

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2022/17**

**IN THE MATTER** of the Education Act 1989

**AND**

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

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

**AND**

**Respondent**

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**TRIBUNAL DECISION**

**12 September 2022**

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**HEARING:** Held on 5 September 2022 (by Microsoft Teams)

**TRIBUNAL:** Ian Murray (Deputy Chair), Neta Sadlier and Maria Johnson

**REPRESENTATION:** Mr McCaughan for the CAC  
The Respondent was self-represented

## Charge

1. The Complaints Assessment Committee (**CAC**) has referred a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers to the Tribunal. In a Notice of Charge dated 23 May 2022 the CAC alleged that [REDACTED]:
  - a) Assaulted his eldest child ([REDACTED], aged [REDACTED]) by hitting him/ on the hand with a broom handle;
  - b) Assaulted two of his children ([REDACTED], aged [REDACTED] and [REDACTED], aged [REDACTED]) by hitting them on the legs with a shoe.
2. The CAC contends that this conduct amounts to serious misconduct pursuant to 10 of the Education and Training Act 2020 (**the Act**) and rr 9(1)(a),(b),(j) and/or (k) of the Education Rules 2016 (**the Rules**); or conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 500 of the Act.

## Evidence

3. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**), signed by [REDACTED] and counsel for the CAC. The ASF is set out in full:

### Introduction

- 1 [REDACTED] was first fully registered as a teacher in January 2008. His current practising certificate is due to expire on 25 February 2023.
- 2 Since approximately January 2000 [REDACTED] has worked as a teacher at [REDACTED].

### Allegation: That in March 2020 Mr [REDACTED]:

- a. assaulted his eldest child ([REDACTED], aged [REDACTED]) by hitting him on the hand with a broom handle;
- b. assaulted two of his children ([REDACTED], aged [REDACTED] and [REDACTED], aged [REDACTED]) by hitting them on the legs with a

**shoe.**

- 3 On 4 September 2020 the Teaching Council received a Police vetting report as part of ██████ practicing certificate renewal. This report disclosed that ██████ had been investigated for assaulting his children, aged ██████.
- 4 The Police vetting report alleged that ██████ had physically disciplined his children, aged ██████ at the time, in March 2020. Specifically, it alleged that on one occasion he hit the eldest child, ██████, on the hand with a broom handle, and on another occasion he hit two other children, ██████ and ██████, with a shoe on their thighs. No injuries to the children resulted from these incidents.
- 5 ██████ was spoken to by Police and admitted that the incidents had occurred.
- 6 Police gave ██████ a verbal warning with respect to each assault but decided not to take the matter further, as this was not supported by ██████ partner, ██████ (who was also the children's mother). Police also noted that ██████ showed remorse, accepted his behaviour was wrong, and had engaged with external support services.
- 7 On 7 September 2020 Police emailed the Principal of ██████ ██████ to advise that ██████ had been warned.
- 8 Oranga Tamariki (**OT**) was also notified and conducted a short investigation. OT chose not to take the matter further, on the basis that "the children's mother had taken all measures necessary to ensure the children's safety".
- 9 Following the assaults, ██████ separated from ██████ and applied for a protection order. This application was later withdrawn by ██████ and a final protection order was not made.
- 10 In ██████ written responses to the CAC investigator, he accepted that he had assaulted his children. He also stated that since the incidents, he had received individual counselling, as well as undertaking counselling with ██████. ██████ also said that he had attended parenting courses (titled "Parenting through Separation", "Family

Coaching" and "Discipline without Shouting, Force or Fluster"), as well as attending a "Living Without Violence" course.

11 [REDACTED] said that his doctor and his counsellor had suggested that it may have been a combination of medication, lack of sleep, an issue with a pinched nerve in his neck, childhood trauma and stress from his job as a teacher which could have contributed to the situations in which [REDACTED] assaulted his children. [REDACTED] also said that he had not been able to play cricket to relieve stress, due to his pinched nerve.

12 [REDACTED] stated that the pinched nerve caused pain on the right side of his body. He was awaiting surgery, and in the meantime, he was on medication to manage this pain. A side effect of the medication was that he experienced mood swings. The pain in [REDACTED] neck had also led to issues with his sleep.

13 During the CAC investigation, [REDACTED] was offered a referral to the Council's impairment process, which he accepted as he believed that his health was a contributing factor in his actions. This was completed on 21 March 2021.

14 In an email dated 9 February 2022 [REDACTED] advised that he and [REDACTED] had reconciled and that they had been living together again for 10 months. [REDACTED] also said that his chronic pain had become increasingly severe, and that he was due to have neck surgery on 16 February 2022 which he hoped would alleviate the pain. He had also changed roles at his school and was teaching STEM classes, which was a subject he was passionate about.

15 [REDACTED] advised that he had kept his Principal and Deputy Principal updated throughout the process.

#### **CAC meeting**

16 [REDACTED] attended the CAC meeting on 24 March 2022, with [REDACTED] as a support person.

17 [REDACTED] confirmed that he had had his surgery and that he was now pain free. He advised that he had completed counselling, and felt that his relationship with [REDACTED] had improved, which [REDACTED]

confirmed. He also explained that counselling had helped him address his own cultural trauma due to how he was raised, and that he understood that people tend to parent how they were parented. ■■■■■ also expanded more on the courses he had completed and explained how his parenting had changed since the incidents.

- 18 The CAC considered that ■■■■■ conduct may possibly constitute serious misconduct (as defined in section 10 of the Education and Training Act 2020). On that basis, the CAC had no option but to refer ■■■■■ conduct to the Tribunal under section 497(5) of the Education and Training Act 2020 (the Act).
- 19 We must be satisfied on the balance of probabilities that the CAC has proved the charge. In this case, ■■■■■ accepts that he assaulted his ■■■■■.<sup>1</sup> Accordingly, we find that the charge is proved.

### Serious misconduct

4. ■■■■■ has not contested that his conduct amounts to serious misconduct but despite that acknowledgement, it is still for the Tribunal to be satisfied that the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).
5. Section 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 Education Council's criteria for reporting serious misconduct.
6. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC

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<sup>1</sup> As a result of various paragraphs and in particular paragraph 18 of the ASF.

relies on rr 9(1)(a),(b),(j), and (k).

**Criteria for reporting serious misconduct**

- (1) *A teacher's employer must immediately report to the Education Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:*
- (a) *using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so):*
  - (b) *emotional abuse that causes harm or is likely to cause harm to a child or young person:*
  - (j) *an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:...*
  - (k) *an act or omission that brings, or is likely to bring, the teaching profession into disrepute.*

*CAC submissions*

7. The CAC referred to two cases: *CAC v Teacher VNZTDT 2020 – 2* and *CAC v Teacher NZTDT 2018 – 105* which also involved assaults on family members and where the Tribunal found serious misconduct.
8. The CAC submitted that [REDACTED] conduct in this case was comparable to those cases. The CAC noted that because it occurred outside the school environment, that meant that the effect on the wellbeing on students criteria was not engaged but the other two criteria were. They argued that in this case [REDACTED] behaviour clearly reflected adversely on his fitness to be a teacher and also brought the teaching profession into disrepute.
9. They submitted that the conduct involved the unreasonable use of force and also was emotional abuse of the children. They also argued that it may involve an act that could be punishable by a term of imprisonment for more than three months, being assault on a child.
10. As a result, they submitted that it was serious misconduct.

*Respondent submissions*

11. [REDACTED] did not argue that his conduct did not amount to serious misconduct but

pointed to some strong mitigating features in relation to his personal circumstances.

*Our analysis*

12. We must be satisfied that ██████ conduct meets at least one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in r 9.
13. We agree that the first criteria for serious misconduct cannot be made out because it took place outside the school environment. Logically that means the behaviour could not be likely to adversely affect the wellbeing or learning of any student.
14. We agree with the CAC that physical assaults on children clearly reflect adversely on ██████ fitness to be a teacher, whether or not they occurred in the teaching environment. ██████ does not appear to take issue with that finding.
15. The test for deciding whether a teacher's actions are likely to bring the teaching profession into disrepute has been set out by the Court in *Collie v Nursing Council of New Zealand*.<sup>2</sup> It is an objective test and requires consideration of whether reasonable members of the public informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by ██████ actions.
16. We accept that ordinarily physical assaults on children would have a tendency to bring the teaching profession into disrepute, although we obviously must make a fact specific assessment in each case. In this case, while we accept the conduct was unacceptable and inappropriate, because of the powerful mitigating features and all that ██████ has done since the misconduct to address the underlying causes of his behaviour, we were convinced that his behaviour would have the required effect on reasonably minded members of the public.
17. In the end, it was unnecessary for us to decide whether the behaviour was of such a character that it may bring the teaching profession into disrepute because the second criteria in s 378 was already established.
18. Moving on to our analysis of Rule 9, it was not contested that this was unjustified or unreasonable physical force on a young person, likely to be emotional abuse and

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<sup>2</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

could amount to the type of criminal conduct envisaged by the reporting rules so that the criteria for reporting serious misconduct is made out.

19. So we find █████ committed serious misconduct,

### **Penalty**

20. In *CAC v McMillan*,<sup>3</sup> we summarised the role of disciplinary proceedings against teachers as:

*... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.*

21. Section 500 of the Act provides:

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

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<sup>3</sup> NZTDT 2016/52, 23 January 2017, paragraph 23.



- (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.*

22. When considering the appropriate penalty, we acknowledge all that ██████ had done to try to understand what had led him to behave in this way and to ensure it did not happen again. We greatly benefited from hearing from ██████ over AVL.
23. He is clearly remorseful for what he has done and insightful about his behaviour. He has done a lot of work to understand what went wrong and now he has a toolbox of strategies to effectively manage the risk of this occurring again. We accept that this occurred at a particularly difficult period in ██████ life as he was suffering an injury that had prevented him from participating in his favoured activity of cricket. This was clearly an important stress management mechanism for him, and he was somewhat lost without it. During the course of the disciplinary proceedings ██████ has independently done a great deal of work on himself to address the root cause of his misconduct and is clearly better able to manage stress and life problems than he was then.
24. ██████ is clearly a passionate and caring teacher and is an asset to the teaching profession. He has great support systems around him and we commend his school for the support that they have provided him. The fact that ██████ has been at the same school for 20 years and was recognised in the school for this. shows the high regard in which he is held at the school.
25. Ordinarily in a case like this we would censure the teacher to mark the seriousness of the misconduct, but here we decided that was not necessary because of the efforts by ██████ over an extended period of time to remedy the harm done, reconnect with his partner and children and work on the root causes of his behaviour. Because of all of that we do not consider it necessary to censure him to mark the seriousness of what he did.

26. We will try to impose a penalty that acknowledges the seriousness of what occurred but one that will also assist the respondent to continue with his rehabilitative efforts. The Tribunal considers it is appropriate to make the following orders:
- (a) That the following conditions are impose on his practising certificate for a period of 12 months following the Tribunal's decision (s 500(1)(c));
    - (i) to provide a copy of the Tribunal's decision to any current or prospective employer;
    - (ii) to continue to practise under the guidance of a buddy / support person at his current school; and

### **Costs**

27. The CAC sought a contribution of 40% of its costs under s 500(1)(h).
28. The Tribunal has previously indicated that such a level of costs will ordinarily be appropriate in cases determined on the papers. We see no reason to depart from our usual approach.
29. Therefore, the Tribunal orders ██████████ to pay 40% of the CAC's actual and reasonable costs under s 500(1)(h) and the Tribunal's costs under s 500(1)(i)..
30. CAC costs are \$2,942.94 and Tribunal costs are \$1,615. So, ██████████ share is \$1,177.58 and \$646.00 respectively. Total costs \$1823.58.

### **31. Non-publication**

32. Section 501 (3) provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:

- (6) *If the Disciplinary Tribunal is 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, it may make any 1 or more of the following orders:*
  - (a) *an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:*
  - (b) *an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:*
  - (c) *an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*

33. ██████ has sought non-publication of his name to prevent identification of his children. The CAC responsibly accept that suppression is appropriate.
34. We agree. Suppression was ordered in analogous cases involving assaults on family members<sup>4</sup> and so we consider it appropriate to order non-publication of ██████ name.



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Ian Murray  
Deputy Chair

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<sup>4</sup> *CAC v Teacher* NZTDT 2018-105 and *CAC v Teacher V* NZTDT 2020-2.

NOTICE - Right of Appeal under Section 504 of the Education and Training Act 2010

1. This decision may be appealed by 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. 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