

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

NZTDT 2023/76

UNDER | WĀHANGA

the Education and Training Act 2020  
(the Act)

IN THE MATTER | MŌ TE TAKE

of a charge referred to the Tribunal

BETWEEN | I WAENGA I A

COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)  
Kaiwhiu | Prosecutor

AND | ME

Kaiurupare / Respondent

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TE WHAKATAUNGA Ā TARAIPUNARA  
DECISION OF TRIBUNAL ON CHARGES  
15 January 2025 - 15 Hanuere 2025

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NOHOANGA - HEARING:

Held on 9 August 2024 (on the papers)

TARAIPUNARA - TRIBUNAL:

B R Arapere (Deputy Chair), D Spraggs  
and R McInernay (Members)

HEI MĀNGAI - REPRESENTATION:

E Mok/N Pearce-Bernie, Meredith  
Connell, for the CAC  
A M Gold, Gold Legal Ltd, for the  
Respondent

## Hei Tīmatanga Kōrero – Introduction

[1] Pursuant to s 497 of the Education and Training Act 2020 (the Act) the Complaints Assessment Committee (CAC) has referred a charge to the Tribunal. The CAC charges that the respondent has engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.

[2] The CAC charges that [REDACTED] registered teacher, of [REDACTED]:

- a. While employed as a teacher at [REDACTED]
  - i. On 11 of September 2020, stole one bottle of wine from Liquorland [REDACTED]
  - ii. On 14 of September 2020, stole two bottles of wine from Liquorland [REDACTED];
  - iii. On 16 of September 2020, stole one bottle of wine from Liquorland [REDACTED].

and/or

- b. While employed as a teacher at [REDACTED] in [REDACTED]:
  - i. On 7 July 2022, consumed alcohol on school grounds during school hours.

## Ko te Hātepe Ture o tonono nei – Procedural History

[3] Pre-hearing conferences (PHC) were held on 5 April and 24 May 2024 before a Deputy Chairperson of the Tribunal at which various timetabling orders were made. An Agreed Summary of Facts (ASoF) was signed by the parties on 17 April 2024.

[4] A hearing on the papers was held on 9 August 2024. No applications for confidentiality orders were received in advance of the hearing. Accordingly, the Tribunal issued a minute to the parties directing that any party wishing to file such an application could do so by 23 August 2024. An application for the respondent was filed on 23 August 2024 and the CAC filed a memorandum of counsel on 6 September 2024.

## Kōrero Taunaki - Evidence

### *Agreed Summary of Facts (ASoF)*

[5] The ASoF is set out below:

### **Background**

1. [REDACTED] ([REDACTED]) is a registered teacher. [REDACTED] has been a registered teacher since 2011, and her current practising certificate is valid until 23 May 2025.
2. [REDACTED] was employed as a teacher at [REDACTED], a primary and intermediate school near [REDACTED], between [REDACTED] and [REDACTED].
3. [REDACTED] commenced employment at [REDACTED] Primary School ([REDACTED]), in Northern Waikato, in [REDACTED].

### **Shoplifting wine**

4. On Friday 11 September 2020, at 3.22pm, [REDACTED] entered Liquorland [REDACTED] (store). [REDACTED] was a regular customer and a friend of the staff.
5. [REDACTED] went to the wine chiller, took a bottle of sauvignon blanc wine and placed it in her shoulder bag. She selected and paid for two other bottles of wine and then left the store, without paying for the sauvignon blanc, which remained in her bag.
6. Three days later, on Monday 14 September 2020, [REDACTED] entered the store at 4.57pm. She chose two bottles of sauvignon blanc from the wine chiller and placed them in her shoulder bag. [REDACTED] selected and paid for a third bottle of wine and then left the store without paying for the two bottles of sauvignon blanc, which remained in her bag.
7. Two days later, on Wednesday 16 September 2020, [REDACTED] entered the store at 7.47pm. She chose a bottle of sauvignon blanc from the wine chiller and placed it in her shoulder bag. [REDACTED] paid for a second bottle of wine and then left the store without paying for the sauvignon blanc, which remained in her bag.
8. The four bottles of wine which [REDACTED] shoplifted had a total value of \$103.96.
9. The store's manager discovered [REDACTED]'s shoplifting upon reviewing the store's CCTV footage, and made a report to the Police.

### **Police charges and diversion**

10. The Police charged [REDACTED] with three charges of theft (under \$500), pursuant to sections 219 and 223(d) of the Crimes Act 1961. The maximum penalty for this offence is three months' imprisonment.
11. [REDACTED] admitted the offending to the Police and explained that she was on a downward spiral of self-destruction due to a relationship breakup.
12. [REDACTED] completed a Police diversion process, which involved her making a reparation payment of \$103, writing an apology letter to the store owners and completing alcohol counselling. The charges were then dismissed in the [REDACTED] District Court on 25 February 2021.

### **[REDACTED]'s response**

13. [REDACTED]'s employment at [REDACTED] ended on [REDACTED] October 2020.
14. On the evening of [REDACTED] 2020 and the weekend that followed,

██████████ (██████████), ██████████'s principal, was approached separately by a ██████████ staff member and four members of the community who told her that ██████████ had been charged with shoplifting.

15. On 21 October 2020, ██████████ spoke with the store owners who confirmed that ██████████ had committed a crime at the store, but declined to provide any details.
16. ██████████ then rang ██████████. ██████████ admitted that she had shoplifted at the store and said she was having a breakdown at the time. She said she was receiving diversion so the offending would not be on her record and would not affect her teaching or her job.
17. As ██████████'s employment with ██████████ had already ended, she was not subjected to a disciplinary process.

**Drinking on ██████████ grounds**

18. Following her departure from ██████████, ██████████ commenced employment at ██████████.
19. On ██████████ 2022, ██████████ was on lunch duty at ██████████ during the second half of the lunch break, meaning she was responsible for monitoring the students. While she was on duty, ██████████ retrieved a bottle of wine from her car. She poured the wine into her drink bottle and then, leaving the wine bottle in her car, sat at an outside table on school grounds and drank several sips of wine from the drink bottle.
20. Another teacher at ██████████, ██████████ (██████████) saw ██████████ and sat down beside her. ██████████'s drink bottle lid was open and ██████████ could smell the wine. ██████████ saw that ██████████ had noticed the smell, and moved the bottle.
21. A short time later, ██████████ reported to ██████████'s principal, ██████████ (██████████), that she believed ██████████ had wine in her drink bottle.
22. After the lunch break, ██████████ left her drink bottle containing the wine in her classroom while she went on a walk with a class of students.
23. A relevant ██████████ policy stated that "[s]taff will not consume or be impaired by alcohol when the school is open for instruction or at any time when they have responsibility for students, including EOTC activities". The policy further stated that: "[s]taff and other adults, including volunteers, must not be in possession of, consume, or be under the influence of alcohol, illegal drugs, mind-altering substances, legal highs, solvents, and other harmful substances on all school grounds, or at any time when they have responsibility for students, including EOTC activities."
24. ██████████'s disciplinary process  
After school had finished on ██████████ 2022, ██████████ met with ██████████, and informed her an allegation had been made that she was drinking alcohol at school. ██████████ admitted that she had been drinking wine that day during the lunch break.

25. ██████████ conducted a formal disciplinary meeting with ██████████ on

██████████ 2022. During the meeting, ██████████ ██████████ said that she had drunk five to six sips of wine.

26. Following the meeting, ██████████ referred the matter to ██████████ ██████████'s Board of Trustees (**Board**).
27. On ██████████ 2022, before the Board had considered the matter, ██████████ ██████████ handed in her resignation.
28. The Board met on 1 August 2022 and decided to terminate ██████████ ██████████'s contract. ██████████ ██████████ was placed on a brief discretionary leave. Her final day was ██████████ 2022.

#### **Mandatory reports**

29. On 25 February 2022, ██████████ submitted a mandatory report to the Teaching Council about the shoplifting. The matter was referred to a Complaints Assessment Committee (**Committee**) for investigation.
30. On 9 August 2022, ██████████ submitted a mandatory report to the Teaching Council about ██████████ ██████████ consuming alcohol at school. The matter was referred to a Committee to investigate.
31. During the Committee process, ██████████ ██████████ was offered the opportunity to undergo a voluntary impairment process in relation to both matters. On 13 February 2023, ██████████ ██████████ advised the Committee's investigator that she did not wish to participate in such a process. She advised that she had completed rehabilitation and was sober.
32. On 3 August 2023, the Committee met to consider the mandatory reports. ██████████ ██████████ did not attend the meeting.

#### **██████████'s comments**

33. In her response to the mandatory report from ██████████ ██████████, dated 24 August 2022, ██████████ ██████████ explained that, at the time of the shoplifting, she was having a breakdown. She attributed this to having to attend school every day during the Covid-19 lockdown, struggling with a marriage separation, being a single parent of three children, and facing an impending surgery. ██████████ ██████████ said she had resigned from her position at ██████████ ██████████ and begun counselling.
34. ██████████ ██████████ also said she took accountability for her actions and that they were a conscious and deliberate attempt on her part to "ruin everything". She said she had had to move towns as a result but that she had since turned her life around.
35. In a response provided on 7 October 2022, ██████████ ██████████ informed the Committee's investigator that she was suffering from post-traumatic stress disorder, anxiety and depression and that she had experienced a significant decline in her mental health. She stated that she was addicted to alcohol.
36. In her response to the mandatory report from ██████████ ██████████, dated 24 August 2022, ██████████ ██████████ said that she had intended to drink the wine after school had ended and while she was preparing material for the relieving teacher who would be taking her class the next day. ██████████ ██████████ said that, on her way back from her car, she saw ██████████ ██████████ and sat down with her. She said she drank a few sips of the wine over approximately five minutes, and said that she did not drink any more of the wine that day.

## Te Ture – Legal Principles

[6] The respondent has been charged by the CAC with serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers.

[7] Section 10(1) of the Act defines “serious misconduct”:

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

(a) that—

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

(ii) reflects adversely on the teacher’s fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct.

[8] The test for serious misconduct is conjunctive.<sup>1</sup> As well as being conduct that has one or more of the adverse professional effects or consequences described in subsection (a)(i)-(iii) the conduct must also be of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct. In other words, if any of the criteria under s 10(1)(a)-(c) are satisfied, but the criteria under s 10(1)(b) is not satisfied, then the conduct will amount to “misconduct” rather than “serious misconduct”

[9] The criteria for reporting serious misconduct are found in Part 3 of the Teaching Council Rules 2016. The Tribunal accepts that, if established, the respondent’s conduct would fall within the following sub-rule of Rule 9(1):

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

[10] The Tribunal also accepts that the test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent’s behaviour.<sup>2</sup>

[11] The burden rests on the CAC to prove the charge. While the standard to which it must

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<sup>1</sup> *Evans v Complaints Assessment Committee* [2021] NZCA 66.

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

be proved is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.<sup>3</sup>

## **Ngā Kōrero a te Kōmiti me te Kaiurupare – Submissions of the CAC and the Respondent**

### *CAC Submissions*

[12] In summary, the CAC submits:

- a. The respondent's conduct amounts to serious misconduct.
- b. The appropriate penalty orders are:
  - a. Cancellation and censure; or
  - b. Censure, the imposition of conditions and annotation of the register.

[13] The CAC says that serious misconduct is the appropriate charge on the basis that the respondent's combined conduct:

- a. Adversely affected, or was likely to adversely affect, the well-being or learning of 1 or more students; or
- b. Reflected adversely on her fitness to be a teacher; or
- c. May bring the teaching profession into disrepute; and
- d. Is of a character or seriousness that meets the Teaching Council's criteria for reporting serious misconduct.

[14] In respect of limb one of s 10(1)(a) the CAC submits that the respondent's conduct, on both parts of the charge reflect adversely on her fitness to be a teacher. The CAC submits the respondent also allowed her dependence on alcohol to take precedence over the need for her to adequately supervise learners during the lunch break. She engaged in dishonesty in stealing alcohol, which is inconsistent with teachers' professional obligations and the trust that society places in them. Further, the CAC says respondent's actions risked bringing the reputation of the teaching profession into disrepute. The CAC submits that reasonable members of the public would expect teachers not to steal, and not to drink alcohol while supervising children at school.<sup>4</sup>

[15] The CAC submits that the respondent's conduct also breached her professional obligations under the Code of Professional Responsibility (Code) in particular section 1.1 (demonstrating a commitment to providing high-quality and effective teaching, by drinking at school) and section 1.3 of the Code (demonstrating a high standard of professional behaviour and integrity, by shoplifting, and by drinking at school).

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

<sup>4</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28].

- [16] In respect of the second limb of the test in section 10(1)(b) the CAC submits the respondent's conduct breached rr 9(1)(g), (h), (j) and/or (k) of the Rules.
- [17] In respect of the shoplifting, rule 9(1)(g) refers to a teacher committing theft as conduct which will meet the reporting criteria for serious misconduct and rule 9(1)(j) refers to a teacher committing an act that may be the subject of a prosecution for an offence punishable by at least three months' imprisonment. The respondent was charged with three charges of shoplifting with the maximum penalty being three months' imprisonment. The CAC submits Rule 9(1)(k) is also engaged because members of the public would reasonably expect teachers not to engage in conduct that involves dishonesty due to the standards of professionalism, honesty and integrity to which teachers are expected to adhere.
- [18] In respect of drinking alcohol at school while responsible for supervising young students, the CAC submits r 9(1)(h) specifically refers to a teacher "being impaired by alcohol [...] while responsible for the care or welfare of a learner or a group of learners". The CAC submits that while there is no evidence that ■■■■■ was visibly affected by the alcohol she consumed from her drink bottle or that this affected her conduct with the students she was supervising, on a plain reading of r 9(1)(h), it could be said she was impaired by alcohol, having consumed it. The CAC submits even if the respondent was not "impaired", such that r 9(1)(h) is not engaged, her conduct in covertly drinking alcohol on school grounds while responsible for learners nevertheless risked bringing the teaching profession into disrepute, contrary to r 9(1)(k). The CAC says the respondent's actions were also unprofessional and were contrary to school policy. The CAC relies on Tribunal cases including *CAC v Fuli-Makaua* and *CAC v Teacher J* where alcohol was a strong factor in the teachers' conduct.<sup>5</sup>
- [19] In reply submissions from the CAC, counsel submitted that cancellation is the appropriate censure and whether the Tribunal can step back from cancellation will depend on the extent to which the respondent has undertaken meaningful rehabilitative steps and sufficiently addressed the causes of her conduct. The CAC submits that protection of learners in the respondent's care is the paramount consideration, and the Tribunal will need to be satisfied that the penalty imposed is sufficient to ensure the ongoing risk to learners is properly mitigated. The CAC acknowledges that the respondent appears to be taking meaningful steps towards her ongoing rehabilitation, however, it notes that the respondent's health needs are considerable and may have implications for her fitness and ability to safely return to teaching.

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<sup>5</sup> *CAC v Fuli-Makaua* NZDTD 2017/40; *CAC v Teacher J* NZTDT 2018/60, 7 May 2020.



## *Respondent Submissions*

[20] The respondent, through her counsel:

- a. Accepts that her combined actions satisfied both the first and second limbs of s 10(1)(a) and (b) of the test for serious misconduct;
- b. Submits that in the circumstances cancellation is not necessary or appropriate;
- c. Advises that she does not intend to renew her teaching certificate while she continues her recovery; and
- d. Submits that should she reach a point where she is well enough to consider a return to teaching it would be appropriate to allow her return but monitored and with conditions.

[21] The respondent submits that authorities relied on by the CAC are more serious than the case before the Tribunal. For example, *CAC v Fuli-Makaua* related to repeat drink driving and driving while disqualified and the teacher received convictions and was sentenced compared to the respondent who was discharged without conviction.<sup>6</sup> The respondent says the *CAC v Teacher J* case is also more serious in that the teacher drank alcohol but endangered the safety of students by leaving it within reach of the students and taking steps to conceal her actions whereas the respondent submits that she has been upfront about her conduct.<sup>7</sup>

[22] The respondent submits that her conduct was more in line with another case called *CAC v Teacher J* although the shoplifting in that case took place on 7 occasions.<sup>8</sup> It is submitted that the case is similar because the respondent's shoplifting was due to her mental health issues, she was remorseful, and had favourable prospects for rehabilitation. In that case the teacher was censured and received a mentoring condition imposed for 2 years.

[23] The respondent submits that due to serious past trauma she has been diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD), has alcohol dependence, major depressive disorder, and Bruxism. She also provided documents in support of her diagnosis from her ACC sensitive claims therapist, medical professionals, and a support worker. She submits that she has recognised and sought appropriate treatment for her medical conditions.

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<sup>6</sup> *CAC v Fuli-Makaua* NZDTD 2017/40.

<sup>7</sup> *CAC v Teacher J* NZTDT 2018/60.

<sup>8</sup> *CAC v Teacher J* NZTDT 2020/28, 22 February 2021.

## Kupu Whakatau – Decision

[24] The Tribunal must be satisfied on the balance of probabilities that the CAC has proved the particulars of the charge. In this case, the ASoF provides an adequate basis to establish the particulars of the charge. Accordingly, we find that the particulars are established. That does not, of itself, mean we have found the conduct amounts to misconduct. To decide that question, we need to assess the conduct against the criteria for misconduct or conduct otherwise entitling the Tribunal to exercise its powers.

[25] The Tribunal considers that for the reasons discussed below with respect to the legal position, the established particulars amount to serious misconduct pursuant to the Act and Rule 9 of the Rules. The Tribunal considers that the respondent's conduct:

- a. Adversely affected, or was likely to adversely affect, the well-being or learning of the children involved;
- b. Reflects adversely on her fitness to be a teacher;
- c. May bring the teaching profession into disrepute; and
- d. Is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct

[26] The Tribunal considers the respondent's conduct of shoplifting wine on 3 separate occasions and drinking alcohol on school grounds while responsible for learners to be inappropriate. In respect of the shoplifting charge, the respondent's conduct was dishonest and inconsistent with her professional obligations and the trust that society placed in her as a member of the teaching profession. Reasonable members of the public would expect teachers to obey the law and not to steal or to drink alcohol while supervising learners.

[27] The respondent admitted the shoplifting offending to the NZ Police and explained that she was on a downward spiral of self-destruction due to a relationship break-up. However, the Tribunal considers that the respondent's actions on this first charge adversely reflect on her fitness to be a teacher. The conduct in this charge related to 3 separate incidents over the space of 6 days. This in itself show a lack of insight into her own behaviour in that she repeated the dishonest conduct. The shoplifting charges had a maximum penalty of three month's imprisonment and while the respondent admitted the charges and was given a discharge without conviction her conduct was nonetheless serious and in breach of professional standards and the law.

[28] The Tribunal considers the respondent's actions in taking sips of wine out of her drink bottle while on lunch duty on school grounds and while responsible for monitoring students was inappropriate. While there is no evidence that students' learning or wellbeing were adversely affected or that this was likely given the amount of alcohol consumed the respondent's conduct in covertly consuming alcohol on school grounds while responsible for supervising learners placed those learners at risk. The conduct also reflected poorly on her fitness to be to teach. The Tribunal has previously observed that a teacher who consumes alcohol during the school day, for whatever reason, brings harm to the reputation of the teaching profession.<sup>9</sup> We consider that drinking alcohol in the circumstances the respondent did was likely to bring the teaching profession into disrepute, whether or not the respondent was visibly intoxicated or her judgement impaired.

[29] The Tribunal considers the two charges reflect poorly on the respondent's understanding of and respect for appropriate behaviours and her professional obligations as a member of the teaching profession. Shoplifting and drinking alcohol in the circumstances that she did are risky and dangerous behaviours and reflect poorly on the respondent's judgement. The Tribunal finds the conduct is of a character and severity that meets the criteria for serious misconduct.

[30] Taking the submissions, evidence and case law into account, the Tribunal regards the combined conduct as meeting the threshold under both limbs of s 10 (s 10(1)(a) and (b)) for serious misconduct and warrants us exercising the disciplinary powers under s 500 of the Act.

### **Utu Whiu – Penalty**

[31] Having determined that this case is one in which we consider serious misconduct to be established, the Tribunal must now consider what an appropriate penalty is in the circumstances, pursuant to s 500:

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

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

*(a) any of the things that the Complaints Assessment Committee could have done under section 497(2):*

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<sup>9</sup> CAC v Collins NZTDT 2016/43, at [41].

- (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 Teaching Council in respect of the costs of conducting the hearing:*
  - (j) direct the teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) Despite subsection (1), following a hearing that arises out of a report under 493 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

[32] In determining penalty, the Tribunal must ensure that three overlapping principles are met, that is, protection of the public through the provision of a safe learning environment for students, maintenance of professional standards, and the public's confidence in the profession.<sup>10</sup> We note also decisions of the superior Courts which have emphasised that the purpose of professional disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect.<sup>11</sup>

[33] In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers<sup>12</sup>:

- (a) Protecting the public;
- (b) Setting the standards for the profession;
- (c) Punishment;
- (d) Rehabilitation;
- (e) Consistency;
- (f) The range of sentencing options;

<sup>10</sup> *CAC v McMillan*, NZTDT 2016/52.

<sup>11</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

<sup>12</sup> *CAC v Mackay*, NZTDT 2018-69 at [40]–[62].

- (g) Least restrictive;
- (h) Fair, reasonable, and proportionate.

[34] The Tribunal does not repeat what it said in that decision, but notes that we have turned our mind to these principles in reaching our decision on penalty.

[35] As noted above, the CAC submitted that cancellation is the appropriate starting point for penalty but the Tribunal may find that we are able to step back from cancellation and impose a different penalty. It submits that while the respondent's steps in her recovery are commendable, caution is needed because alcohol addiction is complex, and relapses are not uncommon.

[36] The Tribunal considers the respondent's serious past trauma and several health disorders that she suffers from influenced the conduct that lead to the charge. The respondent has been a registered teacher since 2011 and the Tribunal understands that until the shoplifting incident in 2020 she has not faced any other charges.

[37] While initially not participating in this disciplinary process due to distress and her poor health more recently the respondent retained legal counsel to represent her (on a pro bono basis) and has also provided the Tribunal with information as to her health, wellbeing and treatments, as well as her efforts towards recovery. The respondent has taken and continues to take steps to address her health issues. The Tribunal considers that the respondent's vulnerable mental health as well as her recovery and rehabilitation are a strong factors influencing the appropriate penalty in this case.

[38] The Tribunal has carefully considered all of the submissions and information provided by the CAC and respondent. On balance and bearing in mind the above, as well as the obligation on the Tribunal to impose the least restrictive penalty in the circumstances, pursuant to section 500(1) of the Act, we order:

- a. Censure;
- b. Annotation of the register for a period of 3 years;
- c. Conditions to commence from the date at which the respondent resumes teaching and to apply for a period of 3 years to any current and subsequent practising certificate issued to the respondent under the Act:
  - i. To provide a copy of the Tribunal's decision to any prospective and current employers in the teaching profession.
  - ii. To develop a relapse prevention plan including engaging in

- counselling, to be agreed with any employer in the teaching profession, and a copy provided to the Teaching Council, to the satisfaction of the Teaching Council – Manager of Professional Responsibility; and
- iii. To provide updates to the Teaching Council on her rehabilitative steps and compliance with her relapse prevention plan every three months.

## He Rāhui Tuku Pānui - Non-Publication

### *Legal principles*

[39] The default position is that Tribunal hearings are to be conducted in public. Consequently, the names of teachers who are the subject of these proceedings are to be published. The Tribunal can only make one or more of the orders for non-publication specified in s 501 if we are of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and to the public interest.

[40] The purposes underlying the principle of open justice are well settled. As the Tribunal said in *CAC v McMillan*, the presumption of open reporting “exists regardless of any need to protect the public.”<sup>13</sup> Nevertheless, protection of the public is an important purpose behind open publication in disciplinary proceedings in respect to practitioners whose profession brings them into close contact with the public. In *NZTDT v Teacher* the Tribunal described the fact that the transparent administration of the law also serves the important purpose of maintaining the public’s confidence in the profession.<sup>14</sup>

[41] In *CAC v Jenkinson* the Tribunal summarised the principles on non-publication.<sup>15</sup> The Tribunal referred to *CAC v Teacher* NZTDT 2016-27, where it acknowledged what the Court of Appeal had said in *Y v Attorney-General* [2016] NZCA 474: While a balance must be struck between open justice considerations and the interests of a party who seeks suppression, “[A] professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure”.

[42] In considering whether to grant such orders, the Tribunal in *CAC v Jenkinson* adopted a two-step process:

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<sup>13</sup> *CAC v McMillan*, NZTDT 2016/52.

<sup>14</sup> *NZTDT v Teacher*, 2016/27, 26.

<sup>15</sup> *CAC v Jenkinson* (NZTDT 2018-1413).

Step 1: "the threshold question". The Tribunal must decide if it is satisfied that the consequences relied upon would be likely to follow if an order prohibiting publication was not made. This simply means that there must be an "appreciable" or "real" risk that the asserted consequence would occur based on the evidence before it.

Step 2: If so satisfied, the Tribunal must determine whether it is proper for the presumption in favour of open justice to yield. This step requires that the Tribunal consider the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression.

[43] This approach was adopted in *CAC v Finch* where the Tribunal noted that the "exceptional" threshold that must be met in the criminal jurisdiction for suppression of a defendant's name is set at a higher level to that applying in the disciplinary context. As such, the Tribunal confirmed that while a teacher faces a high threshold to displace the presumption of open publication in order to obtain permanent name suppression, it is wrong to place a gloss on the term "proper" that imports the standard that must be met in the criminal context.<sup>16</sup>

#### *Applications for non-publication*

##### *The respondent*

[44] The respondent seeks an order prohibiting publication of her name and identifying details on the grounds of her Post-Traumatic Stress Disorder and mental health issues and that there is a real and appreciable risk that publication of the respondent's name and identifying details would have an adverse effect on the respondent's mental health. Further, the respondent submits that she may decide to enter back into the teaching profession once she has sufficiently recovered her mental health. Lastly, she submits it is in the interests of justice that an order is granted. No further evidence was filed by the respondent, and she relies on the information already provided to the Tribunal.

[45] The CAC filed a memorandum of counsel in regarding the respondent's application for permanent name suppression. In summary, the CAC submits that it is well established that it may be proper to order suppression where there is a real risk that publication will adversely affect a teacher's rehabilitation and recovery from mental illness. The CAC accepts that the respondent has provided evidence of her Post-Traumatic Stress Disorder and mental health concerns that that these have contributed

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<sup>16</sup> *CAC v Finch*, NZTDT 2016/11, at [14] to [18].

to her alcoholism and the offending that is the subject of the charge. The CAC submits that the question for the Tribunal is whether the evidence is sufficient to establish there is a real risk that publication will adversely impact on the respondent's conditions and impede her recovery and rehabilitation. That must then be weighed against the public interest in open justice. Accordingly, the CAC is neutral as to the respondent's application and will abide the Tribunal's decision.

[46] On balance and having considered all the materials provided in this matter, the Tribunal is satisfied that the consequences relied upon by the respondent would be likely to follow if an order prohibiting publication is not made. Following the two-step test in *CAC v Jenkinson* the Tribunal finds that there is sufficient evidence to support a finding that there is a real or appreciable risk to the recovery and mental health of the respondent if her name is published. The Tribunal considers that the respondent's vulnerability is such that publication of her name could risk major setbacks in her recovery journey which is ongoing

[47] Accordingly, the Tribunal finds that this is a case where it is proper for the principle of open justice to yield. The Tribunal makes the order sought by the respondent. The respondent's name and any identifying details in this decision are permanently suppressed. This order is to include the names of any other teachers or staff and the schools referred to in the ASoF.

### **Utu Whakaea – Costs**

[48] That brings us to the issue of costs. Ordinarily where there is a finding of serious misconduct, the Tribunal would order the payment of costs which would be in the region of 40% of the actual costs.

[49] The CAC seeks an order requiring the respondent to make a contribution to its costs. A costs schedule of \$12,918.90 was filed. In support of its application the CAC submits that where a charge is proved the usual starting point is for an award of 50% of costs.<sup>17</sup> The CAC submits that because the respondent has signed an ASoF a lesser award of 40% is appropriate. The CAC notes the respondent did not initially participate in the disciplinary process and signed the ASoF after the matter was directed to proceed by way of a formal proof hearing. At that point the CAC had already drafted affidavit evidence which resulted in a corresponding increase in the CAC's costs in the prosecution.

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<sup>17</sup> *CAC v Teacher J NZTDT 2020/28*, 22 February 2021.



[50] In reply submissions dated 31 July 2024 the CAC acknowledges that on the basis of information provided as to the respondent's finances, she appears to have limited financial means and that a reduction in the level of costs is likely to be considered appropriate. The CAC further submits that the evidence the respondent has put forward does not indicate that she is incapable of making some contribution to costs.

[51] The respondent submits she was too unwell to engage fully in the Tribunal process and recognising that she was unable to file her own submissions she instructed her legal representative who has acted for her on a pro bono basis. The respondent submits that because she is on a benefit and has had to withdraw her Kiwisaver on hardship grounds she has no ability to pay costs and that it would add stress and anxiety and be counterproductive to her recovery if she is required to pay costs. Therefore, the respondent submits that costs ought not to be awarded against her.

[52] We consider that this is an appropriate case to depart from the usual approach to the ordering of costs when some form of adverse finding has been made against the teacher. In this case the respondent admitted her wrongdoing from the outset. She is undergoing her recovery from serious and ongoing health issues and has advised the Tribunal of the hardship she is suffering. Given our understanding that the respondent is not presently working as a teacher, we do not consider an order for 40% or 50% of costs would be appropriate or fair. However, we consider the respondent ought to take some responsibility for the costs of this process. Given her financial situation we order that the respondent pay 10% of the CAC costs. The Teaching Council is requested by the Tribunal to allow the respondent to enter into a repayment plan and we encourage the respondent to engage with the Teaching Council for this purpose.

[53] The Tribunal is not making an order that the respondent contribute to any of the costs the Teaching Council has incurred conducting the hearing. As of the date of the hearing (and indeed not until several months later), the Tribunal had not been provided with any information about the Teaching Council's costs. As the respondent did not have the benefit of that information prior to the hearing, the Tribunal would be failing to observe the rules of natural justice were it to make an order.



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**Mokotā - B R Arapere**

Deputy Chair of the New Zealand Teacher's Disciplinary  
Tribunal

Date of decision: 15 January 2025

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

1. The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under section 498(2) or 500 may appeal against that decision to the District Court.
2. The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under section 498(2) or 500.
3. An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
4. Clause 5(2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3