

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2019-51**

**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** **[TEACHER D]**  
**Respondent**

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**TRIBUNAL DECISION**

**15 OCTOBER 2019**

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**HEARING:** Held on 8 August 2019 at Wellington (on the papers)

**TRIBUNAL:** Theo Baker (Chair)  
Nikki Parsons and Stuart King (members)

**REPRESENTATION:** Ms Fitzherbert for the Complaints Assessment Committee  
The respondent represented herself

1. The Complaints Assessment Committee (**CAC**) has referred a charge of serious misconduct alleging the respondent received a Police warning following admissions that she had assaulted children in her care. This had come to the attention of the Teaching Council as a result of a Police Vet report.
2. A panel of the Tribunal convened and considered the matter on the basis of the papers, which included the Notice of Charge, an Agreed Summary of Facts, signed by Ms Fitzherbert and the respondent, submissions from the CAC and a statement signed by the respondent. We also considered an application for non-publication of the respondent's name.

### **Summary of our decision**

3. We found that the charge was established and amounted to serious misconduct. We censured the respondent and imposed a condition on her practising certificate for a period of 18 months that she show a copy of the Tribunal's decision to her current employer and any future employer for the next eighteen months.
4. We made an order for non-publication of the respondent's name on the basis that if her name were published, it could lead to identification of all of the children in her care.

### **Evidence**

5. The evidence to support the charge was in the form of an Agreed Summary of Facts (**ASF**) which is set out in full:

#### **AGREED SUMMARY OF FACTS**

1. *[The respondent] was first registered and fully certificated prior to 1990, and is currently relieving for [a kindergarten].*
2. *[The respondent] became an approved Ministry for Children: Oranga Tamariki caregiver in 2006. 1 [The respondent] and her husband currently have foster five children and have two children of their own in their care.*
3. *Child C was born on 17 February 2005.2 Child D was born on 30 June*

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<sup>1</sup> Known at that time as Child, Youth and Family, a service line of the Ministry of Social Development

<sup>2</sup> In the CAC submissions it was noted that there was an error in the date of birth in the original ASF that was filed. This was corrected from 2019 to 2005.

2008. The children came into [the respondent]'s care on December 2009, and she was granted parenting and additional guardianship orders on 11 February 2011.

4. *At the time of the conduct, the mother of Children C and D was attempting to gain custody of the children, and [the respondent] had no option but to become involved in the Family Court proceedings.*

**The Police vetting report**

5. *On 16 January 2019 the Teaching Council received a Police vetting report from the New Zealand Police which recorded that [the respondent] has received a formal written warning for "assaults child (other weapon)". According to that report, [the respondent] had made a number of admissions in relation to the physical discipline of children (aged 6-14) in her care, which included smacking, slapping, and on the hand with a wooden spoon.*

**Investigation Ministry for Children: Oranga Tamariki**

6. *On 21 August 2018 Child C was interviewed by Oranga Tamariki and disclosed that in March or April 2018 he was hit around the face by [the respondent]. Child C also disclosed two other physical assaults including one when he was smacked on the hand with a wooden spoon. Child C also expressed a desire to remain living with [the respondent].*
7. *On 21 August 2018 Child D was interviewed by Oranga Tamariki and disclosed that she witnessed [the respondent] smack Child C on the shoulder in March or April 2018. She also disclosed that in the past [the respondent] had smacked with the wooden spoon.*
8. *[The respondent] was interviewed and admitted clipping Child C around the back of the head and that the wooden spoon had been used in the past. This incident had occurred on 27 April 2018, the morning of an appointment with the Court appointed psychologist. At that appointment, [the respondent] voluntarily disclosed that she had a difficult morning with Child C hurting Child D, which resulted in her disciplining him by clipping him on the back of the head with her hand. [The respondent] stated that she was*

*extremely stressed out by the "whole court situation and should have reached out for help before it got to that point."*

9. *Oranga Tamariki commenced an investigation into the disclosures. During this time, [the respondent] voluntarily moved out of her family home, being a total of five weeks.*
10. *When spoken to, [the respondent] expressed that the stress and tension of the Family Court proceedings was having a negative effect on the household, and particularly the behaviour of the children. She acknowledged she ought to have reached out for support sooner from outside agencies, including Oranga Tamariki.*
11. *The Oranga Tamariki 'Outcome report – investigation into allegations of abuse, neglect, or harm of tamariki by caregivers' dated 19 September 2018 recommended that [the respondent] remain a caregiver. In addition, the [location suppressed] Oranga Tamariki site acknowledged that they underestimated the level of stress that the family had been experiencing, and acknowledged that the organisation had not provided the appropriate level of support to them.*

#### **Police investigation**

12. *On 31 July 2018 the New Zealand Police received a Child Protection Referral.*
13. *On 29 October 2018 [the respondent] received a written warning from New Zealand Police in relation to the offence of Assaults a Child in respect of children C, D, and another child not mentioned in the Oranga Tamariki report.*

#### **Teacher response**

14. *On 26 February 2019 [the respondent] provided a response to the Teaching Council outlining the steps taken to stabilise her family.*
15. *Children C and D remain in [the respondent]'s care.*

6. The CAC has charged that the respondent received a police warning. The facts that are relevant to us are not that she received a warning, but what she received a warning for: that she had assaulted children in her care.
7. We are satisfied that the ASF supports the factual allegations in the charge, that is not only that she received a police warning, but that she had assaulted children in her care.

### **Serious misconduct**

8. Having found that the factual allegations are proved, we must now decide if the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).
9. Section 378 of the Act provides:

***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.*

10. The criteria for reporting serious misconduct are found in r 9 of the Rules. According to the Notice of charge, the CAC relies on rr 9(1)(a), and/or (n) and (o) that were in place at the time of this conduct:<sup>3</sup>

### **Criteria for reporting serious misconduct**

- (1) *The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*
  - (a) *the physical abuse of a child or young person (which includes physical abuse carried out under the direction, or with the connivance, of the teacher):*

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<sup>3</sup> Clause 3 of Schedule 1 of the Teaching Council Rules 2016 provides that possible serious misconduct by a teacher that occurred before 19 May 2018 must be reported and dealt with in accordance with the principal rules that were in force immediately before that date.

...

(n) *any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:*

...

(o) *any act or omission that brings, or is likely to bring, discredit to the profession.*

#### *CAC submissions*

11. Although there was no reference to r 9(1)(c) in the Notice of Charge, Ms Fitzherbert for the CAC submitted that the conduct also amounts to psychological abuse which is a criterion for reporting serious misconduct under r 9(1)(c). In a previous decision, we have declined to consider a rule that had not been specified in the Notice of Charge.<sup>4</sup> That is not fatal to this charge.
12. Ms Fitzherbert referred to s 377 of the Act which provides that the the purpose of the Teaching Council is “to ensure safe and high quality leadership, teaching, and learning for children and young people ...”
13. In *CAC v Teacher 2009-05*,<sup>5</sup> we said:
 

The legislation is simply not structured in such a way as to draw a line between a teacher’s private and professional life. The principal question is never whether some incident took place in a teacher’s private or professional capacity. The principal question is always whether the teacher’s actions, wherever and whenever they took place, reflect adversely on his or her fitness to be a teacher.
14. Ms Fitzherbert also submitted that the importance of ensuring the protection and safety of children in educational settings has been reinforced by the enactment of the Children’s Act 2014 (**Children’s Act**), and the amendments to the Act in 2015. The Tribunal in *CAC v Mackey*<sup>6</sup> found that the Children’s Act reinforced the importance of closely scrutinising the ongoing fitness to teach of any practitioner who faces a disciplinary charge for behaviour of a type that may pose an ongoing risk to students.
15. Ms Fitzherbert referred to our statement in NZTDT 2014-18 that any breaches of the

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<sup>4</sup> See *CAC v Emile* NZTDT 2016-51, 14 December 2016

<sup>5</sup> *CAC v Teacher 2009-05*, 11 May 2009

<sup>6</sup> *CAC v Mackey* NZTDT 2016-60, 24 February 2017

Council's Code of Ethics for Certificated Teachers (which has now been replaced by the Code of Professional Responsibility) will be a highly relevant consideration to whether there has been serious misconduct.<sup>7</sup> The current Code of Professional Responsibility provides that teachers "will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm",<sup>8</sup> and that teachers shall "manage the learning setting...to maximise learners' physical...and emotional safety".<sup>9</sup>

16. The CAC acknowledged that the use of force in question did not occur in the teaching environment and was not used for the purposes of correction, but referred to various statutory provision and excerpts from previous Tribunal decisions it submitted are relevant to the Tribunal's determination of whether this conduct amounts to serious misconduct, in particular the question of her fitness to be a teacher and the possibility of conduct of this type, even occurring outside the Centre, to bring the teaching profession into disrepute.
- a) Section 139A of the Act provides that teachers employed by registered schools are prohibited from using force "by way of correction or punishment" towards any child or young person at the school. As the Tribunal stated in *CAC v Rangihau*, it is incumbent on all the teaching profession to have a clear appreciation of the prohibition on the use of corrective and disciplinary force under s 139A of the Act.<sup>10</sup>
- b) The Tribunal stated in NZTDT 2014/49:<sup>11</sup>
- ...we repeat as we have said in a number of cases in the past that the use of physical force – even at a lower level such as evident in this case– is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to section [139A] puts his or her status as a teacher in peril.
- c) The Tribunal has also affirmed that the use of force for a corrective purpose, even if no aggression or anger is involved, will typically amount to serious misconduct.<sup>12</sup>

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<sup>7</sup> NZTDT 2014-18, 5 June 2016 at p 11

<sup>8</sup> Code of Professional Responsibility, p 10

<sup>9</sup> The CAC cited p 20, but that appears to be an error.

<sup>10</sup> *CAC v Rangihau* NZTDT 2016-18, at [58].

<sup>11</sup> NZTDT 2014/49, 20 May 2014 at p 5. See also *CAC v Teacher* NZTDT 2016-50, 6 October 2016.

<sup>12</sup> *CAC v Haycock* NZTDT 2016-2, 22 July 2016.

17. Ms Fitzherbert submitted that there is no question that the respondent's conduct in the present case amounts to serious misconduct. The respondent struck two of her foster children as a form of discipline for challenging behaviour. As a result, the respondent was issued with a formal warning by police. That the events occurred at the respondent's home and or that the children were misbehaving does not mitigate the conduct or bring it under the threshold for serious misconduct. She added that reasonable members of the public, informed of the facts and circumstances, would conclude that the respondent's behaviour:
- a) had an adverse effect on the children's physical well-being;
  - b) reflects adversely on the respondent's fitness to be a teacher; and
  - c) brings or is likely to bring the teaching profession into disrepute.
18. The CAC further submitted that the behaviour reaches the "necessary level of character or severity".

*Respondent's position*

19. The respondent filed a statement, an affidavit and some letters in support. These were aimed at penalty and name suppression. She did not dispute that the conduct does not reach the threshold for a finding of serious misconduct.

*Discussion*

20. We agree that a finding of serious misconduct is warranted for the respondent's treatment of her foster children, but we have reached that conclusion on different grounds from the CAC.
21. Dealing with the first part of the test for serious misconduct, we do not find that it meets the first limb of the definition of serious misconduct in s 378, that is that the conduct "adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students". The respondent's relationship with these children did not arise from her role as a teacher and so it is not accurate to refer to them as "students" in this context.
22. We think that the respondent's actions in hitting her foster children with a wooden spoon reflect adversely on her fitness to be a teacher under paragraph (a)(ii) of the

definition of serious misconduct, and the conduct is likely to bring the profession into disrepute under paragraph (a)(iii).

23. To establish serious misconduct, it must also find that the conduct is of a character or severity to meet one of the criteria relied on from r 9. We agree that the respondent's actions in hitting a child on the hand with a wooden spoon and on the head with her hand amounts to physical abuse and meets the criterion in r 9(1)(a), which refers to "a child or young person".
24. We also accept that it is conduct which meets r 9(1)(n), that is an act *that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more*. The respondent received a police warning for "assaults child (other weapon)". Section 194 provides that this offence attracts a maximum prison term of 2 years.
25. Finally, for the same reasons as it brings the teaching profession into disrepute, we find that it is likely to bring discredit to the profession. In our view the test in *Collie v Nursing Council of New Zealand*<sup>13</sup> is met. We are satisfied that reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession is lowered by the behaviour of the respondent.
26. Therefore we are satisfied that the established conduct amounts to serious misconduct.

## Penalty

27. Section 404 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 401(2):*

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<sup>13</sup> [2001] NZAR 74 at [28]

- (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.*

#### *CAC submissions*

28. The CAC submitted that the following penalty is appropriate:
- Censure; and
  - A condition that the respondent be required to show a copy of the Tribunal's decision to her current employer and any future employer for the next eighteen months.
29. The respondent agreed with the CAC's submissions and hoped that the proposed penalty was appropriate.
30. For the CAC, Ms Fitzherbert referred to the following cases:
31. In *CAC v Teacher 2009-05*<sup>14</sup> we considered a teacher's convictions for threatening to kill and assault by a male on a female. After considering all available options, we considered that suspension for six months, censure and completion of anger management counselling was appropriate in the circumstances.

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<sup>14</sup> Above, note 5

32. In *CAC v Allen*<sup>15</sup> a court had discharged a teacher without conviction for assault on a student after becoming aware of rude comments the student had made to the deputy principal about the teacher's wife. In imposing a censure only, we took into account the respondent's expression of genuine remorse, apology to the student and his mother, the teacher's high regard in the community, lack of previous disciplinary history and that he had undergone counselling.
33. In *CAC v Sami*<sup>16</sup> where a teacher who had repeatedly struck a family member with a vacuum-cleaner pipe had been discharged without conviction for assault with a weapon, we noted that the teacher's use of violence placed her registration in jeopardy but cancellation turned on the teacher's rehabilitative prospects and the degree of insight into the causes of offending he or she exhibits. We found that the least restrictive and reasonable penalty was censure and conditions for 18 months to work under a teaching mentor and provide a copy of the Tribunal's decision to any prospective employer.
34. *CAC v Teacher 2017-16*<sup>17</sup> involved the conduct of a teacher who, after finding out that his 13-year-old son had been arrested for shoplifting, "clipped his son around the ear during an argument." The teacher was censured.
35. In *CAC v Teacher A*,<sup>18</sup> during an argument with his partner, a teacher hit his 11-year-old son in the face, pushing him to the ground and causing swelling. He immediately notified Police, who investigated, as did Oranga Tamariki. He was warned by Police, who noted his remorse and that he had undertaken counselling as a result of the incident. Noting the mitigating factors in Teacher A's favour (remorse, counselling, self-reporting to Police), we censured the teacher and imposed a condition that he disclose the Tribunal's decision to future employers for a period of 18 months from the decision date.
36. In the present case, the CAC submitted that the children were vulnerable because of their age and family circumstances. Assault on a child is a specified offence under the

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<sup>15</sup> *CAC v Allen* NZTDT 2015-15, 26 May 2015

<sup>16</sup> *CAC v Sami* NZTDT 2017-14, 27 September 2017

<sup>17</sup> *CAC v Teacher 2017-16*, 20 October 2017

<sup>18</sup> *CAC v Teacher A* 2018-53, 1 May 2019

Children's Act 2014.

37. Ms Fitzherbert submitted that the respondent's conduct is more serious than the conduct in 2017-16, which involved a one-off incident of violence and was considered "hovering on the borderline between misconduct and serious misconduct." Rather, having regard to the vulnerability of the children involved, and the fact that the respondent admitted to striking her foster children on more than one occasion, it is submitted that her conduct is more analogous to the conduct in *Teacher A*.
38. Similarly, the CAC accepted the following mitigating factors will likely have an impact on the Tribunal's assessment of the appropriate penalty. The respondent:
- (a) Was fostering five children at the time, as well as working full time, and having to engage in Family Court proceedings commenced by the biological mother of two of her foster children at the time;
  - (b) Self-reported the incident involving Child C on the day it happened;
  - (c) Co-operated with both the Police and Oranga Tamariki investigation, including moving out of her family home during the Oranga Tamariki investigation;
  - (d) Retained care of the children following the Oranga Tamariki and Police investigation;
  - (e) Was the subject of an apology from Oranga Tamariki, who admitted it could have provided better support for the family;
  - (f) Has displayed considerable and genuine remorse, including insight into approaching agencies for help as required;
  - (g) Has accepted that her conduct amounts to serious misconduct;
  - (h) Has displayed a high level of insight into the seriousness of her conduct; and
  - (i) Has engaged with the disciplinary process.
39. Ms Fitzherbert referred to our comments in *Sami*:

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. We are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.

40. And in *CAC v McMillan* NZTDT 2016/52:<sup>19</sup>

... the purpose of disciplinary proceedings is...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.

41. The CAC submitted that given the mitigating factors outlined, and the guidance from the authorities, a penalty short of cancellation is justified in the circumstances.

42. On the question of conditions, Ms Fitzherbert referred to our comments in *Teacher A*: that while the legislation is not structured to distinguish between a teacher's conduct in private as against a teacher's conduct when at school, cases involving assault in a school are different in nature. In considering penalty, and specifically, whether to impose conditions on Teacher A, we said:

"Although the respondent's reaction to his son raises questions about his anger management and ability to ensure the safety of those around him, we accept that the triggers to this behaviour may be different from those in a classroom. This is relevant to our consideration of protection of public, by which we mean children and young people who may be exposed to the respondent in the course of his teaching career".

43. The CAC is unaware of any issues relating to her conduct in the early childhood centre setting where she works. There are no previous complaints about her teaching practice.

44. Ms Fitzherbert submitted that a condition of candour may be appropriate for the respondent, given that she was warned for conduct which amounts to a specified offence under the Children's Act 2014.

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<sup>19</sup> *CAC v McMillan* NZTDT 2016/52, 23 January 2017 at [23]. Emphasis added.

*Respondent*

45. The respondent told us about her three children, including one who sadly died in 2004. She described the steps leading up to the offending, as outlined in the ASF above. The two children, C and D, who are half-siblings, came into the respondent's care in 2009, when C was nearly 5 and D was 18 months. She and her husband were granted parenting and additional guardianship in 2011, which meant that legally the children were theirs to raise and were no longer referred to as foster children. However, they were still being used as respite and emergency caregivers, including four siblings for a few months in 2015. They continued to provide respite care for three of these children, who returned to live with them in 2017.
46. In August 2016, when the biological mother of C and D filed for custody, they had been living with the respondent's family for 8 years. This affected the children's stability and for C, the anxiety manifested itself in anger and aggression. This affected the family. The respondent did not reach out to CYFS as she felt the children were now her responsibility. She got a counsellor for C.
47. As part of the Family Court proceedings the Judge ordered a specialist report (which we take to be a report from a child psychologist or some other qualified expert witness). On 27 April 2018, the morning the report writer was to visit, C and D were arguing and when the respondent told them to leave the kitchen, C punched his sister in the stomach. The respondent's reflex reaction was to reach up and clip C with an open hand on the side of the head. All three were startled, and when they had calmed down, the respondent apologised for hitting him and they sat down for breakfast.
48. When the respondent was interviewed by the specialist report writer, she voluntarily told him what had happened before his arrival. This was recorded in his report, which was distributed to the lawyers for the biological mother and the children's lawyer. The mother later reported this to Oranga Tamariki who had the impression that the event had only just occurred and therefore interviewed the boys at their schools. That evening the children were worried that the social workers were going to come and take them away. The next day Oranga Tamariki contacted her and told her that she was being investigated for child abuse.
49. In order to minimise the disruption to the five children of having them placed with other

families, the respondent moved out of the home until the matter was resolved. Therefore over the next five weeks, on the days that she was not teaching, the respondent would return home to cook, clean and prepare the evening meal, leaving before the children returned home from school.

50. The respondent was able to return to the family home once Oranga Tamariki had completed their investigation. After the Police had interviewed the respondent she received the Police warning, which also referred to the historical use of a wooden spoon on the hand for discipline. This had stopped 6 years earlier and the respondent acknowledged it was not appropriate.
51. The respondent's absence from the home caused a deterioration in C's behaviour, leading to a suspension from school. Oranga Tamariki then became much more involved in supporting the developmental needs of the three girls, and providing some respite care. The respondent, her husband and C then attended a 12-week functional family therapy intervention course. Counselling was arranged for two of the children.
52. The respondent has now completed a "Foundations for Attachment" programme through Caring Families Aotearoa, through which she has learned strategies for how to create a secure base for children with developmental trauma and attachment challenges. She found this extremely helpful and felt that if she had had this knowledge sooner she would have been better prepared to parent the children placed in her care. She is also now attending personal counselling to help her deal with the anxiety attacks that have risen since she thought there was a possibility of losing her children.
53. The respondent included some character references. The Principal of the school attended by her children describes the respondent as being a dedicated parent who makes no distinction between her biological children and those placed in her care. She works closely with the school, contributes actively in school events, coaching sport and helping around the school, as well as serving as a Board member over a long period.
54. Office-bearers from her church also described the respondent's commitment and active involvement, including teaching Sunday School and taking Youth Group.
55. A former colleague described the respondent's happy learning focus, maintaining a

positive encouraging manner using positive guidance, forming meaningful relationships with tamariki, and hardworking attitude.

*Discussion*

56. We view the respondent's conduct in hitting Child C across the face very seriously. Although the use of the wooden spoon was apparently 6 years ago, the police warning included this conduct which then surfaced with the Police vet report.
57. We are grateful for Ms Fitzherbert's summary of the cases and agree with the proposed penalty. We agree that this case is analogous to *Teacher A*.<sup>20</sup> It is significant that the respondent immediately apologised and voluntarily disclosed the incident to the report writer later that day. It is evident that she did not attempt to hide the event or minimise it.
58. We also acknowledge the respondent's full statement and provisions of character references. The time she has taken to set out matters reinforces the factors the CAC has referred to in mitigation, including her personal circumstances at the time of the offending, the steps taken since and the insight shown.
59. We accept that the respondent's circumstances in defending Family Court proceedings at the time of these events would have been very stressful. It is important that the respondent's stress does not lead to a further assault on any child in the future. The Tribunal is reassured by the better support now being provided by Oranga Tamariki. More importantly we expect that the "Foundations for Attachment" programme will assist her greatly, as will the personal counselling.
60. We agree with the proposed penalty and therefore:
- a) The respondent is censured under s 404(1)(b); and
  - b) Under s 404(1)(c), it is a condition on the respondent's practising certificate that she show a copy of the Tribunal's decision to her current employer and any future employer for the next eighteen months.

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<sup>20</sup> Above, note

## Costs

61. The CAC opted not to pursue costs.
62. We order the respondent to make a contribution toward the Tribunal costs of \$458. This is a nominal amount representing 40% of the standard estimate of costs for a hearing on the papers.

## Non-publication

63. The respondent has applied for name suppression in order to protect the children, C and D, who are the subject of the inappropriate conduct. The respondent describes C as suffering attachment and identity issues. The family lives in a small township.
64. If the respondent were to be identified by the publication of her name, this would impact negatively on them who would be identified by association.
65. The CAC does not oppose name suppression.
66. Section 405(3) of the Act 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:*

...

*(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*

67. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the applicants, as well as the public interest. If we think it is proper, we may make such an order.
68. We acknowledge that the respondent's disclosure of this incident has had a devastating effect on her family. This is quite separate from the impact of any

disciplinary decision on the family. Having regard to the interests of the C and D, we agree that it is proper that the respondent's name is suppressed in order to protect their identity. We therefore make orders for non-publication of the respondent's name and the names of any of her children.



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Theo Baker  
Chair

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

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. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).