

**PERMANENT NON-PUBLICATION  
ORDERS**

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023-51**

RARO TE MANA O TE  
UNDER THE

the Education and Training Act 2020  
(**the Act**)

MŌ TE TAKE  
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A  
BETWEEN

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

ME  
AND

**SHEREE JUNE STILL**  
(Authorisation 324848)  
Kaiurupare / Respondent

Nohoanga | Hearing  
Hei Māngai | Appearance

28 May, AVL (Teams).  
NB Murden. Luke Cunningham Clere for the CAC.  
Respondent, self-represented.

**Tribunal:**

C Garvey (Deputy Chair), R McInerney, L Arndt (Members)

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**DECISION ON LIABILITY AND PENALTY**

**28 June 2024**

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**Introduction | Whakataki**

- [1] The respondent, Sheree Still, is a registered teacher but does not hold a current practising certificate. Ms Still faces a charge in relation to the use of force against a child on a single occasion on 22 November 2020, in her home. The incident came to the attention of the Teaching Council during a standard Police vetting process in January 2022.
- [2] The notice of charge was laid on 18 July 2023. Ms Still did not defend the charge but co-operated with the CAC to prepare an Agreed Summary of Facts, signed by the

respondent on 7 November 2023 and on behalf of the CAC on 15 February 2024. On application of the CAC and agreement of the Tribunal, the matter was dealt with by a hearing on the papers on 28 May 2024.

### The Charge

[3] The notice of charge refers to the Police vetting report, which the CAC refers to the Tribunal for consideration and reads:

1. The CAC charges that Sheree June Still, registered teacher, of [REDACTED], on or about 22 November 2020:
  - a. Pushed Child A (aged [REDACTED]) face down onto a bed; and
  - b. Smacked Child A twice on the bottom.
2. The conduct alleged in paragraph 1, and its subparagraphs, separately or cumulatively, amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and any or all of rule 9(1)(a), (j) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

### The Agreed Summary of Facts

[4] The Summary of Facts signed outlines that the respondent became fully registered in 2010. She allowed her practising certificate to lapse in July 2023. Ms Still received a Police warning for a family harm incident in 2020 and the incident is described as follows:

4. For several months in 2020, Ms Still had [REDACTED] and [REDACTED] staying at her address; Child A ([REDACTED] years old); Child B ([REDACTED] years old), and Child C ([REDACTED] years old).
5. On 22 November 2020 at approximately 5.30pm, Child A kicked one of the other children.
6. Ms Still told Child A to go to his bedroom. Child A refused and a verbal argument began between Child A and Ms Still.
7. Ms Still took Child A to their bedroom. Ms Still pushed Child A face down onto the bed and smacked Child A's bottom twice.
8. Ms Still received a verbal warning from the Police.

[5] The circumstances in which the matter came to be notified to the Police were not outlined. In her response to the CAC, the respondent accepted the facts as described, and said she took full responsibility for her actions. The respondent remains in contact with the children and their mother, with whom she says she has a good relationship. In providing some context for her actions, the Summary of Facts states:

10. With respect to the surrounding circumstances, Ms Still explained that [REDACTED] and her children had been living with her for about eight months. They were [REDACTED] with several children between them. Ms Still said that Child A had behavioural problems and can become quite violent very quickly. On that day, Child A had physically attacked their younger sibling, so Ms Still was escorting Child A to their bedroom. She had injured her arm the night before and was waiting to have it x-rayed. Child A verbally abused Ms Still, walked towards her aggressively in an attempt to physically intimidate her, and pushed her into a dresser, hurting her hand. Ms Still said [she] reacted to this wrongly by pushing Child A face down on the bed and smacking Child A's bottom twice.

### **Serious Misconduct/Misconduct-Legal Principles**

- [6] A charge of serious misconduct relies on a finding under one of the three limbs of s 10(1)(a) of the Education and Training Act 2020 (the Act), and a breach of one or more of the matters set out under r 9 of the Teaching Council Rules 2016 (the Rules). Rule 9 sets out the criteria for reporting serious misconduct to the Teaching Council. The CAC pleads a breach of r 9(1)(a), (j) and/or (k).
- [7] Section 10(1) (a) defines serious misconduct to mean conduct by a teacher that either:
- (a) adversely affects or is likely to adversely affect the well-being or learning of 1 or more students; or
  - (b) reflects adversely on the teacher's fitness to be a teacher; or
  - (c) may bring the profession into disrepute.
- [8] The incident occurred within the respondent's home and in this instance, s10(1)(a)(i) is not engaged.
- [9] Counsel for the CAC set out the accepted guidance for considering limbs (ii) and (iii) of s 10(1)(a). Conduct that may reflect adversely on a teacher's fitness or lower the reputation of the teaching profession is not confined to conduct within the classroom, or to a teacher carrying out their professional duties. The Code of Professional Responsibility which sets expectations for the standard of conduct to be met by teachers when dealing with students, whānau, colleagues and members of the public. This includes the expectation that teachers will demonstrate a high standard of professional behaviour and integrity (clause 1.3) The Examples in Practice that provide guidance on the Code expressly refer to teachers taking care that their actions outside of work do not affect the trust and confidence others have in the teacher or reflect badly on the integrity or standing of the teaching profession.<sup>1</sup>
- [10] Counsel for the CAC submitted that the respondent's conduct both reflects adversely on her fitness and may bring the teaching profession into disrepute, noting:
- ... teachers are expected to be positive role models to students in and beyond the learning environment. The physical safety of children is a fundamental value of the teaching profession. The use of physical force against a child,

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<sup>1</sup> The Code of Professional Responsibility Examples in Practice (p7, commentary on cl 1.3).

even in the private sphere, is contrary to New Zealanders expectations of the appropriate boundaries between adults and children, as reflected in the criminal law. Members of the public would expect teachers to demonstrate basic values widely accepted in society and adhere to the law. Ms Still has failed to do this.<sup>2</sup>

- [11] We agree that the conduct described in the notice of charge and Summary of Facts does reflect adversely on the respondent's fitness. It is trite, but important to say, that this does not mean that the respondent is in fact unfit to teach. We agree with the sentiments expressed by the Tribunal in *CAC v Teacher Z NZTDT 2020/19*, that teachers are human and experience stress and difficulties in their personal lives like any others, and that this may lead to inappropriate conduct for which a teacher is insightful and remorseful. We choose however to reflect this in our penalty decision, rather than by categorising the conduct in this case as 'bare' misconduct.
- [12] We also consider that there is a risk of damage to the reputation of the profession. The use of force for the purposes of discipline is prohibited by s 98 of the Act and assault on a child or on a person in a family relationship are addressed by s194 and s194A of the Crimes Act 1961 respectively. The use of force is an area in which teachers are required to take particular care in the school environment. Expectations for avoiding inappropriate physical conduct also flow into the domestic sphere, by virtue of the requirements of the Code referred to above.
- [13] It follows that there has been a breach of the rules. Rule 9(1)(a) refers to the unreasonable use of force. The use of force was unjustified, as admitted by the respondent. Rule 9(1)(j) is also engaged, as the conduct described is of a nature prohibited by the Crimes Act 1961. The fact that Ms Still received a Police warning and was not charged does not matter in the sense that this rule does not hinge on a charge or a conviction. Rule 9(1)(k) refers to an act or omission that brings, or is likely to bring, the teaching profession into disrepute. For the reasons discussed above, we also find that this rule has been breached.
- [14] Accordingly, we find that the charge of serious misconduct is proved.

### **Penalty**

- [15] Having found the charge proved, we may impose one or more of the penalties set out under s500 of the Act. The purpose of disciplinary proceedings is to promote the protection of the public through setting and maintaining professional standards, dealing appropriately with those who are unfit to teach, and to provide mechanisms for rehabilitation where appropriate. As submitted by the CAC, the Tribunal is required to impose a penalty that is fair, reasonable and proportionate in the circumstances, and comparable to those imposed in similar cases.
- [16] We were referred by counsel for the CAC to several cases involving the use of force on one or more occasions by a teacher in a private setting, against a teacher's own child or other young family member.<sup>3</sup> In all but one of those cases the Tribunal found serious misconduct.<sup>4</sup> Counsel submitted that this case is most similar to *CAC v V*, which involved a family member using force to discipline a child. Teacher V hit her granddaughter with a type of broom and also with the handle of a shopping bag, in

<sup>2</sup> CAC submissions on liability and penalty, 26 March 2024 at [33].

<sup>3</sup> *CAC v Teacher L NZTDT 2019/133*, *CAC v Teacher S NZTDT 2020/45*, *CAC v Teacher V NZTDT 2020/2* and *CAC v Teacher Z NZTDT 2020/19*.

<sup>4</sup> In *CAC v Z* the Tribunal found that the teacher's actions did not meet ethical standards but did not reflect adversely on her fitness or bring the profession into disrepute.

response to the child being disobedient. The Tribunal imposed censure, conditions and annotation of the register.

- [17] There is no evidence in this case to suggest that the respondent poses any risk to students or that the behaviour may be repeated. As the Tribunal has found in similar cases, the use of force for the purposes of discipline is not appropriate, and when this occurs outside the classroom it does have the potential to reflect adversely on a teacher's fitness, and to lower the reputation of the profession.
- [18] Counsel for the CAC submitted that, in line with the cases cited, and the penalty principles, a penalty of censure alone is appropriate.
- [19] We agree that censure is appropriate. However, we also consider it important that there be a disclosure requirement for a limited period, particularly given the respondent's decision not to renew her practising certificate in July 2023, meaning some time has been spent away from the profession. We do not have any evidence to indicate whether the respondent intends to return to teaching.
- [20] The CAC sought a contribution of 40% of the costs incurred. This is in reliance on the Practice Note, and the convention whereby a teacher who co-operates with a prosecution in terms of the preparation of a Summary of Facts and other aspects of the proceeding may be required to meet less than 50% of reasonable costs sought. The CAC filed a schedule of costs on 3 May 2024 outlining total costs in the sum of \$9,018.44, of which 40% is \$3,607.38.
- [21] The respondent has not filed any evidence in relation to costs. We therefore see no basis to depart from the CAC's submissions that a 40% contribution is reasonable. We also order a 40% contribution towards the Tribunal's costs, based on the current standard fee for a hearing on the papers.

### **Non-Publication Orders**

- [22] There is a presumption in favour of proceedings being conducted in public. However, when it considers it proper to do so, the Tribunal may make orders for non-publication in reliance on s501 of the Act. The Tribunal is required to balance the interests of the public against the private interests of any person in respect of whom orders are sought. The Tribunal may also make orders of its own volition, and in this regard is guided not only by s501 but also r 34 of the Teaching Council Rules and the need to pay regard to those considered to be vulnerable including a child or young person.
- [23] Interim non-publication orders were made prior to the hearing without objection from the CAC, relating to the names of the children identified in the Summary of Facts, and referred to the amended notice of charge. Out of caution, and in the absence of hearing from the respondent, the respondent's name was also suppressed on an interim basis, given her relationship (including living at the same address for a period of time) with Child A and their siblings. In a Minute issued on 19 February 2024 and a further Minute dated 5 March 2024, the respondent was put on notice that an application for permanent non-publication orders would need to be made if such an order was sought. The respondent has not made an application for permanent orders.
- [24] For the same reasons as the interim order was considered proper, we make a permanent order in favour of the children identified in the charge and Summary of

Facts. There is no public interest in their identity being known, and their private interests prevail. There is no need for the children to be identified beyond noting a familial relationship to contextualise the charge, and their young age is also important.

- [25] As noted, no application has been made by the respondent. The evidence indicates that she maintains a relationship with the children and their mother but does not share the same surname. In the absence of evidence supporting that an order would be proper in this instance, none is made in respect of the respondent's name.

### Orders

- [26] Pursuant to s 500 of the Act, we make the following orders:

- (a) The respondent is censured, in reliance on s 500(1)(b).
- (b) The respondent is to notify any person or organisation who employs her in a role for which registration with the Teaching Council is required, of this decision, for a period of one year.
- (c) The respondent is to pay costs to the CAC in the sum of \$3,607.38, in reliance on s 500(1)(h) of the Act.
- (d) The respondent is to pay a contribution towards the costs of the Tribunal in respect of the costs of conducting the hearing, in the sum of \$582.00, in reliance on s 500(1)(i) of the Act.

- [26] Pursuant to s 501(6) of the Act publication of the following names and particulars are prohibited:

- (a) The names and identifying particulars of the children referred to as Child A, Child B and Child C in the notice of charge. Identifying particulars include their age, and the location, [REDACTED].



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

**ADDENDUM 7 August 2024**

1. Clarification of the order at paragraph [26](b) of the Tribunal's decision:
2. The condition at [26](b) is to be placed on a subsequent practising certificate and is made in reliance on s500(1)(j) and should read:

The respondent is to notify any person or organisation who employs her in a role for which registration with the Teaching Council is required, of this decision, for a period of one year, pursuant to section 500(1)(j) of the Act



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