

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Brindle NZ Disciplinary Tribunal Decision 2018/12

Teacher Rebecca Jane Brindle was the owner, sole manager and joint shareholder (with her husband) of Kowhai Montessori Pre-school. Mrs Brindle was responsible for setting childcare fees and communicating fees to parents, producing and sending invoices to parents, and managing the business accounts.

A parent complained about the fees but was chastised by Mrs Brindle. The parent then complained to the Commerce Commission, sparking an inquiry. The Commerce Commission found that between term four in 2013 and term four in 2014, Mrs Brindle had issued invoices and letters that misrepresented the amount of ECE subsidy received from the Ministry of Education, resulting in parents paying additional childcare costs, and the pre-school unlawfully receiving additional funding.

The pre-school (a company) was prosecuted by the Commerce Commission. The pre-school entered guilty pleas to all seven charges. The sentencing Judge noted an obvious motivation for the offending was to “maximise unlawful financial gain”, which was determined to be \$221,632.15.

While Mrs Brindle did not receive any convictions personally as a result of her conduct, given Mrs Brindle’s involvement as owner, sole manager and joint shareholder of the pre-school, the Teaching Council referred the matter to its Complaints Assessment Committee (CAC), which referred a charge of serious misconduct to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

While the Commerce Commission charges were withdrawn against Mrs Brindle, the Tribunal noted that the sentencing Judge recognised that the “offending was instigated by her.”

Mrs Brindle did not participate in the proceedings and wished to voluntarily deregister. However, once a Council investigation is underway a teacher cannot voluntarily deregister. The Council must deregister a person if it receives a written request from a person, and that person is not the subject of an investigation into their conduct or competence (Section 358 of the Education Act 1989).

The Tribunal decided that Mrs Brindle was still the “subject of an investigation.”

The Tribunal noted that “behaviour of this type is the antithesis of the standard of honesty expected of teachers.” The Tribunal found that Mrs Brindle’s “sustained dishonest behaviour was motivated by personal gain” and “fundamentally undermined the trust placed in her by both the Ministry of Education and the parents and children associated with [the] pre-school.”

The Tribunal found that this was an “extremely clear-cut example of serious misconduct.” Accordingly, Mrs Brindle’s registration was cancelled, she was censured, the register was annotated, and she was ordered to pay 40 percent of costs.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

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

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **REBECCA JANE BRINDLE**

Respondent

DECISION OF TRIBUNAL

Tribunal: Nicholas Chisnall (Deputy Chair), David Turnbull and David Hain

Hearing: On the papers

Decision: 31 October 2018

Counsel: J M O'Sullivan and L C Hann as counsel for the referrer
The respondent in person

Introduction

[1] The Complaints Assessment Committee (the CAC) referred a charge against the respondent of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. The CAC's notice of charge alleges that the respondent:

In her role as Owner, Sole Manager and Joint Shareholder of Montessori Pre-school Limited (Kowhai Pre-school), did provide false and misleading information to parents of Kowhai Pre-school children, in letters and invoices sent to the parents, about fees and subsidies from the Ministry of Education.

[2] On 8 June 2017, following an investigation by the Commerce Commission, Kowhai Pre-school was convicted in the District Court on seven charges under s 13 of the Fair Trading Act 1986 of making false or misleading representations and sentenced to a fine of \$254,099.10.¹ Judge Jelas summarised the offending in the following way:

The preschool deliberately gave false and misleading information to parents and omitted to disclose to parents the level of funding it was receiving from the Ministry of Education. The false information was grossly wrong. As a result the parents were required to pay significant additional amounts of childcare costs in the pre-school unlawfully received additional funding through its parental contribution and under the early childhood scheme.

[3] The Judge said that, "The purpose of the offending was to create the impression that significant parental contributions were required in order to ensure the preschool continue to operate as its present level of service".

[4] While the Commerce Commission ultimately withdrew charges against the respondent, the Judge recognised that she was Kowhai Pre-school's controlling mind and its offending was instigated by her. The Judge said that:

During the period of the offending it was managed by Rebecca Brindle, a 50 percent shareholder of the business. Ms Brindle's responsibilities include setting childcare fees, communicating those fees to parents, producing invoices and sending invoices to parents, overseeing all written communications to parents and managing all contact with the Ministry of Education.

¹ *Commerce Commission v Kowhai Montessori Preschool Limited* [2017] NZDC 12211, Judge Jelas.

[5] The Judge accepted that there was “a high degree of wilfulness involved” and that an obvious motivation for the offending was “to maximise unlawful financial gain”. The unlawful gain to the Pre-school was \$221,632.15.

[6] The respondent did not participate in this proceeding. She requested that the hearing be undertaken on the papers and advised that:

I am also hereby notifying the Education Council, the CAC and the Disciplinary Tribunal, that I am voluntarily cancelling my teacher registration/practising certificate. As it is apparent from the CAC’s report/findings that they have recommended the cancellation of my teacher registration and for the little self-respect and dignity that I have left, I am making this decision myself.

I maintain that I am a good person of honest character and a highly experienced and qualified ECE teacher, and sadly, with the extreme shortage of registered teachers, the Education Council would take this action.

I have no intention of attending the hearing that will be scheduled in due course.

In a subsequent email, the respondent advised the Council that:

I have voluntarily cancelled my teaching registration/practising certificate and I will not voluntarily enter into any further responses to the above matter.

[7] For the reasons we go on to explain, we have found that the respondent committed serious misconduct. Notwithstanding that Ms Brindle “volunteered” to relinquish her registration, we have independently concluded that cancellation is the inevitable and commensurate outcome given the gravity of the wrongdoing, and that we must make an order to that effect.

The evidence

[8] The CAC filed the affidavit of Nikki De La Mare, who is an investigator employed by the Education Council. Ms De La Mare’s affidavit annexed:

- a) The summary of facts and schedule of penalties prepared by the Commerce Commission and relied upon by the District Court Judge at sentencing. Given that Kowhai Pre-school did not dispute the accuracy of the summary, we are satisfied that its accuracy is not in issue in this proceeding.
- b) Certified copies of Kowhai Pre-school’s convictions.

c) The Judge's sentencing notes.²

[9] The CAC filed its own summary of facts, which we are satisfied accurately describes Kowhai Pre-school's offending, the respondent's role in that, the outcome in the District Court and Ms Brindle's explanation to the CAC when the matter was investigated. It provides:

The respondent, **REBECCA JANE BRINDLE** is a registered teacher. Mrs Brindle was the Owner, Sole Manager and Joint Shareholder (with her husband, Brett Brindle) of Kowhai Montessori Pre-school Limited ("Kowhai Pre-school"). Mrs Brindle was the Director of Kowhai Pre-School from 1998 to 2013 when it was transferred to her husband.

Kowhai Pre-school provided early childhood education services to children from two years to six years of age, from its premises in Orakei, Auckland.

Mrs Brindle was the only person with decision-making responsibilities at Kowhai Pre-School. Her husband was a silent shareholder.

Along with other duties, Mrs Brindle was responsible for setting childcare fees and communicating fees to parents; producing invoices and sending these to parents; managing business accounts; and managing all communication with the Ministry of Education.

An investigation by the Commerce Commission ("the Commission"), and subsequent prosecution, was sparked by a complaint made to the Commission by a parent whose child attended Kowhai Pre-School.

Between 14 October 2013 and 13 October 2014, Kowhai Pre-School received funding under the Early Childhood Education Scheme ("ECE Scheme") administered by the Ministry of Education. Under the ECE scheme, the Ministry of Education will pay a maximum of 20 hours per week for a child to attend an approved facility.

In addition to the 20 hours, the ECE Scheme provides for a reduced hourly rate to subsidise a child's attendance for up to a further 10 hours per week. Parents are then required to pay the portion of the hourly centre fee that exceeds the applicable ECE Subsidy.

At the start of each term, Kowhai Pre-School sent invoices to parents setting out the fees payable for that term. Invoices issued between Term 4 in 2013 and Term 4 in 2014 contained an incorrect ECE Subsidy amount.

For example, on 13 October 2014 Mrs Brindle invoiced parents, stating that the hourly rate was \$13.70, of which \$4.70 was subsidised under the 20 hours ECE scheme. Mrs Brindle made no mention of the Plus 10-hour funding, therefore charging parents \$9.00 per hour. However, the subsidy under the 20-hour ECE scheme was actually \$11.43 per hour and the Plus 10 hours was \$6.70 per hour.

In a letter sent to parents on 5 May 2014, Mrs Brindle misrepresented the ECE Subsidy amount. Mrs Brindle stated that the hourly rate of \$13.70

² As we have said previously, we have no jurisdiction to look behind the convictions, and are bound to accept as proved the facts relied upon by the Judge.

was made up of: 20 hours ECE contribution of \$4.70, and a parental contribution of \$9.00. However, at that time, Kowhai Pre-School was receiving \$11.33 under the 20 hours ECE and additional subsidies under the Plus10 ECE scheme.

On 22 September 2014, after receiving a complaint from a parent, Mrs Brindle sent another letter to parents, and again misrepresented the amount of ECE Subsidy received by Kowhai Pre-School.

Mrs Brindle stated the parental contribution was due to decrease, because of extra funding announced by Government. Mrs Brindle stated that the hourly rate of \$13.70 was made up of: 20 hours ECE contribution of \$5.70 and a parental contribution of \$8.00. However, at that time, Kowhai Pre-School was receiving \$11.43 under the 20 hours ECE and additional subsidies under the Plus10 ECE scheme.

The parent referred the matter to the Commission, who investigated the complaint.

On 30 July 2015, Mrs Brindle attended a voluntary interview with the Commission. Mrs Brindle's responses to the questions put to her during the investigation were minimal and Mrs Brindle declined to provide detailed responses. Mrs Brindle maintained that Kowhai Pre-school had not retained any full invoices from the charge period under investigation and had no electronic records of the invoices during that period.

Following the investigation, the Commission issued its decision, finding that, in total, Kowhai Pre-School received \$221,632.15 in undisclosed ECE funding during the period. The Commission found that Mrs Brindle had issued invoices that misrepresented the amount of ECE subsidy received from the Ministry of Education. Mrs Brindle also sent letters to parents that also misrepresented the amount of subsidy.

The Commission initially laid charges under the Fair Trading Act 1986 against Kowhai Pre-school and charged Mrs Brindle as a party to the offending, as she aided the company to commit the offences.

On 20 March 2017, an undertaking to the Commission was agreed upon. This undertaking confirmed that charges against Mrs Brindle personally would be withdrawn and Kowhai Pre-School would be charged as a company.

An agreed Summary of Facts was included and is **annexed**. Kowhai Pre-School entered guilty pleas to all seven representative charges.

In total, Kowhai Pre-School received \$221,632.15 in undisclosed ECE funding and unlawfully received additional funding through its parental contribution. The full amount of gain was not established by the Commission. However, this amount was agreed between the parties.

Mrs Brindle also agreed to a personal enforceable undertaking to pay the agreed amount if Kowhai Pre-School failed to make payment.

Kowhai Pre-School was convicted and fined in relation to seven representative charges of making false or misleading representations, pursuant to section 13 of the Fair Trading Act 1986. The certified copies of these convictions, and the District Court's sentencing notes, are both **annexed**.

The Commission, and the Court, noted the wider detriment to parents at Kowhai Pre-School, and the community, including parents who may

have elected not to place their children at Kowhai Pre-School due to the high costs and low subsidy.

It was also noted some parents made donations and gave time to the upkeep of Kowhai Pre-School's building and grounds and donated toys and time to Kowhai Pre-School, believing it was underfunded.

In sentencing Kowhai Pre-school, Judge Jelas noted the breach of trust felt by the parents, which was reflected in the victim's statements.

Judge Jelas noted that the false statements were significant and had the significant effect of undermining the purpose behind the funding subsidy. Judge Jelas found that there was a high degree of wilfulness involved in making the statements, and the false statements were a substantial departure from the truth.

Judge Jelas further noted Mrs Brindle had made no attempt to correct the false or misleading statements made, and that when a parent initially made enquiries about the fees to Kowhai Pre-School, she was chastised by Mrs Brindle for doing so.

In sentencing Kowhai Pre-school, Judge Jelas considered that the fine proposed by the Commission and Ms Brindle was too low and imposed a fine of \$265,500.00, with reparation payments made to four families.

In addition to the \$265,500 order made in the District Court, an additional order for reparation was made by the Disciplinary Tribunal to one of the families who initiated their own separate proceedings as a result of the misleading and false statements made. The reparation order was to the amount of \$5,311.85, and was to be paid by Kowhai Pre-School back to the family. This order of the Disciplinary Tribunal was not disturbed by the District Court.

Given Mrs Brindle's involvement with Kowhai Pre-school, Kowhai Pre-School's acceptance of the offending, and that she is a registered teacher, the Council referred the matter to the CAC for consideration of its own motion. Mrs Brindle did not receive any convictions personally as a result of her conduct.

Kowhai Pre-School has been placed into liquidation.

Teacher's response

In Mrs Brindle's response to the Education Council investigator, she described her actions as, "*sincerely not deliberate, calculated or intentional*".

Mrs Brindle obtained her ECE qualification in 1986. She has taught and held supervisory and sole charge positions during her career.

On 20 March 2018, Mrs Brindle indicated she intended to remain in the teaching profession and return to Early Childhood Education in a relief teaching capacity only.

Following the decision of the CAC to refer this matter to the Tribunal, Ms Brindle advised that she no longer wishes to remain a registered teacher.

The effect of the respondent's offer to be voluntarily de-registered

[10] Before this matter was set down for hearing, the Tribunal invited the CAC to advise whether the Education Council would agree to act upon the

respondent's offer to be voluntarily deregistered and whether that ought to circumvent the need to determine the charge.

[11] We are grateful to counsel for the CAC for their comprehensive submissions on this point.

[12] Section 358 of the Education Act 1989 entitles a teacher to apply to the Council for voluntary deregistration. Before the Council can approve an application, two conditions must be met, which are:

- a) That the Council receives a written request from the person seeking deregistration; and
- b) The Council is satisfied that the person is not "the subject of an investigation under Part 32 of the Education Act".

[13] There is no doubt that the first criterion is met in the respondent's case. It is the second that must be determined, and this hinges on what an "investigation under Part 32 of the Education Act" constitutes.

[14] Part 32 of the Education Act, which was enacted in 2015, established the Education Council. Section 382, which sets out the responsibilities of the Council, relevantly provides that it is to:

- a) Carry out the functions under Part 31 relating to teacher registration;³ and
- b) Perform the disciplinary functions in this Part relating to teacher misconduct and reports of teacher convictions.⁴

[15] The CAC became seized of this matter in accordance with s 400(2) of the Education Act,⁵ which provides that:

The Education Council may refer to the Complaints Assessment Committee any matters that relate to teacher conduct of its own motion as it sees fit.

[16] The referral under s 400 empowered the CAC to employ its investigative powers described in s 401, which provides that:

³ Education Act, s 382(1)(d).

⁴ Education Act, s 382(1)(m).

⁵ Section 400 is entitled "Complaints and reports relating to teacher conduct".

Powers of Complaints Assessment Committee

(1) The Complaints Assessment Committee may investigate any report, complaint, or matter referred to it under section 400.

[17] The CAC undertook the investigation into the respondent's behaviour under s 401 on 12 April 2018.

[18] The CAC referred this matter to the Tribunal at the conclusion of its investigation. The referral procedure is contained in ss 401(3) and (4) of the Education Act, which provide that:

(3) The Complaints Assessment Committee may, at any time, refer a matter to the Disciplinary Tribunal for a hearing.

(4) The Complaints Assessment Committee must refer to the Disciplinary Tribunal any matter that the Committee considers may possibly constitute serious misconduct.

[19] The referral to the Tribunal in the instant case, because of the inherent seriousness of the alleged misconduct, was made in reliance on s 401(4). That occurred on 16 May 2018. That, in turn, engaged the obligation contained in s 401(5), which provides:

When a matter is referred to the Disciplinary Tribunal under subsection (4), a notice must be sent to the teacher concerned setting out the charge of misconduct against him or her.

[20] The respondent's application under s 358 was made after the referral to the Tribunal under s 401(4); thus after the CAC had completed its "investigation" under s 401(1). On a narrow reading of s 358, this arguably means that the respondent was no longer "the subject of an investigation under Part 32 of the Education Act" when she applied for voluntary deregistration. However, the CAC submits that the respondent remains under investigation until the allegation of serious misconduct referred to the Tribunal is heard and determined. Counsel for the CAC submits that voluntary deregistration risks "undercutting the primary purposes and principles of disciplinary proceedings, such as public protection".

[21] We agree with the CAC that enabling a teacher who is the subject of an allegation of serious misconduct to voluntarily deregister carries the risk it has identified. For example, s 359 requires the "register of people who are registered as teachers" to be annotated whenever the CAC or Tribunal exercises one of its powers contained in ss 401 and 404. However, it does not make provision for the annotation of voluntary deregistration. Moreover, there is nothing in the Education Act that prevents a person who voluntarily

deregisters before completion of the Part 32 procedure from applying to be registered again in future.⁶ As such, we see merit to the CAC's submission that:

Should the respondent decide in future to apply for registration, the Council must be satisfied that she is of good character fit to be a teacher. In such circumstances, the respondent may assert that the allegations against her had never been substantiated as the Council chose not to pursue them, and that she should be re-registered.

[22] The CAC referred us to the High Court decision in *Kerr v New Zealand Teachers Council*,⁷ where Wild J considered the very issue that arises in this case. His Honour said that:

[28] The defendant [the Council] then posed the question: what is the effect on that policy of allowing a teacher to deregister himself when his good character or fitness to be a teacher has been called in question, rather than having the allegations against him investigated and, if warranted, his registration cancelled by the Council. And answer: in the event the complaint has substance and the Council would have cancelled the teachers registration, the policy is completely undermined. The opportunity for any finding to be made about the teacher's conduct and its implications for his suitability to teach is removed. Arguably, the teacher's name cannot be placed on the Cancelled Teachers List, so prospective new employers are deprived of any warning that the teacher is unsuitable.

[23] Justice Wild concluded that the outcome he described at paragraph 28, "Would not accord with Parliament's intention, had it expressly addressed the situation".⁸

[24] Applying the reasoning in *Kerr*, which mandates a purposive interpretation of s 358, we agree that the respondent remains "subject of an investigation under Part 32 of the Education Act". As such, the Council is precluded from granting her application under s 358 for voluntary deregistration.

⁶ Education Act, Part 31, ss 352-358 and, specifically, s 357(2).

⁷ *Kerr v New Zealand Teachers Council* HC Wellington Reg, CIV-2002-485-860, 6 April 2004.

⁸ At [34].

Our findings

[25] Based on the information attached to Ms De La Mare's affidavit, we are satisfied that the factual allegations contained in the CAC's notice of charge are proved.

[26] Section 378 of the Education Act defines "serious misconduct" as behaviour by a teacher that has one or more of three outcomes.⁹ The test under s 378 is conjunctive.¹⁰ As such, as well as having one or more of three adverse professional effects or consequences, the conduct concerned must also be of a character and severity that meets the Education Council's criteria for reporting serious misconduct.

[27] The New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (the Rules), which apply because the behaviour behind the charge happened in 2013 and 2014, describe the types of acts or omissions that are of a prima facie character and severity to constitute serious misconduct. Those which specifically apply in the respondent's case are r 9(1)(h), which talks about behaviour comprising "theft or fraud" and r 9(1)(o), which encompasses "any act or omission that brings, or is likely to bring, discredit to the teaching profession".

[28] Starting with the first limb of the definition of serious misconduct, we are satisfied that the respondent's behaviour fulfils two of the three criteria in s 378 of the Education Act. First, we accept that the respondent's fraudulent activity adversely reflects on her fitness to teach. As we have said previously, practitioners have an obligation to both teach and model positive values for their students.¹¹ Fraudulent behaviour of this type is the antithesis of the standard of honesty expected of teachers. Second, there can be no doubt that the respondent's behaviour is of a nature that brings the teaching

⁹ Conduct that adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; or reflects adversely on the teacher's fitness to be a teacher; or which may bring the teaching profession into disrepute.

¹⁰ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

¹¹ This obligation is contained in clause 3(c) of the Code of Ethics for Registered Teachers, which applied at the time the respondent misconducted herself. We also agree with the CAC that the respondent's behaviour contravened other aspects of the Code.

profession into disrepute when considered against the objective yardstick that applies.¹²

[29] Having fulfilled the first step in the test for serious misconduct, we must next be satisfied that the respondent's conduct is of a character and severity that meets one or more of the reporting criteria in 9(1) of the Rules. Again, of this there can be no doubt. We are satisfied that the respondent's behaviour engaged two of r 9(1)'s criteria. First and foremost, it is fraudulent behaviour directly caught by r 9(1)(h). Second, it is conduct of a nature that "brings, or is likely to bring, discredit to the teaching profession", thus in contravention of r 9(1)(o).

[30] There can be no dispute that the respondent's sustained dishonest behaviour was motivated by personal gain. The respondent's explanation that her behaviour was "sincerely not deliberate, calculated or intentional", simply bears no weight. The scheme concocted by the respondent had a direct and substantial financial impact on many parents. As we have previously said, "The allocation of funding is based on a high trust model in New Zealand".¹³ Ms Brindle fundamentally undermined the trust placed in her by both the Ministry of Education and the parents and children associated with Kowhai Pre-school.

[31] In summary, this is an extremely clear-cut example of serious misconduct.

Penalty

[32] The primary motivation regarding the establishment of penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met. These are to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.¹⁴ We are required to arrive at an outcome that is fair, reasonable and proportionate in the

¹² *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

¹³ *CAC v Thornton* NZTDT 2015/63, at [20].

¹⁴ The primary considerations regarding penalty were helpfully discussed in *CAC v McMillan* NZTDT 2016/52.

circumstances in discharging our responsibilities to the public and profession.¹⁵

[33] In *CAC v Fuli-Makaua*¹⁶ we recently endorsed the point that cancellation is required in two overlapping situations, which are:

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession;¹⁷ and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.¹⁸

[34] We acknowledge that we must seek to ensure that any penalty we institute is comparable to those imposed upon teachers in similar circumstances. With that principle of consistency in mind, in *CAC v Lyndon* we reviewed a number of this Tribunal's earlier decisions that concerned fraudulent behaviour by teachers.¹⁹ Having considered those cases, we are left with no doubt that this is a paradigm "clear-cut example" of the worst kind of misconduct by a practitioner for which the maximum penalty of cancellation is reserved; thus falling into the first category described in *Fuli-Makaua*. The reasons for this conclusion will be self-evident.

[35] As we said in *Lyndon*, knowing the genesis of the fraud helps explain what motivated the offending, and what degree of risk of repetition there is.²⁰ Unfortunately, Ms Brindle's decision to withdraw means that we have no way of meaningfully answering those questions.

¹⁵ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

¹⁶ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 at [27].

¹⁷ Referring to the sixth of eight penalty factors described by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [50].

¹⁸ See *CAC v Teacher* NZTDT2013/46, 19 September 2013 at [36].

¹⁹ *CAC v Lyndon* NZTDT 2016/61 at [26] and fn 11. See, too, *CAC v McCaskill* NZTDT 2018/15, at [22].

²⁰ See NZTDT 2013/9, at 6.

[36] The respondent, in her letter, emphasises her experience and the societal value that will flow from allowing her to remain a teacher. We accept that there may be circumstances in which a teacher's particular skills and experience mean that, with appropriate conditions and support, it is in the interests of the education community that he or she retains registration. We accept that the respondent has positive professional attributes. However, the counterpoint is that teachers are expected to maintain public trust and confidence by demonstrating a high standard of professional behaviour and integrity. The respondent has flagrantly undermined these values and expectations.

[37] We therefore conclude that nothing short of cancellation of the respondent's registration will meet the obligations owed to the public and the profession.

Costs

[38] The starting point is for the Tribunal to make an award in favour of the successful party reflecting 50 per cent of its, his or her actual and reasonable costs. However, we order the respondent to make a 40 per cent contribution to the CAC's costs. This is consistent with our recent approach and takes account of Ms Brindle's agreement to the matter being dealt with on the papers. The respondent is ordered to pay \$2518.95 to the CAC.

[39] The respondent is also ordered to make a 40 per cent contribution to the Tribunal's own costs, which amounts to \$458.

Orders

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

- a) Pursuant to s 404(1)(b), the respondent is censured.
- b) The respondent's registration is cancelled under s 404(1)(g).
- c) The register is annotated pursuant to s 404(1)(e).
- d) The respondent is to pay \$2518.95 to the CAC under s 404(1)(h).
- e) The respondent is to pay a contribution towards the Tribunal's costs in the amount of \$458, under s 404(1)(i).



Nicholas Chisnall
Deputy Chairperson

NOTICE

- 1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.
- 2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
- 3 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).