

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Peter Bruce Walker

NZ Disciplinary Tribunal Decision 2018/107

Principal Peter Bruce Walker was referred to the Disciplinary Tribunal for allegedly making inappropriate remarks about women; using vulgar language; making inappropriate remarks about Kāhui Ako; and making inappropriate remarks about the (former) Minister of Education, Ms Nikki Kaye.

The result: the Tribunal found that the conduct amounted to serious misconduct. The Tribunal ordered a penalty of censure and annotation of his registration for two years, noting that if he were not due to retire, it would have imposed some conditions restricting his ability to hold leadership roles. There are no non-publication orders for this case.

On 17 July 2019 the Tribunal released its decision following a hearing on the papers. Mr Walker was the Principal of Rotorua Lakes High School (the school) at the time of the conduct. He is now retired.

On 1 March 2018 Mr Walker attended an Eastern Rotorua Schools' governance hui, a strategy termed Kāhui Ako (hui). The members in attendance included four principals, a deputy principal for the second half of the meeting and two representatives of the Ministry of Education (MOE). The allegations against Mr Walker all arise from statements he made at the hui.

On a number of occasions at the hui Mr Walker made inappropriate remarks about women, and used vulgar language. While the comments were made in humour, others present at the hui were uncomfortable. Mr Walker accepted the conduct, noting that the context of the statement had not been taken into account.

A complaint was made by an MOE representative to the Board of Trustees of the school. After an investigation, the Board said while they did not condone the language used by Mr Walker, they had accepted his apology and decided to take it no further.

On 6 April 2018, the MOE representative filed a mandatory report with the Teaching Council regarding Mr Walker's conduct. The CAC investigated, and referred the matters to the Disciplinary Tribunal.

The Tribunal found that the language used was "vulgar", the comments "crude, crass and unprofessional" and considered that the remarks made about Ms Nikki Kaye were "childish and sexist", and "unacceptable from a principal of a school in a professional setting".

The Tribunal found that the conduct amounted to serious misconduct and found Mr Walker's behaviour "disturbing and unacceptable", and "expect that his peers would be embarrassed by this."

The Tribunal was "disgusted" with what it heard, and "had concerns that someone with this type of presentation holds such influential positions". The Tribunal queried Mr Walker's ability to control his emotions and to role-model appropriate behaviour, and found that if he were not due to retire, it would have imposed some conditions restricting his ability to hold leadership roles.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-107

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 **PETER BRUCE WALKER**

Respondent

17 TRIBUNAL DECISION

17 JULY 2019

HEARING: Held at Wellington on 26 March 2019 (on the papers)

TRIBUNAL: Theo Baker (Chair)
Nikki Parsons and Dave Turnbull (members)

REPRESENTATION: S Cann for the CAC
The respondent represented himself

1. The Complaints Assessment Committee (**CAC**) has referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers.

Charge

2. In a Notice of Charge dated 12 November 2018, the CAC alleged that on 1 March 2018 at a Kāhui Ako meeting, Peter Bruce Walker (**the respondent**):
 - a) Made inappropriate remarks about women;
 - b) Used vulgar language;
 - c) Made inappropriate remarks about Kāhui Ako;
 - d) Made inappropriate remarks about the former Minister of Education, Ms Nikki Kaye.
3. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (**the Act**) and r 9(1)(o) of the Education Rules 2016¹ (**the Rules**) or is conduct otherwise entitling the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

Evidence

4. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**), signed by the respondent and counsel for the CAC. The evidence contained in the ASF is set out in full:

AGREED SUMMARY OF FACTS

1. *At all material times, Peter Bruce Walker (respondent) was a registered teacher employed as the Principal at Rotorua Lakes High School (School).*

Eastern Rotorua schools' governance hui

2. *On 1 March 2018 the respondent attended an Eastern Rotorua Schools' governance hui, a strategy termed Kāhui Ako (**hui**). The members in attendance included four principals, a deputy principal for the second half of the meeting and two representatives of the Ministry of Education (**MOE**).*
3. *The allegations against the respondent all arise from statements he made at the hui.*

¹ The amendments made by the Education Council Amendment Rules 2018 do not apply to conduct before 18 May 2018. See Schedule 1 Part 2.

Allegation 1: Made inappropriate remarks about women

4. *On a number of occasions at the hui the respondent made inappropriate remarks about women. He made a number of references to if men were running the show how much better things would be. The comments were made in humour, but made others present at the hui uncomfortable.*
5. *[...]*
6. *[...]*
7. *[...]*
8. *In response to Ms Brouwer's complaint, the Board of Trustees (**BOT**) of the School and an investigator of the Education Council (**Council**),² on 16 March 2018 and 20 April 2018 the respondent stated that, "I accept that I did say what was claimed", however said that the context of the statement had not been taken into account.*

Allegation 2: Used vulgar language

9. *At the hui the respondent used vulgar language in the presence of others. He referred to the parent of a student as a "cunt".*
10. *Ms Taylor, another Principal in attendance, described the respondent's comments as especially "cutting and raw on this occasion", however that most people in attendance had become "numb to his language".*
11. *[...]*
12. *In response to Ms Brouwer's complaint, the BOT and an investigator of the Council, on 16 March 2018 and 20 April 2018 the respondent stated that "I accept that I did say what was claimed", however said that the context of the statement had not been taken into account.*
13. *The respondent said that none of his colleagues "censured me or said they felt my comments were abusive" and he believed that in the context they were not. He said that the language was used in relation to a parent at the school who had been suggested as a community representative for the Kāhui Ako. In explanation, the respondent said he "spoke strongly against her because the parent had made deliberately false accusations about three of his staff".*

² The Education Council was renamed the Teaching Council in September 2018.

14. *In response to an investigator at the Council, on 20 April 2018, the respondent apologised for “using the ‘c’ expletive” as it is not a word he uses or approves of.*

Allegation 3: Made inappropriate remarks about Kāhui Ako

15. *On the same occasion the respondent made inappropriate remarks about Kāhui Ako. He said that Kāhui Ako and the resources was “a waste of time”, “poorly designed and executed” and that it did not offer “anything meaningful for teachers”, a statement he said his staff agreed with.*
16. *[...]*
17. *In a response to Ms Brouwer’s complaint, the BOT and an investigator of the Council, on 16 March 2018 and 20 April 2018 the respondent stated that “I accept that I did say what was claimed”, however said that the context of the statement had not been taken into account.*
18. *The respondent justified his comments about Kāhui Ako:*
- a. *On 16 March 2018, the respondent said that as an eastern suburbs Principals’ group they were meeting before the Kāhui Ako model was implemented and would continue to do so if it were not in place.*
 - b. *In response to an investigator of the Council, on 20 April 2018 the respondent stated that his statements that the “majority of staff at Rotorua Lakes High School see little relevance and value to them in the Kāhui Ako model are a true reflection of staff feelings.”*
 - c. *The respondent said that he stood by his comments on Kāhui Ako funding and the principals’ meetings but “this is not to say that I do not recognise the fine work being done by our eastern suburbs Kāhui Ako lead Principal and across-school teachers.”*

Allegation 4: Made inappropriate remarks about the former Minister of Education Ms Nikki Kaye

19. *On the same occasion, the respondent made inappropriate comments about Nikki Kaye. The respondent said that “he would follow the policies of Nikki Kaye as why wouldn’t he when a woman with blonde hair and cleavage exposed was presenting them.”*
20. *[...]*
21. *In response to Ms Brouwer’s complaint, the BOT and an investigator of the Council, on 16 March 2018 and 20 April 2018 the respondent stated that “I accept*

that I did say what was claimed” however that the context of the statement had not been taken into account.

School investigation and subsequent events

22. *On 2 March 2018, Ms Brouwer, Lead Education Advisor, MOE raised a concern with her manager Mr Schuster, Director of Education, MOE, about statements made by the respondent at the hui.*
23. *On 12 March 2018, Mr Schuster made a complaint to the Chairperson of the Board of Trustees at the school requesting an investigation into the allegations.*
24. *On 21 March 2018 the BOT confirmed in a letter to Mr Schuster that they had investigated, and while they did not condone the language used by the respondent, had accepted his apology and decided to take it no further.*
25. *On 6 April 2018, Mr Schuster filed a mandatory report with the Council regarding the respondent’s conduct.*

Further response

26. *In addition to the above explanations the respondent said in a response to Ms Brouwer and the BOT, on 16 March 2018 that the comments were spoken “in humour” and were taken out of context.*
 27. *The respondent believed it was not a public meeting and that he was speaking in confidence. He stated that “I did get heated and speak candidly as I believe if our Kāhui Ako does not resolve its issues of community support we can’t be truly representative of our community”.*
 28. *He said that he was “truly sorry for causing offence” and remains a “passionate advocate for education, Rotorua Lakes High School and our students.”*
 29. *On 20 April 2018, in response to an investigator of the Council the respondent added that he had “honestly reflected on the fact that my actions and statements made as Principal of Rotorua Lakes High School must at all times remain professional and not emotional”. He stated that he had “learned an invaluable lesson and assured the Board of Trustees that this will never happen again.”*
5. The paragraphs excluded from the above reproduction of the ASF could be described as an agreement as to whether the respondent breached certain clauses of the Code of Professional Responsibility (**Code**), rather than agreement on the facts. These clauses are discussed below.

6. We must be satisfied that the evidence presented establishes the allegations contained in the notice of charge. We are satisfied that the “jokes” the respondent made about how things would be better if men were running the show disrespectful, disparaging and belittling of women, and therefore inappropriate, just in the same way that jokes about other ethnicities and cultures are inappropriate. This includes the comments made about Nikki Kaye.
7. There is no doubt that the language used was vulgar. We find it crude, crass and unprofessional. We also accept that the comments made about Kāhui Ako were inappropriate because the way in which he expressed his opinion was not constructive and unprofessional in that setting. The remarks made about Ms Nikki Kaye were childish and sexist. It is the sort of comment that is unacceptable from a principal of a school in a professional setting.
8. All particulars of the charge are proved.

Serious misconduct

9. We must now decide whether the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).
10. 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.*

11. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on r 9(1)(o) that was in place at the time of this conduct.³

Criteria for reporting serious misconduct

³ 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.

(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:*

...

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

CAC submissions

12. The CAC submitted that the conduct reflects adversely on the respondent's fitness to be a teacher, as it shows a lack of professional judgement and respect for colleagues. For the same reason it was submitted that his conduct may bring the teaching profession into disrepute.
13. The CAC submitted that separately or cumulatively, the conduct amounts to an act or omission that brings or is likely to bring discredit to the teaching profession under r 9(1)(o), and referred to the test in *Collie v Nursing Council of New Zealand* [2001] NZAR 74;⁴ that reasonable members of the public, informed of all the facts and circumstances would find the factual circumstances, could reasonably conclude that the reputation and good-standing of the teaching profession was lowered by the behaviour of the respondent.
14. The CAC referred to the decision of *CAC v Webster* NZTDT 2016-57,⁵ where we found that swearing, when aimed at students was "inexcusable" and that it also met the test in *Collie*. The CAC noted that in the present case the respondent was present at Kāhui Ako in a professional capacity as Principal, and was in a position of responsibility.
15. The CAC also referred to NZTDT 2014-18 where the Tribunal stated that any breaches of the Code of Ethics for certified 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.⁶ The Code of Professional Responsibility provides that teachers "respect the diversity of colleagues", "seek to resolve conflicts respectfully and constructively" and "lead us support" strategies to promote a safe working ... environment, such as initiatives to prevent and manage violence, harassment and bullying.

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

⁵ *CAC v Webster* NZTDT 2016-57, 6 April 2017

⁶ NZTDT 2014-18, 5 June 2016 at pp 5-6.

16. The parties agree that the respondent has breached clause 1.2 – which requires teachers to maintain public trust and confidence in the teaching profession by engaging in professional, respectful relationships with colleagues.
17. Ms Cann also referred to an example of such behaviour as outlined in the guidance to the Code: making derogatory comments about heritage, language, age, gender, identity or culture of a colleague and neglecting to support inclusive practices and policies.
18. The parties also agreed that the respondent has breached clauses:
 - 1.3 – which requires teachers to demonstrate a high standard of professional behaviour and integrity. This includes taking care that any actions do not reflect badly on the integrity or standard of the teaching profession; and
 - 1.5 – which obligates teachers to contribute to a professional culture that supports and upholds this Code.

Discussion

19. We must be satisfied that the respondent's conduct meets one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in r 9. The CAC relies on r 9(1)(o).
20. The CAC has charged that the conduct separately and/or cumulatively amounts to serious misconduct. We find that particulars 1(a), (b) and (d) each meet that test.
21. The respondent's inappropriate remarks about women (1(a)) and about the Minister of Education (1(d)) were disrespectful, belittling of women, offensive to his female colleagues and an embarrassment to his male colleagues. We find that this behaviour reflects adversely on his fitness to be a teacher and brings the teaching profession into disrepute.
22. We find that the respondent's vulgar language (particular 1(b)) was offensive and intended to be so. It was disrespectful of the parents he spoke of, and was unprofessional and inappropriate. Again, we find that this behaviour reflects adversely on his fitness to be a teacher and brings the teaching profession into disrepute.
23. We also find that the language the respondent used to express his criticism of Kāhui Ako was unprofessional and not appropriate in that setting. We think it unlikely that the

established conduct in support of particular 1(c) on its own would have resulted in a referral to this Tribunal, but when considered with the other three, we have no hesitation in finding that overall, the respondent's behaviour brings or is likely to bring the teaching profession into disrepute and is likely to bring discredit to the profession.⁷ We found the respondent's behaviour disturbing and unacceptable. We expect that his peers would be embarrassed by this.

Penalty

24. In *CAC v McMillan*⁸ we summarised the role of disciplinary proceedings against teachers as:

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

25. 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):*
- (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:*

⁷ Applying the test in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

⁸ NZTDT 2016/52, 23 January 2017, paragraph 23.

- (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.*

26. The CAC referred again to *CAC v Webster*, noting that although in that case the conduct occurred in the presence of students and over a longer period of time, in the present case, the respondent's conduct was in the presence of other senior representatives of the Rotorua teaching community and members of the Ministry of Education. The CAC acknowledged that the respondent has fully engaged with the disciplinary process and displayed insight into his conduct.
27. The Committee submitted that the following were aggravating features of the respondent's conduct:
- a) There were multiple instances of inappropriate language and comments, rather than just a one-off remark;
 - b) The respondent as a Principal, was in an elevated position of responsibility. The Tribunal has previously emphasised that inappropriate conduct is not "befitting of any teacher and is even less acceptable in a Principal".⁹
 - c) The respondent knew that the representatives of the Ministry of Education were in attendance at the Kāhui Ako.
28. The CAC accepted the following personal mitigating factors may be relevant:
- a) The respondent has no previous disciplinary history;
 - b) The respondent has expressed some remorse and insight into his misconduct;
 - c) He has acknowledged that his actions amount to serious misconduct, and has cooperated and engaged with the disciplinary process.

⁹ NZTDT 2017-8, 14 August 2017.

29. The CAC sought a censure and annotation of the register. The CAC acknowledged that the respondent has indicated that he intends to retire at the end of this year (6 December 2019), but in light of the charge he will now be retiring at the end of the term. The CAC also noted that the respondent's practising certificate expires on 7 November 2020, and therefore the Tribunal may not consider this order is necessary.
30. The respondent did not file any submissions, but filed seven character references.
31. The Chairperson of Rotorua Lakes High, Wynel Raureti-George, described the respondent as a sensible, approachable and professional Principal. He also said that the respondent can laugh at himself and does not take life too seriously, is honest and fair.
32. The respondent's PA said that she was impressed with the respondent's passion and professionalism and his genuine loyalty to the students and staff. She said she had never seen or heard him be sexist or racist in any way. She did not condone this language, but said it was borne out of a place of passion and caring of the school and education as a whole. She said his fantastic sense of humour puts everyone at ease and makes for a happy and content working environment.
33. Mrs Erina Butterworth, a teacher at the school said she has nothing but the highest admiration and respect for the respondent for supporting her and trusting in her capabilities, regardless of her gender and ethnicity (Māori and female).
34. Miss Curtis has taught with the respondent at two schools. In her view he has demonstrated a commitment for Māori achievement and has always advanced women in the workplace. She said he persuaded her to apply for the position of Dean. She described the respondent as speaking very directly and operating an open door policy. He is good natured and has a great sense of humour. She concluded by saying he is an important part of Rotorua Lakes High School and the community. He is an effective and important participant in the school, and he has the mana to bring the ihi, the wehi and the wana to the position.
35. Paula Short is another staff member and one-time parent. She describes him as always conducting himself in a positive and professional manner and showing respect, kindness, and a foresight and intelligence for the school and students.
36. The Executive Officer, Lillian Gilbert stated that the respondent has always acted professionally and courteously towards her, and at no time has she noticed sexist

remarks or abusive language.

37. The Deputy Principal, Mrs Kuratu Hingston also wrote in support of the respondent. She observed first-hand that he made a difference for Māori through providing leadership opportunities for students and staff, regardless of gender.

Discussion

38. It is a shame that someone who has made a difference for students and staff is also capable of such arrogant behaviour. The Tribunal was disgusted with what we heard, and we had concerns that someone with this type of presentation holds such influential positions. We queried his ability to control his emotions and to role-model appropriate behaviour. If he were not due to retire, we would have imposed some conditions restricting his ability to hold leadership roles.
39. We also considered making it a condition of the respondent's practising certificate that he apologise for his behaviour at this hui. However, the time lapse since this event would lessen the impact of such an apology. We hope that he made apologies at the time.
40. We accept the submissions made by the CAC. In our view the sentence proposed is appropriate. In a recent decision,¹⁰ we traversed the principles outlined by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.¹¹ We believe that the penalty proposed by the CAC satisfies our responsibility to set standards for the profession and ensure consistency. We are also satisfied that this penalty is fair, reasonable and proportionate and the least restrictive.
41. Therefore we impose the following penalty:
- Censure under s 404(1)(b)
 - Annotation for two years under s 404(1)(e).

Costs

42. The CAC sought a contribution of 40% of its costs under s 404(1)(h).
43. The Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i), The Tribunal delegates to the Chairperson authority to determine the quantum of those costs and

¹⁰ *CAC v Cook* NZTDT 2018-50, 11 April 2019

¹¹ *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

issues the following directions:

- a) Within 10 working days of the date of this decision:
 - i. The Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs
 - ii. CAC to file and serve on the respondent a schedule of its costs
- b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal or CAC.

44. The Chairperson will then determine the total costs to be paid.

Non-publication

45. There were no applications for non-publication.



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).