NZTDT 2021/08

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER	the Education Act 1989
IN THE MATTER	a charge of serious misconduct referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
BETWEEN	**THE COMPLAINTS ASSESSMENT COMMITTEE** Referrer
AND	**JESSE JAMES WILLIAMS** Respondent

DECISION OF THE TRIBUNAL

Tribunal:	Hannah Cheeseman (Deputy Chair) Rose McInerney and Nichola Coe (Members)
Hearing:	19 October 2021
Representation:	S McArthur for the referrer Respondent in person

Introduction

[1] The Complaints Assessment Committee ("CAC") has charged the respondent with one charge of engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.

[2] The CAC alleges that the respondent, on or about 6 March 2019, at Tumuaki of Te Kura Kaupapa Māori O Te Rawhitiroa ("the Kura") instructed a [redacted] year old child (child X) to move from the playground to a nearby classroom and swore at and/or used a threatening tone with child X in the classroom, where no one else was present.

[3] The CAC further alleges that on 17 March 2020 the respondent was convicted and sentenced in the Whangarei District Court on a charge of contravention of a protection order.

[4] The CAC alleges that this conduct amounts to serious misconduct pursuant to section 378 of the Education Act 1989 ("the Act") and Rules 9(1)(b) and/or (j) and/or (k) of Teaching Council Rules 2016 ("the Rules"), or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.

Procedural History

[5] The matter was heard on the papers.

[6] Agreed summaries of facts were filed and the parties agreed that the matter could be heard on the papers.

[7] The CAC filed submissions on penalty and costs.

[8] The respondent filed submissions on penalty and costs and in support of his application for name suppression.

[9] The CAC opposes the application for name suppression.

Evidence

Agreed Summaries of Fact (ASoF)

[10] The ASoF for the charge are set out in full as they form the majority of the evidence available to the Tribunal:

Background

1. *The respondent,* ***JESSE JAMES WILLIAMS,*** *is a fully registered teacher. Mr Williams signed an Undertaking Not to Teach (UNTT) on 10 December 2018. Following the conclusion of the CAC investigation and referral to the*

Disciplinary Tribunal the UNTT was lifted by the Teaching Council on 28 April 2021. Mr Williams is currently subject to conditions in relation to a previous Disciplinary Tribunal matter.[1]

2. *Mr Williams was a teacher during the relevant period at Te Kura Kaupapa Maori O Te Rawhitiroa (the Kura**).***

The Incidents

Allegation 1

*On or about 6 March 2018 following an incident in the playground at the Kura, instructed a [redacted] year-old child **(Child X}** to move from the playground to a nearby classroom and swore at and/or used a threatening tone with Child X in the classroom (where no one else was present).*

3. *On or about 6 March 2018, Child X said to another child words to the effect of "did you see my brother's fucking cards" in the playground at the Kura. The respondent asked Child X if he had sworn. Child X said words to the effect of "no Matua I just said fricken". Child X also said words to the effect of "everyone swears at this school".*

4. *The respondent then instructed Child X to move from the playground to a nearby classroom. He told the child to open the door to the classroom. The respondent and Child X moved into the classroom. There was no one else present.*

5. *Once they were inside the classroom the respondent started to yell at Child X and said words to the effect of "We don't say fucking at this school and we don't say fucking at any school. Do you understand that?". When he was yelling his saliva landed on Child X.*

Allegation 2

On 17 March 2020 was convicted and sentenced in the District Court of Whangarei for contravening a protection order contrary to section 90{b) and 112{1){a) of the Family Violence Act 2018.

*6. The amended summary of facts for this offending **(annexed)** was as follows:*

INTRODUCTION

On 25th of January 2020, at the Whangarei District Court, a Final Protection Order was issued where the defendant, Jesse WILLIAMS is the respondent.

The victim in this matter is the applicant, [redacted]. The victim is paraplegic and wheelchair bound.

CIRCUMSTANCES
CRN:
On 16th February 2020 at approximately 7:30am, the defendant was at his home address with the victim.
They got into a verbal argument.

The defendant grabbed the victim's coffee and threw it out of the front door and said to her "let's go bitch, all the way".

The pair continued to argue before the defendant took the complainant down the stairs and helped her into her vehicle.

Once the victim was in the vehicle, she was able to lock the door before the defendant could get into the passenger seat. She left the address.

CRN:

On 18 February 2020 between midnight and 8:30am, the defendant phoned the victim's mobile phone from a family member's landline. She did not answer and he made 3 calls.

The victim phoned the number back and the defendant answered.

The defendant was told by the victim that she does not want to hear from him anymore.

At 3:07pm, the defendant sent an email to the victim implying he was going to make sure she was embarrassed about some scandalous information.

At 5:56pm, the defendant phoned the victim from a different phone number that she wouldn't recognise.

The victim answered and the defendant said "it's me hun". They had a discussion about returning the defendant's wallet and keys.

The victim replied "I can't talk to you" and hung up.

The defendant then sent the victim a text message asking if the Police will arrest him. The victim replied "Leave me alone".
The defendant sent a further 7 text messages to the victim.

COMMENTS

The defendant declined to make a statement.

The defendant has previously appeared before the Court.

7. *The respondent pleaded guilty to the offence (for contravening a protection order contrary to sections 90(b) and 112(1)(a) of the Family Violence Act 2018) on 17 March 2020 and was sentenced to nine months' supervision.*

8. *The respondent did not inform the Teaching Council of the conviction as required by section 397 of the Education Act 1989.*

Mr Williams' Response

Allegation 1

9. *In a meeting with the CAC on 11 March 2021 the respondent acknowledged that he was frustrated at the time of the incident and accepted that he gave Child X a "good growling" and that he was surprised Child X agreed so willingly to move to the classroom with him. The respondent accepted that he responded to Child X in a non-professional manner by swearing at him and saying something along the lines of "we don't say fucking at this school". The respondent also acknowledged that his tone of voice played "a good role in the inappropriate nature" of this interaction with Child X. He accepted that his tone could have been construed as threatening.*

10. The respondent also acknowledged to the CAC that the isolation of himself and Child X in the classroom was certainly not a strategy that he would use again but that the reason he asked Child X to go from the playground to the classroom was to remove the audience. The respondent said to the CAC that he had thought about the incident a lot since and had come up with several other ways of dealing with it.

Allegation 2

11. *In a meeting with the CAC on 11 March 2021 the respondent stated that he needed to "own this", but suggested that the breach of the protection order was due to "respectful communication" with his estranged partner. Mr Williams said he had completed the obligatory rehabilitation and had taken steps to remedy his behaviour.*

12. *Mr Williams stated that he has obtained a protection order against his estranged partner to which the conviction relates.*

[11] It was noted by joint memorandum that there was a context in which the Police summary of facts set out in the ASoF should be viewed.

[12] A statement from the respondent was provided, setting out his background and current work, together with his aspirations for future teaching work. Annexed to this statement was a written apology to child X and his whanau.

[13] The statement also sets out the context to the offending that makes up allegation 2 in the ASoF, together with the reasons for not disclosing the offending to the Teaching Council.

[14] Finally, the statement sets out the details of the anger management program undertaken by the respondent. This was underpinned by the Māori Health Model known as "Te Whare Tapawha". The respondent provided insight into his learnings and the impact that this program has on him in acknowledging the difficulties he had faced in his relationships and work life.

The Law

[15] Section 378 of the Education Act defines "serious misconduct" as behaviour by a teacher that has one or more of three outcomes. Under s 378(1)(a)(i) to (iii), it is conduct which:

(a) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; and/or

(b) Reflects adversely on the teacher's fitness to be a teacher; and/or

(c) May bring the teaching profession into disrepute.

[16] The Court of Appeal recently affirmed that the test for serious misconduct in s 378 of the Education Act is conjunctive.[1] As well as having one or more of the three adverse professional effects or consequences described in s 378(1)(a)(i)-(iii), set out above, the conduct concerned must be of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct. The Teaching Council Rules 2016 ("the Rules") describe the types of behaviour that are of a prima facie character and severity to constitute serious misconduct.[2]

[17] Criteria for reporting serious misconduct are at rule 9 of the Rules. Rule 9 provides that a teacher's employer must report serious breaches of the Code of Professional Responsibility ("the Code"). In the present case, the CAC alleges that the respondent's conduct breaches rule 9(1)(a) and/or rule 9(1)(k).

[18] Rule 9(1)(b) relates to emotional abuse that causes harm to a child or young person.

[19] Rule 9(1)(k) relates to an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[20] In addition to the Rules, the Code of Professional Conduct ("the Code") sets out the standards of expected conduct, and the criteria in section 278(1)(b) of the Act will be satisfied where the conduct alleged amounts to a serious breach of the Code, irrespective of whether the conduct fits one of the examples in Rule 9.

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[1] *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

[2] Which came into force on 1 July 2016 and had a name change from the Education Council Rules 2016 to the Teaching Council Rules 2016 in September 2018.

[21] In the present case, the CAC submits that the following sections of the Code are relevant:

(a) Section 1.3 - the teacher will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity.

(b) Section 2.1- the teacher will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.

[22] If the test for serious misconduct and section 378 of the Act is not met, it remains open to the Tribunal to find that the conduct alleged amounts to misconduct, provided there has been a breach of accepted professional standards. It is noted that not all departures from accepted professional standards will amount to misconduct.

[23] In the event of a finding of either serious misconduct or misconduct, the Tribunal may exercise its powers under section 404 of the Act.

[24] The CAC emphasises clause 2.1 of the Code which requires teachers to promote the wellbeing of learners and protect them from harm. By way of example, the Code provides that "inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour" does not promote the wellbeing of learners.

Submissions

[25] The CAC submits that each of the three criteria in section 378 (1)(a) of the Act are met. the CAC submits that the definition of serious misconduct is made out on both charge one and/or charge two either individually or together.

[26] In particular, the CAC submits that the respondent conduct is likely to adversely affect the students learning or wellbeing together with the wellbeing of other students in the class who will have inevitably witnessed are all heard about the incident. Further the CAC submits that yelling and swearing at a student raises significant issues about a teacher's fitness to practise, and submits that any reasonable member of the public, informed of the facts and circumstances, would reasonably conclude that the reputation and good standing of the profession is lowered when a teacher engages in the kind of conduct the respondent engaged in.

[27] The CAC further submits that the conduct meets the teaching council's criteria for reporting a matter as serious conduct put the following reasons:

(a) the respondent isolated child X, yelled at him in a way that was forceful enough to cause saliva to land on child X, and use the word "fucking" twice. The CAC submits that this behaviour is emotionally abusive as it is likely to cause a child to feel fearful and as such it did or was likely to cause harm to child X, in contravention of rule 9(1)(b).

(b) isolating a child, yelling at them from a close distance and swearing when disciplining a child are actions that the public would not view as appropriate for a teacher. The CAC submits that these actions clearly bring or are likely to bring the teaching profession into disrepute, in contravention of rule 9 (1)(k).

[28] The CAC referred the Tribunal to the decisions of *CAC v Hughes* NZTDT 2018/51, and *CAC v Hutana* NZTDT 2018/58 in support of the submission that offensive language and verbal abuse could constitute serious misconduct.

[29] In relation to the second incident, the CAC submits that a conviction for a family violence offence, namely breach of protection order, reflects adversely on the respondent's fitness to teach. The CAC submits that the use of family violence is contrary to the expected expectations of the public as to the behaviour that teachers are expected to model at all times. Further the failure to report the conviction is, on its own, concerning.

[30] Accordingly, the CAC submits that it would be appropriate for the Tribunal to make an adverse finding.

[31] The CAC submits that the Tribunal does not need to find the respondent guilty of a charge of serious misconduct, although it submits that that test is a useful yardstick to determine whether the Tribunal should make an adverse finding and exercise its powers under section 404 of the Act.

[32] The CAC accepts that the purpose of the Tribunal exercising its disciplinary powers in respect of a conviction is not to punish the teacher a second time. Rather the CAC submits that the purpose of the disciplinary proceedings to further the Teaching Council's overriding purpose of "ensur[ing] safe and high-quality leadership, teaching and learning" through raising the status of the teaching profession.

[33] In support of this submission, and its seeking of an adverse finding, the CAC referred the Tribunal to the decisions of *CAC v Teacher M* NZTDT2019/66 and *CAC v Teacher T* NZTDT 2016/42.

[34] The CAC submits that the respondents conduct is aggravated by the following factors:

(a) He has previously appeared before the Tribunal for failing to disclose convictions.

(b) The nature of the conviction, namely a family violence related conviction.

(c) The vulnerability of the victim, who held the protection order, in particular the fact that she is a paraplegic and is wheelchair bound.

[35] The CAC submits that this is a clear departure from the high standard of professional behaviour expected by teachers as encapsulated in clause 1.3 of the Code and reflected in the Rules. Consequently, the CAC submits that the respondent's conviction reflects poorly on the good standing of the teaching

profession and the respondent's fitness to remain part of it. The CAC submits that an adverse finding is warranted in this case.

[36] The respondent submits that while his conduct fell short of what is expected of teachers, it does not meet the character or severity required to be classified as serious misconduct.

[37] Further in relation to the conviction for breach of protection order, the respondent submits that this came from the context of a factitious relationship breakup and that the facts surrounding the breach of protection order are not of the character or severity of the other cases that have come before the tribunal.

[38] In relation to the failure to report the breach protection order conviction, the respondent submits that as he was not teaching at the time and did not intend to return to teaching, he did not believe the conviction had to be reported.

[39] In relation to the cases relied on by the CAC, the respondent submits that the conduct in both *Hughes* and *Hutana* was more serious than the present case. The respondent submits that the use of offensive language, combined with threats of violence and or damage to property, in those cases was significantly more serious than the conduct displayed by the respondent, which did not include any possibility of physical violence, the expletive used was a repetition of what the student was alleged to have said, rather than an expletive being directed at child X. It was designed to prevent the normalisation of bad language in the Kura. The respondent further submits that the severity of his actions in relation to child X were reduced by the fact that there were no other students present and exposed to the language used, that child X was not humiliated in front of his peers, and that no other students will have observed the respondent's anger or being upset by it.

[40] In support of his submission that this is something less than serious misconduct, this respondent relies on the case of *CAC v X* NZTDT 2018/90.

[41] The respondent accepts that there may have been some effect on the wellbeing or learning of child X his anger but submits that upset is not necessarily equivalent to adverse effects. The respondent submits that while angrily reprimanding a child may not be best practise, a teacher's fitness to teach is not undermined by an occasional expression of anger. Further, the respondent submits that a right-minded member of the public, knowing all of the circumstances of this case, would be unlikely to consider that the reputation of the profession is diminished by the respondent's conduct.

[42] Accordingly, the respondent submits that this case has neither the character nor severity necessary for a finding of serious misconduct.

[43] In relation to the second allegation, the respondent seeks to distinguish the present case from those relied on by the CAC, noting that those cases involved a breach of protection order by way of physical assault and breaches of protection order involving threatening behaviour against two different women, together with trespass and damaged property. The respondent submits that the present case

does not have the aggravating features of those cases and therefore cannot be characterised as of the same severity.

[44] Further, the respondent submits that the present case is somewhat unusual in that the relationship continued despite the existence of the protection order, because the victim visited the respondent by her own choice. Further that even despite the argument the respondent helped the victim down the front stairs of the address so that she could leave when she wished to do so. The respondent submits that this is evidence of the lack of malevolent intent. Further there is no evidence the respondent attempted to get into the vehicle or take any steps to prevent the victim from leaving. Importantly, the respondent notes that while he was angry with the victim there is no evidence of any possible physical violence against her, rather he used care to help her leave at his property safely.

[45] The respondent submits that there was no adverse effect or impact on students and that while any breach of protection order is not ideal behaviour, it should be seen in the context of an acrimonious relationship breakdown, something that could happen to anyone, and it does not impact on the respondent's fitness to teach. Similarly, the respondent submits that while the offending is not ideal, a reasonable member of the public aware of all of the circumstances would be unlikely to consider the reputation of the teaching profession diminished by the respondent's conduct.

[46] Again, the respondent submits that this allegation has neither the character nor severity of the cases involving serious misconduct.

Discussion

[47] We are not satisfied that the respondent's conduct amounts to serious misconduct. While we accept there was some anger expressed in the first incident, it was not of the level where the threshold for serious misconduct is met. Of note, the language used was a repetition of the language child X was being spoken to about rather than an expression of anger.

[48] On its own, we do not consider that the first incident would justify a finding of either serious misconduct or misconduct.

[49] In relation to the second allegation, we consider that the respondent's conduct was clearly inappropriate, and that is reflected in his guilty plea to a charge of breach of protection order. We acknowledge the context in which this offending arose. However, we consider that when taken together the two incidents reflect the respondent's poor management of stress and anger.

[50] Taken as a whole, we consider the respondent's conduct amounts to misconduct.

[51] To find misconduct rather than serious misconduct is not to condone the conduct in either occasion. The professional disciplinary regime under the Act clearly provides for degrees of wrongdoing.

[52] We are persuaded that the test for misconduct is met as a result of the risk of adverse effect on the wellbeing of child X which was present in the first incident, combined with the inherent seriousness of family violence offending which arises from the second incident.

[53] However, judged against his background as a teacher for a significant period, together with the very good rehabilitation and reflection undertaken by the respondent, we do not consider that this is a pattern of behaviour that reflects adversely on the respondent's fitness to be a teacher.

[54] We do not consider that the respondent's conduct had the potential to bring the teaching profession into disrepute, although any incidents of these types give pause for thought.

[55] The High Court in C*ollie v Nursing Council of New Zealand*[3] confirmed that the test is an objective one. In making its determination, the Tribunal must ask itself whether reasonable members of the public fully informed of the facts of the case could reasonably conclude that the reputation and good standing of the profession has been lowered by the respondent's actions.

[56] We conclude that while isolating a child and speaking with them angrily, together with breaching protection orders is something that would cause concern, we are not satisfied that reasonable members of the public, informed and with knowledge of all the factual circumstances – particularly that the respondent's swearing was not in anger, but rather a repetition of language used by child X and the full background to the breach of protection order - could reasonably conclude that the reputation and standing of the profession is lowered by the behaviour of the respondent. Therefore, it does not meet the criterion in r 9(1)(k) or the definition of serious misconduct in paragraph (a)(iii) in s 378.

[57] For completeness, we note that we consider this case more akin to those referred to by the respondent than the significantly more serious conduct in cases such as *Hughes* and *Hutana* relied on by the CAC. We also accept that a breach of protection order involving actual violence or threats are more serious than the respondent's conduct in the present case.

PENALTY

[58] Having determined that this case is one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

> ***404 Powers of Disciplinary Tribunal***
>
> *(1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*

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3 *Collie v Nursing Council of New Zealand*, [2001] NZAR74 at [28].

(a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*

(b) *censure the teacher:*

(c) *impose conditions on the teacher's practising certificate or authority for a specified period:*

(d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*

(e) *annotate the register or the list of authorised persons in a specified manner:*

(f) *impose a fine on the teacher not exceeding $3,000:*

(g) *order that the teacher's registration or authority or practising certificate be cancelled:*

(h) *require any party to the hearing to pay costs to any other party:*

(i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*

(j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

(2) Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).

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

[59] CAC submits that the appropriate starting point for penalty is censure, annotation, a disclosure requirement and the imposition of conditions requiring the respondent to undergo professional mentoring/counselling, completion of anger management, and completion of a course in managing difficult students and situations.

[60] The CAC submits that the conduct is aggravated by the fact that there were two incidents of anger, and that the respondent does not appear to accept the Police summary of facts in full. The CAC submits that this is aggravating as it shows the respondent does not take full responsibility for his conduct.

[61] The CAC accepts that the following mitigating features are present:

(a) The acceptance of the allegations in the ASoF.

(b) The guilty pleas to the charges in the criminal court.

[62] The respondent accepts that a finding of misconduct is appropriate in the present case. The respondent does not accept that further penalty is required given the steps that have been undertaken to date.

[63] The respondent accepts that the conduct is aggravated by there being two incidents of anger, although notes the time between them.

[64] By way of mitigation, the respondent notes that:

(a) There was no evidence of actual or threatened violence.

(b) The respondent apologised to the child and their whanau.

(c) The respondent has taken steps to manage his anger and to learn more appropriate anger management techniques.

(d) There was a context surrounding the breach of protection order which makes it less serious offending.

(e) The completion of the Te Whare Tapa Wha programme significantly mitigates the risk of any future incidents of this type.

[65] The respondent submits that an appropriate penalty would be censure, annotation of the register and a disclosure requirement to future employers.

[66] In determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.[4] Counsel for the respondent submitted that punishment is one of the primary purposes of disciplinary proceedings. We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.[5]

[67] In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers[6]:

(a) Protecting the public.

(b) Setting the standards for the profession.

(c) Punishment.

(d) Rehabilitation.

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4 *CAC v McMillan*, NZTDT 2016/52.

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

6 Above n 16 at [40] – [62]

(e) Consistency.

(f) The range of sentencing options.

(g) Least restrictive.

(h) Fair, reasonable and proportionate.

[68] We do not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.

[69] We agree with the submissions of the respondent in relation to the mitigating features of this incident. We also accept the submissions of the respondent, that a finding of misconduct is a penalty in and of itself.

[70] We do not accept that the respondent challenging some portions of the Police summary of facts is an aggravating feature of this conduct. Firstly, an acceptance of responsibility and remorse is a mitigating feature. So, a failure to accept responsibility or a sense that the respondent was not remorseful would mean he could not claim credit for those things. However, the absence of a mitigating feature is not an aggravating feature of the conduct.

[71] Further, we do not accept that the respondent's challenge to the Police summary of facts, which was more of a request that the Tribunal consider the context in which the offending arose, is a failure to accept responsibility. The respondent pleaded guilty in the District Court. Further, we consider the respondent's actions after the event indicate his remorse and acceptance of responsibility. He has written a letter of apology; he had undertaken anger management counselling and he was written a thorough and articulate statement of his learnings from that program. We consider these demonstrate his insight into his behaviour and significantly mitigate his risk of further incidents.

[72] We consider that the respondent has something of considerable value to contribute to the profession and can continue to add value to the lives of the students he teaches.

[73] Taking into account the finding of misconduct, rather than serious misconduct, the respondent's acceptance of responsibility, and the rehabilitation completed by the respondent, we consider censure, conditions on the respondent's practising certificate and annotation are appropriate penalties.

COSTS

[74] The CAC seeks an order for costs against the respondent towards the CAC's actual and reasonable costs incurred in undertaking its investigative and prosecutorial functions.

[75] The CAC submits that the starting point, in accordance with the Tribunal's practise note of 17 June 2010, is an award of 50% of the cost of investigation, the hearing, and the Tribunal's costs.

[76] Taking into account that the respondent has accepted responsibility and has agreed to proceed with the hearing on the papers with the benefit of an agreed summary of facts, the CAC submits that a reduction in the costs awarded is warranted. The CAC seeks a reduced award of 40% of actual costs.

[77] The Tribunal notes that it has made a finding of misconduct, rather than serious misconduct, and that is a finding that was very clear. This is really a matter which should have been dealt with by the CAC's misconduct processes. We have considered the decision in *CAC v Teacher S*[7]. In that case, the CAC and the teacher involved agreed that the conduct amounted to misconduct, rather than serious misconduct. The reason the matter was referred to the disciplinary Tribunal, rather than being dealt with by the CAC, was because the school involved did not agree to the outcome the CAC originally proposed.

[78] That case is not entirely on point, given that in the present case, the CAC has alleged serious misconduct, and it is that allegation which resulted in the matter coming before the Tribunal. Further, in the present case, the CAC seeks costs, whereas no order was sought in *CAC v Teacher* S.

[79] We have no hesitation in accepting that misconduct rather than serious misconduct was the appropriate charge. We anticipate that the matter could well have resolved without need for referral to the Tribunal, had the CAC charged this matter appropriately.

[80] Accordingly, we consider costs should be reduced and order costs of 20%.

NON-PUBLICATION

[81] The respondent initially sought name suppression. However, no submissions or evidence was filed in support of that application.

[82] No order for suppression is made.

Suppression of Children's names

[83] Rule 34(4) of the Rules requires the Tribunal to consider whether suppression of the details of any child is proper, under s405(6) of the Act.

[84] Taking into account the age and inherent vulnerability of the child we consider that such an order is proper in this case.

ORDERS

[85] The Tribunal's formal orders under the Education Act are as follows:

a) The respondent is censured pursuant to s 404(1)(b).

b) Pursuant to s 404(1)(c), the following conditions are imposed on the

[7] *CAC v Teacher S* NZTDT 2018/5, 21 August 2018

respondent's practising certificate for a period of 12 months from the later of the date of the order or the commencement of employment. The respondent must:

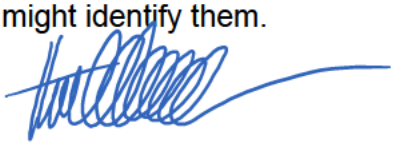
i) Receive mentoring and supervision within the school he is employed.

ii) Complete the "Zones of Regulation" programme provided by Socially Speaking.

iii) advise any existing or prospective employer of this decision and provide it with a copy.

c) Under s 404(1)(e), the register is to be annotated for a period of 1 year.

d) There is order pursuant to s 405(6)(c) permanently suppressing the names of the child, the child's whanau, and any details that might identify them.



Hannah Cheeseman

Deputy Chairperson

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

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