

**PERMANENT NON-PUBLICATION  
ORDERS**

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023-82**

RARO TE MANA O TE  
UNDER THE

the Education Act 1989 (**the Act**)

MŌ TE TAKE  
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A  
BETWEEN

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**  
Kaiwhiu | Prosecutor

ME  
AND

**ALLISON ROSS**  
(Authorisation 355169)  
Kaiurupare / Respondent

**Parties** E McCaughan, Kayes Fletcher Walker, for the CAC.  
G Ogilvie, ECS, representative for A Ross

**Tribunal** C Garvey (Deputy Chair), R McInerney, D Spraggs

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**DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION**

21 August 2024

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**Introduction**

[1] The respondent, Allison Ross, faces a charge of serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers, in relation to three incidents of alleged rough handling of young learners in her care between July 2020 and May 2021. At the relevant time the respondent was employed as an Assistant Manager at [REDACTED] in [REDACTED] (the centre). The particulars of the charge read:<sup>1</sup>

1. The CAC charges that ALLISON ROSS registered teacher, of ASHBURTON:
  - a. On 23 July 2020, roughly handed child [REDACTED] (aged [REDACTED]) [Child J] when she:

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<sup>1</sup> Notice of charge dated 13 November 2023.

- i. took hold of his face with her hand and turned his face to look at her; and/or
  - ii. took hold on his body and/or clothes to move him to a chair and/or couch; and/or
  - iii. made his sit in a chair and/or couch;
  - iv. restrained him by extending her arm in front of his body while he was seated on the couch, to make him stay seated on the couch.
- b. On 25 March 2021, roughly handled [Child J] (aged [redacted]) when she:
- i. grabbed hold of his arm or hand to pull and/or move him outside; and/or
  - ii. once outside, shoved him by the arm and/or threw him, causing him to fall off the deck.
- c. On 25 May 2021, roughly put a hoodie on child [redacted] (aged [redacted] [Child S]).

[2] The respondent elected not to defend the charge, and the matter proceeded on the papers on 31 July 2024, with an Agreed Summary of Facts, submissions from both parties, and a Reflective Statement from Mrs Ross together with references and evidence of professional development. The Tribunal also received an application for permanent non-publication orders from the centre.

### **The Summary of Facts**

- [3] The respondent's employer investigated the incidents in the charge. The respondent resigned in July 2021, although denied the events as described.<sup>2</sup> The matter was referred to a Teaching Council investigator in September 2021 and after some delay, was referred to the CAC in May 2023. Mrs Ross attended a meeting with the CAC in August 2023 and maintained her denial. The summary of facts was subsequently signed on 10 May 2024.
- [4] Mrs Ross was first registered in November 2015, training as a teacher after a 25-year career working with the Salvation Army.<sup>3</sup> Each of the incidents in the charge was observed by other teachers working at the centre.
- [5] The incident described in particular 1(a) occurred towards the end of the day. The summary of facts records that Child J was disrupting other children and did not follow an instruction from the respondent. She pulled the child close to her by his shirt and spoke firmly to him. When Child J did not make eye contact the respondent "*grabbed*

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<sup>2</sup> The Reflective Statement dated 8 May 2024 by the respondent refers to her employment not being in jeopardy, but some concern over proposed changes to her role and her working environment as influential in her decision.

<sup>3</sup> Reflective Statement dated 8 May 2024.

*[his] face around his jaw, forcing him to look at her while she spoke.*" The respondent then ushered the child outside to play.<sup>4</sup>

- [6] Mrs Ross was outside shortly after this and was observed by another teacher to be telling Child J off. Two teachers then observed:

...Mrs Ross forcefully putting [Child J] into an orange seat and asking him not to move...[Child J] tried to get back up and as he did so Mrs Ross put him back in his seat multiple times with the same, if not more, force. [Child J] was becoming upset.<sup>5</sup>

- [7] Further restraint was used by the respondent placing her arm across Child J to prevent him getting off the couch. The child became tearful while trying to move away.<sup>6</sup> The incident was initially managed at a low level, with the centre manager referring to personal stressors known to be impacting Mrs Ross at the time.<sup>7</sup>

- [8] With regard to particular 1(b), a teacher was outside and heard yelling from inside the centre and then observed the respondent "*pulling [Child J] by the arm from inside the Centre to outside. As Mrs Ross was doing that she was telling [Child J] he could stay outside.*"<sup>8</sup> Further:

When they got to the outside deck area Mrs Ross forcefully shoved [Child J] by the arm and threw him off the deck area, causing [Child J] to fall to the ground.<sup>9</sup>

- [9] The child was upset and crying and was calmed down by two other teachers.<sup>10</sup>

- [10] Particular 1(c) occurred three months later. Mrs Ross was seen by another teacher to guide a child into a locker room and tell the child to stay there. Mrs Ross left the locker room, saying the child was in time out, and returned shortly after and forcibly dressed the child in the hoody, and reprimanded them for crying. The teacher who observed this spent about half an hour calming the child.<sup>11</sup>

## Liability

- [11] The relevant provisions of the Education Act 1989 and the Education and Training Act 2020 as to serious misconduct are the same, requiring that one of three limbs under s378/ s10 be met, together with a finding of conduct that is of a character or severity to require reporting to the Teaching Council under rule 9 of the Teaching Council Rules 2016.

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<sup>4</sup> ASOF [4]-[5].

<sup>5</sup> ASOF at [7].

<sup>6</sup> ASOF at [9].

<sup>7</sup> ASOF at [12].

<sup>8</sup> ASOF at [16].

<sup>9</sup> ASOF at [17].

<sup>10</sup> Above, n9.

<sup>11</sup> ASOF at [21] – [26].

- [12] Section 10 refers to conduct that:
- (a) adversely affects or is likely to adversely affect the well-being or learning of 1 or more students;
  - (b) reflects adversely on the teacher's fitness to be a teacher;
  - (c) is an act or omission that may bring to profession into disrepute.
- [13] The charge pleads a breach of r 9(1)(a), which is the unjustified or unreasonable use of force on a child or young person. Rule 9(1)(k) refers to an act or omission that brings or is likely to bring the profession into disrepute.
- [14] The CAC's submissions outline the relevant legal tests under each of the limbs of s10. Mrs Ross did not provide submissions on liability. In short, the CAC submits that all three limbs of s10 are met. We agree and have summarised those submissions with some comments:
- (a) s10(1)(a)(i) - the young age of the children involved, and evidence that they were visibly upset and took time to be consoled by other teachers, meaning it is likely that their wellbeing was adversely affected. A transient or minor upset will not inevitably mean this limb is met but we are satisfied in this case that it is. The resort to force has the potential to adversely impact the relationship between a young child and their teacher.
  - (b) s10(1)(a)(ii) - s24 of the Act expressly prohibits the use of force in the early childhood setting. There was no potential justification in any of the incidents, such as the need to protect the child, another child or the respondent from harm. A breach of the Code of Professional Responsibility may reflect adversely on fitness. Clause 1.3 requires that teachers maintain public trust and confidence by demonstrating a high standard of professional integrity. Clause 2.1 sets an expectation that teachers will promote the well-being of learners and protect them from harm. The conduct was in breach of these expectations and reflects adversely on the respondent's fitness to teach.
  - (c) s10(1)(a)(iii) - the conduct may bring the profession into disrepute, involving more than one incident of force against young children in the respondent's care. While not necessarily determinative, we note that the conduct was reported by three other teachers including one who escalated the matter to the Ministry of Education<sup>12</sup>, suggesting that it contravened expected standards.
- [15] The threshold for serious misconduct is met, because the respondent used clothing to forcibly move children for perceived disobedience, who were not posing an imminent risk to others, and the unnecessary use of restraint. This amounts to unjustified or unreasonable force under r9(1)(a). That the respondent did not intend

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<sup>12</sup> ASOF at [27] records that a teacher lodged a complaint with the Ministry of Education regarding particular 1(c) as they felt concerned that insufficient steps were taken in relation to 1(b).

to cause harm is relevant to penalty but does not avoid a breach of this rule as the use of force itself was intentional and was not justified.

## Penalty

- [16] Having found the charge proved, we may impose one or more of the penalties set out under s500 of the Act. The principles of penalty in disciplinary proceedings are well established. The primary purpose is not to punish a teacher, but is to protect the public, and to maintain standards and public confidence in the profession. We are required to impose the least restrictive penalty appropriate in the circumstances, and one that is fair, just and proportionate.
- [17] The CAC submit that the respondent's limited insight and repeated denials would have justified cancellation as an appropriate starting point, but step back from this given that there is evidence of personal stressors impacting the respondent at the time of the first incident, her later cooperation with the CAC, and reflections, references and evidence of professional development. The respondent does not hold a current practising certificate. The CAC therefore proposes:
- (a) Censure.
  - (b) Annotation of the register for a period of two years.
  - (c) Conditions on a future practising certificate that the respondent:
    - (i) provides a copy of the Tribunal's decision to a current teaching employer and prospective teaching employer.
    - (ii) practices under the guidance of a mentor approved by the Teaching Council, and the Teaching Council may stipulate the form of mentorship and requirements for reporting/updates.
    - (iii) undertakes further education in positive behavioural management.
- [18] The CAC referred to several cases for comparison, including:
- (a) *CAC v May*<sup>13</sup> in which the Tribunal cancelled the teacher's registration after finding serious misconduct in relation to a single incident, where an 18-month-old was grabbed by the arm and swung around. The teacher's explanations for her actions were inconsistent and while the Tribunal accepted the teacher did not intend to cause harm, it was not satisfied that the teacher had sufficient insight to support a lesser penalty.
  - (b) In *CAC v Teacher Q*<sup>14</sup> a primary school teacher grabbed a six-year-old child by the arm while they were running, pulling with force such that the child fell heavily. The misconduct continued when the teacher later restrained the child while remonstrating with them about their behaviour. The teacher

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<sup>13</sup> *Complaints Assessment Committee v May* NZTDT 2019/86.

<sup>14</sup> *Complaints Assessment Committee v Teacher Q* NZTDT 2020/23.

acknowledged this amounted to serious misconduct. The Tribunal imposed censure and conditions, requiring mentoring and disclosure of the Tribunal's decision.

- (c) In *CAC v Chen*<sup>15</sup> an early childhood teacher lifted a 20-month-old child by the wrist and pulled up and dragged the child; a similar incident occurred with a 3-year-old child. The teacher acknowledged serious misconduct, showed insight and provided evidence from a current employer indicating support and good practice. The Tribunal imposed censure and conditions.

- [19] Evidence of remorse, insight and other matters which provide reassurance against future misconduct are significant factors in determining the gravity of penalty imposed. Cases involving the use of force place the focus on ensuring ākongā are safe, in accordance with the statutory prohibition on corporal punishment and the ethical standards for protecting the well-being of learners prescribed by the Code.
- [20] The Tribunal perceived some of the behaviour described in the summary of facts as reflecting an 'old school' approach of exerting adult power and authority over children in the respondent's care. The respondent was reluctant to accept responsibility initially.
- [21] There are mitigating factors, being very positive references provided<sup>16</sup>, and the absence of concerns in the respondent's subsequent teaching role. It is also apparent that the incidents occurred at a time of difficulties within the centre.<sup>17</sup> The respondent states that she notified her new employer of the investigation findings, and the referral to the Teaching Council.
- [22] Taking these matters into account we consider the following penalties are appropriate:
- (a) Censure.
- (b) Conditions on a future practising certificate requiring that Mrs Ross:
- (i) discloses the Tribunal's decision to any prospective future teaching employer, for a period of 12 months; and
- (ii) engages in mentoring with a mentor approved by the Manager of Professional Responsibility at the Teaching Council with termly reporting, for a period of 12 months. This should include positive behavioural management but can otherwise be agreed between the respondent and the mentor. If the respondent is teaching in a permanent position then it is preferable that a senior staff member fulfil this role. Some flexibility may be required in a relieving role.

<sup>15</sup> *Complaints Assessment Committee v Chen* NZTDT 2020/54.

<sup>16</sup> We may only give the references limited weight in that they are dated 2021, prior to the notice of charge and are not addressed to the Tribunal.

<sup>17</sup> Letter from ██████████ Director ██████████ dated 27 July 2024.

- (c) Annotation of the register for 12 months.

### **Costs**

- [23] The CAC seeks a contribution to its costs of the proceeding and has filed a schedule outlining costs in the sum of \$7,868.94, 40% of which is \$3,147.58. There is nothing to suggest this quantum is not reasonable for a hearing on the papers, and the contribution sought reflects the usual practice in accordance with the Practice Note for an order where a teacher has cooperated to dispose of proceedings expediently.<sup>18</sup>
- [24] The respondent has filed submissions as to costs together with evidence of her financial position. Notably, the respondent is not currently working, her husband is partly retired and receives a pension, she had limited earnings (details provided) for the year to 17 June 2024 and does not consider she is in a financial position to pay costs.
- [25] The general expectation is that teachers who appear before the Tribunal should be expected to meet some costs, which are otherwise borne by the profession as a whole. A 40% contribution reflects a 10% reduction from the starting point of 50%. We may further reduce an order made based on relevant circumstances. We accept that costs will cause some financial difficulty for the respondent based on the evidence provided and will make a further reduction to 30%. Arrangements can be made with the Teaching Council as to repayment of costs over time.

### **Applications for non-publication orders**

- [26] Pursuant to s501 of the Act, the Tribunal may make non-publication orders if it considers it is proper to do so, balancing the public interest with the private interests of any person. We have received applications as follows:
- (a) by the CAC in relation to the children named in the notice of charge and summary of facts.
  - (b) by the respondent, for non-publication of her name and identifying particulars.
  - (c) by ██████████, director of ██████████, in relation to the name any identifying particulars of the centre.
- [27] The starting point is the presumption of open justice, meaning that there is transparency around matters that come before the Tribunal. The test for making an order is not the exceptional circumstances required in criminal proceedings. What is 'proper' requires us to consider whether the harm that is asserted will arise from publication is likely to follow. This means there must be a real, appreciable or substantial risk. A mere assertion of harm is not sufficient, and it is well established that consequences that may be considered ordinary in the context of an adverse disciplinary finding, will not support an order. This includes embarrassment, and some distress or upset to the teacher and also to their family.
- [28] As counsel for the CAC has alluded to, it is common for the Tribunal to require clear evidence when a party relies on an assertion that publication will lead to harm to their

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<sup>18</sup> Practice Note on Costs dated April 2022.

or another's mental health, or cause some other harm to family members that goes beyond an expected or ordinary consequence<sup>19</sup>. This is not to be punitive or unsympathetic, but we otherwise risk setting the threshold for making orders too low in the context of the principle of open justice.

- [29] It is clearly proper to suppress the names of the children identified in the charge, as there is no public interest in their names being known, and their privacy interests as young children are paramount.
- [30] The application by Mrs Ross is opposed by the CAC. The application relies on the following grounds:
- (a) concern for two of her adult children who also work in teaching, and the potential impact on their employment.
  - (b) health reasons, supported by a letter from a nurse practitioner stating that the respondent is feeling unwell in anticipation of publication including tearfulness, a lack of sleep and self-isolating behaviour. Reference is made to historical mental health concerns and that "her [the respondent's] concerns are that this may reoccur if suppression is not permanent."
- [31] The application for the centre is made on several grounds:
- (a) the centre owner's wellbeing, with references made to counselling;
  - (b) efforts undertaken over the past few years to address issues at the centre, and the significant stress that this caused;
  - (c) concerns regarding the response from elements within the centre community;
  - (d) unfair impact on current staff.
- [32] We are sympathetic to the apprehension Mrs Ross feels regarding publication of her name in relation to these proceedings however the evidence provided does not in our view reach the threshold for making an order the 'proper' outcome. We do not consider there is any appreciable risk of harm to the respondent's adult children, who have no relationship to this charge, and it does not reflect on them in any way. For Mrs Ross, it should also be clear that the events are now some years old, there is no evidence of repeated concerns, and we have acknowledged the positive references provided. These matters tell against an order. Further, the nurse practitioner's letter reflects self-report, rather than diagnosis and/or a medical opinion of the likely consequences of publication and as the CAC submits, is too vague to be a basis on which to grant the application.
- [33] With regard to the centre, after some consideration we find on balance that it is proper to make an order, given the cumulative effect of the grounds put forward by ██████████ and set out in detail in her letter.

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<sup>19</sup> See for example *Complaints Assessment Committee v Teacher NZTDT 2016/27* at [63]-[64].



**Orders**

[34] Accordingly the Tribunal makes the following penalty orders:

- (a) Mrs Ross is censured, pursuant to s 500(1)(b) of the Act.
- (b) Conditions are to be imposed on any subsequent practising certificate pursuant to s500(1)(j):
  - (i) that Mrs Ross discloses the Tribunal's decision to any prospective teaching employer for a period of 12 months.
  - (ii) that Mrs Ross engages in mentoring with a mentor approved by the Manager of Professional Responsibility at the Teaching Council with termly reporting, for a period of 12 months, to include reflection on positive behaviour management.
- (c) Annotation of the register pursuant to s 500(1)(e) for a period of 12 months.
- (d) Costs payable to the CAC in the sum of \$2,360.00.

[35] Pursuant to s501, the Tribunal orders non-publication of the following:

- (a) the name and identifying particulars of the children identified in the notice of charge and summary of facts.
- (b) the name and identifying particulars of [REDACTED].



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