

**NON-PUBLICATION ORDERS**

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023-38**

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

**ROBYN JUNE GIBBESON**  
(Authorisation 119214)

Kaiurupare / Respondent

Nohoanga | Hearing  
Hei Māngai | Counsel

18 December 2023, AVL (Teams) On Papers  
J Ah Koy, Meredith Connell for the CAC  
Respondent self-represented.

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**DECISION|TE WHAKATAUNGA**

**8 February 2024**

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**Tribunal:** Catherine Garvey, Deputy Chair, Kura Tuhura, Louise Arndt

## **Introduction| Te Whakatakinga**

[1] Robyn Gibbeson is an experienced Food Technology teacher and has been employed at Cambridge Middle School for over 30 years. Prior to the incident the subject of this charge, Ms Gibbeson had no previous disciplinary matters and has had none since, and the evidence supports that she held, and retains the respect of her employer and colleagues.

[2] The original notice of charge is dated 8 June 2023. Leave was granted for the filing of an amended notice of charge dated 3 November 2023, the substance of which reads:

### **Particulars of the Charge**

1. On 23 November 2021, whilst teaching at Cambridge Middle School, the teacher grabbed Student K (aged 12 years) by the arm and pulled her away from a door resulting in red marks on the Student's left arm.

2. The CAC, considering the conduct as outlined above, have resolved to refer the matter to the Disciplinary Tribunal pursuant to section 497 (4) of the Education and Training Act 2020. The purpose of this referral is for the Disciplinary Tribunal to consider whether the conduct alleged at paragraph 1 amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and Rule 9(1)(a) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

[3] By agreement of the parties, the Tribunal proceeded with a hearing on the papers on 18 December 2023. We received submissions from the Complaints Assessment Committee (CAC), an Agreed Summary of Facts, supporting documentation provided by Ms Gibbeson and brief submissions in reply from the CAC.

[4] Following the hearing the Tribunal issued a Minute to give the parties an indication of our findings on liability, penalty and costs, given the likelihood that a formal decision would be delayed because of the Christmas holiday period. This decision now sets out the reasons for our findings.

## **The Agreed Summary of Facts| Te Whakarāpopototanga**

[5] The Summary of Facts describes the relevant conduct on 21 November 2021 in Ms Gibbeson's food technology classroom as follows:

[4]...During the lesson, Student K, aged 12 years old, was working together with three other classmates. Ms Gibbeson had stopped the group on two occasions during the lesson to

remind the students about noise levels and behaviour. The group was being disruptive throughout the lesson.

[5] The lesson was nearing its end and the students were cleaning up. This involved them getting brooms from a store cupboard located outside the classroom in the cloak bay area. Student K and another student went out to retrieve the brooms. The pair were gone for several minutes and Ms Gibbeson could not [locate]<sup>1</sup> them. When Ms Gibbeson attempted to open the closed door to get the students to come back into the class, Student K was [pushing]<sup>2</sup> the door shut, preventing Ms Gibbeson from opening the door.

[6] When Ms Gibbeson managed to open the door, she forcefully grabbed Student K on the back of her left arm above her elbow and firmly said 'get back in there', pulling Student K away from the door and into the classroom, before letting go of her arm. Ms Gibbeson gripped Student K's arm with sufficient force to leave a visible red mark on Student K's arm.

[7] Ms Gibbeson then raised her voice and firmly told Student K in front of the other students in the class that she was going to "throw out" the food that Student K had made during the lesson unless Student K "took the smirk off her face."

[8] Student K immediately left the Food Technology classroom and went to the principal's office. Student K told the principal, Darryl Gibbs (Mr Gibbs), what had happened. Student K was upset and still had a visible red mark on her left arm above her elbow from where Ms Gibbeson had grabbed her, which Mr Gibbs observed.

[9] Later that evening, Mr Gibbs received an email complaint from Student K's parents about the incident.

[5] On the same day as the incident Ms Gibbeson acknowledged to Mr Gibbs that the incident had occurred as described, and that she had acted out of frustration. Following a further and formal meeting on 29 November 2021, Ms Gibbeson received a formal warning for serious misconduct. A mandatory report was made to the Teaching Council on 22 December 2021. Ms Gibbeson provided a written response to the Teaching Council, confirming that she agreed with the school's findings and manner of dealing with the matter. The Summary of Facts concludes:

Ms Gibbeson stated she is "totally remorseful and positive this was a 'one-off' incident that will never happen again".

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<sup>1</sup> The word "locate" corrects a typographical error in the charge, which read "get". Counsel for the CAC addressed this in submissions.

<sup>2</sup> The word pushing replaces "pushed", being corrected in submissions for the Complaints Assessment Committee.

[6] We note that the manner in which Ms Gibbeson spoke to the student as described in the Summary of Facts does not form part of the charge.

### **Discussion – Liability| Ngā Kōreorero Mo Ngā Kawenga**

[7] The charge pleads that Ms Gibbeson is guilty of serious misconduct pursuant to s 10 of the Education and Training Act 2020 (“the Act”) and rules 9(1)(a) and/or (k) of the Teaching Council Rules 2016, or in the alternative, misconduct. Section 10 of the Act outlines the requirements for serious misconduct. As is established, the test is conjunctive, meaning one of the elements of s10(1)(a) must be met as well as a breach of r 9. “Mere” misconduct may be made out if one of the limbs of s 10 are met, but no breach of r 9 is found.

[8] The use of physical force for correction or punishment (corporal punishment) is prohibited under s 98 of the Act. Guidelines issued under s 101 of the Act more broadly outline the expectations on teachers in terms of safely managing student behaviour. These include the statement that physical contact should not be used to compel, punish or correct ākonga as this is considered corporal punishment and is prohibited.<sup>3</sup>

[9] The Teaching Council Code of Professional Responsibility also sets out guidelines for behaviour by teachers, including the need to act in a manner that promotes the wellbeing of learners and protects them from harm, giving as an example of conduct to be avoided inappropriate handling such as grabbing a student.<sup>4</sup>

[10] Section 10(1)(a) of the Act refers to:

- (a) conduct that adversely affects or is likely to adversely affect one or more students;
- (b) conduct that reflects adversely on the teacher’s fitness to practise as a teacher;
- (c) conduct that brings or is likely to bring the teaching profession into disrepute.

[11] Given the use of force out of frustration, the absence of justification such as to prevent a risk of imminent harm to the student or another person, the obvious red marks made by Ms Gibbeson on the student’s arm and the embarrassment or upset

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<sup>3</sup> Ministry of Education – Physical Restraint Guidelines, p17.

<sup>4</sup> In section 2.1 of the guidance to the Code.

caused by the incident we find the student was adversely affected. This is borne out by the fact that the student went immediately to the Principal, and the complaint by the student's parents.

[12] We also find that the conduct reflects adversely on Ms Gibbeson's fitness as a teacher. Physical force applied in response to student behaviour is not appropriate as a means of discipline or compulsion. Teachers are expected to manage challenging student behaviour in an appropriate manner.

[13] As for whether Ms Gibbeson's conduct brings the teaching profession into disrepute, we consider that we should look at the conduct as a whole, bearing in mind the test is that of a reasonable observer armed with all the relevant facts. Ms Gibbeson's immediate acknowledgment and remorse, her acceptance of the school's investigation and findings, and the fact that this was a one-off response to challenging behaviour. We do not find s10(1)(a)(iii) met in this instance.

[14] Turning to the breach of rules pleaded in the charge, r 9(1)(a) refers to the use of unjustified or unreasonable force. Given our finding that it was inappropriate for Ms Gibbeson to grab the students arm for the purpose of correction or compulsion and did so with sufficient force to leave red marks, we find this rule has been breached. Accordingly, a finding of serious misconduct follows.

### **Discussion - Penalty and Costs| Te Hapa Tautuku me ngā utu**

[15] Section 500 of the Act sets out the actions the Tribunal may take upon finding a charge proved. Of the available penalties which range from a censure to cancellation, we should apply the least restrictive penalty appropriate in the circumstances and ensuring proportionality with similar cases. The primary aim is not to punish the teacher although that is a likely effect; discipline is a statutory mechanism to support the protection of the public, the maintenance of professional standards and of public confidence in the profession.

[16] Ms Gibbeson's conduct, while serious because of the use of force, is at the lower to moderate end (as was submitted by the CAC) and does not warrant the more severe penalties available under s 500. It involves a single incident that was out of character and for which Ms Gibbeson immediately expressed remorse. Evidence was provided in support of Ms Gibbeson in a letter co-signed by the Principal and Deputy

Principal of Cambridge Middle School dated 5 December 2023. This attests to Ms Gibbeson responding to the incident by setting a professional goal to develop positive relationships and interactions with all ākonga at the school, and her attendance throughout 2022 at regular meetings and reflection with her team leader. The letter states that this professional development resulted in “... a very positive outcome in terms of relationship building with ākonga and Robyn feeling happy and supported.” Ms Gibbeson is said to meet professional standards and to be a valued member of staff about whom senior leadership have had no reason to be concerned since the incident the subject of the charge.

[17] A second letter dated 29 November 2023 was provided from Ms Gibbeson’s Head of Department, which also refers positively to Ms Gibbeson working safely and effectively in the classroom, and her passion for teaching. Ms Gibbeson also provided evidence of positive feedback from students and parents, which we acknowledge, but can give limited weight in the absence of evidence that those persons are aware of the charge.

[18] The CAC’s written submissions initially sought censure, conditions imposed for 12 months involving professional development in behavioural management, and that Ms Gibbeson’s employer be informed of the decision, and annotation of the register. However, submissions filed in reply following receipt of Ms Gibbeson’s references acknowledged that requiring further professional development or mentoring might not be necessary. The CAC sought a contribution of 40% of the CAC’s costs. Counsel referred us to three cases, *Complaints Assessment Committee v Thomas*<sup>5</sup>, *Complaints Assessment Committee v Mackey*<sup>6</sup> and *Complaints Assessment Committee v Simpson*<sup>7</sup>. We have considered these decisions, which in our view are all more serious in nature than the present case. They helpfully display the role that remorse and rehabilitative steps may play in moderating the penalty to be imposed.

[19] Sections 500(1)(h) and (i) enable the Tribunal to make an order for costs in relation to any party, and an order for a sum to be paid to the Teaching Council in respect of the costs of the hearing. Counsel for the CAC provided a schedule of costs totalling \$8,109.80, of which a 40% contribution is \$3,243.92. The costs of the hearing claimed by the Tribunal are \$1,455.00 of which 40% is \$582.00. We are guided by the

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<sup>5</sup> NZTDT 2019/15, 3 March 2021.

<sup>6</sup> NZTDT 2016/60, 24 February 2017.

<sup>7</sup> NZTDT 2015/50, 15 April 2016.

Practice Note on costs. The Tribunal retains a discretion as to the award and quantum of costs, with the common approach being reduction from a contribution of 50% in the event of an undefended hearing where the teacher co-operates to resolve the proceedings efficiently.

[20] Ms Gibbeson did not file evidence of her financial position, other than stating that an order would “*significantly strain [her] already tight finances.*” We acknowledge the potential hardship a costs order might pose. However, we consider the costs sought are not unreasonable and the evidence provided is insufficient for a further reduction in contribution to be ordered.

[21] We consider the following penalties appropriate:

- (a) Censure.
- (b) A condition to require Ms Gibbeson to complete, if she has not done so, the mandatory Ministry of Education online module Physical Restraint-Understanding the Rules and Guidelines.
- (c) Ms Gibbeson will be required to meet an order for costs, amounting to 40% of the costs of the CAC and Tribunal being \$3,243.92 and \$582.00 respectively, a total of \$3,825.92.

#### **Non-Publication Order| Te Whakaputanga**

[22] Neither Ms Gibbeson nor the school sought non-publication orders. Although not named, out of caution the CAC submitted that an order should be made in favour of the student that the conduct in the charge relates to. We agree that there is no public interest in the name of the student being published and make an order accordingly.



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

Appeal Notice-Right of Appeal under s 504 Education and Training Act 2020

1. This decision may be appealed by a teacher who the subject of the decision by the Disciplinary Tribunal, or by the Complaints Assessment Committee.
2. Appeals must be made within 28 days after written notice of the decision or any longer period as the court allows.