

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018/87

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 **VALERIE ELEANOR COONEY**
Respondent

DECISION OF THE TRIBUNAL

28 May 2020

HEARING: Held on 9 April 2019 on the papers

TRIBUNAL: Rachel Mullins (Deputy Chair)
Nikki Parsons and Maria Johnson (members)

REPRESENTATION: Ngaroma Tahana, Kahui Legal for the Complaints Assessment
Committee
W Lawson, Lance Lawson, Barristers and Solicitors for the respondent

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee ("CAC") has charged the respondent with engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
2. The CAC alleges that the respondent:
 - (a) On 25 October 2017 assaulted Student A, a Year 7 student, by hitting and/or slapping him on the face;
 - (b) On 4 December 2017 firmly held onto the arm and/or shoulder of Student B, a Year 7 student, without his consent, and then pushed him away.
3. The CAC alleges that this conduct amounts to serious misconduct pursuant to section 378 of the Education Act 1989 ("the Act") and Rules 9(1)(a) and/or (c) and/or (f) and/or (n) and/or (o) of the Education Council Rules 2016 ("the Rules") (as drafted prior to the amendments on 18 May 2018), or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.
4. The matter was heard on the papers.

Ko te hātepe ture o tono nei – Procedural History

5. A Pre-hearing Conference ("PHC") was held on 17 December 2018 at which it was agreed a Joint Memorandum of Counsel would be filed by 21 January 2019.
6. The Joint Memorandum of Consent was duly filed on 18 January 2019. The Joint Memorandum of Consent proposed the following by way of resolution:¹
 - (a) The respondent will plead guilty to the charge;
 - (b) The summary of facts is agreed;
 - (c) Both parties agree the conduct amounts to serious misconduct;
 - (d) Both Counsel agreed that an appropriate penalty be:

¹ Refer Joint Memorandum of Consent at [4]

- (i) Censure;
 - (ii) Annotation to record finding of serious misconduct; and
 - (iii) Conditions for the respondent to undergo professional development in regards to classroom discipline and stress management.
- (e) A stand down period is not required in the circumstances.
7. The Chairperson issued a minute on 23 January 2019 with timetabling directions for submissions on threshold and penalty. The CAC filed submissions on 4 March 2019 attaching the Agreed Summary of Facts ("ASoF").
8. The respondent filed submissions on 15 March 2019 and attached character references for the respondent.

Kōrero Taunaki - Evidence

Agreed Summary of Facts

9. The ASoF is set out in full below:
1. *The respondent **VALERIE ELEANOR COONEY** was a registered teacher employed at John Paul College ("the School") between 1987 and 25 January 2018.*
 2. *Mrs Cooney was often used to assist other teachers when they were having difficulty with managing students' difficult behaviours, as was the case in this incident.*

25 October 2017 – Student A

3. *On 25 October 2017 three male students were sent to the respondent's class by another teacher because of their disruptive behaviour. Student A was one of these students.*
4. *When the respondent was soliciting an explanation for the disruptive behaviour, Student A started to laugh. The respondent thought Student A was laughing at her attempt to reprimand the students. Because of this the respondent slapped Student A across his left cheek with her right hand. The student was upset and started to cry.*

5. *The respondent immediately regretted her actions and she apologised to Student A in the presence of another staff member after the class was dismissed.*
6. *In a written statement dated 25 October 2017, the respondent stated that:*

"This morning while speaking to these boys, Student A was answering back, and appeared to be laughing at me, and I hit him. It was an involuntary action and I regretted it immediately".
7. *The respondent engaged in a restorative justice meeting with Student A and his whānau. Following this meeting the respondent thought the matter was resolved and the incident would not be taken any further. However, the School initiated an employment disciplinary process.*

4 December 2017 – Student B

8. *On 4 December 2017, the respondent was teaching a folk dancing class at the school. Student B was taking part in this class.*
9. *The respondent took exception to Student B's uncooperative behaviour and unwillingness to find a female dance partner.*
10. *The respondent put her hand on Student B's shoulder and pushed him towards the girls in the class. Student B pulled away and told the respondent to "get stuffed".*
11. *The respondent told Student B to leave the class and report to the Dean. Student B left the hall and later made a complaint against the respondent.*

Investigation and referral

12. *The School submitted a mandatory report of these two incidents to the Education Council on 15 December 2017. The Complaints Assessment Committee of the Education Council ("Committee") investigated the allegations and prepared an investigation report for response.*

Teacher's Response

13. *In response to both incidents, the respondent acknowledged the seriousness of these matters and expressed remorse for her actions.*

14. *In respect of the first incident, the respondent told the Committee she "flipped" Student A on the cheek despite her earlier statement that she had "hit" Student A.*
15. *In respect of the second incident, the respondent accepted that she had put her hand on his shoulder in an attempt to move him towards the female students.*
16. *In explanation the respondent said she was under stress at the time of these incidents from personal and professional circumstances including:*
 - (a) *The responsibility for disciplining students referred to her by other teachers; and*
 - (b) *Her husband's ongoing illness.*

Applicable Code

17. *High standards are expected of all registered teachers, as set out in the Code of Professional Responsibility and Standards for the Teaching Profession/Ngā Tikanga Matatika mō te Haepapa Ngaiotanga me Ngā Paerewa mō te Umanga Whakaakoranga ("the Code").*
18. *According to the Code teachers must (among other things) work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.²*

Ngā Kōrero a te Kōmiti – CAC Submissions

10. The CAC submits that these incidents combined amount to serious misconduct. Assessing the limbs of section 378(1) of the Act, the CAC submits that the respondent's actions had immediate impact on the wellbeing of both students:
 - (a) Following the slap to the face, Student A was upset and started to cry;
 - (b) Student B pulled away, told the teacher to "get stuffed", left the hall and contacted his parents who later made a complaint.

² Standard 2.1 of the Code of Professional Responsibility and Standards for the Teaching Profession.

11. The CAC therefore submits that whilst not inflicting physical harm on the two students, both were humiliated in front of their peers and as such the respondent's conduct had an adverse effect on their wellbeing.
12. Further, the use of force, slapping and pushing students, reflects adversely on the respondent's fitness to teach and is of a nature that brings the teaching profession into disrepute. The CAC refers the Tribunal to the case of *CAC v Rowlingson*³.
13. The CAC says that the respondent's actions were not attempts to gain students' attention but were a result of the respondent becoming frustrated and overreacting to disruptive behaviour and perceived disrespect.
14. Turning to whether the respondent's conduct is of a character and severity that meets the reporting criteria under Rule 9(1), the CAC submits that the respondent's use of force constitutes physical abuse in breach of Rule 9(1)(a) as it was with enough intensity that it made Student A cry.
15. With respect to Student B, the CAC submits that the duration and force of the push was enough that Student B pulled away, told the respondent to "get stuffed" and immediately phoned his parents.
16. Further, the CAC say that Rule 9(1)(n) has been breached with respect to the incident involving Student A as the conduct, common assault, could be subject to prosecution under the Crimes Act 1961 which attracts a maximum penalty of one year imprisonment.
17. The CAC reminds the Tribunal of the absolute prohibition on the use of corporal punishment set out under section 139A(1) of the Act and reminds the Tribunal that we have previously said that any teacher who uses physical force contrary to section 139A puts his or her status as a teacher in peril.⁴
18. The CAC refers the Tribunal to several similar fact cases involving physical contact and how the Tribunal has dealt with these various factual scenarios.⁵

³ *CAC v Rowlingson*, NZTDT 2015/54, 9 May 2016.

⁴ *CAC v Teacher*, NZTDT 2014/49 at [5]

⁵ *CAC v Te Peeti* NZTDT 2017/32, 3 April 2018, *CAC v Duval-Smith* NZTDT 2017/31, 18 April 2018, *CAC v Allen* NZTDT 2015/15, 26 May 2015, *CAC v Teacher B* NZTDT 2017/07, 2 August 2017, *CAC v Emile* NZTDT 2016/51, 14 December 2016.

19. In relation to penalty, the CAC highlights the aggravating factors in this situation:
- (a) A hit to the head in relation to Student A;
 - (b) The emotional harm suffered by each of the students;
 - (c) The degree of force specifically in relation to Student A; and
 - (d) The repeated conduct in that these assaults occurred within a couple of months of each other.
20. The CAC also notes the mitigating factors which include:
- (a) The remorse expressed by the respondent with respect to both incidents;
 - (b) The longstanding service of the respondent having a teaching career spanning some 55 years with an unblemished record;
 - (c) The respondent has cooperated throughout the internal school investigation and the CAC process;
 - (d) The CAC also acknowledges the difficult personal circumstances the respondent was going through at the time.
21. Considering all the relative factors, the CAC submits that a censure and conditions on the respondent' practising certificate requiring her to enrol in professional development around providing a safe working environment for students, and providing a reflective statement to the Tribunal are appropriate.

Ngā kōrero a te Kaiurupare – Respondent's submissions

22. Despite an initial indication from the respondent that she agreed her conduct amounted to serious misconduct⁶, she now invites the Tribunal to make a finding of misconduct rather than serious misconduct.
23. Counsel for the respondent submits that in the circumstances, when looking at the context as a whole including the respondent's unblemished 50 year teaching career, as well as

⁶ Refer Joint Memorandum of Counsel dated 18 January 2019 at [4].

the significant stress she was under at the time, the respondent's conduct does not amount to serious misconduct.

24. Further, the respondent submits that the conduct on each occasion was fleeting and when looked at alongside the personal challenges the respondent was experiencing, the fact it was completely out of character, her actions cannot be considered to adversely affect her fitness to be a teacher. Counsel for the respondent also submitted that as the personal stressors suffered by the respondent at the time of the incidents are no longer present, then it is unlikely that there will be *"further loss of control of this nature in the future"*.⁷
25. Members of public when fully aware of the context of the offending *"might conclude that the Respondent's reaction was understandable (though not excusable) and not a negative reflection on the profession"*.⁸
26. Regarding penalty the respondent submits that the primary purpose of disciplinary proceedings is the protection of the public, maintenance of professional standards and punishment. The outcome and punishment must be proportionate to the conduct. In discharging these responsibilities, the Tribunal must consider the least punitive outcome necessary.
27. The respondent submitted that the Tribunal should note the following by way of mitigation:
 - (a) the conduct was isolated conduct, not premeditated or prolonged, and that neither student suffered physical harm or injury;
 - (b) the respondent has accepted responsibility for her actions and has expressed genuine remorse. In relation to Student A she has apologised and engaged in a restorative justice process with Student A and his whānau;
 - (c) the respondent has resigned and subjected herself to a self-imposed stand down period of over one year;
 - (d) the character references provided speak to the respondent's professional integrity and positive contribution to the teaching profession; and

⁷ Refer Respondent's Submissions at [11]

⁸ Above n 6 at [12]

- (e) the respondent has had an extensive career with no previous history of such conduct which shows that the incidents were out of character; and
 - (f) the respondent has cooperated throughout the disciplinary process.
28. The respondent submits that she is still able to add positively to the profession and would like the opportunity to do that.
29. Further the respondent agrees with the penalty proposed by the CAC.

Te Ture - The Law

30. The respondent has accepted that her conduct was inappropriate. Initially she agreed that her conduct amounted to serious misconduct, however given the broader context Counsel for the respondent now invites the Tribunal to consider misconduct rather than serious misconduct.

31. Section 378 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.

32. The test under section 378 is conjunctive⁹, 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.

33. The CAC alleges that the respondent's conduct falls within the definition of Rule 9(1)(a) and/or (c) and/or (f) and/or (n) and/or (o) of the Rules. Rule 9 sets out the criteria for reporting serious misconduct and misbehaviour that amounts to serious misconduct:

⁹ *Teacher Y and Education Council of Aotearoa New Zealand*, [2018], NZTDT 3141, 27 February 2018 at [64].

- (a) Rule 9(1)(a) – the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with connivance, of a teacher);
- (b) Rule 9(1)(c) – psychological abuse of a child or young person, which may include (but is not limited to) physical abuse of another person, or damage to property, inflicted in front of a child or young person, threats of physical or sexual abuse, and harassment;
- (c) Rule 9(1)(f) – neglect or ill treatment of a child or young person in the teacher's care;
- (d) Rule 9(1)(n) – any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of three months or more;
- (e) Rule 9(1)(o) – any act or omission that brings, or is likely to bring, discredit to the teaching profession.

34. Rule 9(2) provides that:

Physical, sexual or psychological abuse is reportable whether it occurs as –

- (a) *A single act; or*
- (b) *A number of acts forming part of a pattern of behaviour, even if some or all of those acts, viewed in isolation, are minor or trivial.*

35. We further note section 139A of the Act which provides that no teacher "*shall use force, by way of correction or punishment, towards a student or child*".

Kōrerorero – Discussion

36. We are satisfied that the respondent's conduct amounts to serious misconduct. We also wish to be clear that the incident involving Student A is and of itself serious misconduct. Slapping a student across the face in frustration and anger is behaviour that is strictly prohibited under section 139A of the Act.
37. Whilst the incident involving Student B may not when viewed in isolation, have reached the threshold for serious misconduct, the Tribunal is being asked to look at both incidents cumulatively. Further, we also note Rule 9(2) which says that physical abuse is either a

single act or a number of acts forming a pattern of behaviour even if some or all of those acts viewed in isolation are minor or trivial. So, while the incident involving Student B may be at the more minor end of the spectrum, when viewed in conjunction with the incident involving Student A, it is clear that the respondent's actions amount to serious misconduct. We set out below our reasons for this finding.

38. In terms of the test under section 378(1)(a) of the Act, we have no problem in determining that the respondent's cumulative actions were likely to adversely affect the wellbeing or learning of the students. Both incidents were in front of other students which would likely have caused some embarrassment. Further, the evidence is that Student A cried as a result of being slapped by the respondent and Student B was upset to the point that he pulled away, told the respondent to "get stuffed" and immediately contacted his parents.
39. While the wellbeing of the students may have only been impacted briefly, we are still of the view that they were impacted, nonetheless.
40. We are also satisfied that the respondent's actions reflect adversely on her fitness to be a teacher and may bring the teaching profession into disrepute. The use of physical force for correction or punishment is strictly prohibited under the Act and therefore in the eyes of the public slapping Student A across the face would most certainly bring into question the standards of the teaching profession. The incident involving Student B further confirms that at that point in time the respondent exhibited a pattern of behaviour (involving two separate incidents) that reflects adversely on her fitness to be a teacher, and may well bring the profession into disrepute.
41. We note our decision in *CAC and Rangihau*¹⁰ where we said it is incumbent on all members of the profession to have a clear appreciation of the prohibition on the use of corrective and disciplinary force under section 139 of the Act.
42. The High Court in *Collie and Nursing Council of New Zealand*¹¹ confirmed that the test is an objective one. In making its determination, the Tribunal must ask itself whether reasonable members of the public fully informed of the facts of the case could reasonably conclude that the reputation and good standing of the profession has been lowered by the

¹⁰ *CAC v Rangihau*, NZTDT 2016/18 at [58].

¹¹ *Collie v Nursing Council of New Zealand*, [2001] NZAR74 at [28].

respondent's actions. Slapping a student across the face in frustration coupled with grabbing a student's shoulder a few months later is something that would not be perceived well by the public.

43. Turning now to look at whether the respondent's conduct is also of a character or severity that makes the Teaching Council's criteria for reporting serious misconduct, we note that we only need to find contravention of one of the specific rules covered in Rule 9(1) for this limb to be satisfied. The CAC has alleged that the respondent has breached Rules 9(1)(a) and/or (c) and/or (f) and/or (n) and/or (o). Despite the CAC pleading Rules 9(1)(a), (c), (f), (n) and (o), the CAC submissions focus predominantly on Rule 9(1)(a) as will our reasoning.
44. This is not to say that the respondent's conduct may not also have been in breach of Rules 9(1)(c), (f), (n) and (o). For example, in relation to Rule 9(1)(n), the respondent could have been prosecuted under section 194(a) of the Crimes Act for assault on a child which carries a maximum penalty of two years' imprisonment, bringing her conduct squarely within the scope of Rule 9(1)(n). We are also satisfied that slapping a child across the face is an act or omission that brings, or is likely to bring, discredit to the profession under Rule 9(1)(o). However, as noted above, as Rule 9(1)(a) is the most context specific, we will deal with that in more detail.
45. In the case of *CAC v Teacher*¹² we looked at the issue of what constitutes abuse for the purposes of Rule 9(1)(a). We considered the cases of *Rowlingson*¹³ and *Haycock*¹⁴ and how a full contextual enquiry is required when considering whether a teacher's conduct amounts to abuse. In *Rowlingson* we looked at the two definitions of "abuse" as set out in the Oxford English Dictionary.¹⁵ Firstly, whether the respondent's conduct was used "to bad effect or for a bad purpose" and/or secondly whether the respondent's actions were "to treat with cruelty or violence". There is obviously a degree of overlap between the definitions. It is difficult to imagine a situation where violence was used, and this was not also conduct that was for bad effect or bad purpose.

¹² *CAC v Teacher* NZTDT 2016/50

¹³ Above n 3

¹⁴ *CAC v Haycock* NZTDT 2016-2

¹⁵ Above n 3 at [34]

46. Whilst in *Rowlingson* we focused on the second limb of the definition, subsequent cases¹⁶ have considered both limbs are necessary to the contextual enquiry require under Rule 9(1)(a), and we use the same approach here.
47. In relation to Student A, this is a clear example of the respondent losing control and lashing out in anger. She was violent and her actions were used for bad effect. The respondent's use of force was for the purposes of punishing Student A for laughing at and disrespecting her. This is a clear breach of section 139A and is physical abuse under Rule 9(1)(a).
48. In relation to the incident involving Student B, in and of itself we may not have found that the respondent's conduct amounted to serious misconduct but perhaps something less. However, considered alongside the incident involving Student A, it shows a pattern of behaviour for the respondent at a particular point in time.

Kupu Whakatau – Decision

49. As already noted, the respondent's conduct amounts to serious misconduct.
50. We acknowledge that the respondent was experiencing a considerable amount of stress and pressure, both professionally and personally at the time, and is extremely remorseful for her actions. Nonetheless, there are no circumstances in which striking a student across the face can be considered an appropriate disciplinary measure.
51. As we noted in *CAC v Mackay*¹⁷ the trust whānau place in teachers every day is not a responsibility that should be taken lightly. Whilst *Mackay* involved a referral of a conviction for domestic violence, the following passage demonstrates the significant amount of trust that society places in the teaching profession:

Everyday hundreds of thousands of parents and whānau send their most precious taonga, their children, to school across Aotearoa to be cared for and nurtured by teachers. It is imperative that teachers take this privilege and responsibility incredibly seriously. Their behaviour both inside and outside of the classroom must be of a standard that meets the trust and expectations that whānau have of them. Extreme violence of this nature is unacceptable conduct for a person in such a position of responsibility as a teacher is.

¹⁶ For example, see Above n 11 and *CAC v Mackey* NZTDT 2016/60

¹⁷ *CAC v Mackay* 2018/69 at [36]

Whiu - Penalty

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

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

53. The CAC submits that a censure and conditions on the respondent's practising certificate are appropriate to achieve the three overlapping principles the Tribunal must consider in relation to penalty.
54. The respondent agrees with the penalty sought by the CAC and submits that she is still able to positively contribute to the profession and therefore a censure with conditions will assist with her rehabilitation and reintegration into the profession.
55. 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.¹⁸ Counsel for the respondent submitted that punishment is one of the primary purposes of disciplinary proceedings. We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.¹⁹
56. 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 powers²⁰:
- (a) Protecting the public;
 - (b) Setting the standards for the profession;
 - (c) Punishment;
 - (d) Rehabilitation;
 - (e) Consistency;
 - (f) The range of sentencing options;
 - (g) Least restrictive;

¹⁸ *CAC v McMillan*, NZTDT 2016/52.

¹⁹ *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).

²⁰ Above n 16 at [40] – [62]

- (h) Fair, reasonable and proportionate.
57. We do not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
58. The respondent has had a long and successful career in the profession. Up until these incidents she has not previously appeared before the Tribunal and has an unblemished record. We also recognise by all accounts that her actions were out of character at a time where she was under immense personal and professional strain.
59. We also acknowledge that the respondent, at least in relation to Student A, engaged in a Hui Whakatika or restorative justice process with the student and their whānau. That to us shows a teacher that has reflected on her behaviour, acknowledges the mamae that she has caused and proactively took steps to make things right.
60. We agree that the respondent still has something to contribute to the profession and can continue to add value to the lives of the students she teaches. We also note the letter from the Principal of John Paul College highlighting how the respondent is a highly regarded maths teacher and until these incidents has had an unblemished teaching career of over 30 years.
61. Considering the above, pursuant to section 404(1) of the Act, we order as follows:
- (a) A censure under section 404(1)(b) of the Act;
 - (b) Under section 404(1)(c) of the Act the following conditions are to be placed on the respondent's practising certificate:
 - (i) Within three months of the full decision, the respondent must enrol in a professional development course around positive guidance for better learning outcomes/behaviour management by a provider approved by the Teaching Council and a completion certificate sent to the Manager of Professional Responsibility of the Teaching Council;
 - (ii) The respondent must provide a reflective statement to the Manager of Professional Responsibility of the Teaching Council within three months of the full decision;

(iii) The respondent must tell her current and prospective future employer of the decision for a period of two years from the date of the full decision and provide them with a copy of the full decision with evidence to the Teaching Council of this disclosure.

(c) Pursuant to section 404(1)(e) of the Act, annotation of all the above for a period of two years following the date of the full decision.

62. We note that a decision only minute has previously been issued with respect to this matter setting out the Tribunal's findings and penalty. Given the timing of the full decision it may be that the respondent has already fulfilled the conditions set out in paragraph 61(b)(i) and (ii). If that is the case, so long as the Teaching Council has evidence of completion, then those conditions are deemed to have been satisfied.

Utu Whakaea – Costs

63. The CAC seeks an award of costs of 50%.

64. The respondent submits that costs should lie where they fall, or alternatively, that the contribution be reduced from the base of 50%.

65. The Tribunal is minded to order 40% costs.

66. The CAC is to file and serve a copy of its cost schedule. Under section 404(1)(h) the respondent is ordered to pay 40% of the costs shown in the CAC schedule unless the respondent files and serves submissions as to costs within 10 days of the date the CAC has sent the cost schedule. If these submissions are received the Tribunal delegates to the Deputy Chair the task of fixing the amount of the CAC's costs.

67. The respondent is also ordered to pay 40% of the Tribunal's costs. This matter was dealt with on the papers and the schedule submitted by the Tribunal shows \$1,145.00 of total costs. The respondent is to pay \$458.00 pursuant to section 404(1)(i). Any objection should be filed within 10 days of receipt of the decision and referred to the Deputy Chair.



Rachel Mullins
Deputy Chair

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

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