

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/23

IN THE MATTER of the Education and Training Act 2020

AND

IN THE MATTER of an inquiry by the New Zealand Teachers
Disciplinary Tribunal of the Teaching Council of
Aotearoa New Zealand

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **UPUTAUA MUAIAVA**

Respondent

DECISION OF THE TRIBUNAL ON REFERRAL

6 JUNE 2023

HEARING: Held partly on the papers, partly in person via Teams on 3 March 2023

TRIBUNAL: Rachael Schmidt-McCleave (Deputy Chair)
Celeste Harrington and John Ruge (members)

REPRESENTATION: E J McCaughan for the Complaints Assessment Committee
Ms J Brown for the respondent who attended in person with her
support person

Hei timatanga kōrero – Introduction

1. The respondent was convicted on 18 January 2023 on 65 charges of evading or attempting to evade the assessment or payment of GST and PAYE for MBM Contractors Limited and Phoenix Tama Limited contrary to section 143B(2) of the Tax Administration Act 1994 (maximum penalty of imprisonment for a term not exceeding 5 years; a fine not exceeding \$50,000; or both).
2. Pursuant to section 497(4) of the Education and Training Act 2020 (the “Act”), the Complaints Assessment Committee (“CAC”) referred the respondent’s criminal convictions to the Tribunal. This was on the basis that it considers the convictions warrant consideration by the Tribunal under section 497(4).
3. The referral from the CAC states that:
 - (a) The teacher has been convicted and sentenced in the Pukekohe District Court for the offence outlined above.
 - (b) The CAC considers that the convictions in paragraph (a) warrant action by the Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand.
4. The CAC alleges that the conduct above warrants an adverse finding.
5. The matter was heard via Teams on 3 March 2023. Counsel for the CAC and for the respondent appeared, as did the respondent and her support person. The respondent spoke to her reflective statement and both counsel gave oral submissions in addition to their written submissions which had been previously filed.

Ko te hātepe ture o tono nei – Procedural History and Preliminary Matters

6. A pre-hearing conference (“PHC”) was held on 14 October 2022, whereby various timetabling directions were made to enable the referral to proceed to a hearing. An interim order for non-publication of the respondent’s name and identifying details was made at that time.

Kōrero Taunaki - Evidence

Agreed Summary of Facts

7. The ASoF is set out in full below:

“Introduction

1. *Mrs Muaiava is currently working as a teacher at Homai School, a primary school in Manurewa, Auckland. Mrs Muaiava has been a registered teacher since 23 May 2008. Mrs Muaiava’s current practising certificate is due to expire on 22 February 2024.*

The offending

2. *On 18 January 2021 Mrs Muaiava was sentenced to 9 months’ home detention, after pleading guilty to 65 charges of evading or attempting to evade the assessment or payment of tax (pursuant to s 143B(2) Tax Administration Act 1994 – maximum penalty 5 years’ imprisonment and/or \$50,000 fine). The charges covered the period from January 2014 to October 2017.*
3. *Mrs Muaiava’s husband, Tamanini Muaiava, was jointly charged with her, and also pleaded guilty to those 65 charges.*
4. *A copy of the Summary of Facts which Mrs Muaiava accepted as part of her guilty pleas is attached, and forms part of this Summary of Facts.¹*
5. *The sentencing Judge’s notes are attached, and also form part of this Summary of Facts.² The sentencing Judge described the offending as follows:*

The defendants, a married couple, have since 2002 jointly conducted business supplying labour to agricultural growers in South Auckland. Throughout they have failed to comply with their tax obligations [sic].³ That failure led to a conviction of Tamanini in 2007 for failing to file GST and income tax returns. He was adjudged bankrupt in March 2008.

Thereafter the defendants followed a repeat pattern of tax evasion. They would set up a company and control its operation directly or by manipulating family members who held a nominal shareholding and directorship. When confronted by the Tax Department about that company’s failure to comply with tax obligations, the company would be wound up and a new company incorporated to continue their trading. Examples of this can be found in their business Panina Harvesting Contractors Ltd (**PH**).

Following Tamanini’s bankruptcy in March 2008 for failure to pay GST and income tax debts the couple incorporated PH on 13 November 2008. They used the device of appointing their 18 year old daughter as the sole director and shareholder. The business supplied labour to South Auckland commercial garden growers. PH did not file any GST returns or register as an employer despite receiving tax advisory assistance and education from the Commissioner of Inland Revenue. When PH was audited, default assessments were issued compounded by evasion shortfall penalties for the tax non-compliance.

Shortly after the audit of PH the defendants then incorporated a second company MBM on 5 December 2013. This time they enlisted their 19 year old son, Malcolm, a person with no business experience as the sole director and shareholder of the

¹ The Summary of Facts was attached to the Tribunal Summary of Facts, but is not reproduced here. It will be referred to as needed in the Tribunal’s decision.

² The sentencing Judge’s notes were attached to the Tribunal Summary of Facts, but is not reproduced here. It will be referred to as needed in the Tribunal’s decision.

³ Assumed to be a typo and should be “obligations.”

company. Again, once incorporated the defendants continued the long-standing family business of providing labour to the same growers that PH had serviced.

Information obtained during the Commissioner's investigation showed that MBM charged GST invoices issues and engaged workers to provide labour but did not file any GST or PAYE returns.

On several occasions MBM was requested to register as an employer and file its outstanding GST and PAYE returns. The defendant Uputaua attended meetings with Inland Revenue officers in 2016 and was provided education on GST and PAYE filing obligations.

However, even after IRD education and assistance MBM failed to file any returns. It came to a point where the Commissioner issued MBM with GST and PAYE default assessments for the periods of 1 December 2014 and 30 September 2016. Those assessments were never disputed.

On 25 January 2017 the Commissioner issued deduction notices to Balle Brothers and AS Willcot against invoice payments due to MBM. The Commissioner did so as a recovery action of its audit assessed tax debt.

When the defendants became aware of the deduction notices they again ceased to trade under MBM. Using this device, the defendants were protected from the Commissioner's rights to collect funds from the deduction notices.

Despite the defendant Tamanini's tax fraud conviction and bankruptcy and the defendant Uputaua interacting with the mentors at IRD the couple continuously failed to file tax returns for MBM even while under audit. I find that the defendants evaded the assessment and payment of MBM's GST and PAYE for the relevant periods.

After the audit of MBM the defendants then ceased trading with that company and moved all their business to yet another entity.

On 26 January 2017 they incorporated Phoenix Tama. This time consistent with the use of their children to form these companies they enlisted their 19 year old daughter, Bessie Muaiava, who had no business experience as the sole director and shareholder.

Phoenix Tama (**PT**) was audited for GST and PAYE periods from January 2017 to October 2017. During that time both defendants were involved in running the business. The audit showed that PT charged GST on invoices issued and engaged workers to provide labour but did not file any GST or PAYE returns.

Due to the audit activity PT appointed a tax agent who filed three of its outstanding GST returns at the time. This was for the GST period ending 31 January 2017 to 31 May 2017 but having filed those returns PT never paid the GST.

During this period one of the defendants' main contractors, Balle Brothers, was requested to pay PT's invoices in two parts. The contractor paid cash cheques that were handed to the defendant Tamanini and deposited any GST component of the invoices to PT's bank account.

This arrangement was reached to facilitate that company's payment of GST to Inland Revenue. Despite this arrangement the defendants never paid PT's GST

on the three GST returns filed by its tax agent. They evaded the payment of tax liability for those three periods. PT failed to file any further GST returns and despite registration for PAYE, because of audit requests from the Commissioner, PT never filed any PAYE returns.

The Commissioner issued default assessments to PT in a letter of the 15 November 2017. Those assessments were never disputed.

I find each child used by the defendants to nominally fulfil director or shareholder roles were enlisted as mere puppets for the ongoing business operations continued by their parents.

At all times I find the defendant Tamanini and to a lesser extent his wife the defendant Uputaua were the individuals in control of and managing the day-to-day operation of each company.

I further find that both were aware of the companies' GST and PAYE and tax obligations.

....

I reject the defendant Tamanini's claim that he never intended to evade his tax obligations nor defraud the State. However, I accept the defendant Uputaua was throughout the offending employer as a teacher. I find her time away from the day to day running of the business may lower her culpability.

...

The total tax evaded by these defendants was therefore estimated at \$431,644.66. The defendants failed to make any payment towards those liabilities. That amount excludes any interest or penalty. There is no realistic hope of recovery of that loss to the State.

I accept the Commissioner's position that both defendants are equally culpable for that entire loss.

....

The defendants kept no record of the money they received or paid out. While it is clear they lived off their contracting income for several years neither the exact amount of revenue loss caused by the offending nor the amount they claimed to have spent in the support of their labourers can ever be known.

....

While the defendants are of modest means and have few assets or exhibit a lavish lifestyle their family accepted considerable income from this tax fraud.

...

There is some difference in the culpability of Mrs Muaiava. Unlike her husband this offender has no previous convictions. Her primary occupation as a school teacher must mean this defendant had less time to devote to the family business. Her husband confirmed that he mostly operated the business. Mrs Muaiava's much better command of the English language may have created the perception of her having a more significant control of company arrangements. However, I cannot be

entirely satisfied that is so. There is a distinct possibility that her role was more as an interpreting tool for use in the company's communications. I view her culpability as wilful blindness to her husband's offending. I accept the defendant is of good character and very remorseful.

...

[Mrs Muaiava] evaded her tax obligations by wilfully and knowingly encouraging the tax evasion arrangements devised by her husband. I find the complexities involved in the spiralling tax situation created by her husband were beyond her capability.

Police vetting report

6. *On 16 February 2021 the Teaching Council received a Police vetting report regarding the 65 convictions.*
7. *Mrs Muaiava was in contact with the Teaching Council at the time of the convictions due to renewing her practising certificate. As part of that Mrs Muaiava advised the Registration Team at the Teaching Council of the convictions.*

Responses from Mrs Muaiava

8. *On 14 July 2021 Mrs Muaiava provided a written response to the convictions, which included the following comments:*
 - a. *Her current employer was aware of the proceedings, and was supportive of her.*
 - b. *The offences were not related to her teaching role and employment, but to the work of her husband involving his working in market gardens.*
 - c. *"The role of Mr Muaiava was employing members of the community, otherwise unable to get work and paying them well – just not paying the tax or GST that he should have."*
 - d. *"The workers were better paid than those of other contractors – really due to the fact of not paying the tax obligations."*
 - e. *"I am extremely remorseful over the situation. I entered guilty plea to the charges at the earliest opportunity."*
 - f. *She was extremely proud and passionate of her teaching, and she wished to continue working as a teacher.*
 - g. *She was, and remained, ashamed of being sentenced in Court.*

CAC meeting

9. *Mrs Muaiava attended the CAC meeting on 2 June 2022, along with her support person (another teacher at Homai School).*
10. *Mrs Muaiava stated that the convictions did not reflect on her ability to teach as the convictions were separate, she was not convicted of a specified offence (under the Children's Act 2014) and she was no threat to children. Mrs Muaiava stated that she advised her Board of Trustees at the time, as well as the Principal and her team.*

11. *Mrs Muaiava stated that she was just involved in the businesses to help her husband, and that the family did not gain anything financially from her offending. Mrs Muaiava stated that there was no money for an accountant, and that they ran the business to provide jobs for family who had come over from Samoa. The family members were not entitled to IRD numbers as they were not supposed to work in New Zealand.*
12. *Mrs Muaiava stated that she wanted to continue to teach and serve her community and school.”*

Te Ture - The Law

8. Under section 493 of the Act, all convictions punishable by three months’ imprisonment or more incurred by a teacher must be reported to the Teaching Council.
9. The Tribunal accepts the CAC’s submission that this requirement is consistent with the commitments made under the former Code of Ethics for Certificated Teachers and its replacement, the Code of Professional Responsibility. Under the former Code, teacher commitment to society included to *“teach and model those positive values that are widely accepted in society and encourage learners to apply them and critically appreciate their significance.”* Under the new Code, teachers make a commitment to the teaching profession to *“maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.”*
10. In *CAC v Bird*,⁴ the Tribunal confirmed that a referral under section 497(3) does not need to be framed as a charge of serious misconduct, but that the Tribunal needs to reach an adverse finding. In particular, the Tribunal needs to decide whether the circumstances of the behaviour that resulted in the convictions reflect adversely on the teacher’s fitness to practice as a teacher.
11. The Tribunal does not need to find the respondent guilty of serious misconduct in order to make an adverse finding. However, as this Tribunal said in *CAC v Lyndon*,⁵ the *“serious misconduct yardstick”* may be useful in determining whether an adverse finding is warranted.

⁴ *CAC v Bird* NZTDT 2017/5, 22 June 2017.

⁵ *CAC v Lyndon* NZTDT 2016/61, 26 April 2017.

1. The Act does not define “misconduct” but does define “serious misconduct”. This Tribunal has, on prior occasions under the previous Act, undertaken its assessment of whether conduct is misconduct by reference to the Act’s definition of “serious misconduct” (which has not changed in the new Act):⁶

“**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) 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.”

2. As this Tribunal has stated on many occasions, section 10 establishes a two-step test for serious misconduct, namely first that the conduct must have one or more of the adverse professional effects or consequences described in subsections 10(a)(i)-(iii), and, second, that the conduct must meet the Teaching Council’s criteria for reporting serious misconduct. These are set out in rule 9 of the Teaching Council Rules 2016 (the **Rules**).
3. The Court of Appeal in *Evans v Complaints Assessment Committee of Aotearoa New Zealand* [2021] NZCA 66⁷ held that (at [6]):

“[i]f one of the matters in limb (a) of the definition [of serious misconduct] is made out, the question whether limb (b) is met determined whether the conduct is “serious misconduct” or “misconduct simpliciter”.

4. What this means in practice is that, if a teacher’s conduct adversely affects, or is likely to adversely affect the well-being or learning of one or more students, or reflects adversely on the teacher’s fitness to be a teacher, or may bring the teaching profession into disrepute, then the conduct will constitute misconduct. If the conduct is sufficiently serious

⁶ See *CAC v Evans* NZTDT 2018/43; *Education Council of Aotearoa New Zealand v Teacher Y* 2016/25, 29 March 2017.

⁷ Citing *Teacher Y v Education Council of Aotearoa New Zealand* [2019] NZCA 637. Note that, in addressing the question of the earlier Act, the Court of Appeal noted in *Evans* that “[the] current legislation has replicated the earlier provisions. It is to be assumed that Parliament did so in the knowledge that the approach to determining what constitutes misconduct has been settled and has not caused difficulty.”

to engage one or more the rule 98 reporting criteria, then it will constitute serious misconduct.

5. The criteria for reporting serious misconduct is detailed in rule 9 of the Teaching Council Rules 2016, including the following matters:
 - (a) Rule 91)(g) – acting dishonestly in relation to the teacher’s professional role, or committing theft or fraud.
 - (b) Rule 9(1)(j) – an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more.
 - (c) Rule 9(1)(k) – an act or omission that brings, or is likely to bring, the teaching pr into disrepute.
6. The “disrepute” test under rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent’s behaviour.⁸
7. Finally, if the Tribunal makes an adverse finding it is able to exercise its power to impose orders under section 500 of the Act.⁹

Ngā Kōrero a te Kōmiti – CAC and Respondent Submissions

CAC submissions

8. The CAC submitted that there are particularly relevant features of the respondent’s conduct here:
 - (a) The extent of the offending, in that the offending occurred over a period of approximately 6 years, between 2014 and 2019, and involved 65 separate charges of tax evasion.
 - (b) The value of the property obtained. Despite having funds available to pay the GST and the PAYE, and being made aware of their obligations on multiple occasions,

⁸ *CAC v Collins* NZTDT 2016/43, 24 March 2017 at [40], commenting on ‘discredit’ to the profession under the Teacher’s Council (Conduct) Rules 2004 and quoting *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

⁹ *CAC v Bird* NZTDT 2017/5, 22 June 2017.

the respondent and her husband decided not to pay that money to the Government. Therefore, taxpayers lost at least \$431, 565, which could have made a massive difference to any schools which received it.

- (c) There was an element of personal gain to the offending, although the CAC acknowledged it is impossible to state how much. However, the CAC submitted, what is clear is that the respondent and her husband decided to dishonestly prioritise the needs of themselves and other people they knew, rather than the needs of the community as a whole.
 - (d) The offending involved a gross breach of trust.
 - (e) The offending was premeditated. The IRD made various efforts to educate the respondent and her husband regarding their tax obligations. Despite these efforts, as well as a previous prosecution against her husband for tax fraud, the respondent and her husband used their children as puppets in order to continue running their business and evade paying tax.
9. The CAC emphasised that the fact that the conduct occurred outside of the school setting does not mitigate the respondent's conduct or remove it from the question of appropriate professional conduct.
 10. The CAC submitted that the Tribunal should make an adverse finding in this case, on the basis that the respondent's conduct reflects adversely on her fitness to practice as a teacher. Although the conduct did not occur in a school setting, it is nevertheless submitted by the CAC that the repeated offending raises serious issues about the respondent's integrity, as well as her willingness to comply with the law.
 11. The CAC is of the view that the respondent's offending clearly would have amounted to serious misconduct in terms of the section 10 tests:
 - (a) Given the number of instances of dishonest offending, as well as the respondent's guilty pleas to various charges of tax evasion, a reasonable member of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent's conduct.

- (b) The Code of Professional Responsibility provides that teachers commit to maintaining public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity (clause 1.4). The respondent's conduct did not demonstrate a high standard of professional behaviour and integrity, undermining the public trust and confidence in the teaching profession.
 - (c) The conduct was of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct. The conduct was tax evasion (a fraudulent offence) and it is an offence punishable by imprisonment for a term of 3 months or more.
12. In oral submissions, counsel for the CAC explained that the reference in Judge Winter's sentencing notes to the respondent's "good character" was judicial "code" for the respondent having no previous convictions, and that nothing further than that should be read into the comment. The CAC relies on the Judge's findings to show the respondent's culpability. She would have been aware of the previous convictions but embarked on further instances of tax evasion, ultimately depriving the community of c.\$430,000 that could not be recovered.

Respondent submissions

13. Through her counsel's written submissions, the respondent accepted that the Tribunal would make an adverse finding against her as a result of her convictions, because the convictions put into question the respondent's fitness to teach, bring the profession into disrepute, and are of the character and severity to engage rule 9.
14. The respondent emphasised that she continued to be employed within her school despite the convictions and has remained an effective teacher. Her school has provided support for her while protecting the interests of the school by prohibiting her from working with money.
15. The remainder of the respondent's submissions address her position in relation to penalty and will be discussed later in this decision.

16. The respondent, through her counsel, also provided an additional written memorandum and a statement, both of which she and her counsel spoke to at the hearing.
17. In summary, the respondent's counsel submitted in that further information provided:
 - (a) In his Sentencing Notes, Judge Winter determined that the respondent was of good character but wilfully blind to her husband's offending. This suggests something else was happening when the Judge observed the respondent and her husband.
 - (b) As per the respondent's statement, her marriage was abusive and it was her husband's prison sentence that put a stop to the abuse.
18. Orally, and in a written statement, the respondent gave some very personal information about her marriage which the Tribunal is thankful for but does not need to set out in this decision other than to confirm the Tribunal has considered it carefully in reaching its decision. It is enough for the Tribunal to observe that there was a power imbalance in the home and, as Judge Winter noted, this may lessen the respondent's culpability somewhat in the offending.
19. Both counsel in the oral hearing made submissions about the Tribunal's decision in *CAC v Pace*¹⁰, which the Tribunal addresses below.

Kupu Whakatau – Decision

20. The Tribunal finds that the respondent's conduct warrants an adverse finding.
21. The respondent's offending was serious and occurred over a lengthy period of time and involved a large number of separate charges of tax evasion (65 in total). The offending also continued even when the IRD had made efforts to educate the respondent and her husband about their tax obligations, and the respondent's husband had faced a previous charge. This involved a degree of premeditation which, together with the respondent and her husband involving their children, the Tribunal is unable to overlook notwithstanding the respondent's personal situation.

¹⁰ *CAC v Pace* NZTDT 2019/4, 2 December 2019.

22. There is no doubt that the convictions bring the profession into disrepute, involving as they do such a large amount of money and the breach of trust attached to fraudulent offending. It matters not that the offending did not occur in a school setting. The Tribunal remains satisfied that it is conduct which raises questions about the integrity of the respondent in a way that brings the profession into disrepute.
23. The Tribunal is of no doubt that the conduct would have amounted to serious misconduct had that been the charge.

Whiu - Penalty

24. Having determined that this case is one in which an adverse finding is warranted, the Tribunal must now turn to consider what is an appropriate penalty in the circumstances:

500 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(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 or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*

(i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*

(j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

(2) *Despite subsection (1), following a hearing that arises out of a report under 493 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*

(3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(j), are recoverable as debts due to the Teaching Council.*

25. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.¹¹ We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.¹²

26. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers¹³:

- (a) Protecting the public;
- (b) Setting the standards for the profession;
- (c) Punishment;
- (d) Rehabilitation;

¹¹ *CAC v McMillan*, NZTDT 2016/52.

¹² *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

¹³ Above n 16 at [40] – [62]

- (e) Consistency;
 - (f) The range of sentencing options;
 - (g) Least restrictive;
 - (h) Fair, reasonable and proportionate.
27. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
28. As stated above, the most comparable case to the present is *CAC v Pace*. In that case, Mrs Pace was convicted of two representative charges of aiding and abetting two companies to commit tax evasion (charges which attract a maximum penalty of five years' imprisonment and/or a fine not exceeding \$50,000). Mrs Pace was sentenced to six months' home detention with six months' post detention conditions.
29. Mrs Pace wished to maintain her teaching registration and submitted letters in support from an early childhood centre, as well as a letter from an Oranga Tamariki social worker regarding her being an approved caregiver of children in state care. Mrs Pace's offending had spanned a total period of 30 months and had involved liability to the IRD of over \$250,000. The Tribunal was satisfied that an adverse finding was justified, and that the case fell within the first category of cases described in *CAC v Fuli-Makaua*¹⁴, namely that the seriousness of the conduct was such that no outcome short of deregistration would be appropriate.
30. In the *Pace* case, the Tribunal noted that it had not previously dealt with a case involving tax evasion convictions. It had, however, dealt with cases involving benefit fraud, noting in *CAC v Perez*¹⁵, the key themes that had emerged from benefit fraud cases:
- (a) The Tribunal treats benefit fraud as a form of dishonesty. The label benefit fraud does not make such fraud any more or any less serious than other categories of fraud. The seriousness of the teacher's offending relates to the particular circumstances of the fraud, rather than any such categorisation.

¹⁴ *CAC v Fuli-Makaua* NZTDT 2017/40.

¹⁵ *CAC v Perez* NZTDT 2015/48, 9 May 2016.

- (b) Any teacher convicted of fraud stands the risk of losing his or her registration. Serious dishonesty on a teacher's part by definition raises an issue about a teacher's fitness to teach. In every case involving convictions for benefit fraud, or any other serious fraud, the question therefore inevitably arises as to whether the Tribunal can discharge its responsibilities by making an order which does not involve cancellation of the teacher's registration.
 - (c) In many cases, the Tribunal has felt able to impose a lesser sanction.
 - (d) The cases suggest that when a teacher takes an active role in the proceeding, is prepared to acknowledge their wrongdoing and provides some credible explanation, that teacher is in a stronger position to retain registration.
 - (e) However, much depends on the seriousness of the offending and there are some cases in which the offending is simply too serious for the matter to be dealt with in any other way.
31. The respondent urged us to distinguish *CAC v Pace*. Her counsel submitted that:
- (a) In *Pace*, the teacher personally profited from her fraud. She took overseas trips with the money and purchased the half share of a property. In this case, there is no evidence of personal gain.
 - (b) Also in *Pace*, the teacher took no responsibility for her offending and blamed the MOE funding model for working against her. In this case the respondent has taken full responsibility for her actions by making an early guilty plea. She could have blamed her husband, as he mostly operated the business but, despite her lesser culpability, she did not blame him.
 - (c) In *Pace*, the teacher was the sole operator, whereas in this case the respondent jointly operated the business with her husband. Her husband oversaw the day to day running of the business and the respondent would not have been able to control either the business or her husband.
32. The respondent pointed to what she says are analogous cases in which cancellation of registration did not occur.

33. In *CAC v Perez*¹⁶, Ms Perez was a solo parent who committed benefit fraud amounting to \$35,483.93 in the wake of a relationship break-up. She had participated in the disciplinary process and was a highly regarded teacher. The Tribunal censured her, required her to continue to repay the debt, annotated the register, and required her to disclose the decision to current and future employers. The Tribunal acknowledges that the respondent in this case is also a well-regarded teacher, who has cooperated in the process. However, the extent and duration of her offending was significantly larger than that of Ms Perez. There is also no likelihood the respondent can repay the amount of tax evaded.
34. The same can be said of the Tribunal's decision in *CAC v Toleafoa*¹⁷, where Ms Toleafoa committed benefit fraud in the amount of over \$68,000 in the wake of the breakdown of her marriage when she developed a gambling addiction.
35. In *CAC v Teacher*¹⁸ where, unlike the respondent in this case, the teacher denied and then downplayed the offending and did not engage with the disciplinary process, there was a modest amount involved as compared to here.
36. The Tribunal, however, considers this case is analogous to *Pace*. Both involved significant amounts of money, in the respondent's case three times as much as in *Pace*, and over a longer period of time. There is no prospect of that amount being repaid to IRD.
37. The respondent had had the intervention of IRD but had chosen to continue offending.
38. Balanced against those aggravating factors, and like the respondent in *Pace*, the Tribunal must place the respondent's lack of previous convictions and her cooperation with Tribunal processes.
39. Put simply, while the Tribunal acknowledges the difficulties in the respondent's personal situation, the contribution she is making in her current position, her cultural background, and her cooperation in the process, the quality and seriousness of the respondent's offending outweighs those considerations. This is not a one-off mistake, but involves

¹⁶ *CAC v Perez* NZTDT 2015/48

¹⁷ *CAC v Toleafoa* NZTDT 2018/18.

¹⁸ *CAC v Teacher* NZTDT 2020/52

sustained offending over a period of years, with IRD attempting to assist the respondent and her husband.

40. In the Tribunal's view, only deregistration will sufficiently reflect the adverse effect of the respondent's offending on her fitness to teach and/or its tendency to lower the reputation of the profession.
41. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:
 - (a) Cancellation of the respondent's registration under section 500(1)(g) of the Act.

Utu Whakaea – Costs

42. Under section 500(2) of the Act, the CAC is not permitted to seek a contribution to its costs when the matter arises out of a referral under section 493. The CAC sought no costs, and none are ordered.

He Rāhui tuku panui – Non-publication

43. No permanent suppression orders were sought and none are made.



Rachael Schmidt-McCleave
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).