own procedures. Rule 25A was inserted by the Teaching Council Amendment Rules 2023 on 29 July 2023 and provides:

1.No charge laid with, or matter referred to the Disciplinary Tribunal may be withdrawn except with leave of the Disciplinary Tribunal.

2.On any application for leave to withdraw a charge the Disciplinary Tribunal may-

- (a) grant leave on any terms and subject to any conditions it thinks fit; or
- (b) dismiss the application.

[6] Given the CAC’s outline of its position, it seems clear that this matter cannot proceed and there is no public interest in the Tribunal declining the application in the absence of evidence supporting the charge, and taking into account the interests of the learner.

[7] By memorandum dated 8 April 2024 counsel for the respondent confirmed that there is no objection to the charge being withdrawn. No issue as to costs has been raised.

Directions | Ngā Whakahau

[8] The following orders are made:

- (a) Leave to withdraw the charge is granted.
- (b) Costs lie where they fall.

Dated: 8 April 2024



C Garvey
Deputy Chair of the New Zealand Teacher's
Disciplinary Tribunal