

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-67

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

[REDACTED]

Kaiurupare / Respondent

Hearing:
Hei Māngai | Appearance

10 May 2024, AVL (Teams).
On the papers:
J Ah Koy, Meredith Connell for the CAC.
Respondent, Self-Represented.

Tribunal:

Catherine Garvey (Deputy Chair), Kiri Turketo,
Simon Williams

DECISION AS TO LIABILITY, PENALTY AND NON-PUBLICATION ORDERS

24 JUNE 2024

Introduction | Hei timatanga kōrero

- [1] [REDACTED] (the respondent) is the subject of a disciplinary charge dated 19 October 2023 pertaining to misleading conduct between November 2021 and 8 December 2021, when she applied for a teaching position at [REDACTED] (the school). The respondent voluntarily deregistered in August 2022 and remained unregistered at the time of the hearing on 10 May 2024.
- [2] By consent, the matter proceeded by way of a hearing on the papers. The Tribunal received an Agreed Summary of Facts dated 4 April 2024 in which the respondent accepted all aspects of the charge; submissions on behalf of the Complaints Assessment Committee (CAC); a Reflective Statement by the respondent and an email dated 9 May 2024 outlining the respondent's application for permanent non-publication orders. The Tribunal allowed the CAC time to address non-publication and received a memorandum from counsel detailing the CAC's position on 7 June 2024.

The Notice of Charge

- [3] The charge arises from a mandatory report lodged by the school's Principal and relies on s 497 of the Education and Training Act 2020 (the Act).
- [4] The particulars of the charge read as follows:
1. The CAC charges that [REDACTED], formally registered teacher, of Auckland:
 - a. Acted dishonestly when applying for a teaching position, including by:
 - i. on or about 28 November 2021, intentionally providing incorrect phone numbers for her referees; and / or
 - ii. on or about 6 December 2021, impersonated a referee during a phone call; and/or
 - iii. on or about 6 December 2021, lied about the providing of an incorrect phone number for a referee and the impersonation of that referee, namely [REDACTED]; and/or
 - iv. on or about 8 December 2021, impersonated a referee, namely [REDACTED].
 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)(g) 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

- [5] The respondent's teaching experience is briefly explained in correspondence to the Teaching Council provided during the CAC investigation. The respondent qualified in 2007 and taught until May 2015, when she became [REDACTED]. She returned to teaching fulltime in 2017 but required leave for [REDACTED], returning to work in term 4 of 2017. In December 2017 the respondent experienced a [REDACTED]. It is not clear what teaching roles she undertook between 2017 and 2021, with reference only to a "*failed attempt at being a classroom teacher*" in 2021¹.
- [6] The Agreed Summary of Facts is signed and dated 4 April 2024. It outlines that the respondent applied for a teaching role at the school on 24 November 2021, submitting the names of three referees. None of the named referees had agreed to provide a reference and one had expressly refused to do so. The respondent provided her own mobile telephone number and that of her son in place of contact numbers for the referees.
- [7] On 6 December 2021 the Principal of the school, [REDACTED], attempted to contact one of the named referees. The respondent answered the phone, impersonated her former colleague and gave herself a positive reference. The respondent then emailed [REDACTED] with a concocted story about leaving her phone with the purported referee over lunch. She stated that the referee was the person he had spoken to.
- [8] On 7 December 2021, the respondent emailed a second referee (presumably anticipating that the Principal had already made contact) and said she had accidentally provided an outdated curriculum vitae with the referee's name, and the respondent's own telephone number. She said, untruthfully, that [REDACTED] had contacted her, and she had impersonated the referee, but that he also intended to contact them at work. [REDACTED] had in fact become suspicious and had not

¹ Respondent's letter to Teaching Council (undated, in response to a letter from the Council dated 26 April 2023).

attempted to contact the referee.

[9] Further the Agreed Summary of Facts records:

On 7 December 2021, [the respondent] sent an email to the Teaching Council in which she sought advice as she had “really mucked up”. In the email she stated that she had applied for a job and did not realise that she had provided an older CV that listed a previous colleague as a reference and had Ms [REDACTED] own phone number on it. She said she was contacted and the caller asked for the referee so she said she was the referee but asked to be called back. In that time the principal calling realised she had lied.²

[10] On 8 December, the respondent answered a call from the Principal and impersonated the third referee, again giving herself a positive reference. [REDACTED] became suspicious and contacted the referee directly at her school. The respondent also emailed the referee to admit that she had impersonated her. She advised [REDACTED] that she had accepted a position elsewhere.

[11] That same day a mandatory report was made to the Teaching Council. The respondent was notified of this in March 2022, and appears to have co-operated with the CAC investigation. The respondent voluntarily deregistered on 1 August 2022 and at that time, had no intention of returning to teaching.³ The CAC advised of the option of a voluntary impairment process but the respondent declined this.⁴

[12] The Agreed Summary of Facts details [REDACTED]
[REDACTED]
[REDACTED] These matters are relevant to our discussion of penalty, and we address them in more detail below.

The law | Te Ture

[13] The charge pleads serious misconduct, or in the alternative, conduct otherwise entitling the Tribunal to exercise its powers under s 500. Section 10(1)(a) of the

² Agreed Summary of Facts at [10].

³ n2 at [12] – [13].

⁴ n2 at [19]. The impairment process can be used to assess or to assist with a teacher who is or may be impaired.

⁵ Likely to have had ongoing sequelae but no evidence of this was provided by the respondent. The Agreed Summary of Facts notes that a reason given by the respondent for not engaging in the impairment process was the cost of collecting relevant health information.

⁶ n2 at [16] and [17].

Act defines serious misconduct to mean conduct that meets one of the three limbs in that subsection and is also a breach that is of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct. Those criteria are set out in r 9 of the Teaching Council Rules 2016. The CAC rely on rr 9(1)(g) and (k).

[14] Section 10(1)(a) refers to conduct:

- (a) that adversely affects or is likely to adversely affect the well-being or learning of 1 or more students. (The CAC do not rely on this limb).
- (b) that reflects adversely on the teacher's fitness to be a teacher.
- (c) that may bring the teaching profession into disrepute.

[15] Guidance on the standard of conduct that is expected of teachers is found in the Code of Professional Responsibility. Teachers are expected to maintain public trust and confidence in the profession, including by:

- (a) engaging in professional, respectful and collaborative relationships with colleagues (cl 1.2).
- (b) demonstrating a high standard of professional behaviour and integrity (cl 1.3).
- (c) contributing to a professional culture that supports and upholds the Code (cl 1.5).

Discussion | Kōrerorero

[16] The Agreed Summary of Facts describes a course of intentionally misleading conduct by the respondent over a period of about two weeks including:

- (a) the submission of an application for employment as a teacher listing referees without their consent or correct details.
- (b) impersonating two referees on the telephone.
- (c) attempts to 'cover her tracks' with the referees and the school Principal on realising that reference checks were being carried out.
- (d) providing misleading information to the Teaching Council by email on 7

December 2021.

- [17] The respondent did not make submissions on liability but in her Reflective Statement confirmed that she does not dispute the factual allegations and accepts that her conduct was both “*wrong*” and “*dishonest*”.
- [18] We agree with counsel for the CAC’s submission that the respondent’s conduct placed her professional judgment and integrity in issue⁷. The Code and the associated Examples in Practice make clear that fitness to teach is not confined to conduct within the classroom and extends to relationships with students, colleagues and the wider community. It is fundamental that a teacher applying for a role is honest in their application. The respondent’s deception was intended to assist her to gain a teaching role and is directly linked to the question of her fitness. So too is the respondent’s dishonest correspondence with the Teaching Council in December 2021, which falls within the expectation of a professional commitment that supports and upholds the Code. Honest dealings with a professional’s regulatory body are obligatory. As such the conduct described in the charge and Agreed Summary of Facts is in breach of s10(1)(a)(ii).
- [19] We also consider that the conduct, when viewed objectively by a member of the public apprised of the relevant facts, is likely to bring the teaching profession into disrepute. The public is entitled to expect that teachers act honestly when dealing with colleagues, potential employers and with their regulatory body.
- [20] Turning to the second step in determining serious misconduct, the CAC relies on a breach of r 9(1)(g), which refers to a teacher “*acting dishonestly in relation to the teacher’s professional role, or committing theft or fraud.*” This case involves a series of dishonest acts over a short period of time. The Agreed Summary of Facts does not support any of the misconduct being accidental or careless and the respondent accepts she acted dishonestly. The application for a teaching position and communications with the Teaching Council was conduct “*in relation to [the respondent’s] professional role.*”
- [21] Rule 9(1)(k) on which the CAC also relies, refers to “*an act or omission that brings or is likely to bring the teaching profession into disrepute.*” The respondent’s conduct is also in breach of this rule, for the same reasons as outlined above.

⁷ CAC submissions as to liability and penalty, 4 April 2024 at [3.1].

Penalty

- [22] Having found the respondent is guilty of serious misconduct, the Tribunal may impose a penalty 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. 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.
- [23] The fact that the respondent is not currently registered means that the Tribunal may not make an order for cancellation or suspension. We can however impose a penalty with the intention of ensuring appropriate safeguards are in place if the respondent does return to teaching, as she has indicated in her Reflective Statement that she hopes to do in some capacity.
- [24] Counsel for the CAC outlined the following aggravating factors:
- (a) premeditation, being the intentional listing of the names of referees with the respondent's own phone number and another incorrect number, and listing a referee despite knowing that they were not willing to provide a reference.
 - (b) that the respondent continued to lie about her conduct by impersonating a referee, misleading ████████ about why her own number was given for the referee, and in saying she had accidentally provided her son's phone number.
 - (c) That the "*deception spanned three referees*" and the respondent impersonated two (that is, that it was not a single incidence of deception).
- [25] The CAC accepts that there are mitigating factors, namely the absence of any previous disciplinary history, acceptance by the respondent of her (mis)conduct with two of the referees and the Teaching Council, and her acknowledgment that she is "*disgusted and so regretful of her actions.*"
- [26] The CAC submitted that cancellation would ordinarily follow for cases involving dishonesty, such as the present. Counsel referred us to *CAC v Sharma*⁸ in which

⁸ *Complaints Assessment Committee v Sharma* NZTDT 2018/51, 25 March 2019

a teacher provided dishonest information about her employment history, did not disclose previous disciplinary action and used referees who lied on her behalf about their working relationship with her. The Tribunal made an order for cancellation and said that the attempt to mislead a prospective employer to secure employment:

...is behaviour that strikes at the heart of the expectation for honesty and integrity that the profession and the public have of practitioners...practitioners have an obligation to both teach and model positive values for their students. Fraudulent behaviour of this type is the antithesis of the standard of honesty expected of teachers.⁹

- [27] In *CAC v Teacher*¹⁰ the teacher falsely claimed in his curriculum vitae to have completed a Bachelor of Education and relied on this to secure a position as a Principal. The Tribunal noted that incorrect information was provided intentionally and for the purposes of advancing his career. No mitigating circumstances were presented to the Tribunal and an order for cancellation of registration was made.
- [28] The CAC submitted that if the respondent remained registered, it would likely have sought cancellation. Instead, the CAC submit that the Tribunal ought to impose a censure and conditions, as follows:
- (a) that the respondent must inform any employer or prospective employer of the Tribunal's findings and provide a copy of the decision, for at least two years.
 - (b) that the respondent undergoes further professional development addressing inappropriate and ethical conduct as a teacher, to be started within a six-month period of any practicing certificate being issued. Any such professional development course to be agreed with the Manager of Professional Responsibility at the Teaching Council.
 - (c) that the respondent engages with a mentor provided by the employing school for a period of 12 months to assist with her appropriate and ethical conduct as a teacher.
- [29] In her Reflective Statement the respondent expresses her remorse for her

⁹ n6 at [11].

¹⁰ *Complaints Assessment Committee v Teacher* NZTDT 2013/32.

actions, and her acknowledgment of wrongdoing and dishonesty. She explains that she is enrolled in a Masters of Counselling and has reflected on her actions. The statement refers to the significant impact of the respondent's [REDACTED], noting the impact these had on her teaching practice, and that she did not seek the help she required. The respondent states that she has "*done a lot of work on myself to ensure that I will never put myself, or anyone else, in the position of needing to question my integrity ever again.*"

- [30] With regard to the respondent's voluntary deregistration and intentions for future employment, she states:

Through counselling and learning, I have been able to acknowledge that this [deregistration and not teaching] is not what I want and that I had been asking for what I thought I deserved. I have had to take a deep look at what I have done as well as what I want. It has made me realise that my actions need consequences, but that is not for me to decide, and that I need to be behaving and owning up to these actions, not telling others what needs to be done in order to 'make up' for what I have done.

- [31] The respondent refers to her goals within the education sector and gives an assurance that if she returns to teaching her misconduct will not be repeated. She states that she is committed to receiving ongoing counselling, acknowledges the importance of professional supervision, and her intention to undertake ethics training relevant to teaching.

- [32] We agree with the CAC that the conduct was sufficiently serious to warrant a penalty directed at the respondent's registration. Whether that was cancellation or suspension would depend on any evidence filed and our view on the appropriate penalty to meet the purposes of the Act. We were not required to make that final assessment.

- [33] Given the respondent's intention to seek re-registration, we consider it is appropriate to impose conditions on a future practising certificate, in reliance on s500(1)(j). Conditions will ensure that the Tribunal's findings are disclosed to a future employer of the respondent (in any capacity that requires registration with the Teaching Council) and to provide reassurance that there are appropriate safeguards in place to manage her safe return to practice given the conduct that led to the charge, and the factors pleaded in mitigation.

- [34] We adopt with some amendment the conditions proposed by the CAC. These are set out at paragraph [48] below.
- [35] The CAC seeks an order for costs pursuant to s 500(1)(h) of the Act. In reliance on the Practice Note¹¹ and the respondent's co-operation including the Agreed Summary of Facts and mode of hearing, on the papers, the CAC submits that a contribution of 40% is appropriate. A schedule of costs was filed, outlining total costs in the sum of \$7,637.50, of which 40% is \$3,055.00. These costs appear reasonable.
- [36] The respondent has not made submissions or provided evidence as to her ability to meet an order for costs.
- [37] We agree that an order for costs amounting to 40% of the CAC's costs is appropriate. A similar order will be made in favour of the Teaching Council representing 40% of the fees claimed by the Tribunal, being \$582.00¹².

Non-Publication

- [38] Pursuant to s 501 of the Act the Tribunal may make orders prohibiting publication of (amongst other things) the name and identifying particulars of any person: s 501(6)(c). The Tribunal may also suppress details of evidence that is produced before it: s 501(6)(b)¹³. This provision is relevant in the present case given the sensitive nature of some of the evidence provided by the respondent in support of her application for non-publication orders and in her Reflective Statement.
- [39] The Tribunal is required to consider whether it is "proper" to make an order. In considering an application where harm or some otherwise undesired consequence of publication is asserted, the Tribunal is required to consider whether that outcome is "likely", meaning a real or appreciable risk is present.
- [40] The respondent did not initially seek interim non-publication orders. However, immediately before the hearing the parties were put on notice of an application by a member of the media for disclosure of the Notice of Charge and Agreed

¹¹ Practice Note on Costs, 1 April 2022.

¹² The current standard fee for a hearing of the papers is \$1455.00. This does not reflect the actual costs incurred by the Tribunal and is inherently reasonable.

¹³ This provides for non publication of the whole or any part of any books, papers or documents produced at a hearing.

Summary of Facts. The respondent opposed this. An interim order was made, with which the CAC indicated its agreement, prohibiting publication of the name and identifying details of the respondent, the persons named in the charge and the persons and school identified in the Agreed Summary of Facts.¹⁴ Given the late notice of the respondent's application, the Tribunal allowed the CAC time to respond to this after the substantive hearing, to ascertain the position of the school and the persons identified in the Agreed Summary of Facts, and to consider its position in relation to the respondent's application.

[41] In summary, the respondent relies on the following grounds:

- (a) to protect her [REDACTED] children.
- (b) to avoid adversely affecting her "*progress in working* [REDACTED]
[REDACTED]".
- (c) to avoid harm to her future employment prospects.
- (d) that the respondent and her children [REDACTED].
- (e) [REDACTED]
[REDACTED] and in relation to which the respondent states she and her eldest child have received negative comments in the past.
- (f) concern for other extended family members.

[42] The respondent emphasises [REDACTED] and has provided evidence indicating the nature of those current concerns.

[43] The CAC filed a memorandum dated 7 June 2024, in which it takes a reasoned neutral stance on the respondent's application. After traversing the evidence, the CAC acknowledges the potential link between the respondent and her son with publication of her name, the risk that publication may [REDACTED]
[REDACTED] and that the Tribunal may find that this tips the balance in favour of non-publication. The CAC also submits that there is no public interest

¹⁴ Minute dated 9 May 2024; Memorandum of the Committee on interim non-publication orders and release of documents dated 10 May 2024.

in certain details in the Agreed Summary of Facts being published. [REDACTED]
[REDACTED]
[REDACTED]

- [44] Counsel for the CAC advises that two of the named referees do not seek name suppression, but one does; and that there are no orders sought for the school or Principal.
- [45] We consider this is a case in which it is proper to make the orders sought by the respondent. The respondent's evidence as to her concerns for her children [REDACTED]
[REDACTED]
[REDACTED], has been persuasive in the Tribunal's decision-making.
- [46] For completeness, reliance on a concern for future employment is not more than an ordinary consequence of publication and was not a ground on which the decision was based in this case.
- [47] With regard to the school and the persons named by the respondent as referees, there is no public interest in the naming of these. There is a potential for undue emphasis on those named where the respondent is not, and a small risk that the respondent might be identified. The Principal of the school acted promptly and appropriately, and any relationship between the school and the respondent's actions were confined to the short period in the charge. As such we do not consider there is any public interest in these details being known, particularly in light of our decision regarding non-publication for the respondent.

Orders

- [48] Accordingly, for the reasons outlined above, the Tribunal orders pursuant to section 500 of the Act:
- (a) The respondent is censured in reliance on s 500(1)(b).
 - (b) The following conditions are to be imposed on a future practising certificate held by the respondent pursuant to s 500(1)(j):

- (i) The respondent is to disclose this decision to a future employer for a period of two years.
- (ii) Annotation of the register for two years.
- (iii) The respondent is to undertake professional development that addresses ethical conduct as a teacher, such as training in the Code of Conduct, and to be started within a six-month period of any practising certificate being issued and agreed with the Manager of Professional Responsibility at the Teaching Council.
- (iv) The respondent is to engage with a mentor for a period of 12 months on commencement of any role for which registration with the Teaching Council is required. The mentor is to be approved by the Manager of Professional Responsibility for the Teaching Council.

[49] The following orders for permanent non-publication are made:

- (a) The name and identifying particulars of the respondent including:
 - (i) the name of the school, the school Principal and persons named in the Agreed Summary of Facts as referees listed by the respondent.
- (b) Details outlined in the evidence specifying [REDACTED]
[REDACTED]
[REDACTED].



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