

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2021/48**

**IN THE MATTER** of the Education and Training Act 2020

**AND**

**IN THE MATTER** of a charge of serious misconduct referred by the  
Complaints Assessment Committee to the New  
Zealand Teachers Disciplinary Tribunal

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

**AND** **STEVIE ROCHELLE BUTLER**

Respondent

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**DECISION OF THE TRIBUNAL ON CHARGES**

**28 June 2022**

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**HEARING:** Held on 9 May 2022 on paper via Teams

**TRIBUNAL:** Rachael Schmidt-McCleave (Deputy Chair)  
Lyn Evans and Nikki Parsons (members)

**REPRESENTATION:** C Paterson/A-R Davies, Meredith Connell for the Complaints  
Assessment Committee  
A R Shaw/C R Osborne, C & F Legal Limited for the respondent

## **Hei timatanga kōrero – Introduction**

1. Pursuant to section 497(4) of the Education and Training Act 2020 (the “Act”), the Complaints Assessment Committee (“CAC”) referred the respondent’s conduct to the Tribunal, on the basis that the CAC considers that it constitutes “serious misconduct” as defined in section 10(a) of the Act.
2. The charge alleges that the respondent, a registered teacher of Nelson:
  - (a) Used unreasonable and/or unjustified force on children in the Centre, namely:
    - (i) On 19 February 2021, held Child A (aged 2 years) and squeezed her upper arms tightly, and/or
    - (ii) On or around February 2021, grabbed Child B (aged 2 years) by the arm, lifted him off his feet into the air, then pushed him away, and/or
    - (iii) On or around September 2020, struck Child C (aged 2 years) on the head with a wooden block.
3. The CAC alleges that the conduct above separately and/or cumulatively amounts to serious misconduct pursuant to section 10 of the Act and any or all of Rules 9(1)(a), and/or (k) of the Teaching Council Rules 2016 or, alternatively, amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Act.
4. The matter was heard on the papers via Teams on 9 May 2022.

## **Ko te hātepe ture o tono nei – Procedural History and Preliminary Matters**

5. A pre-hearing conference was held on 30 November 2021. At that pre-hearing conference, counsel for the respondent confirmed the charge was to be defended, with 6 or 7 witnesses called, and that a three-day hearing would be required. Timetabling directions were made, and the charge was set down for hearing in Nelson on 9 to 11 May inclusive. The respondent was granted interim suppression over her name and identifying details, as were the children referred to in the charge and the name of the childcare centre, such interim suppression to remain in effect until further order of the full Tribunal at the hearing.

6. The Tribunal issued a further Minute dated 23 February 2022, after the respondent indicated (after having had the benefit of time to take full advice on the matter) that she now admits the charge in full. The respondent therefore sought, and the Tribunal granted, an order that the Tribunal substitute the defended hearing set down for May 2022 for a hearing on the papers. Amended timetabling directions were ordered by the Tribunal accordingly. This was amended further by Minute of the Tribunal dated 14 April 2022, after an extension was sought by the Committee.

## **Kōrero Taunaki - Evidence**

### *Agreed Summary of Facts*

7. The ASoF is set out in full below:

#### ***“Introduction***

1. *Stevie Rochelle Butler is a registered teacher (registration number 323518) Her full practising certificate expires on 12 November 2024.*
2. *At the relevant time, Ms Butler was employed by Happy Feet Childcare as a teacher at its Richmond early childhood education centre (**Centre**) in Nelson. She began her employment at the Centre in July 2020.*

3. [REDACTED]

#### ***Hitting a child on the head with a wooden block***

4. *On a day in September 2020, about 20 to 25 children at the Centre were seating themselves at a number of tables to get ready for kai. Miss Butler was standing in the middle of the room. [REDACTED] (Child B) was playing near the tables.*
5. *Another child (**Child C**) hit Child B on the head with a large wooden building block. Miss Butler saw this happen. She aggressively took the block from Child C who turned away from Miss Butler to move away. Miss Butler then struck Child C with the block, hitting the top part of the back of his head. This was done with enough force to be audible.*
6. *Child C immediately began to cry as a result of being hit by Miss Butler. Miss Butler picked Child C up and took him and a chair from one of the tables and sat him against the wall.*

#### ***Picking up [REDACTED] by the arm and yanking him off the ground at the Centre***

7. *At about 10 am on a day in early February 2021, a parent was dropping off her child at the Centre. Once she had left her child at the Centre, she returned to her car parked outside. Just as she got to her car, she heard Miss Butler yelling*

loudly at ██████████ Child B, for something he was doing while Miss Butler was with some of the children in the outside area. The parent then saw Miss Butler grab Child B by the forearm, and yank him aggressively upwards off the ground, swinging him backwards and shoving him behind her in one motion.

8. The parent then observed Miss Butler aggressively reprimand Child B, causing him to start crying.

### **Holding and squeezing a child's upper arms tightly**

9. At about 3pm on 19 February 2021, Miss Butler was responsible for a group of two to three-year-old children in the Mānuka room of the Centre. There was an incident between some of the children in relation to a tee-pee that was set up in the room. One of the children started crying, so Miss Butler tended to him.
10. While Miss Butler was doing this, another child (**Child A**) tried to get her attention by having a tantrum. Miss Butler turned to Child A and said "I'm going to move you", then picked her up and carried her on her hip through the door to behind the front desk area in the foyer, where ██████████ ██████████ ██████████ and ██████████ ██████████ were seated at the desk. As Miss Butler was carrying Child A on her hip, Child A started kicking and flailing, so Miss Butler stood her down on the ground in front of the photocopier and knelt down to try to talk to Child A.
11. At this point, Miss Butler held both of Child A's upper arms tightly, causing Child A's skin to bulge between Miss Butler's fingers and turning Miss Butler's knuckles white. Miss Butler held Child A's arms like this for between 15 and 20 seconds. ██████████ tried to intervene three times, telling Miss Butler she would take over. Miss Butler ignored ██████████ offers of assistance. Miss Butler eventually let Child A go and ██████████ took Child A onto her knee.
12. As a result of Miss Butler squeezing Child A's arms, Child A suffered bruising and marks in the shape of grabbing on both arms. Bruising was still visible six to seven days after the event. Child A said to her parent on multiple occasions that "Stevie" hurt her arms that day.

### **Teacher's comments**

13. Miss Butler denied striking Child C with a wooden block, saying she couldn't remember this.
14. In relation to the allegation that she aggressively reprimanded and forcefully grabbed ██████████ (Child B), picked him up and shoved him behind her while at the Centre, Miss Butler did not provide any response to the Teaching Council. However, in the course of the Centre's employment disciplinary investigation, Miss Butler did not deny the allegation, but stated she couldn't remember much of it. However, she accepted that she "growled him" and raised her voice, and that she gets "a little frustrated" ██████████. She also conceded that if she could have done things differently, she would have ██████████ ██████████.

15. *She denied holding Child A's upper arms and holding them tightly as alleged, stating she only held her wrists."*

## **Te Ture - The Law**

8. Section 10 of the Act defines serious misconduct:

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

(a) *that –*

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

(ii) *reflects adversely on the teacher's fitness to be a teacher;*

*or*

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

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

9. As confirmed by the District Court in relation to the identical test under section 378 of the Education Act 1989 (the "former Act"),<sup>1</sup> the test under section 10 is conjunctive, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.

10. The criteria for reporting serious misconduct are found in the Teaching Council Rules 2016 (the "Rules"). The Tribunal also accepts the CAC's submission that, if established, the respondent's conduct would fall within the following sub-rules of Rules 9(1):

(a) Rule 9(1)(a): unjustified or unreasonable physical force on a child:

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

11. The Tribunal 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

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

conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.<sup>2</sup>

## **Ngā Kōrero a te Kōmiti – CAC and Respondent Submissions**

### *CAC submissions*

12. In summary, the CAC submits, in relation to the substantive charge, that the respondent's conduct meets both limbs of the section 10 test for serious misconduct in that:
  - (a) The conduct engages all three of the adverse professional effects or consequences outlined in the section 10 definition of serious misconduct; and
  - (b) It is conduct of a character or severity that meets one or more of the following examples for reporting serious misconduct provided in rule 9 of the Rules:
    - (i) Rule 9(1)(a): using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so; and/or
    - (ii) Rule 9(1)(k): an act or omission that brings, or is likely to bring, the teaching profession into disrepute.
  
13. With regards to the first limb of the test, namely whether the conduct adversely affected, or was likely to adversely affect, the wellbeing of the children involved, the Committee noted that, for this element to be satisfied, the Tribunal is not required to find that a child suffered actual harm as a result of the teacher's conduct. It may conclude that the teacher's conduct was 'likely to' adversely affect a child's wellbeing or learning. The Committee submitted:
  - (a) In respect of hitting Child C over the head with a block, there is no evidence of direct or lasting consequences for Child C. However, Child C immediately cried as a result of being hit with the block.
  - (b) There is no direct evidence of lasting adverse consequences for Child B (although he immediately cried after being reprimanded), but the Tribunal is entitled to

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

proceed on the basis that such consequences are a logical outcome or 'likely to have occurred' as a result of the respondent's conduct.

- (c) Child A suffered bruising lasting six to seven days after the respondent held her upper arms tightly.
14. The Committee submitted that the respondent's conduct in hitting Child C in the head with a block, yanking Child B and yelling at him, and holding Child A's arms so tightly that they were bruised did or was likely to affect those children's wellbeing and that the conduct was not de minimis.
15. The Committee further submitted that the respondent's conduct reflects adversely on her fitness to be a teacher and is in breach of section 24 of the Act, which prohibits teachers from using force towards any child for the purposes of correction or punishment. It is also contrary to the Code of Professional Responsibility for the Teaching Profession ("Code"). The Committee submitted that the respondent's reaction to Child C's behaviour towards Child B involved the use of punitive and retributive force mimicking the behaviour of a child and that it was immature and entirely inappropriate and unprofessional. By hitting the child [REDACTED], the Committee submitted that the inference invited was that she was unable to respond professionally and appropriately [REDACTED] [REDACTED] [REDACTED] which displayed a lack of professionalism. The Committee also pointed to the forceful hit on Child C, and the force used on Child A's arms, all of which shows that the respondent is, or was, unable to exhibit a satisfactory level of self-control.
16. Further, after reviewing the applicable cases, the Committee said of the conduct's propensity to bring the profession into disrepute, that the conduct could be characterised as conduct that 'may bring' the teaching profession into disrepute.
17. In respect of the second limb of the test, the Committee submitted that the respondent's conduct was a serious breach of the provisions of the Code set out above.
18. The Committee concluded that the conduct was of a character and severity that would meet the threshold for serious misconduct.

*Respondent submissions*

19. The respondent, in addition to her counsel's submissions, provided a signed statement which set out (in her submission):
- (a) Her acceptance of full responsibility for her actions and why she did not immediately accept the charge.
  - (b) Her regret and remorse for her actions towards the children.
  - (c) A demonstration of her remorse by way of an apology to the children and their parents.
  - (d) A demonstration of her remorse and her recognition that rehabilitation is required by way of her enrolment (on her own motion) and participation in the Ministry of Education's "Incredible Beginnings" course.
  - (e) The degree to which she has gained insight about her behaviour, what she should have done instead in the incidents in question, and how she will approach her teaching and similar incidents in the future.
20. Additionally, the respondent (through her counsel) submitted that, although she accepted the charge, the second limb of the test for serious misconduct has not been made out:
- (a) The respondent's employer did not consider it was required to make a mandatory report under section 491 of the Act.
  - (b) The Centre did not consider the Code to have been seriously breached by the respondent at any point, suggesting that the Centre did not view the force used on any of the children as greater than what would be justified or reasonable in the circumstances, nor did it view the conduct as likely to bring the profession into disrepute.

**Kupu Whakatau – Decision**

21. The Tribunal finds all the particulars set out in the notice of charge are established to the requisite standard.

22. The Tribunal considers that, cumulatively and for the reasons discussed below with respect to the legal position, the established particulars amount to serious misconduct pursuant to section 378 of the Act, and rules 9(1)(a) and (k) of the Rules. The Tribunal notes that, contrary to the respondent's submissions, it is not bound in this finding by whether or not a mandatory report was made by the respondent's employer to the Council and notes that, given the Tribunal's findings about the conduct, is of the view that it should have been reported.
23. 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 (section 10(a)(i) definition);
  - (b) reflects adversely on her fitness to be a teacher (section 10(a)(ii) definition);
  - (c) may bring the teaching profession into disrepute (section 10(a)(iii) definition and Rule 9(1)(k));
  - (d) constituted unreasonable and unjustified physical force (Rule 9(1)(a));
24. This Tribunal has commented many times that the use of force for corrective purposes, even where they may be no aggression or anger involved, will typically amount to serious misconduct, while acknowledging that each case must be determined on its facts and having regard to the nature of the force used and the surrounding circumstances.<sup>3</sup> For instance, in *CAC v Haycock*,<sup>4</sup> the Tribunal confirmed that the use of force for a corrective purpose, even in the absence of aggression or anger, will typically amount to serious misconduct.
25. It is acknowledged that the Tribunal has previously observed that any use of force contrary to the predecessor provision to section 24, will not automatically comprise serious misconduct, and that to constitute serious misconduct "*the behaviour concerned must satisfy the character and severity threshold established in the Rules. This is an assessment that must be undertaken on a case by case basis to determine if the charge is proven.*"<sup>5</sup>

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<sup>3</sup> *CAC v Haycock* NZTDT 2016/2, 22 July 2016.

<sup>4</sup> *Ibid.*

<sup>5</sup> NZTDT 2016-50, 6 October 2016 at [26].

26. However, here, the Committee considers that the respondent's conduct involved did meet this threshold. In the case of Child A, the conduct was extremely serious, involving bruising that lingered for some time on Child A's arms, and involving the respondent ignoring offers from her colleagues for assistance. Child A continued to speak to her parents about the conduct. Child B had his arm yanked and was shoved and was spoken to in an aggressive manner. Child C was struck on the head with a block, severely enough for it to make a sound. All three children were of a young and vulnerable age.
27. The Tribunal finds all the instances comprising the Charge to be of an extremely concerning and serious nature, involving a level of aggression and a pattern of response to frustrating child behaviour which is totally unacceptable, and of a scale likely to harm the wellbeing of the children involved. The Tribunal considers its decision to be supported by analogous cases.
28. In *CAC v Teacher C*,<sup>6</sup> the Tribunal found serious misconduct to be established when a teacher used force in multiple ways to deal with a child with a history of challenging behaviour (pulling the child, shutting the child outside, gripping the child's wrists, and restraining the child by trapping them against a wall). The Tribunal in that case considered the conduct was at the lower end of the scale but that the entire (albeit brief) episode was concerning and needed to be addressed.
29. In *CAC v May*,<sup>7</sup> the Tribunal found serious misconduct to be established after a teacher (with no intention of causing harm to the child) had forcefully grabbed an 18-month-old child by the arm and swung him into the air. The Tribunal in that case said there was no doubt that the teacher's behaviour risked lowering the profession's standing in the eyes of the public, and further stated that it was incumbent on all in the profession to have a clear appreciation of the express statutory prohibition on the use of corrective and disciplinary force in the Act.<sup>8</sup>
30. In *CAC v Hutchinson*,<sup>9</sup> the Tribunal found serious misconduct after a teacher grabbed a child by the forearm and put him in the corner. When the child went to stand up, the teacher pushed him backwards causing his head to hit the bottom of a mirror on the wall and telling

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<sup>6</sup> *CAC v Teacher C* NZTDT 2020/32, 18 March 2021.

<sup>7</sup> *CAC v May* NZTDT 2019/96, 9 January 2020.

<sup>8</sup> Citing *CAC v Rangihau* NZTDT 206/18, 7 July 2016.

<sup>9</sup> *CAC v Hutchinson* NZTDT 2020/1, 14 September 2020.

him “that’s what happens when you don’t listen.” The teacher also picked up another young child by the arms and threw him back down on the ground.

### **Whiu - Penalty**

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

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

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

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

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

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

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

33. In *McMillan* 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;

<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> Above n 16 at [40] – [62]

- (f) The range of sentencing options;
  - (g) Least restrictive;
  - (h) Fair, reasonable and proportionate.
34. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
35. In its submissions on penalty, the Committee, after referring to comparable cases, submitted that the conduct here falls at the low to moderate end of the spectrum in terms of seriousness.
36. By way of mitigating factors, the Committee acknowledged that the respondent has no previous disciplinary history.
37. In terms of an appropriate penalty, the Committee submitted that the three incidents demonstrate a pattern of the respondent failing to respond to a child's misbehaviour in a proportionate, professional and non-violent manner. The Committee submitted that a penalty with a starting point of a period of suspension until specified conditions are met would be appropriate. The Committee noted the following additional factors of concern:
- (a) The respondent sought to minimise and/or deny the allegations during the Committee's investigation and deflected the allegations by criticising her colleagues and the Centre.
  - (b) The respondent only accepted the charge at a relatively late stage.
  - (c) The respondent has provided no evidence (as at the time of the Committee's submissions) showing any insight into her conduct.
38. If the Tribunal was minded to step back from a penalty of suspension, the Committee still sought a penalty with a rehabilitative focus, namely censure, annotation of the register and certain conditions on the respondent's practising certificate.
39. The Tribunal acknowledges the statement and apology provided by the respondent, which shows she has taken some steps towards showing insight into the serious nature of the conduct here. The respondent further submits that the appropriate penalty is censure,

annotation of the register and the imposition of detailed conditions on the respondent's practising certificate, including a condition to attend further training on behavioural management of young children. The respondent points to:

- (a) Her acceptance of full responsibility for her actions.
  - (b) Her genuine regret and remorse and her demonstration of the same by her enrolment in Incredible Beginnings and by her apology.
  - (c) The significant degree to which she has gained insight into her behaviour and how she will approach her teaching and similar incidents in the future.
40. The Tribunal has taken into account both sets of submissions carefully and considered the cases referred to by both parties.
41. The Tribunal has already commented on the serious manner in which it regards this conduct. It does not agree the conduct is at the low to moderate end of the spectrum. Any knock to a child's head is of extreme concern, especially where it was loud enough to be heard. Further, Child A's arms were bruised for some days afterwards. In the circumstances of this conduct, the Tribunal was mindful that cancellation of the respondent's registration was open to it in these circumstances, and whether or not this occurred turned on the respondent's rehabilitative prospects.<sup>13</sup>
42. In this regard, the Tribunal acknowledges that the respondent has attended the Incredible Beginnings course but is mindful that that course is designed for teacher leaders and does not necessarily have a focus on behaviour management and emotion control. Further, the respondent did not initially accept the charge and as submitted by the Committee, went to some length to minimise the conduct and was prepared to fully defend the charge. The Tribunal does accept that the respondent has now provided an apology and is on the journey to gaining insight into her behaviour and how she will behave in the future.
43. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:

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<sup>13</sup> *CAC v Ormsby* NZTDT 2017/33, 24 October 2018.

- (a) Suspension of the respondent's practising certificate under section 500(1)(d) of the Act until the respondent provides evidence to the Council that she has attended a training course (approved by the Council) focussed on behaviour management and emotion control.
- (b) Censure of the respondent under section 500(1)(b) of the Act.
- (c) Annotation of the register for a period of two years from the date the respondent returns to teaching under section 500(1)(e) of the Act.
- (d) Under section 404(1)(c) of the Act the following condition is to be placed on the respondent's practising certificate for a period of two years from any date the respondent may return to teaching:
  - (i) The respondent must tell any future employer of the decision and provide them with a copy of the full decision with evidence to the Teaching Council of this disclosure.

#### **Utu Whakaea – Costs**

- 44. The CAC submits that a 40% contribution to the CAC's overall costs is appropriate. This reflects a discount from the starting point of 50% to acknowledge the respondent's cooperation.
- 45. The Tribunal sees no reason to depart from the usual principles. Additionally, the Tribunal notes that the respondent took some time to accept the charge. The Tribunal therefore orders 45% costs in favour of the CAC. The CAC is to provide a Schedule of Costs within 7 days of this decision. Any submissions in relation to that Schedule are to be filed and served within a further 7 days.
- 46. The respondent is also ordered to pay 45% of the Tribunal's costs pursuant to section 500(1)(i).

#### **He Rāhui tuku panui – Non-publication**

- 47. There is an interim order for non-publication. The respondent has made an application for name suppression pursuant to section 405 of the Act. This is based on the following grounds:

- (a) [REDACTED]
  - (b) Extreme hardship to the parents of the children and other teachers at the Centre;
  - (c) Extreme hardship to the respondent's partner, due to his role as a manager at a manufacturing business;
  - (d) Extreme hardship to the respondent's current employer (another Centre);
  - (e) Extreme hardship to the respondent professionally, emotionally and socially.
48. The application is opposed by the Committee, although the Committee submits that the names and identifying details of the children involved ought to be suppressed and seeks orders accordingly. [REDACTED]  
[REDACTED] The Committee submits to the names of the other two teachers in the charge also being suppressed.
49. There has been no application for suppression of the name of the Centre.
50. The application of the principle of open justice to proceedings before the Tribunal is contained in section 405(3) of the Act. The primary purpose behind open justice in a disciplinary context is the maintenance of public confidence in the profession concerned through the transparent administration of the law.<sup>14</sup>
51. The Tribunal's powers to prohibit publication is found in section 405(6) of the Act. It can only make one of the non-publication orders in (a) to (c) of section 405(6) if it is of the opinion that it is "proper" to do so having regard to the interests of any person, including but not limited to, the privacy of the complainant and to the public interest.
52. The Tribunal has adopted a two-step approach to applications for non-publication orders. First, it considers whether it is proper to make a non-publication order having regard to the various interests identified in section 405(6); and, secondly, it decides whether to exercise its discretion to make the orders sought.<sup>15</sup> Bare assertions will not suffice for displacing

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<sup>14</sup> *CAC v Teacher* NZTDT 2016/27 at [66] [citing *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

<sup>15</sup> *Ibid* at [61].

the principle of open justice and nor will the “ordinary” hardships or expected consequences of a proceeding involving allegations of serious professional misconduct.<sup>16</sup>

53. Here, the Tribunal is not convinced that there is sufficient evidence before it for it to be satisfied of the hardship identified by the respondent in her application being a real and appreciable risk. The parents of Child A and C are not named in the agreed summary of facts and are not in this decision. The alleged risk of hardship to the respondent, her partner and her current employer are speculative in the Tribunal’s view. Discomfort and stress caused by disciplinary proceedings are seen as an ordinary consequence of such proceedings, and do not justify disruption of the presumption of open justice which this Tribunal must apply.
54. Accordingly, the Tribunal declines the respondent’s order for non-publication of her name and identifying details. The Tribunal does, however, order non-publication of:
- (a) The names and identifying details of all three children named in the charge.
  - (b) [REDACTED]
  - (c) The two teachers named in the charge.

*R. E. Schmidt-McCleave*

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Rachael Schmidt-McCleave  
Deputy Chair

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

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<sup>16</sup> *Y v Attorney-General* [2016] NZCA 474 citing *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 approved by the Supreme Court declining leave to appeal in *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4.

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).