

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

WĀHANGA the Education Act 1989
Under

MŌ TE TAKE of a charge referred by the Complaints
In the matter of Assessment Committee to the New Zealand
Teachers Disciplinary Tribunal

I WAENGA I A **COMPLAINTS ASSESSMENT COMMITTEE**
Between

ME **MICHELLE PILLAY**
And **Kaiurupare**
Respondent

TE WHAKATAUNGA Ā TE TARAIPUNARA
TRIBUNAL DECISION DATED 19 JULY 2022

HEARING: 30 November 2021 (on the papers)

TRIBUNAL: Theo Baker (Chair)
Lyn Evans, Nikki Parsons (Members)

REPRESENTATION: Mr Neild for the CAC
The respondent did not participate

Hei timatanga kōrero – Introduction

1. In a Notice of Charge dated 6 May 2021, the Complaints Assessment Committee (**CAC**) charged that Michelle Pillay (**the respondent**) had engaged in misconduct or conduct otherwise entitling the Tribunal to exercise its powers.
2. The charge arises because of a lack of agreement on outcome following a CAC investigation. The conduct concerns an allegation that the respondent had misrepresented her skills and experience when applying for the position of Head of Personalised Learning at Porirua College.
3. In the charge it is explained that the respondent did not respond to or signed the proposed outcome agreement and so the matter has been referred to the Tribunal. This is because the CAC's disciplinary powers on finding misconduct, require the agreement of the teacher and the person who complained or referred the matter to the Council.
4. The respondent did not attend a pre-hearing conference in June 2021 and so the referral had to be set down for formal proof.
5. The CAC filed an affidavit of service, saying that on 28 September 2021 the respondent was served with statements from 7 named individuals, as well as the Notice of Referral, a Memorandum of the CAC regarding the mode of evidence and a letter explaining the proceedings. At a further directions conference on 21 October 2021 Mr Neild as counsel for the CAC advised that following this the respondent had emailed him, indicating that she wanted to make a response. He had offered to ring her, but he had heard nothing further.
6. The Chair made some further directions to give her a further opportunity to be heard. She was to file any response by 26 October and notify the Tribunal and Mr Neild if she wanted to attend a hearing and be heard in person or by audio-visual link (using Microsoft Teams) Otherwise the matter was to be heard on the papers on **30 November 2021**. The respondent did not comply with those directions.

Korero Taunaki – Evidence

7. The CAC filed statements from the following:
 - a. Harold Millard, who was appointed by the Board of Porirua College to investigate concerns relating to the respondent
 - b. Simon Drewery, former Principal at Apii Te Uki Ou (**ATUO**), a private primary school in the Cook Islands
 - c. Ragne Maxwell, Principal at Porirua College in 2017
 - d. Tania Morgan, Principal at Tereora College in Rarotonga
 - e. Bruce Trezise, who was Principal at Botany Downs primary school until April 2020
 - f. John Topp, who was Deputy Principal at Porirua College in December 2017 and, along with Principal Ragne Maxwell, interviewed Ms Pillay for the position of Head of Personalised Learning at the College
 - g. Nella Stowers, an investigator for the CAC.
8. A bundle of documents was also submitted.
9. At a pre-hearing conference on 22 June 2021 the Chair directed that the CAC file evidence for a formal proof hearing in the form of sworn or affirmed statements so that the hearing could proceed on the papers without the witnesses needing to attend. On 23 July Mr Neild filed a memorandum submitting that the witness statements in the form provided were sufficient for a formal proof hearing. They have each witnessed signing their name below the following words:

I confirm the truth and accuracy of the statement. I make this statement with the knowledge that it is to be used in Disciplinary Tribunal proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to mislead.
10. Mr Neild said that the form of statement chosen was to mirror the requirements of a formal statement in criminal proceedings which can be used as formal proof in that jurisdiction. He referred to s 124 of the Criminal Procedure Act which provides that for “category 1” offences, evidence of a

fact or opinion may be given by way of an affidavit or “a formal statement”.

11. The form of the statement was approved by the Chair.

Harold Millard

12. Harold Millard is the Director of Intellegentis Limited, an organisation providing independent workplace investigations. In 2018 he was working as a consultant for Independent Human Resources New Zealand Limited (**IHRNZ**).
13. On 14 June 2018 Mr Millard was appointed by the Board of Porirua College (**the College**) to investigate concerns relating to Ms Michelle Pillay, then employed at the College as Head of the Faculty of Personalised Learning (**HFPL**).
14. Mr Millard produced a copy of his investigation report which extended to some 29 pages.

Covering letter

15. Included in the Bundle of documents was Ms Pillay’s covering letter dated 7 December 2017 for her application for Head of Faculty for Personalised Learning and SENCO. She referred to her previous roles, saying that:
 - a. she had been appointed Head of Literacy (SENCO) at Tereora College, was the Teaching in charge of Year 7 and year 8;
 - b. her roles prepared her to professionally liaise with outside agencies, tertiary providers and MOE providers, to allocate a budget cost effectively, model differentiated strategies while developing whanaungatanga;
 - c. IEPs were created in collaboration with subject, tutor teachers and whanau. She said she had managed worked collaboratively with teachers of various departments, from English and Science to Horticulture and Cook Island Maori to develop personalised learning plans;
 - d. She had successfully developed IEPs and learning pathways for students with a range of challenges such as Aspergers, ADHD, Down Syndrome, Auditory Processing Disorder, Autism Bipolar and Depression.

- e. She had developed a reading programme for at risk junior students in association with the MOE and had provided teachers with literacy strategies

Ragne Maxwell

16. Ms Maxwell was the Principal at the College in December 2017. She has been a teacher for over 30 years.
17. Ms Maxwell told the Tribunal that on 11 December 2017 she interviewed Ms Pillay for the position of HFPL at the College. During her previous employment at Kapiti College as Deputy Principal, Ms Maxwell had managed a similar faculty to the College's Faculty of Personalised Learning. She has a background in learning support and has been trained as a learning support teacher.
18. The College, which is decile 1, had a roll of approximately 500 students. The area in which the College is located has property and a lot of gang activity, bringing lots of issues. Most of the students are from Pasifika or Māori church based families with very strong and very supportive whānau. However, there is a group of students who have extremely high levels of need. Therefore the HFPL role is crucial for the College.
19. The HFPL role reports directly to the Principal. The focus on "personalised learning" has two different aspects. The role includes supporting both top-end students that need extension and students that are not achieving and have very particular needs.
20. The SENCO role is also associated with the HFPL role. As part of the HFPL role, individual education plans (**IEPs**) need to be completed in consultation with teachers and the family and special assessment conditions students (students who are entitled to readers, writers and extra time in NCEA examinations and internal assessments) need to be arranged. Ms Maxwell said there are not vast numbers of students who need this help, but those who did need support are very high needs.
21. There is a team of teacher aides, and the College has more than is usual for a school of its size. A key aspect of the HFPL role is managing the teacher aides, including recruitment and employment, such as advertising, shortlisting,

interviews, appointments, contracts and police checks. The HFPL is supported in this role by support staff (such as the finance manager who will help work out rates of pay), but the HFPL ensures all the relevant actions are taken.

22. In late 2017 the existing HFPL resigned from the College and took a similar role at Mana College, leaving a crucial vacancy that required filling urgently. The College advertised the role quickly and received a number of applications, but Ms Pillay's application was the only real possibility.
23. John Topp and Ms Maxwell interviewed Ms Pillay for the position very late in the year. Ms Maxwell took notes during the interview, but the College has a policy in which it only retains notes taken during referee checks and interviews for three months.
24. Ms Maxwell said she had difficulty in completing referee checks for Ms Pillay. Her most recent role at St Patrick's was too dissimilar to the College's HFPL role, so the key referee in Ms Maxwell's view was Tania Morgan, the Principal at Tereora College, but Ms Maxwell was unable to get through to Ms Morgan despite trying numerous times. She tried emailing her but did not receive a reply.
25. Ms Pillay had previously been shortlisted for a similar role at Mana College, and so Ms Maxwell asked the Principal there to give feedback he had received from Ms Morgan, but his feedback was positive but vague.
26. Ms Maxwell said that in the end they decided to appoint Ms Pillay on 20 December 2017 based on her covering letter, CV and performance at the interview. Ms Maxwell knew they had a lot of students transitioning in who needed the support and IEPs immediately. Mr Topp and Ms Maxwell considered that Ms Pillay came across as competent with background and experience in this type of role. During the interview, she showed that she certainly knew a number of things about the sort of testing you do in this area. Ms Maxwell took in good faith what was in Ms Pillay's covering letter, which was produced to the Tribunal along with Ms Pillay's CV.
27. Ms Maxwell found some aspects of the covering letter, CV and interview made Ms Pillay stand out. In particular, Ms Pillay said in paragraph 2 of her

letter that her previous roles had prepared her to “allocate a budget cost effectively”. Ms Maxwell assumed this meant that she had experience of managing budgets and keeping within budget. This was key for the role as the budget is not huge for the Personalised Learning Faculty and the College gets in little pots of money at different times, so the employment of teacher aides and managing of their hours and employment costs is important to ensure the budget isn’t overspent.

28. Another comment that Ms Maxwell noted in the second paragraph of Ms Pillay’s covering letter was “I have been appointed Head of Literacy (SENCO) at Tereora College in Rarotonga”. Ms Maxwell interpreted the role of “Head of Literacy (SENCO)” as being pretty much the same position the College was recruiting for. Ms Pillay said in her letter that she had “[created] personalised learning pathways for junior and senior students, [managed] support staff, [collaborated] with subject tutors and whānau, [liaised] with outside agencies and [collated] reports for staff and BOT” which were all activities crucial to the HFPL role.
29. In the third paragraph of the cover letter Ms Pillay also said that she had managed and appraised support staff. That was key for Ms Maxwell because HFPL is a one teacher faculty so it requires working with support staff.
30. Ms Pillay’s letter further stated in the third paragraph that she had worked collaboratively with teachers to create personalised learning plans for students with specific educational and behavioural needs. Ms Maxwell understood that to mean that Ms Pillay had done IEPs as part of her role as head of literacy (SENCO).
31. Further in that paragraph Ms Pillay said, “The aim of the head of literacy was focused on raising literacy levels inclusively in diverse classrooms, ESOL, low-literacy students and an array of disorders. As part of my role I developed a reading programme ...”. Ms Maxwell understood that to mean that Ms Pillay’s development of the reading programme was part of a much bigger role that she had held at Tereora College.
32. In paragraph 4 of Ms Pillay’s cover letter she mentioned that she was a leader in the intermediate sector. This seemed relevant to Ms Maxwell for

developing IEPs.

33. In paragraph 6 of Ms Pillay's cover letter she talked about developing IEPs with "Asperger's, ADHD, Down Syndrome, Auditory Processing Disorders, Autism, Bipolar and Depression". That looked good to the College from a recruitment perspective.
34. At paragraph 8 of her cover letter, Ms Pillay said she was "quite capable of working autonomously and independently but do thrive on collaboration" and that she had a "tolerant and friendly nature". According to Ms Maxwell, this was important to the College as the HFPL needed to be able to build relationships.
35. In her CV, Ms Pillay described herself as being "Head of Literacy" and "Head of Whānau". Ms Maxwell said across schools there are a variety of terms for a dean's role. At the College they call them "pastoral leaders", but some schools call them Head of Whānau, others Head of House and others use Dean. In the interview, Ms Pillay described the role of Head of Whānau as essentially a Dean's role. Ms Maxwell can't confirm if Ms Pillay used the word "Dean", but certainly Ms Maxwell gained the understanding that it had effectively been a Dean's role.
36. After Ms Pillay's appointment, Ms Maxwell developed concerns about her competence. She was concerned as there were some particularly volatile situations at the College at the time and if Ms Pillay did not have the capabilities she said she had, Ms Maxwell was concerned about her ability to deal with some vulnerable students' safety.
37. In Ms Maxwell's experience is that Ms Pillay says things in the heat of the moment and she says it as though it is the complete truth. She is very convincing when she speaks this way, is passionate and gives a lot of details. However when you talk to her later, she says something different.

John Topp

38. John Topp was Deputy Principal at the College in December 2017. He has been a teacher for over 25 years.
39. Mr Topp described Ms Pillay's presentation at her interview on 11 December 2017 with Mr Topp and Ms Maxwell. He said she came across as bright,

bubbly and competent. He described her as “very impressive”. What impressed him was her level of engagement with them during the interview as well as the talk around what she had done, what she could do and the experience she had had. Her experience in her CV and application letter indicated to them that she had what it took to do the job and what they needed to be done for their students and staff.

40. During the interview, Ms Pillay told them that she had experience doing this kind of work with both students and staff. This was helpful as the College needed someone that the staff could go to for support for working with students with particular learning and behavioural needs, including someone who could offer advice and guidance to the teachers that have these students.
41. Mr Topp said that at the time it seemed a “no brainer” to appoint Ms Pillay to this position.
42. After the appointment some concerns arose about Ms Pillay’s performance. Mr Topp was unable to reconcile her performance with what he saw and heard at her interview.

Simon Drewery

43. Mr Drewery is the Principal at Waiuku Primary School, a position he has held for three years. Before this, he was Principal at Apii Te Uki Ou (ATUO), a private primary school in the Cook Islands. He was involved in interviewing and appointing Ms Pillay as a teacher at ATUO. He describes Ms Pillay as a very charming and well-spoken person with a strong personality. He recalled her coming across very well at interview.
44. Mr Drewery worked fairly closely with Ms Pillay for around six months, including going on a school camp to one of the outer islands with her, other staff and children. He knew her well enough to comment on her capabilities as a teacher and her personality.
45. At ATUO Ms Pillay had what Mr Drewery would describe as a “Scale A” teacher. She was in charge of a combined year 7 and 8 class. Given there was only one class for years 7 and 8, in Mr Drewery’s view it would be a bit fanciful to describe her role as “teacher in charge year 7-8”.
46. At ATUO the senior leadership consisted of a principal and a deputy principal.

The rest of the teaching staff were classroom teachers.

47. In Mr Drewery's view, Ms Pillay's move to Tereora College at the end of 2013 was mutually beneficial. She fell short of what they had thought she would be like based on her recruitment.
48. Ms Pillay's curriculum knowledge was great, but she struggled with behaviour management and relationships.
49. It surprises Mr Drewery a little that Ms Pillay was in a SENCO/personalised learning role at a high school, as he would imagine that if she worked with kids with behaviour and learning difficulties she would struggle to keep professional separation and would be prone to being too involved. However, Mr Drewery noted that it had been over five years since he had worked with Ms Pillay, and he acknowledged that she might have grown professionally since that time.

Tania Morgan

50. Tania Morgan is currently the Principal at Tereora College in Rarotonga, a role she has held for over six years. She has been at Tereora College for around 17 years.
51. In December 2017 she received some emails from Ms Maxwell regarding Ms Pillay's prospective employment at Porirua College. Ms Morgan is fairly certain she replied to those emails, but it would have been late in December 2017 as their admin block had been demolished and they were in the process of moving offices.
52. On 19 May 2018, she replied to an email from Ms Maxwell regarding Ms Pillay's employment at Tereora College.
53. Ms Morgan says that she was at Tereora College when Ms Pillay was appointed as an English teacher there, but she was not the principal and so was not involved in her recruitment or appointment. Although she didn't know Ms Pillay before she went to Tereora College, she did work with her fairly closely whilst she was there. She monitored the role Ms Pillay had, and so Ms Morgan considers she worked closely enough with her to comment on that.

54. Ms Pillay was initially appointed as a senior English teacher, not as a literacy specialist. After she had been working at Tereora College for a year, Ms Pillay was appointed to the role of Teacher in Charge of Literacy. The role was “Teacher in Charge of Literacy” because they distinguished between “Head of Faculties” and “Teachers in Charge” and there was no literacy faculty. The Teacher in Charge of Literacy role touched on other areas other than just English, including maths and sciences.
55. As part of the Teacher in Charge of Literacy role, Ms Pillay continued to teach her senior English classes but also set up a reading programme for the very low readers, including children at year 9 who were reading at a five year old’s level. Before then there had been no reading programme at Tereora College.
56. Ms Pillay ran the programme for one term. It took place on a Wednesday morning. The school’s student leaders became peer buddies for weak readers. The peer buddies would read with the weak readers for half an hour before school on Wednesday mornings.
57. After the Wednesday programme had some success, Ms Pillay contacted the Ministry of Education advisers to extend the programme. Two people at the Ministry of Education designed the extended programme with Ms Pillay and Ms Pillay implemented the programme, including managing parent volunteers. Tereora College appointed Ms Pillay to the position of Teacher in Charge of Literacy so she could run the programme.
58. During her time in that role, Ms Pillay made quite a bit shift in the learners and also played a pivotal role in the development of teachers by providing strategies for them to use within classes. There is no role of SENCO in the Cook Islands, including at Tereora College.
59. Ms Pillay seemed to have experience in responsibilities that may have fallen under the SENCO area. Ms Morgan can remember her running a workshop on IEPs for teacher aides that including teacher aides from other schools. Ms Morgan is not sure if Ms Pillay was an “expert” in IEPs but she did know about them. Ms Morgan attended a workshop and Ms Pillay seemed very confident.
60. While at Tereora College, Ms Pillay did not have a management or leadership

role, apart from her role as Teacher in Charge of Literacy. Although she directed teacher aides within the programme she ran, she wasn't "in charge" of teacher aides.

61. Ms Pillay did not have staff reporting to her or complete appraisals for staff. Her role was more one where she had to form a relationship with different teachers and they would go to her for help with different strategies.
62. Ms Pillay did not have a budget to manage.
63. Ms Morgan did not recall Ms Pillay creating any programmes for gifted, intelligent students. Tereora College did not have any specific programmes for gifted and talented students and the teachers completed this kind of work when they could.
64. Overall, Ms Morgan had no concerns about Ms Pillay's competence. She cared deeply for the students and would give her all for the students.

Bruce Trezise

65. Bruce Trezise was the Principal at Botany Downs Primary School until April 2020. He was in that role when Ms Pillay was appointed to a classroom teacher role in 2009. She taught year 5 and 6 students at Botany Downs. She reported to another teacher called Ms Bornman who reported directly to Mr Trezise. Ms Pillay left Botany Downs in May 2013.
66. On 16 May 2018 Ms Maxwell contacted Mr Trezise by phone to discuss the roles that Ms Pillay had previously held at Botany Downs. Mr Trezise emailed back that the role at Porirua College was a very big one that Ms Pillay would need lots of professional development and support in if she had not developed her skills since she had left Botany Downs.
67. Mr Trezise cannot recall whether Ms Pillay at some time had any students with Down Syndrome and Asperger's or an ORS student in her classroom. It is possible and indeed highly likely that she had such a student in her class.
68. Mr Trezise said that during her time at Botany Downs, the school employed a SENCO on staff. Ms Pillay was not responsible for creating or coordinating the creating of IEPs for students, although she would have contributed to the creation of them by sharing information and collaboration with the SENCO just

as other classroom teachers did. Mr Trezise would not use the word “coordinate” to describe Ms Pillay’s involvement with special needs assistance and Ms Pillay did not have any specific Special Education Skills or responsibilities while she was employed at Botany Downs.

69. Under guidance from the SENCO or the Special Education Faculty, it is possible that Ms Pillay helped teacher aides find resources for high needs children. This was expected of all teachers at Botany Downs.
70. Mr Trezise commented on the role described in Ms Pillay’s CV as “Teacher of Accelerate and Challenge Mathematics stream”. At the time Ms Pillay was at Botany Downs, the Deputy Principal took some maths extension groups but Ms Pillay did not take these groups and they did not describe the groups as “Accelerate and Challenge Mathematics stream”.
71. Ms Pillay may have been referring to her teaching streamed classes at Botany Downs. For several years the senior classes were streamed into five groups, and Ms Pillay may have taught the upper stream group of more capable children, but it was not called Accelerate and Challenge Mathematics stream. Teaching these children would not have required any special preparation.
72. Mr Trezise recalls that Ms Pillay was not a particularly strong or confident teacher of mathematics at the time and was given assistance with her maths teaching.
73. As for being head of whānau year 5 and 6 between 2009 and 2012, Mr Trezise says that since he has been at Botany Downs they have not used that role description so he has no idea of what Ms Pillay is referring to when she uses that term. However for a period of time, Ms Pillay was in charge of a group of children that were house leaders. Ms Pillay may have kept an eye on one house when they had a house fund day, but this would have been a very minor role.
74. When Mr Trezise read this description, he assumed the role being described was quite a senior one in charge of a large number of classes of children. Ms Pillay was not part of the management team at Botany Downs at any stage. They did not consider her to be experienced enough for such a position.

75. As for teacher in charge of prefects and whole school assemblies, Mr Trezise said there are not and never have been prefects at Botany Downs school. Ms Pillay looked after the year 6 house leaders at one stage and as part of that certainly ran some vibrant house day assemblies. At Botany Downs every teacher had a turn at running an assembly with their class during the course of the year.
76. Ms Pillay had a background in dance and did a great job with that group of children. She had a real flair for dance and this was a strength of hers.

Nella Stowers

77. Ms Stowers is employed as an investigator for the CAC. She took over the investigation of Ms Pillay's conduct on 11 May 2021 after the previous investigator left the Council.
78. Ms Stowers produced a copy of an email dated 22 February 2019 from Michelle Pillay to Charlotte Taylor, the former investigator. In this she said that the aim of her response was to:
1. *Provide you with irrefutable evidence that I did not misrepresent my skills, a decision which was declared and accepted by the BOT of Porirua College ... Every statement can be linked to my experiences and/or responsibilities expressed in my resume and letter of application for the position of Head of Personalised Learning and Specialist Educational Needs.*
 2. *Share a "collation of evidence" which tells you about my experiences in the first few weeks at Porirua College. This also documents all tasks fulfilled in 13 weeks. As you can tell, I have accomplished an insurmountable amount of tasks in 13 weeks.*
79. The respondent went on to talk about the evidence that she completed for her SAC and RTLB referrals, a copy of her appraisal from Tereora College showing her achievement of three excellents and one area as highly competent against the New Zealand Professional Teacher Standards. She provided "references" from colleagues. These were forms where she had put forward a number of questions to which the colleagues had answered "yes".
80. The respondent also provided a copy of the collective agreement which she

says was seriously breached, and a copy of workplace bullying allegations that were laid at the College. She also referred to the investigation conducted by Mr Millard and identified what she considered to be some procedural unfairness.

The respondent

81. The respondent denied the charge and in the course of the investigation provided references from colleagues. These did not specifically address the allegations in the evidence from the CAC. As noted above, she had provided some templates with specific questions in them to which the signatories could tick “Absolutely”, “Yes” or “No”. They appeared to be aimed at her competence as a teacher and her compliance with professional standards rather than the specific experience which she had represented herself to have. It would have been more helpful to her defence if she had asked colleagues to address the specific matters in the briefs of evidence filed by the CAC.

Whakataunga – decision

82. Before deciding if the charge of misconduct has been established, we must ensure the evidence supports the allegation that the respondent had misrepresented her skills and experience when applying for the position of Head of Personalised Learning at Porirua College.
83. The burden of proof is on the CAC, and the Tribunal must be satisfied on the balance of probabilities that the charge is made out. That means that we must find that the alleged conduct is more likely than not to have occurred.
84. We have based our decision on the evidence contained in the briefs of evidence and have also taken into account the information provided by the respondent in the course of the College and Council investigations.
85. As outlined in the CAC submissions, the key issues that Ms Maxwell felt were misrepresentations were Ms Pillay’s purported experience as itemised below:
Leadership in the intermediate sector, and Head of Whānau;
86. Mr Drewery said that Ms Pillay taught a combined Year 7/Year 8 class. It was a bit fanciful to describe her as Head of Year 7 and 8. He said that the senior leadership consisted of a principal and a deputy principal. The rest of the

teaching staff were classroom teachers. There was no role called Head of Whānau. We accept that this is the name often given to a Dean.

87. We are satisfied that that the respondent misrepresented her role to give the impression that she had a leadership role across some classes.

Creation of personalised learning pathways for junior and senior students; In collaboration with subject tutors and whānau

88. Mr Trezise said that during Ms Pillay's time at Botany Downs, the school employed a SENCO on staff. Ms Pillay was not responsible for creating or coordinating the creating of IEPs for students, although she would have contributed to the creation of them by sharing information and collaboration with the SENCO just as other classroom teachers did.

89. Ms Pillay may have collaborated with other teachers and whanau from time to time, but it is misleading to imply that this was done as part of a co-ordination or creation of IEPs. We find she intentionally gave the impression that she led the coordination of the IEPs.

Development of IEPs for students with Asperger's syndrome, ADHD, Down syndrome, Auditory Processing Disorders and other conditions;

90. Mr Trezise would not use the word "coordinate" to describe Ms Pillay's involvement with special needs assistance and Ms Pillay did not have any specific Special Education Skills or responsibilities while she was employed at Botany Downs

91. We are satisfied that Ms Pillay intentionally and falsely gave her prospective employers that she had experience in a specialised area of education, when she did not.

Managing support staff; Allocating budgets

92. Ms Morgan said that Ms Pillay did not have staff reporting to her or complete appraisals for staff and that she had no responsibility for budget allocation.

93. We are satisfied that Ms Pillay intentionally and falsely gave her prospective employers that she had operational management experience that she did not have.

Development in a reading programme;

94. Based on Ms Morgan's evidence, Ms Pillay did have a role in developing a reading programme. Although further delving into what that entailed might reveal it was not of the nature the Ms Maxwell had understood it to be, that does not mean it was a misrepresentation to say that she had developed a reading programme.
95. On some matters such as liaising with outside agencies or with colleagues and whānau, there is no evidence in the CAC briefs of evidence that Ms Pillay did not have experience in these matters but it appears that she did not do any of this in the context of a SENCO, leadership or personalised learning.
96. In summary we are satisfied that that Ms Pillay misrepresented her experience and skills in management, leadership, personalised learning and special needs. The factual allegation in the charge is established.

Misconduct

97. Serious misconduct is defined in section 378 of the Act as follows:

serious misconduct means conduct by a teacher –

(a) *that –*

(i) *adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;*

(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.*

98. Because this is a charge of misconduct, Mr Neild appropriately focused his submissions on the first part of the definition for serious misconduct as set out in paragraph (a) section 378.
99. The CAC submits that this conduct reflects adversely on the respondent's fitness to be a teacher and may bring the teaching profession into disrepute. In particular, it was submitted that:
 - a. Ms Pillay's conduct was intentionally dishonest.
 - b. Employers of teachers are entitled to expect that teachers have honestly

acknowledged their strengths and limitations. Ultimately, employers place significant reliance on candidates' honest descriptions of skills and experience to determine their suitability for a teaching position. Her decision to misrepresent her previous experiences shows a concerning lack of self-awareness or willingness to acknowledge personal limitations.

- c. Her misrepresentation risked her being appointed to a position for which she was not adequately qualified. It therefore risked students' wellbeing or learning because she did not have the required skills or experience to adequately support students.

100. The CAC referred to two Tribunal decisions dealing with misrepresentation of employment or qualifications in applying for teaching positions. In *CAC v Bruce*¹ the Tribunal found that a misrepresentation of a Fine Arts Diploma as a Degree was not sufficiently serious to constitute serious misconduct, but when considered with his omission of a previous employer (which was relevant to the new role) it did reach that threshold.

101. In *CAC v Teacher*² the Tribunal considered a teacher's misrepresentation of his qualifications on applying for a Principal's role amounted to serious misconduct:

... in a profession which is in part at least directed to assisting students to obtain genuine academic qualifications, it's beyond any serious doubt that fraudulently misstating one's qualifications in the course of an application for a position – perhaps especially a senior position – constitutes serious misconduct and is entirely unacceptable.

102. Mr Neild quite reasonably submitted that the present case is less serious because rather than falsely representing her qualifications, she simply overstated or overinflated her skills and experience.

103. One could equally argue that this case is just as bad. She simply did not have the experience required for the role, but she intentionally led her prospective employers to believe that she did. Some of the students that she was

¹ NZTDT2018/104

² NZTDT 2013/32

responsible for had some specific needs that required those skills. However, we take no issue with laying the charge at the level of misconduct.

104. We agree that such dishonesty may bring the teaching profession into disrepute as laid out in paragraph (a)(iii) of the definition in section 378 set out above. Ms Pillay has breached her obligations under the Code of Professional Responsibility which expects teachers to maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.
105. The conduct also reflects adversely on the respondent's fitness to be a teacher. In that regard we mean fitness as discussed by the High Court in a case involving the professional discipline of a nurse:³

“Fitness” often may be something different to competence ... aspects of general deterrence as well as specific deterrence remain relevant. So too is the broader consideration of public or community's confidence and the upholding of the standards of the nursing profession.

106. This can equally apply to the teaching profession. That is not to say that we have found Ms Pillay is unfit to be a teacher, but we do find that her conduct reflects adversely on her fitness to be a teacher.
107. Although it might be a stretch to say that her conduct was likely to adversely affect the well-being or learning of one or more students, we agree with Mr Neild that an adverse impact on one or more students was a possible outcome.
108. In summary we find that Ms Pillay is guilty of misconduct.

Whiu - penalty

109. Section 404 of the Act provides:

404 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:

³ *Professional Conduct Committee v Martin* 27 February 2007 Justice Gendall

- (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 Teaching Council in respect of the costs of conducting the hearing:*
- (j) *direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.*

110. In *Roberts v Professional Conduct Committee*⁴ his Honour Justice Collins discussed eight relevant factors in determining appropriate penalty under the Health Practitioners Competence Assurance Act 2003. These have been more recently summarised in the decision of *Katamat v Professional Conduct Committee* [2019] NZHC 1633:

- a. Most appropriately protects the public and deters others;
- b. Facilitates the Tribunal's "important" role in setting professional standards;
- c. Punishes the practitioner;
- d. Allows for the rehabilitation of the practitioner;
- e. Promotes consistency with penalties in similar cases;

⁴

Roberts v Professional Conduct Committee [2012] NZHC3354 at [44] to [51]

- f. Reflects the seriousness of the misconduct;
 - g. Is the least restrictive penalty appropriate in the circumstances; and
 - h. Looked at overall, is a penalty which is “fair, reasonable, and proportionate in the circumstances”.
111. These principles have also been considered in this jurisdiction in decisions such as *CAC v Cook* 2018/50.
112. The CAC referred to the two cases cited above. In *Bruce* the Tribunal imposed a penalty of censure, annotation of the register for four years and a condition on the teacher’s practising certificate that he provide a copy of the decision to prospective employers for four years from the release of the decision. In the other case, NZTDT2013-23, where the teacher had taken no part in the proceedings, his registration was cancelled and he was censured.
113. The CAC was not seeking cancellation and submitted a penalty similar to that in *Bruce* would be appropriate, with a shorter period of conditions to reflect the lower gravity of the respondent’s conduct.
114. We agree. The Tribunal has no reason to doubt Ms Pillay’s ability as a teacher and we acknowledge that she has provided some favourable references. It is unfortunate that she and the CAC had been unable to reach agreement on the outcome proposed by the CAC. That is not to say that we condone her conduct in any way but we agree that it is probably better categorised as “misconduct” rather than “serious misconduct”.
115. The problem with her allowing the case to proceed to the Tribunal is that we have greater powers than the CAC. In particular the Tribunal can cancel or suspend a teacher’s registration. It would have been good to have heard from Ms Pillay about her professional aspirations. We suggest that if she wants to move into more senior positions, she would benefit from some mentoring.
116. Based on the conduct that is before us, we impose the following penalties on Ms Pillay:
- a. She is censured under section 404(1)(b)

- b. We impose the following conditions on her practising certificate under section 404(1)(c) for a period of 2 years from the date of this decision:
 - i. She is to hold no management roles.
 - ii. She must provide a copy of this decision to any current, prospective or future employers in the education sector.
117. Teachers who face disciplinary charges must expect to pay some of the costs, which should not be borne by the profession. The starting point for costs should be 50%.⁵ Where there has been a guilty plea and co-operation with a disciplinary prosecution, some reduction is usually made. That is not the case here and the CAC sought a contribution of 50%.
118. We agree that is appropriate. The CAC provided a costs schedule totalling \$8,180.04, of which 50% is \$4,090.02. Under section 404(1)(h) the respondent is ordered to pay \$4,090.02 to the CAC.
119. There are no applications for name suppression.



Theo Baker
Chair

⁵ *Cooray v Preliminary Proceedings Committee* (unreported, AP 23/94, Wellington Registry, 14 September 1995)

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

1. This decision may be appealed by 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).