

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-20

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

████████████████████████████████████████

Kaiurupare | Respondent

DECISION OF THE TRIBUNAL

3 April 2024

Hearing | Te Rongonga

27 March 2024 (by Teams)

Representation | Hei Māngai

L van der Lem for the CAC
J Brown for Ms ██████████

Tribunal panel | Pae Taraipiunara

T J Mackenzie (Deputy Chair), S Walker, L Arndt

Introduction

- [1] The Complaints Assessment Committee (CAC) has referred a matter regarding the respondent to the Tribunal for determination.
- [2] The CAC considers that the conduct may amount to serious misconduct or otherwise entitle the Tribunal to exercise powers under s 500 of the Education and Training Act 2020 (the Act).
- [3] Ms [REDACTED] accepts that her conduct requires disciplinary sanction and/or that her conduct would amount to serious misconduct.

Facts

- [4] The agreed facts are as follows:

Background

1. The respondent, [REDACTED] is a fully registered teacher. She was first registered in 2019. Her practising certificate is due to expire on 18 November 2023.
2. Prior to her resignation on 3 June 2023, [REDACTED] was a teacher at Flaxmere Primary School ("the School") in the Hawkes Bay.
3. On 9 June 2021, the Teaching Council received a mandatory report filed by Robyn Isaacson, the principal at the School, which alleged that [REDACTED] had intentionally lied to staff at the School. This alleged lie led staff to believe that both they and their students were in potential danger from an ex-partner of [REDACTED] leading to a lockdown at the School.

The allegation

4. On 10 May 2021, Ms Isaacson met with [REDACTED] to discuss her health. [REDACTED] advised she had been receiving threatening messages from an ex-partner, "Daniel". Daniel was a fake person that [REDACTED] had invented. [REDACTED] agreed, at Ms Isaacson's suggestion, to report Daniel to the Police and to obtain a protection order. She subsequently advised Ms Isaacson that she had applied for and been granted a protection order, under which she was the protected person and Daniel was the respondent.
5. Over the following days, [REDACTED] told several other staff members about Daniel. She showed Ms Isaacson and other staff members copies of text messages which she had purportedly received from him. The messages came from "Daniel 3" and "Uknown" [sic] and included numerous threatening comments, including:

You'll wish you were dead after what I'm going to do to you.

You have two choices I kill myself or I fuck you up. I can come right now and no one would fucking miss you. You think this is my fault, you've done this to your self [sic]. You better reply or I'll make the decision for you[.]

6. The text messages also included warnings that Daniel would kill himself if [REDACTED] did not speak to him, and suggested that he blamed [REDACTED] because the Police had recently fined him for messaging her.

7. The text messages were fake. They had been written by [REDACTED] posing as Daniel.

8. [REDACTED] also showed Ms Isaacson and other staff members a letter purportedly written by Daniel. The letter stated Daniel would "follow the protection order". This letter was also fake and written by [REDACTED]. No such protection order existed.

9. On 13 May 2021, [REDACTED] told Ms Isaacson and other staff that Daniel had tried to kill himself and was in hospital.

10. [REDACTED] saw Ms Isaacson in her office. [REDACTED] was visibly distressed, shaking and crying. [REDACTED] told Ms Isaacson Daniel had discharged himself from hospital. While in Ms Isaacson's office, [REDACTED] pretended to take a call from Police arranging to go into the Police station to give a statement. Ms Isaacson asked [REDACTED] to tell her parents about the messages she was receiving from Daniel, and [REDACTED] agreed to do so. Later that night, [REDACTED] texted Ms Isaacson to say she had told her parents and they did not care. This was a lie. [REDACTED] had not talked to her parents.

11. On 14 May 2023, [REDACTED] told Ms Isaacson that Daniel was in the Hawke's Bay. [REDACTED] provided Ms Isaacson with a photo of an unknown male, whom she alleged was Daniel. In response, the School put in place a Safety Plan - the photo of Daniel was provided to reception staff, staff locked the doors to the main block of the School, and Ms Isaacson alerted the Police.

12. Ms Isaacson then instructed [REDACTED] to go home, and asked her to send her a picture of the protection order. [REDACTED] repeatedly refused to send the protection order, before admitting there was no protection order. [REDACTED] said she was too scared of Daniel to have applied for one, but had not wanted to disappoint Ms Isaacson.

Teacher's response

13. During the course of the School's investigation [REDACTED] corresponded with several of her colleagues through social media and text messages. In those exchanges, she repeatedly apologised for her actions, and indicated that she had lied so that her condition would be taken seriously and so that she could receive help.

14. On 17 May 2021, [REDACTED] send an email to Ms Isaacson. In that email, she expressed regret at her actions and recognised that she had broken the trust that both Ms Isaacson and her colleagues had placed in her.

15. She explained that during her university studies she had been in an abusive relationship with a woman named Danielle. She said everything she told staff happened, for example that up until 2020, Danielle had been sending her abusive text messages. She thought people would take her previous experiences more seriously if the abusive ex-partner in question was a man. She accepted that she had faked the texts which she had alleged were from Daniel, but claimed she had based the content of those messages from what third parties had been telling her that Danielle had been saying about her. [REDACTED] believed her pain and trauma had clouded her judgement.

16. On 9 March 2023, [REDACTED] attended the meeting before the CAC. At that meeting she stated she had Post Traumatic Stress Disorder ("PTSD") because of her past relationship with Danielle. She noted that following her resignation from the Centre [REDACTED] had begun seeing a counsellor for her PTSD, and had resumed teaching at another school in the Hawkes Bay.

Discussion – the referral

- [5] We accept that the several counts of dishonesty with her school, causing a near lockdown, would amount to serious misconduct in terms of the applicable tests (if charged with such). The behaviour reflects adversely on [REDACTED] fitness to be a teacher and may bring the profession into disrepute. As noted, [REDACTED] agrees with this.
- [6] We also accept that the conduct was at a level to engage the reporting criteria of the Teaching Council Rules 2016, particularly rule 9(1)(g) (acting dishonestly) and (k) (disrepute).
- [7] We consider that the conduct warrants the exercise of disciplinary powers.
- [8] The respondent has accepted that the referral test is met in this case.

Further evidence

- [9] Beyond the agreed facts, we have also been provided with various information from the respondent. This speaks further to how the conduct occurred, and what the respondent has done about it since. We were also provided with a positive report from her counsellor.
- [10] We also convened a hearing (online) to hear from the respondent directly, and from her current school principal. This was helpful to us. We engaged with the respondent regarding her current employment, her future aspirations, her enjoyment of the role, and her risk management in relation to the incident(s) that generated this case.
- [11] We heard in detail about current and ongoing arrangements for counselling, and moreover what the respondent has learnt and changed as a result of the previous incidents.
- [12] We also spoke with her school principal who attended this hearing. [REDACTED] has been employed as a teacher at this school for two and a half years at present. The principal provided us with further insight into the respondent's success and stability now as a teacher.
- [13] Our primary concern was to ensure that the risk of a future similar event was minimised. If it was not, we would have serious concerns about whether the respondent should be continuing to teach. Such a view might have resulted in a suspension or even a cancellation.

[14] After receiving and considering all the information above, and engaging in discussions with the respondent and her school principal, we are comfortable stepping back from such sanctions. We consider that the respondent has shown stability and responsibility for some time now, such that the issues that have led to this case can be said to have abated.

[15] We consider that the respondent has so far been successful on her journey and that a balance should now be struck which allows her to continue to move on, but, provides some safeguards at the same time.

Penalty

[16] Taking all of that into account, we consider that the appropriate penalty should be:

- Censure (section 500(1)(b) of the Act).
- Annotation of the register (section 500(1)(e)).
- Conditions on the respondent's current practising certificate that for a period of three years from the date of this decision (and likewise on any future practicing certificate issued during the period of three years from this decision, if her current one was to lapse for any reason) that the respondent:¹

- 1) Advise her current and any new education employer of this decision and provide it to them, with confirmation of this provided to the Teaching Council (Manager of Professional Responsibility).
- 2) Continue to attend counselling for two years and to provide further updated reports to the Teaching Council (Manager of Professional Responsibility) at six monthly intervals. Such updating reports we would envisage would be of a similar length and content as the report currently provided.
- 3) Engage a mentor at her current school (and any future employment) for a period of two years. The mentor is to report back to the Manager of Professional Responsibility at the Teaching Council on ■■■■■ personal and professional progress. It is envisaged that each report would be similar in length and content to the current reference from the respondent's principal.

¹ Section 500(1)(c)&(j).

[17] If there are any issues with these conditions as they are carried out, the parties can return to the Tribunal for directions.

[18] Although the CAC also suggested that a relapse prevention plan was also required, having heard from the respondent in detail and her principal, we consider that a paper form version of what is already in place would not add any further value to this exercise.

Non Publication

[19] The respondent seeks an order for permanent non publication of her name per section 501(6) of the Act. This is based on the effect of publication on her given the type of personal issues at hand, including reopening issues from earlier relationships, the school shooting incident, and issues around sexuality.

[20] The starting point is a presumption of open justice. That however can be displaced by the interests of any person including the respondent, if we consider it proper to do so.

[21] The CAC submits that the presumption is not displaced on the evidence, and refers to the general principle that non publication for professionals can be a higher hurdle.

[22] In *Y v Attorney-General* the Court of Appeal noted that while a balance must be struck between open justice considerations and the interests of a party who seeks suppression, “[A] professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure”.²

[23] The Court of Appeal in *Y* also referred to its decision in *X v Standards Committee (No 1) of the New Zealand Law Society*, where the Court had stated:³

The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

[24] In *J v New Zealand Institute of Chartered Accountants Appeals Council Gwynn J* similarly referred to this point.⁴ That case concerned a Chartered Accountant’s disciplinary decision. Gwynn J stated:

² *Y v Attorney-General* [2016] NZCA 474, [2016] NZFLR 911, [2016] NZAR 1512, (2016) 23 PRNZ 452 (at [32]).

³ *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

⁴ *J v New Zealand Institute of Chartered Accountants Appeals Council* [2020] NZHC 1566.

[85] Publication decisions in disciplinary cases are inevitably fact-specific, requiring the weighing of the public interest with the particular interests of any person in the context of the facts of the case under review. There is not a single universally applicable threshold. The degree of impact on the interests of any person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error). Nonetheless, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.

(citations omitted).

[25] Whilst overall the hurdle is seen as quite high in professional disciplinary jurisdictions, context is important. The decisions above involve more direct client or consumer issues, and the public interest in any future clients and consumers being able to make an informed choice.

[26] Turning to the present case. The respondent has taken significant steps to remedy her previous issues, as already set out above. Further, her behaviour whilst carried out within a school setting was not strictly related to teaching or indeed anything in the classroom.

[27] The public interest in knowing about the problems the respondent has faced is not great in that context. On the other hand, we consider that a publication which detailed the objectively odd facts of this case and named the respondent would likely risk causing her a serious setback professionally and personally. We consider that her interests displace the presumption.

[28] We therefore make a final order for non-publication of the respondent's name and any details identifying her.

[29] We extend that non-publication order to the name of the Respondent's current school and school principal. We note that we have not included Flaxmere Primary School in the non-publication orders. However there should be no risk of other teachers there being mistaken for the respondent, given she no longer works there.

Costs

[30] Having been disciplined, the respondent is required to meet some of the costs of this case. We agree that a 40% contribution is appropriate.

[31] The CAC seeks costs as follows:

- CAC costs: \$1618.94
- CAC legal costs: \$14660.40
- Total: \$16279.34

40%: \$6511.73

[32] We note that the CAC legal costs as at 15 December 2023 were \$8736. At that point, the CAC had completed its first submissions, received the respondent's submissions, and then completed a reply to them. Since that date, the Tribunal has arranged the hearing of this matter and the conducted the hearing, which took 45 minutes. We are not sure how the CAC costs managed to climb another \$5924.40 over that final hearing phase.

[33] In any event, this was a relatively straight forward case with agreed liability and facts, some disagreement on penalty and publication, and a short online hearing. Considering levels of costs in other cases, we consider that a total of \$10,000 (GST exclusive) is a reasonable sum of legal costs. We will base our order off of that sum.

[34] The costs orders then will be:

- CAC costs: \$1618.94 (internal costs) + \$10000 (external reasonable costs) = \$11,618.94 / 40% = \$4647.58 total costs payable to the CAC (section 500(1)(h)).
- Tribunal costs in addition are \$1455. 40% is \$582 which we also order, payable to the Teaching Council (section 500(1)(i)).



T J Mackenzie
Deputy-Chair of the New Zealand Teacher's
Disciplinary Tribunal