

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

NZTDT 2021/65

the Education Act 1989

In the Matter of

a charge referred by the
Complaints Assessment
Committee to the New Zealand
Teachers Disciplinary Tribunal

Between

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor/Referrer

And

**PAUL HENRY MEADS
(Registration Number 136805)**

Kaiurupare | Respondent

TE WHAKATAUNGA Ā TARAIPUUNARA

DECISION ON LIABILITY AND PENALTY

DATE: 3 April 2023
HEARING: 28 March 2023 (On the papers)
TRIBUNAL: C Garvey (Deputy Chair) N Coe, L Evans
(Panel Members)
REPRESENTATION: Evan McCaughan for the CAC
Dzintra King for the Respondent

INTRODUCTION

1. Mr Meads is the subject of a charge laid by the Complaints Assessment Committee (CAC) in relation to a single incident of physical force used on a Year 10 student on 10 August 2018. Mr Meads was investigated by his employer Pukekohe College, following which no further action was taken and he continued teaching. The student's family laid a complaint with the Police on 5 October 2018. In May 2019, following a Police investigation Mr Meads was offered and declined a formal Police warning¹. A mandatory report was made to the Teaching Council on 19 May 2019, followed shortly after by a charge of common assault laid under s 9 of the Summary Offences Act 1981. The assault charge was heard on 6 September 2019 and Mr Meads was found guilty.² Mr Meads was discharged without conviction on 12 November 2019.³
2. In early 2020 the Teaching Council referred Mr Meads to a CAC. The CAC's investigation culminated in a disciplinary charge being issued on 9 December 2021. The parties signed an agreed Summary of Facts in June 2022, and the matter was dealt with on the papers at the request of the parties, on 28 March 2023.
3. At the time of the incident the subject of this charge, Mr Meads had been a registered teacher for almost 30 years and teaching since 1978. Mr Meads allowed his practising certificate to lapse in September 2021 and has advised the CAC and the Tribunal that he does not intend to teach in future.

THE DISCIPLINARY CHARGE

4. The Notice of Charge was issued on 9 December 2021. The charge contains a single particular, which the CAC alleges amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (the Act) and Rule 9(1)(a) and/ (j) and or (k) of the Teaching Council Rules 2016 (the Rules):

The CAC charges that Paul Meads, registered teacher, of Pukekohe, on 10 August 2018 deliberately pushed a student during a basketball game in the School's gym, causing the student to fall against a wall.

5. In the alternative, the CAC allege that this conduct entitles the Tribunal to exercise its powers pursuant to s 404 of the Act.

AGREED SUMMARY OF FACTS

6. The Summary of Facts relies largely on the findings of fact made by the District Court Judge. The District Court found Mr Meads guilty of assault after viewing video footage

¹ A formal Police warning means a matter will not proceed to a charge, but requires the person being warned to accept responsibility.

² *Police v Meads* [2019] NZDC 20659, Moala J, 17 October 2019

³ *Police v Meads* [2019] NZDC 26268, Moala J

of the incident and hearing directly from the student. Judge Moala summarised the pertinent events as follows:

“The Shove

[29] Given my finding that Mr Meads saw the aggressive pushes by [Student A] before he started the run I am satisfied that Mr Meads was unhappy with [Student A]. This was completely understandable as [Student A] was being aggressive in an informal game of basketball with his classmates. How Mr Meads dealt with [Student A’s] aggressive play was to shove him and give him ‘a taste of his own medicine.’ I am satisfied that the push was deliberate and not done to avoid a collision. On the footage, Mr Meads took two quick steps towards [Student A]. Mr Meads was deliberate and balanced in his stance. He was looking directly at [Student A].

[30] I accept that basketball is a physical game. But this shove was not part of the game. Mr Meads was not playing any more and he shoved [Student A]. The push was done out of anger and/or frustration.

[31] In his evidence, [Student A] said he was not looking at Mr Meads. He was running across the baseline when Mr Meads stepped and pushed him into the wall with two hands. He described it as a forceful push. Mr Meads’ hands made contact with [Student A’s] left shoulder and elbow. [Student A] hit the wall with his arm and bounced off the wall with his shoulder. Again, this is consistent with the footage. [Student A] said he had a sore neck and shoulder that night.

Self-Defence

[35] There is nothing to suggest that Mr Meads was trying to protect or defend himself.

...

Result

[38] ...I am satisfied that Mr Meads intentionally applied force to [Student A] by shoving him. I am satisfied that this shove was not within the rules of basketball, nor was it within the game of basketball. It was done without [Student A’s] consent and without an honest belief by Mr Meads that [Student A] was consenting. I am also satisfied that Mr Meads was not acting to defend himself.”

7. The Summary goes on to record that Mr Meads was discharged without conviction, which was not opposed by the police.
8. The CAC notified Mr Meads of their investigation in February 2020. It is not clear from the Summary of Facts what caused delays in the CAC investigation, but Mr Meads ultimately attended an interview on 5 November 2021. The Summary records that he told the CAC he was not meant to be teaching the class and did so when it became

obvious no other teacher was going to attend. Mr Meads denied any intention to push the student, and alleged the student's version of events changed after the CCTV footage came to light. This denial is of little assistance to us given we are bound by the Court's findings, and Mr Meads' agreement to the Summary of Facts.

9. The Summary concludes:

"...Mr Meads said he had no intention of going back to teaching and had let his practising certificate expire.

[23] The CAC considered that Mr Meads' conduct may possibly constitute serious misconduct (as defined in s. 378 of the Education Act 1989). On that basis, the CAC had no option but to refer Mr Meads' conduct to the Tribunal under s 401(4) of the Education Act 1989."

DISCUSSION

10. We received a bundle of documents from the parties including the Summary of Facts, written submissions on liability, penalty and non-publication orders and a copy of the reserved decisions of the District Court Judge in relation to the assault charge and discharge without conviction.

11. We considered and determined this matter in reliance on section 378 of the Act, and Rule 9 of the Rules. Section 378(1) defines "serious misconduct" as:

a. Conduct by a teacher that:

- i. adversely affects or is likely to adversely affect the well-being or learning of 1 or more students; or
- ii. reflects adversely on the teacher's fitness to be a teacher; or
- iii. may bring the teaching profession into disrepute; and

b. that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

12. Section 378(1) highlights the breadth of expectation on teachers to maintain high standards of professionalism, not only with regard to the students they teach, but to the teaching profession and the community.

13. Rule 9 sets out a non-exhaustive list of the matters which require an employer to report serious misconduct to the Council. These are acts or omissions that the employer reasonably believes to be a serious breach of the Code of Professional Responsibility. A report may be made based on a single incident, or a pattern of behaviour. In this case, the CAC allege that Mr Meads is guilty of serious misconduct in that he:

- a. used unreasonable or unjustified physical force on a student (9(1)(a)); or
- b. committed an act that may be the subject of an offence punishable by imprisonment for a term of 3 months or more (9(i)(j)); or
- c. acted in a manner that brings or is likely to bring the profession into disrepute (9(1)(k)).

14. We accept the submissions for the CAC that the test under s378 is conjunctive, meaning that we must be satisfied that Mr Meads' conduct meets one of the criteria at s378(1)(a)(i) to (iii) and is also of a character or severity that warrants reporting, in reliance on one or more of the Rule 9 matters pleaded.

15. We are bound to accept the factual findings of the District Court as set out in the decision of Moala J and that Mr Meads' conduct amounted to common assault. While one adverse finding under s378 is sufficient, we find Mr Meads' conduct to meet all three limbs. That is:

- a. s378(1)(a)(i): The student was adversely affected, complaining to his parents and experiencing soreness from the force Mr Meads applied, causing him to fall into a wall. The student was withdrawn from the school by his parents, and it was implied (but we do not need to find) that this related solely to this incident and the school's response to it.
- b. s378(1)(a)(ii): Mr Meads' conduct reflected adversely on his fitness to be a teacher, in that he used physical force as a means of correction and failed to respond to Student A's conduct in an appropriate manner. Examples of how he ought to have dealt with Student A were given by a basketball coach who was a witness for Mr Meads in the District Court proceedings and whose evidence is recorded in the judgment. We agree that an oral response identifying the student's aggressive behaviour and calling on Student A to play within the rules of the basketball game was the appropriate response, followed by removing Student A from the game if his behaviour did not improve.
- c. s378(1)(a)(iii): we have little detail about Mr Meads' view of events beyond his denial of wrongdoing (until Ms King signed the Summary of Facts on his behalf on 1 June 2022).⁴ We know that Mr Meads left his office and stepped in of his own volition to supervise the class when he observed that they did not have a teacher. We note the District Court Judge's findings that Student A was behaving in an aggressive manner and that Mr Meads' unhappiness with this was "*completely understandable*." However, responding to poor student behaviour in an appropriate and non-physical manner is what is required of a

⁴ The Summary of Facts signed by Ms King has been dated in handwriting 01/06/2020 however the chronology of events makes clear that this is an error and should read 2022. Mr McCaughan signed on behalf of the CAC on 9 June 2022.

teacher. Viewed objectively, the use of physical force in this instance brought or is likely to bring the teaching profession into disrepute.

16. Turning to Rule 9 and the criteria for serious misconduct relied upon by the CAC in the charge, we again had no difficulty in finding the threshold for serious misconduct met.
17. Mr Meads used physical force as a means of expressing his disapproval of Student A's behaviour. The use of force was deliberate, and there was no element of consent (for example, justified contact within the context of a sporting contest) and likewise no element of self-defence. There was no justification for the use of force and Rule 9(1)(a) is met.
18. Rule 9(1)(j) is indisputably met. Mr Meads was found guilty of common assault under s9 of the Summary Offences Act 1981, which carries a maximum sentence of imprisonment of 6 months, greater than the 3 month period stipulated in this rule. The fact that Mr Meads was discharged without conviction makes no difference in this regard.
19. As will be apparent from our finding in relation to s378(1)(a)(iii) we consider that Mr Meads' conduct brings or is likely to bring the teaching profession into disrepute and Rule 9(1)(a)(iii) is also met.

PENALTY

20. Having found the charge proved we are required to consider the appropriate penalty to impose under s 404 of the Act. The primary function of the disciplinary process is to maintain professional standards in order to protect the public from poor practice and from those who are unfit to teach. Disciplinary proceedings can ensure accountability of those guilty of a disciplinary charge, provide rehabilitative penalties where appropriate and enable the removal of those who are unfit (by virtue of the powers of suspension and cancellation). Disciplinary findings are also intended to help maintain professional standards and public confidence in the profession.⁵
21. The principles applied to penalty in the professional disciplinary arena are well established, being those set out by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354. In summary these are:
 - a. to protect the public, including deterring others from acting in the same way;
 - b. to set professional standards;
 - c. penalties may have a punitive function, but this is not the primary purpose of penalty;

⁵ In reliance on *CAC v McMillan* NZTDT 2016/25

- d. rehabilitation of the practitioner, where appropriate;
- e. to impose a penalty that is comparable to those imposed in similar circumstances;
- f. to reserve the maximum penalties for the worst offending;
- g. to impose the least restrictive penalty in the circumstances;
- h. to assess whether the penalty is fair, reasonable and proportionate in all the circumstances.

22. The CAC submitted that cancellation is the appropriate response, acknowledging that Mr Meads' conduct would not necessarily require this, but his lack of insight means the Tribunal cannot be satisfied the conduct will not occur again.

23. Counsel referred to Mr Meads' refusal to accept a formal Police warning and his decision to defend the assault charge, as well as a failure to accept responsibility when he met with the CAC. The CAC also relies on a delay in Mr Meads agreeing to the Summary of Facts, having initially indicated he would defend the charge. Regarding a risk to others in the future, Mr McCaughan submits that "*[t]here is very little to no information to suggest that the Respondent has insight into why his actions were wrong, or what he has done to better equip himself to respond to similar incidents in the future. Therefore the Tribunal cannot be satisfied that this conduct will not occur again.*"

24. Counsel submitted in the alternative that censure, annotation and conditions involving notice to any future employer, mentoring and professional development would be appropriate.

25. On behalf of Mr Meads, Ms King briefly submitted that the reasonable and appropriate penalty is censure, and that this would satisfy the overlapping purposes of the Tribunal as already described. Ms King referred to the fact that Mr Meads retained his position, and had a long career in education. Ms King confirmed Mr Meads' intention was not to teach again.

26. We have considered other cases involving the unjustified use of physical force that appear comparable in gravity.⁶ Counsel for the CAC submitted that this case is most on par with *CAC v de Kriek*⁷ which involved a one-off incident of force to correct a student, in a moment of anger or frustration. In that case a teacher dragged a student by the collar in a chair across the floor until they got to their feet. The teacher acted out of frustration that the student was playing a computer game rather than doing their schoolwork. The teacher was immediately remorseful, admitted the conduct and

⁶ *CAC v Deans* NZTDT 2015 66; *CAC v X* NZTDT 2013/26; *CAC v Allen* NZTDT 2015/15; *CAC v De Kriek* NZTDT 2019/132

⁷ Above n6

undertook rehabilitative action. The Tribunal imposed a penalty of censure and conditions on the teacher's practising certificate.

27. Inevitably, given the importance of protecting students from harm, previous decisions in cases involving the use of force have placed substantial weight on evidence of rehabilitation, insight and remorse on the part of teachers appearing before this Tribunal. We agree that these factors are very important. We are also mindful to consider the seriousness of the conduct and other relevant features that cannot be characterised as evidence of rehabilitation but are nonetheless mitigating.
28. Those features that we consider also relevant to penalty and which do not appear to have been given sufficient weight in the CAC's submissions calling for cancellation are:
 - a. This matter involves a single incident towards the end of a long career in teaching. That Mr Meads was not considered an ongoing risk to students by his employer is borne out by the fact that he retained his position after the school's investigation.
 - b. Mr Meads resigned and has not re-entered the profession. This is a significant consequence for him, after a long teaching career and service to his local community (as outlined in the District Court decision allowing a discharge without conviction). The District Court Judge accepted Mr Meads' has suffered "*considerable pain*" as a consequence of his actions.
 - c. The discharge without conviction was granted largely on the basis of the direct and indirect consequences for Mr Meads as a teacher, including the requirement to notify the Teaching Council of a conviction. While it is not for the Court to determine fitness to practice it was clearly not the Judge's view that Mr Meads posed such a risk that he ought not be a teacher.
29. Mr Meads appears to have been co-operative with the investigation process (the reason for delays were not outlined to us) and presented in person for an interview with the CAC. He also engaged with the court proceedings, and we appreciate that it has now been some four and a half years since the incident that is the subject of this charge, which is a long time to have a significant matter weighing on him. Through his representative Mr Meads has remained involved in these disciplinary proceedings. We accept that Mr Meads has experienced anxiety in relation to this matter.
30. Section 404 provides a range of penalties and we are required to impose the least restrictive penalty that is appropriate in the circumstances. We consider that a penalty short of cancellation is reasonable in the circumstances of this case. We are able to impose a penalty which provides for oversight and training to be required of Mr Meads should he seek to return to the profession in some capacity. We largely agree with the alternative penalties proposed by the CAC proposed in the event that the Tribunal did not order cancellation.

31. We consider the following penalties are appropriate:

- a. Censure;
- b. Annotation of the register with this censure for two years;
- c. Conditions on Mr Meads' subsequent practising certificate to apply for a period of two years:
 - i. Mr Meads is to provide a copy of the Tribunal's decision to any prospective employer;
 - ii. Mr Meads is to seek the guidance of a mentor approved by the Teaching Council. The Council may stipulate the frequency of engagement and duration of the mentorship but not longer than two years from the resumption of work as a teacher;
 - iii. Mr Meads is to complete the mandatory training module "Physical Restraint-Understanding the Rules and Guidelines" within one month of obtaining a practising certificate.

32. We are aware that all teachers must complete the online module by February 2024. There is no absolute requirement that Mr Meads be teaching when he completes this (in the event his plans change); there are means by which he could achieve completion of the module before any return to practice, should he wish to.

33. The Tribunal may also make an order for costs under s404(1)(h) unless the proceedings arise out of a report of a qualifying conviction. Because Mr Meads was discharged without conviction, we are able to consider the CAC's application for costs, as well as an order that encompasses costs to the Teaching Council.

34. The CAC sought a contribution of 40% of its costs as at 21 June 2022 in the sum of \$2,069.58 which seem very reasonable to the Tribunal. (The supplementary submissions did not contain an updated outline of costs).

35. The submissions on behalf of Mr Meads did not address costs, and as such we do not have evidence of his financial position and the implications of any costs order for him.

36. An order of 40% of costs incurred is common where the charge is made out and we see no basis to deviate from this on the evidence before us. In making this order we acknowledge that there are no aggravating features to justify an increase in the costs awarded, and Mr Meads has to some extent participated in the proceedings, including the signing of a Summary of Facts and agreement to proceed on the papers.

37. Accordingly, an order that Mr Meads pay a 40% contribution to the CAC in the sum of \$2069.58 and Tribunal's costs pursuant to s 404(1)(h) and (i) of the Act in the sum of \$582.00, being a total of \$2651.58.

NON-PUBLICATION

38. Section 405 of the Act contains a presumption in favour of open hearings however the Tribunal has the power to make orders prohibiting publication of details of proceedings including the name or any particulars of the case, of the person charged with a disciplinary offence, or any other person: s 405(6)(c).
39. While there is a presumption in favour of open hearings, the Tribunal may prohibit publication on application or of its own volition, if it considers it is "*proper*" to do so. In making this assessment the Tribunal is required to take into account the privacy of the complainant, and the public interest. The Tribunal needs to reach a decision which balances the importance of open justice and the interests of the party seeking suppression. The threshold does not require exceptional circumstances in order for the Tribunal to exercise its discretion, however it does require something more than the ordinary consequences of publication. We would generally expect evidence of the anticipated adverse outcome from a party seeking an order.
40. It is also relevant to consider whether the Tribunal's findings can be meaningfully communicated if salient details are prohibited from publication.
41. Both the name of Mr Meads and the student have previously been published in the District Court proceedings. That does not inevitably mean an order will not be made by the Tribunal. In the case of the student, the CAC sought orders for non-publication of the name, date of birth and any other identifying details of the student. The Tribunal sees no purpose in the student being identified, and an order will be made accordingly. The CAC did not request that the name of the school be suppressed, and we do not consider that necessary.
42. Mr Meads seeks an order that his name and identifying details not be published in relation to this matter and relies on a letter dated 8 September 2022 from his General Practitioner asserting a potential adverse effect of publication on his mental health. This letter is not addressed to the Tribunal and does not expressly refer to the disciplinary proceedings. However, we accept it was intended for this purpose by the reference to "*the incident at work 4 years ago*" and the risk attached to "*any possibility of having this information publicly available.*" Mr Meads has not provided any evidence himself on the matter of suppression.
43. We accept the submissions for the CAC in relation to Mr Meads' application for non-publication, with regard particularly to the need for sound evidence in support of an application on health grounds. The fact that the GP's letter is approximately 6 months old detracts from its pertinence. It lacks detail as to the nature of any treatment Mr Meads may be currently receiving for his mood, or as to the objective likelihood of publication having an adverse impact on Mr Meads beyond what we would regard as an expected consequence of publication of this matter.

44. We acknowledge the impact on Mr Meads of these proceedings but decline his application for non-publication of his name and identifying details.

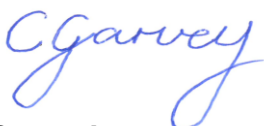
ORDERS

45. In summary the Tribunal makes the following orders:

- a. Mr Meads is censured pursuant to s 404(1)(b);
- b. The register will be annotated with this censure for a period of two years pursuant to s 404(1)(e);
- c. Pursuant to s 404(1)(j) any subsequent practising certificate obtained by Mr Meads will be subject to the following conditions:
 - i. Mr Meads is to provide a copy of the Tribunal's decision to any prospective employer;
 - ii. Mr Meads is to seek the guidance of a mentor approved by the Teaching Council. The Council may stipulate the frequency of engagement and duration of the mentorship but not longer than two years from the resumption of work as a teacher;
 - iii. Mr Meads is to complete the mandatory online training module "Physical Restraint-Understanding the Rules and Guidelines" within one month of obtaining a practising certificate. Mr Meads is encouraged to do so at the earliest opportunity and may complete this certification prior to applying for a practising certificate.
- d. The name and any identifying details of the student must not be published in relation to these proceedings.
- e. Mr Meads is to pay costs in the sum of \$2,651.58, being a 40% contribution.

46. The parties may appeal all or part of this decision pursuant to s 409 of the Act. An appeal is to be made within 28 days of receipt of written notice of this decision, or within such further time as the District Court allows.

47. A copy of this decision is to be published on the Teaching Council website.



Catherine Garvey

Deputy Chairperson