

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL  
I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

NZTDT2022/47

I RARO I TE MANA O TE | UNDER THE

Education and Training Act 2020

MŌ TE TAKE | IN THE MATTER OF

disciplinary proceedings pursuant to Part 5 of the  
Act

I WAENGA I A | BETWEEN

Complaints Assessment Committee

ME | AND

[REDACTED] (Registration Number [REDACTED])

TE WHAKATAUNGA MŌ TE WHIU, TE HERENGA ME NGĀ UTU  
DECISION ON PENALTY, LIABILITY AND COSTS

TE RĀ:

5 September 2023

TE RONGONGA:

Audio-visual link (Microsoft Teams), 25 June 2023

PAE TARAIPUUNARA:

Rachael Schmidt-McCleave (Deputy Chair), David Spraggs/Kura Tuhura  
(Members)

HEI MĀNGAI:

Mr E McCaughan (Kayes Fletcher Walker Ltd) for the CAC  
The respondent, self-represented

## Whakataki – Introduction

1. Pursuant to section 497(4) of the Education and Training Act 2020 (the “Act”), the Complaints Assessment Committee (“CAC”) referred the following matter relating to the respondent to the Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand (the Disciplinary Tribunal):

[The respondent's] conviction on 17 June 2021 on one charge of using a document for a pecuniary advantage between 13 January 2016 and 8 December 2017, which is an offence under section 228(1)(b) of the Crimes Act 1961.

2. The CAC's reasons for referral were that:
  - (a) The respondent was convicted and sentenced in the Whangarei District Court for the above offence.
  - (b) The respondent self-reported her conviction to the Teaching Council of Aotearoa New Zealand as required by section 493 of the Act.
  - (c) The CAC considers that the conviction warrants action by the Disciplinary Tribunal.
3. The matter was heard on the papers via Teams on 25 June 2023.

## Te tukanga i mua i te kēhi – Procedural History and Preliminary Matters

4. A pre-hearing conference (“PHC”) was held on 23 February 2023. The parties agreed to various timetabling matters.
5. Interim suppression of the respondent's name and identifying details was ordered by the Tribunal to stay in place until the end of the hearing. The Tribunal also noted that the respondent has filed an application for permanent suppression, on the basis the District Court has ordered name suppression in relation to the matters the subject of the charge. The CAC did not oppose this application, which is dealt with at the end of this decision.

## Te taunaki - Evidence

### *Whakarāpopoto whakaae o ngā meka - Agreed Summary of Facts*

6. The ASoF is set out in full below:

#### *“Introduction*

1. *[The respondent] was first provisionally registered as a teacher in February 2018. She became fully registered in December 2021.*
2. *The criminal offending occurred before [the respondent] became registered with the Teaching Council of Aotearoa (the Council). However, at the time of her conviction (17 June 2021), she was provisionally registered.*

3. On 17 June 2021, [the respondent] was convicted of a charge of using a document for a pecuniary advantage (pursuant to s 228(1)(b) Crimes Act 1961, maximum penalty 7 years' imprisonment), after pleading guilty. She was sentenced to 100 hours of community work and ordered to pay \$9,000 reparation. [The respondent] was granted full name suppression in the criminal proceedings.
4. On 24 June 2021, [the respondent] reported her conviction to the Council within the required timeframe. On 28 June 2021, the Council received a Police Vetting Report which conformed [the respondent's] conviction.

### **The offending**

5. As part of her guilty plea, [the respondent] accepted that the Police Summary of Facts recorded below was correct, and she was sentenced on the basis of these facts.

#### **Summary of Facts**

#### **INTRODUCTION**

The defendant in this matter [the respondent] with a date of birth [REDACTED] was employed in late 2014 by Northpower in Whangarei as part of a community sponsorship programme. She was employed on a fixed term agreement for a period of four years and worked the holidays to gain work experience as part of the agreed programme.

Over this four-year period the defendant was supervised by various staff and generally worked in all departments carrying out general duties.

#### **CIRCUMSTANCES**

Towards the end of the sponsorship programme in late 2017, Northpower noted discrepancies with the defendant's timesheets. This led to Northpower reviewing the defendant's timesheets. Northpower has a Cardex security system that shows door entries into the Whangarei main office building.

The Cardex records were cross references [sic] with the days the defendant claimed to have worked and revealed that between 13 January 2016 and 8 December 2017, the defendant had submitted timesheets for a total of 164 days when she had not been at work.

The frequency of the offending clearly increased from submitting timesheets for one day per pay cycle that wasn't worked escalating to nine days.

The defendant was paid at a rate of \$17.85 per hour as well as some time and a half over the period. The pay cycle at Northpower was fortnightly from Tuesday until Monday.

The total amount of hours the defendant claimed to have worked when she was in fact absent amounted to \$23,008.67.

The defendant had been filing her timesheets and getting her supervisor to sign them and then adding further hours. There were also occasions where she forged the signature of her supervisor. Northpower held a meeting with the defendant on 21 December 2017 to discuss the discrepancies.

The defendant admitted that she had been pre-filling in her timesheets and not bothering to amend it when she was absent. She further admitted that she had signed her final timesheet as her supervisor.

The defendant told Northpower that she felt because she was only getting paid around \$80 a day into her bank account that it wasn't a big deal. The defendant did say that she would pay the money back but to date no payments have been made.

#### **DEFENDANT COMMENTS**

The defendant declined to comment.

#### **Response from [the respondent]**

6. Despite being notified about the offending in 2018, Police did not investigate [the respondent] until 2020.
7. In her reporting email to the Council dated 24 June 2021, [the respondent] stated that the offending was something she did many years ago and prior to her entering the teaching profession. She said it was something she deeply regretted and she would never do it again. She strongly believed her past actions did not reflect who she was as a teacher and the passion she has for teaching.
8. At the time she was convicted of the offending, [the respondent] was working at [REDACTED]
9. The Principal of [REDACTED] provided the Council a letter in support of [the respondent] dated 6 June 2021. He advised that [the respondent] had disclosed the charge she was facing to him at the end of 2020. He noted that [the respondent] had been mature and diligent in communication and was "without doubt" a positive role model to students and a "responsible teacher."
10. On 7 June 2022, [the respondent] declined the opportunity to provide a further response.

#### **CAC meeting**

11. The CAC met on 8 September 2022 to consider the matter. [The respondent] attended the CAC meeting.
12. At the CAC meeting, [the respondent] was remorseful for her actions and said she had learned her lesson. [The respondent] told the CAC she loved being a teacher, as it was her passion. She said she was supported by her whānau and her previous employer at [REDACTED]
13. [The respondent] has subsequently advised that she has completed her community work."

#### **Te Ture - The Law**

7. Section 493 of the Act provides that all convictions punishable by 3 months' imprisonment or more must be reported to the Council. Here, a conviction under section 228(1)(b) of the Crimes Act is punishable by up to three years imprisonment.
8. This requirement of the Act is consistent with the commitments made under the former Code of Ethics for Certificated Teachers and its replacement, the Code of Professional Responsibility. In the former Code, teachers' commitment to society included to "teach and

*model those positive values that are widely accepted in society and encourage learners to apply them and critically appreciate their significance.” Under the new Code, teachers make a commitment to the teaching profession to “maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.”*

9. In cases involving a referral of convictions, the Tribunal is required to make an “adverse finding” against a teacher. The Tribunal and the District Court have both previously held that it may make an adverse finding where the teacher’s conduct “reflects adversely on the respondent’s fitness to be a teacher” (*CAC v S*, Auckland DC, CIV 2008 004001547, 4 December 2008 and *CAC v Teacher NZTDT 2005/1*, 4 November 2005).

10. In assessing whether a teacher’s fitness to teach has been affected, the Tribunal in *CAC v Crump NZTDT 2019/12* emphasised the focus to be (at [42]):

[whether] the teacher’s conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher’s peers or by the community.

11. The Tribunal is not required to make a formal finding of serious misconduct, although the threshold for serious misconduct may inform the Tribunal’s decision on whether to make an adverse finding (*CAC v Ali NZTDT 2021/11*, 28 October 2021).

12. Section 10 of the Act defines serious misconduct:

***serious misconduct*** means conduct by a teacher –

(a) that –

(i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or

(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.

13. As confirmed by the District Court in relation to the identical test under section 378 of the Education Act 1989 (the “former Act”),<sup>1</sup> the test under section 10 is conjunctive, meaning that as well as meeting one or more of the three adverse consequences, a teacher’s

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<sup>1</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018 at [64]

conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.

14. The criteria for reporting serious misconduct are found in the Teaching Council Rules 2016 (the "Rules"). The Tribunal also accepts the CAC's submission that, if established, the respondent's conduct would fall within the following sub-rules of Rules 9(1):
  - (a) Rule 9(1)(g): acting dishonestly in relation to the teacher's professional role, or committing theft or fraud.
  - (b) Rule 9(1)(j): an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more.
15. The Tribunal also considers that Rule 9(1)(k) is engaged (an act or omission that brings, or is likely to bring, the teaching profession into disrepute). The test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.<sup>2</sup>

## **Ngā tāpaetanga a te kaiwhiu – CAC Submissions**

### *CAC submissions*

16. In summary, the CAC submits:
  - (a) The conduct warrants an "adverse finding".
  - (b) The following orders are appropriate:
    - (i) Censure;
    - (ii) Annotation of the Register (for a period of two years); and
    - (iii) Conditions (pursuant to section 500(1)(c)) to apply for two years from the date of the Tribunal's decision to her current practising certificate and any future practising certificate):<sup>3</sup>

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<sup>2</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

<sup>3</sup> Note that the Tribunal understands that, if the direction is only made in relation to a teacher's *current* practising certificate, then the conditions may well not transfer onto a teacher's *future* current practising certificate unless the Tribunal expressly states this, even if the intended timeframe for the conditions has not expired.

- (A) to provide a copy of the decision to any teaching employer she is working for at that time, as well as any prospective teaching employer; and
    - (B) not to hold/undertake any teaching role involving the handling of any money or the management of any finances.
  - (iv) Permanent suppression of the respondent's name.
17. The CAC also submitted that teachers are role models for learners, and therefore have considerable influence in and beyond the learning environment.
18. The CAC submitted that the most significant features of the respondent's conduct are as follows:
- (a) The respondent unlawfully received a total of \$23,008.67.
  - (b) The thefts occurred over a period of nearly 2 years. Therefore, this could not be categorised as a one-off error of judgement.
  - (c) The respondent was convicted of a charge of using a document for pecuniary advantage, a crime punishable by a maximum penalty of seven years' imprisonment.<sup>4</sup>
19. The CAC submitted that the respondent's conduct is at least as serious as, if not more serious than, all of the cases it has relied upon, given the amount of money involved and the extended period over which the offending occurred. The CAC submitted that the respondent's conduct could be properly classed as "*serious misconduct*" and that, accordingly, an adverse inference can be drawn, on the basis that her conduct reflected adversely on her fitness to practice.
20. The cases referred to by the CAC are referred to and discussed below.
21. The CAC acknowledged that the thefts did not occur in an educational setting. The CAC accepted that this is relevant when the Tribunal is considering penalty orders, and in particular whether there is a likelihood that the conduct will be repeated in an education setting. The CAC submitted, however, that the context in which the thefts occurred does

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<sup>4</sup> The Tribunal notes that the particular provision of the Crimes Act that the respondent was convicted under carries a maximum term of imprisonment of *three years*' imprisonment.

not affect whether an adverse inference can be drawn and that, in all cases, the relevant person stole money that they knew they were not entitled to.

#### *Ngā tāpaetanga a te kaiurupare - Respondent submissions*

22. The respondent did not file submissions but did provide an email dated 12 April 2023 in which she stated “[thank] you for this. I’ve through it all [sic] and totally agree”.

#### **Whakataunga – Decision**

23. The Tribunal finds that the respondent’s conviction warrants the Tribunal making an adverse finding and meets the requirements for serious misconduct. The respondent’s offending was serious, carrying with it a possible heavy penalty of imprisonment. Such behaviour does not reflect well upon the profession and the respondent’s fitness to teach. This is particularly so where the offending involved money of the quantity in this case, and was also sustained and not a one-off occurrence.
24. There are analogous cases which support the Tribunal’s finding in this case.
25. In *CAC v Coldstream* NZTDT 2019/18, Ms Coldstream stole \$4,735 from the Centre where she was working as Centre Manager, to help sustain her addiction to online gambling. The Tribunal found her conduct amounted to serious misconduct but was satisfied that Ms Coldstream had reflected on her conduct and had taken steps to change her behaviour. The Tribunal also acknowledged that Ms Coldstream had no previous disciplinary history and had repaid the money in full. The Tribunal made very similar penalty orders as to what is proposed by the CAC for this proceeding.
26. In *CAC v Fletcher* NZTDT 2018/17, Mr Fletcher was the principal of a rural school who, over a time period of almost three years, misused the school’s fuel card to purchase \$5,926.70 of fuel for his personal use, claimed reimbursements of \$330.60 for travel to professional development courses which he did not attend, and failed to pay rent for a school house for a period of five weeks (amounting to unpaid rent of \$1,980.00).
27. In that case, the Tribunal found serious misconduct and decided in the circumstances that the only appropriate outcome was cancellation of Mr Fletcher’s registration.
28. Finally of relevance is the decision of *CAC v Fa’aea* NZTDT 2021/29.. In that case, over a period of six years, Ms Fa’aea stole \$19,200.00 from her employer (which was connected to the education sector, but not an education provider). Ms Fa’aea was charged with criminal offences, pleaded guilty, and was ultimately discharged without conviction after paying back all of the money.



29. The Tribunal had no hesitation in finding that Ms Fa'aea's conduct amounted to serious misconduct, which could have led to an outcome of cancellation were it not for the significant mitigating factors available. The Tribunal again made orders very similar to what is proposed by the CAC in this case.

#### **Whiu - Penalty**

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

#### **500 Powers of Disciplinary Tribunal**

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
  - (b) *censure the teacher:*
  - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
  - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
  - (e) *annotate the register or the list of authorised persons in a specified manner:*
  - (f) *impose a fine on the teacher not exceeding \$3,000:*
  - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
  - (h) *require any party to the hearing to pay costs to any other party:*
  - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
  - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a*

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

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

31. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.<sup>5</sup> We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.<sup>6</sup>
32. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers<sup>7</sup>:
- (a) Protecting the public;
  - (b) Setting the standards for the profession;
  - (c) Punishment;
  - (d) Rehabilitation;
  - (e) Consistency;
  - (f) The range of sentencing options;
  - (g) Least restrictive;
  - (h) Fair, reasonable and proportionate.
33. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty. We also note that the respondent has been cooperative throughout this proceeding and that she supports what is proposed by the CAC on penalty. We hope that the respondent can continue to reflect on what she has learned from this past offending and continues to show

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<sup>5</sup> *CAC v McMillan*, NZTDT 2016/52.

<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

<sup>7</sup> Above n 16 at [40] – [62]

the passion towards young learners that she has to date. We also emphasise that the condition we have placed as to financial management is for the respondent's own protection as much as that of her employer.

34. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:

- (a) Censure under section 500(1)(b) of the Act.
- (b) Annotation of the Register (for a period of two years) under section 500(1)(e) of the Act; and
- (c) Conditions (pursuant to section 500(1)(c)) to apply for two years from the date of the Tribunal's decision to her current practising certificate and any future practising certificate):
  - (i) to provide a copy of the decision to any teaching employer she is working for at that time, as well as any prospective teaching employer; and
  - (ii) not to hold/undertake any teaching role involving the handling of any money or the management of any finances, including with respect to school activities such as excursions and galas.

35. The Tribunal further notes the suppression orders made by the District Court and, to avoid these being undermined, orders permanent suppression of the respondent's name and identifying details pursuant to section 501(6) of the Act.

#### **Utu Whakaea – Costs**

36. Because this is a charge arising out of a conviction, the Tribunal is unable to make a costs award.<sup>8</sup>



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Rachael Schmidt-McCleave  
Deputy Chair

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<sup>8</sup> Section 500(2) of the Act.

NOTICE - Right of Appeal under Section 504 of the Education and Training Act 2020

1. This decision may be appealed by the teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).