

**PERMANENT NON-PUBLICATION
ORDERS**

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022-25

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

DECISION – LIABILITY, PENALTY AND NON-PUBLICATION

1 March 2024

Representatives: R Belcher, Luke Cunningham Clere for the CAC
T Conder, Holland Beckett Law for the respondent

Tribunal: C Garvey (Deputy Chair), Rose McInerney, Simon Williams
(Members)

Introduction

- [1] The respondent, [REDACTED], faced a disciplinary charge relating to conduct during her [REDACTED] tenure as Principal of [REDACTED] School, a year [REDACTED] school in [REDACTED] (the school). The respondent is currently in a full-time teaching role at an intermediate school.
- [2] This matter has a long procedural history and was initially intended for a defended two-week hearing in November 2023. Late in the piece the parties notified the Tribunal of the prospect of agreement as to the facts and acknowledgment of the charge, and the hearing was ultimately vacated in favour of a hearing on the papers at the request of the parties. This was a pragmatic decision but did deprive the Tribunal of contextual evidence that may have assisted us, particularly with regard to allegations of unprofessional behaviour in managing staff and decision-making.
- [3] The Tribunal convened on 9 February 2024 to consider written submissions on liability, penalty and non-publication orders, an agreed bundle of documents and a brief of evidence from the respondent. Additional memoranda were received at the Tribunal's request on 20 February, in relation to non-publication issues.

The Charge

- [4] In or about [REDACTED] concerns were raised by staff at the school about the respondent's conduct toward a teacher aide (Teacher Aide A). Following investigation by the Board of Trustees (the Board) a mandatory report was made to the Teaching Council dated [REDACTED]. A Complaints Assessment Committee (CAC) was appointed, and further allegations arose during the CAC's investigation. The respondent resigned after the original complaint was made, and officially ceased employment at the school in [REDACTED].
- [5] The CAC filed a notice of charge on 13 June 2022. By consent, an amended charge dated 13 November 2023 was filed with the Tribunal on or about 20 December 2023. The amended charge asserts serious misconduct and/or misconduct otherwise entitling the Tribunal to exercise its powers under s 500 of the Education and Training Act 2020 (the Act). Some of the conduct occurred prior to the introduction of the Act but the relevant provisions of the Education Act 1989

are the same.¹ The particulars of the charge read as follows:

1. The CAC charges that [REDACTED], registered teacher, of [REDACTED]:
 - a. On [REDACTED], was impaired by alcohol during a Board of Trustees meeting on Zoom and acted in an inappropriate manner consistent with intoxication during the meeting.
 - b. In or around [REDACTED], engaged in inappropriate conduct towards a teacher, Teacher Aide A.
 - c. During her tenure as principal at [REDACTED] School from [REDACTED] to [REDACTED] failed to demonstrate a high standard of professional behaviour and integrity in that she:
 - i. Played an inappropriate game at a Board of Trustees meeting on [REDACTED]; and/or
 - ii. Breached a Board of Trustees directive by attending the home of a teacher aide when she was under Board investigation for inappropriate and/or unprofessional conduct towards said teacher aide.
 - d. During her tenure as principal at [REDACTED] School from [REDACTED] to [REDACTED], failed to engage in professional, respectful and collaborative relationships with colleagues in that she:
 - i. Behaved unprofessionally in meetings with staff; and/or
 - ii. Sent an unprofessional and/or inappropriate message to a staff member on Facebook messenger; and/or
 - iii. Announced changes to staff member's hours and/or positions at a staff meeting without notifying staff affected by such changes prior to the meeting; and/or
 - iv. Deducted two days of a caretaker's leave without notice on the basis she did not believe he had worked those two days.

[6] The charge also pleads a breach of r 9(1)(k) of the Code of Professional Responsibility (the Code) which refers to an act or omission that brings, or is likely to bring, the teaching profession into disrepute. This may refer to a single act, or a number of acts forming part of a pattern of behaviour even if some of the acts when viewed in isolation are minor or trivial: r 9(2).

¹ Section 378(1)(a) and (b) of the 1989 Act are mirrored in s10(1)(a) of the Act.

The Summary of Facts and the Particulars of the Amended Charge

[7] The parties filed a seven page “Statement of Accepted Facts” dated 20 December 2023 (the Summary of Facts). The charge can be broadly divided into three parts: the respondent’s conduct at a Board of Trustees meeting conducted over Zoom on [REDACTED]; conduct towards teaching staff in [REDACTED] and [REDACTED]; and the respondent’s conduct relating to an intimate relationship with Teacher Aide A in or around [REDACTED].

Particulars 1(a) and 1(c)(i) - the Board of Trustees meeting

[8] Particular 1(a) alleges that the respondent’s behaviour at the Board meeting on [REDACTED] was “*inappropriate*.” Particular 1(c)(i) reflects cl 1.3 of the Code and alleges that the respondent failed to “*demonstrate a high standard of professional behaviour and integrity*” at the same meeting.

[9] In the context of the nationwide lockdown in response to the COVID-19 pandemic, the Board was required to meet remotely on the evening of [REDACTED]. The respondent attended by Zoom from her home. Non-Board members were also in attendance.² The respondent accepts that she was impaired by alcohol at this meeting. Some attendees observed the respondent drinking red liquid from a stemless wine glass.

[10] Conduct suggesting impairment is set out in the Summary of Facts as follows:

8. During the meeting, [REDACTED] acted in an unusual manner. This included slurring her words, kissing the camera, giggling during her uninvited lead of a prayer, referring to documents as the “bomb diggity”, and discussing a staff member’s performance in a public meeting with non-Board members present including parents. At one point, [REDACTED] fell off her chair.
9. During the Zoom session, [REDACTED] initiated a game which involved telling the participants to make a fist with a specified hand if their favourite colour was red, or the other hand if it was blue, or join their hands together in front of their forehead if their favourite colour was any other colour. After the game, [REDACTED] commented on a participant’s favourite colour saying, “Oh, so you’re black power,”

[11] Six attendees expressed concern following the meeting, and the respondent apologised as part of a disciplinary process.³

[12] In a brief of evidence dated 19 January 2024 the respondent discusses this incident and states that before the meeting while making dinner she “*had a couple of glasses of wine. Usually a couple of glasses will not have any noticeable effect*”

² Summary of Facts at [7].

³ n2 at [10]-[11].

on me, other than to relax me.” She goes on to state that she had recently recommenced anti-depressant medication that she had been prescribed while [REDACTED] previously and did not consider any interaction with alcohol; and that she was also taking Zopiclone to assist with sleep. The implication from the respondent’s evidence, together with information provided by her General Practitioner (discussed below in relation to non-publication) is that these medications were commenced without medical oversight as she had not at that time consulted a health practitioner.

[13] In reply, counsel for the CAC objected to the introduction of factual evidence in addition to the Summary of Facts. Counsel objected to the respondent quantifying the volume of alcohol used and the respondent’s assertion that she “*did not realise the extent to which I became impaired.*”⁴ Reliance was placed on previous decisions of the Tribunal accepting additional factual evidence for the purposes of penalty but disregarding this when considering liability.⁵

[14] We accept that the CAC’s objection is reasonable, and we have not given the respondent’s evidence quantifying the alcohol consumed any weight. In any event the issue is the consequences of the respondent’s intoxication, namely making inappropriate comments at a public meeting and otherwise presenting in an unprofessional manner as head of the school, playing a gang-related game and the inability to recognise this behaviour until it was brought to her attention subsequently.

Particular 1(d) – alleged failure to engage in professional, respectful and collaborative relationships with colleagues

[15] Particular 1(d) alleges that the respondent failed to engage in professional, respectful and collaborative relationships with colleagues, relying on conduct during meetings, in electronic communications, and in dealing with employment-related changes. Supporting evidence is described in paragraphs 25 to 50 of the Summary of Facts. Additionally, an audio recording of a staff meeting convened by the respondent on [REDACTED] was produced, and the Tribunal listened to this recording as part of the evidence.

[16] The Summary of Facts outlines that the respondent’s conduct was rooted in her desire to implement change at the school, and the way she communicated her

⁴ Brief of Evidence 19 January 2024 at [17].

⁵ *Complaints Assessment Committee v Sine/ NZTDT 2019/6* at [7]-[8]; *Complaints Assessment Committee v Oudshoorn-Davis 2021/59* at [5].

ideas and expectations was not universally well received:

25. During ██████████ tenure as principal of the school, ██████████ proposed and implemented changes in the way the School was managed and run. These changes created tension, and ultimately a breakdown in the relationship, between ██████████ the Board of Trustees, and some teachers at the School.

[17] A general summation of the reaction of some staff to the respondent's style of leadership is outlined as follows:

26. As a result of the tensions between ██████████ and the teaching staff, some teachers would avoid the staff room. In several staff meetings, ██████████ communicated forcefully and firmly with the staff. Some staff felt that the interactions were aggressive and some returned to their classrooms after these meetings upset, in some cases crying.

27. Some staff stated that they felt ██████████ was unpredictable and reported being stressed, and, at times, intimidated or scared. Several long-standing members of the School's staff left as a result of the breakdown in relationship.

Particular 1(d)(i)

[18] The Tribunal listened to the audio recording of the meeting held before school on ██████████. The provenance of this was not explained but the respondent did not oppose its inclusion and we infer that it is accepted to be an accurate recording. The recording starts before the respondent enters the room. It is apparent from the general conversation before that the respondent convened the meeting at short notice to staff. The phrase "*forcefully and firmly*" as used in the Summary of Facts accurately reflects the respondent's tone as she delivers what we perceive is a prepared speech (certainly not a "*conversation*", as the respondent introduces it). The speech articulates a focus on the school's children and striving to provide opportunity and achieve excellence; it also reflects that the respondent expects strong resistance from some to her leadership, and that she sees her role as "*to scrutinise, to challenge, to question, to role model*".

[19] The respondent states that she expects all staff to "*preserve the reputation of* ██████████ and "*the mana and dignity*" of students and their whānau and tells staff "*you do NOT have to stay here*" if they do not agree with her leadership, and that for some the changes will mean "*life may be very miserable for you.*" The respondent gives out copies of the Code with emphatically directing staff to "*Read it*". She describes the Code saying:

It perfectly outlines our responsibilities to schools, to children, to each other.

- [20] The respondent states that she is “*more than happy*” to listen, but that individuals should speak to her with a support person, in her office. She concludes by advising that she will not be at the school for the rest of the day, until the following Tuesday

- [21] The recording continues after the meeting is formally ended, with the respondent remaining with some staff members. At least two staff are heard to be upset by what the respondent has said and her manner of delivery. The respondent can be heard to agree that she has presented a “*bit of a like it or lump it*” situation.

Particular 1(d)(ii)

- [22] This pertains to the respondent’s handling of a teacher who delivered Duffy books, by bike, to student homes while the level 4 lockdown was in place. This was done without the respondent’s knowledge but when brought to her attention she contacted the teacher during the evening on Facebook Messenger, initially requesting information about the number of books delivered. The Summary of Facts records:

31. Teacher 4 provided this information [number of books delivered] to [REDACTED]. In her response, [the respondent] mentioned the “possible risks that this has placed, not just [Teacher 4] in, but also [REDACTED], the board of trustees and the community.” [REDACTED] also asked several questions about the delivery of the books and offered to either speak informally with Teacher 4 at 8pm that evening or put the matter in an email so Teacher 4 could engage a union representative.

32. Teacher 4 felt nervous and panicked by the interaction.

33. At 8.10pm, [REDACTED] called Teacher 4 and said that she wanted to “manage this off the books completely” and that what Teacher 4 had done was illegal. She advised Teacher 4 that if she wanted it dealt with formally, then it was a criminal matter and it was to be directed to the Police. After the phone call, Teacher 4 was afraid and unnerved.

34. At 9.03pm [REDACTED] messaged Teacher 4 stating “I know you will nervous. Try hard just to breathe. I promise you. I’ve got this! It will be ok. I really appreciate you being honest and open. Perfect.”

35. Teacher 4 replied “Thanks” with an emoji of a crying sad face.

36. At 9.17pm [REDACTED] replied “Xxxxx”.

- [23] Over the following two days further messages were sent and the respondent advised Teacher 4 the matter would not be taken further, concluding “*I got ya. X*”.

Particular 1(d)(iii)

- [24] Near the end of the [REDACTED] school year the respondent decided to move a teacher from the [REDACTED] in the following year. The respondent did not consult the teacher about this decision before announcing it at a staff meeting. The teacher stated that “*it would have been nice*” if the respondent had spoken with her first and “*left the meeting crying and asked her team leader to go home.*” The Summary of Facts goes on:

41. Following this meeting, [REDACTED] asked to speak to Teacher 5 about her professionalism. [REDACTED] told Teacher 5 she had behaved unprofessionally in front of colleagues.

42. On [REDACTED], [REDACTED] sent a letter to Teacher 5 stating that Teacher 5 had called [REDACTED] names and required her to attend a meeting to discuss her conduct.

- [25] The respondent met with Teacher 5 then wrote to her advising that the matter was resolved but “*these types of unprofessional behaviour would not be acceptable and that if you had any issues that you needed to raise them with me personally using professional channels of communication.*” The warning in the letter was ‘active’ for six months. No information was provided about the teacher’s conduct other than that outlined at [24] above.

- [26] A further incident where the respondent made a significant change without consultation relates to Teacher Aide B, who was on a fixed term contract. The contract had been renewed by the respondent’s predecessor with changes to hours as required, in discussion with Teacher Aide B. The respondent unilaterally ended Teacher Aide B’s position as a teacher aide as follows:

46. On [REDACTED] placed a letter to Teacher Aide B in his cubby hole stating that his employment as a teacher aide would end on [REDACTED] [REDACTED] “as agreed.” Teacher Aide B did not agree to his fixed term role ending.

47. At [a] meeting on [REDACTED] announced that Teacher Aide B’s role as a teacher aide would cease. Although [REDACTED] and Teacher Aide B had previously met to discuss his job, he was not formally consulted before the meeting took place and had not agreed to his fixed term role ending.

[27] Teacher Aide B also worked part-time as a caretaker at the school. The respondent deducted two days of leave, without discussion on the basis that she did not believe he had worked the two days claimed. The respondent did not provide any formal record of the deducted leave or the allegation.⁶

Particular 1(b) and 1(c)(ii) - Teacher Aide A

[28] According to the Summary of Facts the respondent and Teacher Aide A knew each other through their children's sport, and as Teacher Aide A had assisted at the school as a parent helper. The agreed bundle contains numerous screenshots of Facebook messages exchanged between the two dating from [REDACTED]. It is not clarified whether this is the first date on which messages were exchanged in this way. The content of the respondent's messages on [REDACTED] and in [REDACTED] imply that she was attracted to Teacher Aide A prior to this and is making a deliberate effort to initiate a sexualised relationship. Only some of the screenshots include a date or time stamp. Of those that do, several pages indicate messages being sent during school hours.

[29] Teacher Aide A commenced employment at the school in [REDACTED]. The Summary of Facts does not describe interactions between the respondent and Teacher Aide A in the first months of the year.

[30] The context for the first message in the bundle dated [REDACTED] is not explained but appears to reflect a conversation between the two about Teacher Aide A's mood. When Teacher Aide A thanks the respondent for checking on [REDACTED], she replies:

My pleasure. You are doing an amazing job at the school. Its like you've been there forever. Look after yourself hey! Youre precious to our tea[m].

[31] Teacher Aide A thanks the respondent for her feedback, states that [REDACTED] loves [REDACTED] job and appreciates the respondent "*giving me a shot.*" On [REDACTED] at 10.16pm the respondent uses Facebook Messenger to request Teacher Aide A to assist with before school care. She concludes with a reference to Teacher Aide A's weekend looking like "*a blast*", the inference being that she has looked at material posted by Teacher Aide A. The following morning at 7.25am the respondent again uses Facebook Messenger to contact Teacher Aide A. The context of her request is not entirely clear but appears to be asking Teacher Aide to join her for a hair

⁶ n2 at [50].

appointment, after she has completed “BSC” (before school care) duties.⁷

- [32] In undated messages but which appear to be shortly after the above communication, the two share the following exchange (the respondent is denoted with an R and the teacher aide with an A):

R: I want you close to me.

A. Lucky we have a meeting then.

R. That’s why I tapped the seat for you to sit next ti (sic) me

At the haircuts.

A. Hmmmm haha

R. Did you not feel the electricity?

I felt it aaaaaages ago

A. LOL felt things I shouldn’t have haha

R. When you and [name] first broke up

A. have I ever been able to give you eye contact

R. And then when you went on Acc (sic)

A. ???????

Think about it

R. And I needed a TA⁸

- [33] The conversation continues with the respondent alluding to having an attraction to Teacher Aide A for some time, and Teacher Aide A agreeing ■■■ (also) had “*thought inappropriate things for a while haha*”.

- [34] The Summary of Facts summarises the intimate relationship as follows:

14. On ■■■■■■■■■■, ■■■■■■■■■■ contacted Teacher Aide A on Facebook Messenger with a picture of Teacher Aide A’s “Tinder” profile. Tinder is an online dating app.

15. ■■■■■■■■■■ and Teacher Aide A had an intimate personal relationship. This included sex on one occasion, and the exchanging of a large number of messages, including flirtatious messages from both participants. These messages also included ■■■■■■■■■■ sending photographs that are attached and marked “A” and “B”. Copies of some of these messages are attached and marked “C”. At the time,

⁷ Agreed bundle pp 12-16.

⁸ pp 25-26

Teacher Aide A was a willing participant but later █████ felt that the relationship was inappropriate.

- [35] The two photographs show the respondent naked or semi naked in selfies.⁹
- [36] At 11.31am on Tuesday █████, the respondent sent a message to Teacher Aide A including a screenshot of the Teacher Aide A's Tinder profile photograph. The respondent writes that she has made an "*awkward discovery*" and states "*I'm going to have to ask you to respect my privacy and then my reputation is in your hands. LOL*" The respondent also jokes about Teacher Aide A 'swiping right' on her profile. Conversation of a personal nature follows, discussing sexual preferences, relationships and the respondent's reasons for being on Tinder █████ █████, to "*perve*" and to "*get some attention from █████*".
- [37] On or immediately before █████ something happened between the pair that is not clear from the evidence, and Teacher Aide A became distressed at school. The respondent sent numerous messages during the school day, and Teacher Aide A was upset by the volume and content of these. Teacher Aide A shared the messages and photographs with several colleagues. The Summary of Facts states:
17. On or about █████, Teacher Aide A asked █████ to stop messaging Teacher Aide A. █████ agreed. However, further communication continued shortly thereafter. █████ continued messaging [Teacher Aide A], including sending over a hundred messages in one day, with messages that included: "I'll do anything to be with you", "OMG, I feel like a stalker", "What have I done for you not to talk to me", "Why won't you answer your phone?". "Answer my calls" and "Tell me if you want me to stop but I don't want to stop. Fuck it, I can't stop". Other messages between the pair are included and marked "D".
18. On █████, Teacher Aide A was observed by five teachers as extremely upset. Teacher Aide A read out to the Teachers messages █████ had received from █████ and showed them images █████ had shared with █████. Communications between the pair continued during this period."
- [38] These events were communicated to a member of the Board, and the Board convened an urgent meeting on █████ That same day the Board sent the respondent a letter to advise that they were investigating allegations of potential serious misconduct and █████ was instructed not to approach or communicate with Teacher Aide A.¹⁰ This Summary of Facts describes how this directive was

⁹ Agreed bundle pp 10-11.

¹⁰ n2 at [19] and [20]. A copy of the Board's letter was not included in the agreed bundle.

breached by the respondent:

21. On [REDACTED] went to Teacher Aide A's home with Teacher Aide A's permission. While at Teacher Aide A's home, [REDACTED] and Teacher Aide A discussed the allegations and the investigation. [REDACTED] told Teacher Aide A to delete the messages between the two. Teacher Aide A told [REDACTED] [REDACTED] had deleted the messages but retained copies.

[39] Five teachers made written complaints to the Board about the respondent's conduct with Teacher Aide A. Although the respondent now acknowledges that she had an intimate relationship with Teacher Aide A¹¹, she denied this to the Board and the CAC until presented with copies of messages that Teacher Aide A retained. The Summary of Facts sets out the respondent's denials as follows:

- a. During the Board's investigation, at a meeting with the Board's subcommittee on [REDACTED], [REDACTED]:
 - i. Repeatedly denied that there was [an] intimate or sexual relationship, stating "[t]hat is just gossip and rumour-there was only friendship, not sexual" and "I didn't cross the line."
 - ii. described Teacher Aide A as a "[REDACTED]".
 - iii. stated that she had not read the Board's directive not to contact Teacher Aide A at the time she went to [REDACTED] house.
 - iv. stated that it was Teacher Aide A who suggested they delete the messages off their phones.
- b. At the the CAC meeting, [REDACTED]:
 - i. Stated she could see how people could conclude that there was "[REDACTED] [REDACTED]" but it was "completely inaccurate."
 - ii. explained text messages like "I love you" as being messages between friends.

[40] Returning to the messages between the respondent and Teacher Aide A¹², predominantly the respondent, between [REDACTED] several of these are pertinent as a reflection of the respondent's professionalism (or lack thereof) towards colleagues, and demonstrate awareness of her seniority and ability to influence the employment of others such as:

¹¹ n2 at [24].

¹² n7 pp 40-122.

(a) When Teacher Aide A does not respond to a barrage of messages on [REDACTED] the respondent writes “*I can get you a permanent job somewhere else??? If that will help.*”¹³

(b) She writes “*I fell in total love with an employee.*”

(c) When Teacher Aide A expresses that “*I’m so fucked lol*” in apparent reference to issues within the school the respondent replies:

How? I’m your employer
 Not them
 Three are fucking teacher aides
 No offenc[e]
 ...
 [TAA] I’m the principal
 That’s heavy shit
 I can fire all of them
 Even if the letter goes through
 The Board won’t do jack shit

 Like I’ve said to you so many times
 This kind of shit is 99% of what I do
 On the daily...¹⁴

(d) The respondent refers to some of her colleagues as “*gossiping wankers*”.¹⁵

[41] When Teacher Aide A replies, the messages refer to confusion over the relationship, conflict in the workplace and the impact of the relationship and fall out from this. The respondent attempts to assert her ability to control what will transpire (despite saying that she has given her resignation). The imbalance of power is very clear in the exchange.

Submissions and Discussion – Liability

[42] There was no dispute as to the legal tests set out in submissions by the parties, but they diverge sharply as to the seriousness with which it was submitted we should view the respondent’s conduct.

[43] The charge is pleaded, in the usual way, as serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. There are three limbs to misconduct under the Act, pursuant to s 10(1)(a):

- (a) conduct that adversely affects or is likely to adversely affect one or more students;
- (b) conduct that reflects adversely on the teacher’s fitness to be a teacher;

¹³ n7 p 58.

¹⁴ n7 pp 108-9.

¹⁵ n7 p118.

(c) conduct that brings or is likely to bring discredit to the profession.

[44] A finding of serious misconduct requires also that there is a breach of one of the matters set out under r 9 of the Teaching Council Rules 2016, which sets out criteria for an employer to report serious misconduct.

[45] It is helpful to refer to the Code for guidance as to the behaviour expected of teachers in order that they will:

(a) maintain public trust and confidence in the teaching profession.

(b) work in the best interests of learners.

(c) show commitment to families and whānau.

(d) show a commitment to society.

[46] These are broad-reaching expectations which demonstrate that teachers have responsibilities to students, to colleagues, whānau and the wider community. Of particular note are the following clauses:

(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 this Code: cl 1.5.

(d) engaging in relationships with families and whānau that are professional and respectful: cl 3.1.

[47] We address each limb of s 10(1)(a) in turn based on the evidence that we have received, and which is summarised above. Whether conduct is likely to have an adverse effect means that there is a real, substantial or appreciable risk of this.¹⁶ The CAC submitted that this likelihood was established in this case on the basis:

The Agreed Summary records that there was prolonged tension and ultimately a breakdown in the relationship between ██████████, the Board and some of the Teachers at the School. This manifested in teachers leaving the School, avoiding the staffroom, becoming upset, feeling stressed, intimidated, scared and in some instances returning to their classrooms crying. In the recording of the ██████████ meeting, ██████████ acknowledges that some parents are aware that the teachers at the School are unhappy.

¹⁶ *Complaints Assessment Committee v Marsom* NZTDT 2018/25

- [48] Counsel for the respondent submitted that there is a lack of evidence of any specific impact on students, but on the other hand acknowledged that “*the gateway concerning student impact*” has been opened, acknowledging the possible impact on the ability of teaching staff to “*perform at their best.*”
- [49] We consider that there is sufficient evidence that an adverse impact on students was likely, given the distraction caused by the personal relationship between the respondent and Teacher Aide A, the distress caused to Teacher Aide A including during working hours, and the negative impact of unhappy teaching staff including staff crying because of interactions with the respondent, as well as staff choosing to leave the school. The recording of the meeting on [REDACTED] includes the respondent commenting that “*it has been brought to my attention by a couple of parents that they believe staff are unhappy*”, suggesting some general comment within the school community that conceivably has reached the ears of students. We acknowledge that there is no clear evidence of a student or students being directly adversely affected, and we have factored this into our penalty decision.
- [50] With regard to the respondent’s fitness to be a teacher (s10(1)(a)(ii)), the CAC focusses on her conduct towards Teacher Aide A. Counsel submits that fitness encompasses professional conduct towards colleagues, referring to cl 1.2 of the Code.
- [51] The CAC submits that the power imbalance between the respondent and Teacher Aide A was significant. Further, it is submitted that the breach of the Board’s directive not to contact Teacher Aide A, the instruction to delete the messages, and persistent messaging causing distress to Teacher Aide A all reflect adversely on the respondent’s fitness.
- [52] Counsel for the respondent referred to the well-established test for fitness, being:
- ...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. The views of the teachers on the panel inform the view taken by the Tribunal.¹⁷
- [53] Counsel addressed the individual allegations and submitted that none reached the threshold for an adverse finding about the respondent’s fitness, characterising her conduct towards colleagues as poor management due to inexperience and various

¹⁷ *Complaints Assessment Committee v Crump* NZTDT 2019/12 at [42].

personal stressors. It was acknowledged that the respondent's approach was unconstructive, but that the conduct was not intended to be malicious or cause harm.

- [54] With regard to the way the respondent managed the ending of the relationship with Teacher Aide A it was submitted that:

[T]his must be viewed in light of the fact that adults often experience difficulties in their relationship and that the Tribunal must be careful to limit its focus to the aspects of that which raise questions about [REDACTED] fitness as a teacher, not a general judgment of her conduct as a party to a relationship.

- [55] We were referred to *National Standards Committee 2 v Tingey* a case involving a long-running extra-marital relationship between two lawyers within the same firm, and the caution that regulatory authorities must “*consider carefully what aspects of private conduct ought to be submitted to disciplinary bodies for scrutiny.*”¹⁸

- [56] As to the respondent's intoxication and conduct at the Board meeting in [REDACTED], counsel submitted that while this was “*unacceptable*” it was a “*relatively private meeting*” and a one-off occurrence and noted the possible influence of the respondent's anti-depressant medication.

- [57] We consider that the respondent's conduct in several respects reflects adversely on her fitness to be a teacher. We agree with the CAC's submission that fitness goes beyond competence and conduct in the classroom and includes professional relationships with staff and the wider school community, as exemplified by the Code. A principal can only become such by being a teacher first, and to divorce the respondent's conduct as a principal from her fitness to function as a teacher is, in our view, lacking insight. Leadership and the ability to maintain constructive relationships are crucial to the role of school principal but are also critical attributes required of teachers. Dealing with colleagues respectfully and understanding professional boundaries are as important for a classroom teacher as they are for a teacher in a management position.

- [58] Of most concern is the intimate relationship with Teacher Aide A, and we do not consider this can be viewed as primarily a personal matter. The Facebook messages included in the agreed bundle suggest that it was the respondent who initiated a non-platonic relationship with Teacher Aide A. She intimates that she assisted Teacher Aide A into their job because of her attraction to them. The

¹⁸ [2023] NZLCDT 22 liability decision at [12].

respondent then chose to notify Teacher Aide A that she had seen their Tinder profile, rather than (for example) removing or altering her own profile while she paused to consider the implications of pursuing a closer relationship.

- [59] While both were consenting adults, the decision to enter a relationship with a junior staff member calls the respondent's judgment into question. It ought to have been plain that this would place Teacher Aide A in an awkward position at the school and it also must have been plain that it would be likely to cause concern among staff, and potentially within the school community. There was also a need to consider how the employment relationship would be managed if the relationship ended.
- [60] There is no general prohibition on relationships between teaching colleagues, and we do not suggest that is necessary or reasonable. Individual circumstances will always be relevant. However, unlike the findings of the Lawyers and Conveyancers Disciplinary Tribunal in *Tingey*, the respondent's relationship with Teacher Aide A was characterised by a significant imbalance in power. The Facebook messages show the role of "boss" and "employee" was significant to the parties during the short-lived relationship.¹⁹ The respondent acted unprofessionally when she allowed the relationship to encroach into the school day, and when she became indiscreet in her communications, for example by referring to mutual colleagues in a disrespectful way.
- [61] In *Tingey* the Tribunal acknowledged the right of adults to private lives, tempered by the persisting need for professionalism where those adults work together:

[10] There is a difference between upholding professional standards which prevent the exploitation of those who are not in a position to protect themselves because of a power imbalance, and the imposition of moralising or infantilising principles which would interfere with the right of adults to freely make relationship decisions.

[12] One of the filters for misconduct is whether the conduct would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable. Those imagined lawyers of good standing are not to be taken as imposing personal moralities; rather, they are assessing conduct that impinges significantly on the professional realm and on the standing of the profession. Another significant filter is whether the conduct brings into question whether the practitioner is a fit and proper person to be a lawyer.

- [62] The Summary of Facts and the messages in the agreed bundle show that the

¹⁹ The messages include Teacher Aide A referring to the fact that "my boss has indicated she wants my face in her ass" at p 24 and the respondent refers to Teacher Aide A as "my employee" at p67.

respondent's relationship with Teacher Aide A did impinge significantly on the professional realm, including that:

- (a) the respondent resigned.
- (b) Teacher Aide A's position was made very difficult also leading to resignation.
- (c) staff members complained to the Board.
- (d) personal and emotive communications were exchanged during the school day.
- (e) staff were shown these communications as well as intimate photographs of their principal without her knowledge or consent.
- (f) inappropriate comments were made to Teacher Aide A by the respondent about their mutual colleagues including threats to fire those colleagues.

[63] We also find that the respondent's manner of communicating with some staff reflects on her fitness, with reference to her management of the teacher who delivered books in breach of the level 4 lockdown. The situation was not an emergency and contacting the teacher at night by Facebook Messenger was not appropriate, and nor was the content of the messages. We accept that the teacher would have been concerned by the threat of Police involvement and criminality and was dissuaded from seeking advice by the respondent presenting stark alternatives to her while simultaneously sending reassurance with emojis and kisses ("Xxxxx").

[64] We also find that the respondent's behaviour in being intoxicated to the point of impairment at a Board meeting reflects adversely on her fitness to be a teacher. Engagement with the public is part and parcel of teaching, and at the meeting, the respondent was a representative of the school to the Board and to the public. A good relationship with trust and confidence between a Board and a principal are critical. That the respondent's behaviour was considered inappropriate is borne out by the fact that complaints were made by meeting attendees. We do not agree with the respondent's assertion that the meeting was a relatively private setting.

[65] The final limb, or gateway, into misconduct is whether the teacher's conduct brings or is likely to bring the profession into disrepute: s 10(1)(a)(iii). The CAC submits, using the standard test, that a reasonable member of the public aware of the Summary of Facts would conclude that the reputation and standing of the teaching profession was lowered by the respondent's behaviour.²⁰

²⁰ In reliance on *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

[66] Counsel for the respondent submitted:

As noted above, the gateways concerning student impact and bringing the profession into disrepute have been opened by this conduct – but not, in counsel's submission, the gateway of fitness to teach. The conduct above then is aggravated by this unique factor that [REDACTED] was failing as a leader of people, and the overall effect of those failures are to demonstrate that this ill-fittedness in that role reached a level that cannot be tolerated by the Tribunal. In counsel's submission, this allows a finding of misconduct, but only on a collective basis.

[67] We find that, taken together, the respondent's actions as pleaded in the charge are likely to bring the profession into disrepute. The conduct involves a pattern of behaviour that showed poor judgment and had an adverse impact on others. The respondent's conduct at the Board meeting had the potential to bring disrepute to the school. According to the respondent's brief of evidence, it was only after the meeting that she became aware that her behaviour was not appropriate, and she states she is "*mortified*" by this. The fact that she was unable to recognise the behaviour as inappropriate reflects a significant degree of intoxication. While the context (lockdown, the possible influence of medication and personal stressors) is important, we consider that the respondent's actions had the potential to bring the profession into disrepute because of the acknowledged lack of judgment shown.

[68] Likewise, the manner in which the respondent conducted herself with Teacher Aide A may bring the profession into disrepute. The respondent appears to have believed she could act with impunity in embarking on a relationship with a junior staff member and without obvious thought for the impact on Teacher Aide A. The views expressed by the respondent to Teacher Aide A towards her job and colleagues also reflect poorly and would in our view cause reasonable members of the public concern at the lack of professionalism shown.

[69] In summary, to specifically address each of the particulars given the separate and cumulative pleading of the charge, we find as follows:

- (a) Particular 1(a) – the respondent was by admission impaired during the Board meeting, and conducted herself in an inappropriate manner in a public setting where she was a representative of the school. This included discussing the performance of a teacher and playing a gang-related game. This conduct was likely to bring the profession into disrepute and also amounts to a breach of r 9(1)(k), and is therefore serious misconduct.
- (b) Particular 1(b) – the respondent engaged in inappropriate conduct with Teacher Aide A including by entering into an intimate personal relationship, failing to draw a clear line between their professional and personal

relationships and allowing the relationship to have a significant adverse impact on the teacher aide's employment. We consider that this particular on its own amounts to serious misconduct, as it is in breach of s10(1)(a)(ii) and (iii) fitness and r 9(i)(k) for the reasons given.

- (c) Particular 1(c)(i) – the respondent admits playing a gang-related game and that this was inappropriate. The game led by the respondent was ill-advised and could easily have caused offence and others to question her judgment. We make the same comments as for 1(a) above.
- (d) Particular 1(c)(ii) – the respondent initially said that she did not read the Board's letter directing her not to contact Teacher Aide A however she has recanted that position. In addition to breaching the directive, part of the purpose of visiting Teacher Aide A appears to have been to impede the investigation that was to follow by suggesting deleting messages between them. It is acknowledged in the Summary of Facts that the respondent attended Teacher Aide A's home by consent. However, the contact was unwise and certainly amounts to misconduct.
- (e) Particular 1(d)(i) – we are critical of the respondent's manner of conducting the meeting on [REDACTED]. A forceful and firm approach is not in itself objectionable, and different members of staff would have received the message with varying degrees of acceptance or concern. The way the Code was presented and the 'like it or lump it' approach gives the impression of a threat to employment. Overall, the respondent's approach was confrontational and did not show respect to her colleagues. The evidence also supports that there were other instances of unprofessional communication including role changes without prior notice indicating a failure to engage constructively with some colleagues over important issues. We consider these matters meet the threshold for misconduct.
- (f) Particular 1(d)(ii) – the respondent's management of a concern regarding a lockdown breach by using Facebook Messenger and "x" symbols and emojis was unprofessional. So too was the presentation of the alternatives of resolution 'off the books' or Police involvement. We consider these incidents meet the threshold for misconduct.
- (g) Particular 1(d)(iii) – as above for 1(d)(i) we consider it was unprofessional to publicly announce significant staff changes without prior notice to affected staff. The allegation of making changes to Teacher Aide B's role and presenting this as an agreed change is also of concern. To determine whether these matters in themselves met the threshold for misconduct would require further evidence but taken together they cumulatively support the adverse findings that we have made.
- (h) Particular 1(d)(iv) – making a deduction without discussion or formal record is unprofessional. Such matters are more appropriately dealt with in an employment context however we acknowledge that this was included as evidence of an unprofessional and/or disrespectful approach to the respondent's colleagues.

Submissions and Discussion - Penalty

[70] Having found the charge proved the Tribunal may make an order under s 500 of the Act, which sets out a variety of penalties ranging from censure to cancellation

of registration. Discipline, and more particularly the imposition of penalties, is intended to protect the public through the maintenance of professional standards and dealing with those who are unfit to teach; to maintain confidence in the profession, and to provide mechanisms for rehabilitation where appropriate. We are required to impose a penalty that is fair, reasonable and proportionate in the circumstances.

[71] Cancellation is reserved for cases where the conduct is sufficiently serious that no other outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness and/or its tendency to lower the reputation of the profession. There must be no alternative penalty that will adequately address the ongoing risk that the teacher is considered to pose.²¹

[72] It is common to identify aggravating and mitigating factors when deciding what penalty to impose. Counsel for the CAC submitted the following are aggravating factors:

- (a) the respondent's persistent denial of the core allegations and late decision to agree a Summary of Facts, only after the proposed witnesses for the CAC had been briefed.
- (b) that the respondent cast aspersions on Teacher Aide A, describing [REDACTED] as a "[REDACTED]" and stating that it was the aide who wanted to delete messages between the two.
- (c) the respondent misled the CAC about the nature of her relationship with Teacher Aide A.

[73] The CAC submits that limited credit should be given for the respondent's acceptance of the amended charge and the remorse that she has expressed. The CAC sought censure and cancellation but submitted that:

"in light of [REDACTED] (belated) acceptance of the conduct, and depending on the contents of [REDACTED] medical or other evidence, the Tribunal may consider that a penalty short of cancellation may meet the purposes of a penalty in a professional disciplinary setting."

[74] Counsel submitted that in that case, censure, annotation of the register, a 6-month suspension and conditions including counselling, mentoring and notice any current and future employer for a three-year period are appropriate. The sole case referred to for comparative purposes was *CAC v Teacher M*, in which

²¹ In reliance on *Complaints Assessment Committee v Fuli-Makaua* [2017] NZDT/40.

a suspension of 4 months was imposed.²²

[75] For the respondent, counsel submitted that the role of penalty is primarily rehabilitative, and much emphasis was placed on the submission that the conduct arose:

45. ...within the context where it was ██████████ role as principal that was the issue of greatest concern. While her interactions with staff and in particular the way in which her relationship with Teacher Aide A ended would not be condoned in any case, the seriousness of these allegations come primarily as a result of the role that she occupied at the time.

46. The CAC raises the prospect of cancellation in its submission. By its nature, this is a penalty that reflects a conclusion that the teacher cannot (in light of what has occurred) continue safely in the profession. In counsel's submission, such a conclusion is simply not available in this case where there is no reason to doubt ██████████ ability as a teacher – only her fitness in a management role.

[76] Counsel for the respondent submitted that there are features which minimise the seriousness of the misconduct, and further mitigating factors that indicate a rehabilitative penalty is appropriate, namely:

- (a) that the conduct is largely about a failure to maintain professional relationships between teachers and *“does not go to fundamental fitness and does not lead to a conclusion that ██████████ cannot be trusted as a teacher moving forward.”*
- (b) the respondent was in a new role and feeling unsupported.
- (c) the *“harassment element”* is *“significantly mitigated by the fact that the relationship was consensual.”*
- (d) the respondent has been teaching for more than one year without issue, and with a principal who is aware of the charges and supportive of her.
- (e) unique personal circumstances contributed to the conduct, being a difficult ending to the respondent's marriage at around the time of the conduct, and mental health difficulties.
- (f) the respondent's acceptance of the conduct and its wrongfulness. The respondent's denial of culpable behaviour was *“unsurprising”* because the relationship was consensual and the impact of her marriage ending. The development of insight *“reflects the fact that the conduct that gives rise to the charges was not deliberate in the sense of being actions she always understood to be wrong-but rather were wrong decisions made (in large part) in good faith, but which she now understands to have been wrong.”*

²² *Complaints Assessment Committee v Teacher M* [2018] NZTDT/34.

[77] Counsel for the respondent submitted that a censure, and conditions to address the respondent's ill-suitability for a managerial role and her need for ongoing mental health support are appropriate penalties and sufficient to protect the public. Other cases were not cited for comparison although counsel did concede that suspension would often be appropriate in "*similar cases*".

[78] The brief of evidence filed by the respondent in relation to penalty describes her situation in 2020 as a "*perfect storm*" stating:

I was in a very difficult work environment, with a huge amount of stress. I was trying to lead a school that did not want my leadership in the middle of a pandemic, with limited support. To add to this, my [REDACTED] was coming to an acrimonious end. [REDACTED] I was coming apart at the seams.²³

[79] The respondent goes on to acknowledge that it is clear from her messages to Teacher Aide A that "*something was very wrong*" and to express deep sorrow for the distress that she caused to Teacher Aide A and to other staff.²⁴ The respondent states:

In terms of the allegations in respect of my professionalism, I acknowledge that I was so driven to effect change and bring about my vision, and so focused on the children, that I lost sight of the actual adult people who I also had responsibilities towards. As a principal I had a responsibility to drive culture and to do better for my colleagues, I fell short. I recognise that I was not able to do what was necessary in that role. I acknowledge that my manner and communication upset some staff, and that I let them down in terms of ensuring they felt safe and respected at work. I acknowledge that I made mistakes in my management of the school, and of my colleagues, and that those mistakes caused harm. I apologise for the upset that I caused. My actions were not malicious but I can see that they reflect my inexperience and at times, a lack of empathy or insight into how others might feel. I had blinkers on and was unable to see all of this at the time.²⁵

[80] As is apparent from our findings on liability, we consider that the respondent showed a lack of judgment and integrity in her dealings with colleagues, in particular Teacher Aide A. The respondent's submissions seek to minimise the degree of this misconduct; the respondent's brief however acknowledges that she conducted herself poorly and that she did cause harm to others. We accept that the respondent found herself in a difficult situation as a new principal and meeting resistance from some staff, but the way she responded to that is a reflection on

²³ n4 at [9].

²⁴ n4 at [11].

²⁵ n4 at [12].

character and judgment – matters of fitness – not simply on her managerial skills. We consider that there are implications for her fitness to teach that are not addressed simply by removing the respondent from a management role.

- [81] The relationship with Teacher Aide A shows a significant lack of judgment and lack of appreciation for professional boundaries. This is not confined (as the respondent's submissions would have us find) to the way in which the respondent conducted herself at the ending of that relationship. We do not accept the submission that it is "*unsurprising*" that the respondent denied wrongdoing for the reason that the relationship was consensual (and presumably, the inference is that it was not wrong). The denials were dishonest and lacked insight and undoubtedly made the investigation more protracted than necessary.
- [82] The comments made by the respondent to Teacher Aide A about their mutual colleagues were also unprofessional and her willingness to suggest a threat to jobs is aggravating. The respondent's dealings with staff at the meeting on [REDACTED], and in changing staff hours and roles without proper notice or consultation are more obviously matters that reflect inexperienced management (including a dictatorial approach). These incidents contribute to the overall concern with the respondent's professionalism.
- [83] We accept however the evidence that the respondent has been teaching in a classroom for approximately one year, apparently without incident, and appears to intend to continue teaching. The respondent has shown some insight, and provided some evidence that goes some way to explaining but not excusing her conduct.
- [84] We have carefully considered the appropriate penalty to address these concerns, including considering whether cancellation is warranted. But-for the respondent's acknowledgment of wrongdoing and the possibility of rehabilitation that allows her to continue her career in teaching, and support to do so, we would have imposed cancellation. We remain concerned at the level of genuine insight that the respondent has shown in terms of commencing the relationship with Teacher Aide A and the length of time taken to admit the culpable conduct. We do not have evidence that the respondent has undertaken any formal mentoring relationship or supervision, or the extent to which she continues to engage with health professionals to address stated mental health issues.
- [85] We consider that a 6-month period of suspension is appropriate and will meet the purposes of protecting the public and setting standards, while enabling the

respondent to rehabilitate. We also will impose conditions to ensure that the respondent seeks professional assistance with respect to her role as a teacher, and her mental health. We agree with both parties that the respondent should not seek or accept a role in management. Conditions will reflect the importance of professional development including training in the Code and professional boundaries, and a formal mentoring relationship with a senior teacher.

[86] A censure is also appropriate.

[87] In the usual course, we would have considered an order for costs in favour of the CAC and Tribunal under s 500(1)(h) and(i). However, we are advised that the respondent is in receipt of legal aid and both parties acknowledge that pursuant to section 45 of the Legal Services Act 2011 there is no ability to award an order for costs in the absence of exceptional circumstances.

Non-Publication Applications

[88] Pursuant to s 501, hearings of the Tribunal are public unless the Tribunal considers it is proper to make orders for non-publication of names, identifying particulars or documents received in the course of the proceeding. The threshold for displacing the presumption of open justice is lower than the exceptional circumstances required by the courts, but the exercise of discretion must be done in a principled way and balance the public interests against the interests of any other person.

[89] In addition to s 501, we take into account r 34 of the Teaching Council Rules 2016, which refers to special protection for certain witnesses and vulnerable people. Rule 34(d) refers to a person whose evidence before the Tribunal relates to a matter that may include “*intimate or distressing evidence.*”

[90] We were referred to two cases involving inappropriate conduct towards a colleague. More typically, cases before the Tribunal involving sexual misconduct have involved a teacher and student and suppression is almost invariably considered necessary to protect the privacy of the student.²⁶ In the cases we were referred to involving inappropriate conduct involving a colleague, non-publication orders were made.²⁷

[91] Applications have been made for permanent orders in favour of Teacher Aide A by the CAC in reliance on r 34; and by the respondent including as identifying

²⁶ We note that this is not inevitably the case eg *CAC v Taurapa* [2022] NZTDT/27, 22 May 2023.

²⁷ *CAC v Teacher M* [2018] NZTDT/34; *CAC v Teacher B* [2017] NZTDT/8.

particulars, Teacher Aide A and other staff at the school and the name of the school. The CAC opposes the application for the respondent but does not oppose non-publication of the names of staff whose evidence has been consolidated into the Summary of Facts or referred to in the agreed bundle. No application has been made on behalf of the school.

- [92] The application for Teacher Aide A is not opposed by the respondent, who considers that if she herself is named this will lead to identification of Teacher Aide A. The CAC makes the application on the grounds that the evidence relating to Teacher Aide A includes intimate and distressing material, and that Teacher Aide A's privacy interests outweigh any public interest in being named.
- [93] Counsel for the CAC submits that naming the respondent and the school is unlikely to be an identifying particular, based on Teacher Aide A's indication about this. A file note was annexed to a memorandum from counsel, evidencing a discussion between the CAC investigator and Teacher Aide A, in which Teacher Aide A is recorded as saying that the identities of the parties are known in the [REDACTED] community. The file note records Teacher Aide A's position as being "*I want [REDACTED] to be named in any decision of the Tribunal so she has to publicly face the consequences of what she did to me.*" Teacher Aide A also expresses concern that being named will cause harm to them and their partner and children.
- [94] Somewhat contrarily counsel for the CAC submits that:
- Given the time that has elapsed since the conduct, Teacher Aide A's short time in the teaching profession and ... subsequent career change, the risk of general members of the public (without special knowledge of the circumstances of this case) identifying Teacher Aide A is low.
- [95] We note that there is no evidence before us that there has been any publicity in the media about this matter identifying the parties (or at all).
- [96] We consider it is appropriate to make an order in favour of Teacher Aide A, whose privacy interests and those of their family outweigh the public interest in the context of the sensitive and personal evidence that we have received.
- [97] Likewise, we consider it is appropriate to make an order in favour of the staff referred to in the evidence, albeit they are not identified by name other than one staff member to whom particular 1(d)(iii) relates.

[98] With regard to the school, it seems clear that if we are to grant the respondent's application, we will also be required to order non-publication for the school. The school's position has not been put directly before the Tribunal. Counsel for the CAC submitted that the CAC does not generally seek a school's views but alert the initiator of a complaint to the possibility of publication and invite them to apply for an order if desired. In a memorandum following the hearing counsel advised:

In the present case, the prosecutor and the CAC's investigator have discussed non-publication with the Chair of the School's Board. In line with its usual practice the CAC declined to advance a non-publication application on behalf of the School but it was invited to make its own application.

[99] Counsel indicates that the Board's stated preference is not to be named but in the absence of an application does not take this further.

[100] The respondent's application is made on the following grounds:

- (a) the extremely personal details could cause wide ranging harm to Teacher Aide A, [REDACTED] School, the respondent, her family and her current employer.
- (b) publication may lead to identification of Teacher Aide A. (This submission was made before the position for Teacher Aide A was made known).
- (c) the potential impact on the respondent's current employer, in particular pressure to end the respondent's employment and loss of faith in school management (presumably by association with the respondent).
- (d) hardship to the respondent's children, and to her partner who is also a school teacher.
- (e) [REDACTED].

[101] The respondent has provided evidence of a [REDACTED] [REDACTED], and her clinical psychologist has described that the effects of abuse the respondent has experienced are longstanding and significant. We have also received evidence from an acute mental health service where the respondent was seen in [REDACTED], and the respondent's GP whom the respondent first saw on [REDACTED] regarding her mental health in the context of the events that lead to this charge. The most recent letter provided to us is dated in November 2022, from the respondent's clinical psychologist. This letter expresses the view that publicity could exacerbate the respondent's underlying mental health issues.

[102] The lack of more current medical evidence has caused us to consider our decision very carefully, as has the views of Teacher Aide A supporting publication of the respondent's name notwithstanding the likely implication that this will identify them to at least some members of the public.

[103] We refer to the respondent's brief of evidence which states:

The publication of my name, and the extremely personal details about myself and others set out in the Accepted Statement of facts, could cause wide ranging significant harm, including to [Teacher Aide A], [the school], my current school, my family, my children, my partner, my ability to support my family and to my mental health. I believe this will be the case no matter the outcome reached.

...

The release of my name would also cause a huge amount of harm and hardship, and significant stress and embarrassment for my children, [REDACTED]

[REDACTED]²⁸

[104] The respondent goes on to assert:

If my name is published, it is likely that my mental health will spiral again and I will be unable to function or [REDACTED]. I am worried I will have no job, no prospects, and no self-worth. Once again I will be unable to be there for my family. I am desperately worried and distressed by this prospect...²⁹

[105] We consider that the respondent's history of mental health issues is significant and that even a robust person would be at risk of some form of relapse in the face of adverse publicity of this personal nature. The respondent clearly experienced an extreme response to the ending of the relationship with Teacher Aide A. While r 34 is not directed at a respondent to proceedings, the evidence about the respondent also contains intimate and distressing details, and we consider it appropriate to take this into account. In our view this can be considered a distinguishing factor in terms of the potential for greater harm from publication for the respondent and those associated with her than might arise in other types of misconduct.

[106] It is also relevant that publication is not expected to have the effect of needing to deter a repeat of the misconduct, or of bringing other complaints about the

²⁸ n4 at [27] and [29].

²⁹ n4 at [32].

respondent to light.

[107] We are mindful of the likely impact on the respondent's family, particularly her ■■■ children given their age (the oldest being ■■■ and the youngest around ■■■ years of age), the content of the charge, the evidence and the detail in this decision. We give less weight to any impact on the respondent's partner and employer but acknowledge that they may suffer some fallout from their association with the respondent.

[108] On balance we accept that there is a likely risk of harm and we consider it is proper to order non-publication of the respondent's name and identifying particulars, being the name of the school, her current school, Teacher Aide A and other staff from ■■■■■ School.

Orders

[109] Accordingly, we make the following orders:

- (a) The respondent is censured pursuant to s 500(1)(a).
- (b) The respondent is suspended for a period of six months, pursuant to s 500(1)(d).
- (c) The following conditions will be placed on the respondent's practising certificate and future practising certificate for a period of three years pursuant to ss 500(1)(c) and (j):
 - (i) The respondent is to provide an employer or prospective employer with a copy of this decision.
 - (ii) The respondent is to provide the manager of professional responsibility at the Teaching Council with evidence of ongoing engagement in therapy with an appropriately qualified counsellor or psychologist and of mentoring with a senior teacher – such mentoring to include coverage of the Code, and professional boundaries.
 - (iii) The respondent may not seek or accept a management position.

[110] For the reasons given, there is no order as to costs.

[111] The following non-publication orders are made pursuant to s501 of the Act:

- (a) The name and identifying particulars of the respondent.
- (b) The name and identifying particulars of Teacher Aide A.
- (c) ■■■■■ School.

(d) The names of staff at [REDACTED]

[112] The parties have a right of appeal under s 504 of the Education and Training Act 2020. Any appeal must be made within 28 days after receipt of the written decision, or any longer period that the court allows.



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

**PERMANENT NON-PUBLICATION
ORDERS**

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022-25

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

**RULING ON REQUEST TO RECALL JUDGMENT AND DEFER PENALTY OF
SUSPENSION**

19 March 2024

Representatives

R Belcher, Luke Cunningham Clere, for the CAC
S Conder, Holland Beckett Law, for the respondent

Tribunal:

C Garvey (Deputy Chair), Rose McInerney and Simon
Williams (Members)

Background

- [1] The Tribunal issued a decision on liability and penalty on 1 March 2024 following a hearing conducted on the papers on 9 February 2024. The evidence before the Tribunal was confined to an Agreed Summary of Facts, an affidavit by the respondent annexing medical information, submissions from counsel and an agreed bundle of documents.
- [2] The Tribunal imposed penalties under s500 of the Act, including a six-month suspension. In accordance with Rules 35(3) of the Teaching Council Rules 2016 the suspension took effect as at the date the respondent received the Tribunal's written findings. It was sent to counsel electronically on 1 March 2024, and received by the respondent on that date.¹
- [3] In reaching its decision on penalty the Tribunal took into account all of the available evidence. Both parties made submissions which addressed the potential that a period of suspension could be imposed. The CAC submitted that cancellation may be appropriate but, in the alternative, submitted that an appropriate penalty could include, amongst other things, suspension for 6 months.
- [4] The penalty submissions filed on behalf of the respondent submitted that a "starting point of suspension" would be appropriate in cases of this nature, but argued for the lesser penalties of conditions and censure.
- [5] Neither party made submissions as to the commencement date of a period of suspension, if this was to be imposed. Further, no evidence was provided on behalf of the respondent's current employer as to the likely impact of a penalty of suspension. As this was a hearing on the papers, the Tribunal was not able to explore with counsel the details and implications of the penalties to be imposed. We are aware of one case in which a delayed suspension has been imposed for this reason, but at the time the substantive decision was issued.² We are not aware of a decision being recalled for this purpose.

¹ Memorandum of counsel for the CAC 8 March 2024, at [2].

² CAC v Parsons [2019] NZTDT 500 2/9/20.

Further Evidence

[6] On or about 6 March 2024 [REDACTED], [REDACTED] where the respondent is now employed, wrote directly to the Teaching Council and to the Complaints Assessment Committee to acknowledge receipt of the Tribunal's decision. These letters contain slightly different content but seek the same outcome, namely a deferral of the respondent's suspension to term 3 2024 or term 1 2025.

[7] In his letter to the Complaints Assessment Committee, [REDACTED] writes (addressing the respondent by her preferred name, Miss [REDACTED]):

While I respect the Committee's decision, I wish to express my concerns regarding the timing of [REDACTED] suspension, which is set to commence at the beginning of Term 2. As the Principal of [REDACTED] I am acutely aware of the stress this decision places on our school's operations, the significant disadvantages it imposes on the 26 students under [REDACTED] care, and the challenge it presents in securing a suitable replacement within a 7 weeks and 5 days timeframe amidst an ongoing teacher shortage. The replacement position, being of fixed term for only six months and coinciding with the mid-year period, exacerbates these challenges.

Therefore, it is my strongly held preference that [REDACTED] suspension be deferred until the beginning of the 2025 school year. Such a deferral would significantly mitigate the impact on our students and allow for a more seamless transition. Should this not be feasible, an alternative consideration for the commencement of Term 3 as the start of the suspension period would still offer a less disruptive option.

[8] We note that the reference to the period of suspension commencing at the beginning of term 2 is not correct.

[9] [REDACTED] did not identify whether his correspondence was discussed with the respondent. Accordingly, a Minute was issued to the parties seeking clarification of the respondent's position, and inviting submissions on whether a variation to the implementation of a penalty in an issued decision is a matter the Tribunal can address, and if so, whether we ought to address that in this case. The Tribunal requested that memoranda be filed by 15 March 2024.

[10] Counsel for the respondent filed a memorandum dated 8 March 2024. In this Mr Conder advised:

- (a) prior to [REDACTED] correspondence the parties had conducted some discussions regarding the possibility of seeking a deferral of the suspension to the end of term one, subject to certain (unstated) conditions.
- (b) the respondent discussed deferral of the suspension with her employer.
- (c) the parties then further discussed deferral to the end of term 2, which the CAC indicated it did not support.
- (d) the respondent was aware that [REDACTED] “wished to raise concerns but was not aware of the precise content of his letter(s) until he provided her with copies already sent.”
- (e) the respondent supports the school’s position, essentially in order to support the school to find a replacement and avoid disruption to her students.
- (f) the respondent states that it was not her intention to subvert the process or avoid any effect of the Tribunal’s orders.

[11] As for the Tribunal’s jurisdiction, counsel noted rule 35(3) of the Teaching Council Rules 2016 to the effect that an order of the Tribunal takes effect on the date on which the order is received unless a later date is specified. Counsel submitted that the Tribunal has inherent power to recall its decisions, referring to three decisions³ and the well-established principles in *Horowhenua County Council v Nash* (No2) [1968 NZLR 632 (SC)].

[12] In *Nash* the Supreme Court determined that there are three exceptional circumstances in which it may be appropriate to recall a judgment:

- (a) that since the hearing there has been an amendment to a statute or regulation or a new judicial decision of relevance and high authority; or
- (b) where counsel has failed to draw the court’s attention to a legislative provision or authoritative decision of plain relevance; or
- (c) some other very special reason justice requires that the judgment be recalled.

[13] Counsel for the respondent relies upon the third ground, submitting:

The question of timing of any suspension was not addressed in submissions by either party-although it was known that [REDACTED] was teaching in a new role at the time. The consequence of this is that the impact of her immediate suspension on her school, and on its students, is one that has not been considered, but which warrants

³ *CAC v Shortcliffe* [2018] NZTDT 729; *CAC v Teacher R* [2019] NZTDT 31; *CAC v Teacher* [2022] NZTDT 3.

consideration by the Tribunal.

- [14] Counsel for the CAC has since filed two memoranda, the first also dated 8 March 2024, noting that counsel had not received either of [REDACTED] letters. Mr Belcher acknowledged that some discussion took place immediately following the issue of the Tribunal's decision about the implementation of the suspension. The CAC recognised the decision was for the Tribunal, but was not opposed to the respondent seeking a stay of the suspension until the end of term one of the 2024 school year, premised on receipt of certain information from the school. This was, in short, confirmation that the employer had received the decision, that the employer was content for the respondent to remain as a teacher and that appropriate support was available for the respondent. The CAC subsequently opposed a request for support to seek a longer period of stay of the suspension to the end of term 2.
- [15] The CAC highlighted the effect of the Tribunal's orders from the date of receipt of the decision, and the potential concern raised if the respondent was acting in breach of those orders by continuing to teach while suspended.
- [16] In a second memorandum dated 15 March, counsel for the CAC set out the legal principles relating to orders of the Tribunal and the power to recall a decision. Counsel referred to a further decision of this Tribunal where the power to recall was acknowledged, and that power exercised in reliance on an error whereby the respondent had served an application for non-publication on the CAC but not filed it with the Tribunal for its consideration.⁴ Counsel also referred to a case in which the Tribunal recalled its decision based on oversight in reviewing all of the evidence that had been filed, having omitted to view CCTV footage that was filed as an adjunct to the agreed summary of facts.⁵
- [17] As with the respondent, counsel for the CAC submitted that the third ground in *Nash* is the basis on which a decision to recall might be made in this instance. The CAC indicated that it would abide the decision of the Tribunal, but referred for guidance on what might constitute a 'very special reason' to recall the decision to the High Court in *Faloon v Commissioner of Inland Revenue*⁶ regarding this

⁴ *CAC v Teacher KNZTDT 2018/56*.

⁵ *CAC v White NZTDT 2019-55* (unpublished).

⁶ (2006) 22 NZTC 19,832 (HC)

third limb which held:

While the third category is not defined with particularity in the judgments, it is quite clear that the discretion to recall must be exercised with circumspection, and it must not in any way be seen as a substitute for appeal. In particular there are some things that it can be said the power to recall does not extend to. It does not extend to a party recasting arguments previously given, and re-presenting them in a new form. It does not extend to putting forward further arguments, that could have been raised at the earlier hearing but were not.⁷

[18] Counsel for the CAC submitted that if the application for recall is granted and a decision made to stay the commencement of the respondent's suspension, any deferral beyond the commencement of term 2 is opposed. The grounds on which the CAC takes this position are:

- (a) that the suspension was imposed to protect the public and set standards while enabling the respondent to rehabilitate, and a lengthy deferral undermines those aims.
- (b) the finality of decisions is an important principle, and this matter has a protracted history.
- (c) the respondent's practice will benefit from the suspension being undertaken as soon as possible and enable her to return to teaching having undertaken a degree of rehabilitation if she commences the conditions imposed by the Tribunal.

Findings

[19] We accept based on the authorities referred to us that there is jurisdiction to recall a judgment in appropriate circumstances.

[20] We consider the requirement for a "very special reason" to recall our written reasoned decision sets the bar relatively high. In our view, this does not include providing the Tribunal with evidence that with diligence could have been made available at the time the Tribunal considered this matter. As set out from in quoting the submissions of counsel for the respondent at [13] above, it was simply the case that the submissions and evidence failed to address the timing of the suspension even though the respondent's circumstances were known.

[21] The respondent did not make any submission seeking a deferral of suspension,

⁷ at [13].

should that penalty be imposed, and nor did the respondent's brief of evidence address the prospect of suspension or a deferred commencement should that penalty be imposed.

- [22] In reliance on the respondent's brief of evidence dated in January 2024, she has been in her current role for at least one year. This proceeding has been on foot for a long time, with significant leeway from the Tribunal in terms of last-minute adjournments of the hearing, amendment to the charge, and ultimately vacating the in-person hearing to instead consider what was a complex set of circumstances on the papers, at the request of the parties. It ought to have been apparent given the nature of the charge and the admissions in the agreed summary of facts, that a penalty of suspension would reasonably be within the Tribunal's contemplation, if not very likely. It is also our impression from the evidence that [REDACTED] was apprised of the proceedings and provides a high degree of support to the respondent.
- [23] We accept that the Tribunal may stipulate the date for commencement of a suspension, and that it may be appropriate in some cases to set this date so that the suspension takes effect on a date after receipt of the Tribunal's decision. This would be case-specific and evidence-based.
- [24] In our view, while we accept it will be difficult for the respondent's employer and students to have the respondent suspended from teaching, this is not an uncommon consequence where the Tribunal suspends a currently-employed teacher. We consider that there was time for arrangements to be made and/or evidence to be filed with the Tribunal in a timely fashion so that we could take this into account when reaching our decision. We agree with counsel for the CAC that the finality of proceedings is important and do not wish to set a precedent whereby parties may seek a recall based on the realisation of foreseeable consequences of a serious adverse finding.
- [25] We also agree with the tenor of the submission of counsel for the CAC, that the support the respondent has from her employer is beneficial and that efforts to commence compliance with the conditions imposed by the Tribunal as far as possible during the suspension period will assist her upon her return to practice.
- [26] Accordingly we decline to allow the respondent's request that we recall our

decision in order to defer the implementation of the penalty of suspension and original orders remain in place.



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