

# TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

## Complaints Assessment Committee (CAC) v Fletcher NZ Disciplinary Tribunal Decision 2018/17

Teachers and leaders are required to demonstrate a high standard of professional behaviour and integrity.

This case involves dishonest conduct by a rural primary school principal, James Bernard Fletcher.

It was alleged that Mr Fletcher:

- misused Omihi School's fuel card to purchase petrol for his own personal use from September 2014 to June 2017 (a total of \$5,926.70);
- claimed reimbursement from Omihi School for travel to professional development courses on six occasions which he did not attend between March 2016 and January 2017, (a total of \$330.60);
- failed to pay rent for the Omihi School house for five weeks in 2014, and to disclose his non-payment of rent during this time until June 2017 (a total of \$1,980.00).

During the Board of Trustees' (Board) investigation into the first allegation, Mr Fletcher admitted the conduct, apologised and undertook to repay the money. At that time, he voluntarily disclosed to the Board that he had also claimed reimbursement for travel to professional development courses he didn't attend, and had not paid rent for the school house for five weeks in 2014. He undertook to reimburse the school for the travel and rent.

Mr Fletcher was dismissed by the school on 3 July 2017, effective immediately. He has since repaid all the money to the school.

The matter was referred to the Complaints Assessment Committee of the Teaching Council (CAC) for investigation. Mr Fletcher advised the Council that he "accept[ed] [his] errors", understood the process that would follow and was not currently teaching.

The CAC referred Mr Fletcher to the New Zealand Teachers Disciplinary Tribunal (Tribunal) with a charge of serious misconduct. Mr Fletcher accepted the charge, and filed a brief affidavit, stating "I deeply regret my actions and acknowledge that I voluntarily accept that I acted in bad faith."

The CAC submitted that as the principal of the school Mr Fletcher was in a position of trust and responsibility and he abused that by fraudulently and deceptively using the school's money for his own purposes on multiple occasions.

The Tribunal agreed Mr Fletcher's conduct amounted to serious misconduct. Noting that "his conduct was deliberate, intentional, and systematic and extended over a three-year period and it involved theft from the school via a number of different methods."

The Tribunal agreed with the CAC's submissions on penalty, saying Mr Fletcher "abused the position of trust that the Board placed in him. Although he has since repaid the funds, that has happened only as a result of his being found out. As noted above, his conduct raises questions about his fitness to be a teacher. His conduct is shameful and sets a very poor example for students."

The Tribunal censured Mr Fletcher, cancelled his registration, and also ordered Mr Fletcher to pay 40 per cent of the CAC's costs, and 40 per cent of the Tribunal's costs.



**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2018-17**

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

**AND**

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

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

**AND** **JAMES BERNARD FLETCHER**  
**Respondent**

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**TRIBUNAL DECISION**

**DATED: 21 November 2018**

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**HEARING:** Held at Wellington 10 September 2018 on the papers

**TRIBUNAL:** Theo Baker (Chair)  
Simon Heath, Tangi Utikere (members)

**REPRESENTATION:** Ms Rebecca Scott for the Complaints Assessment Committee  
The respondent did not participate in the hearing

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. The charge is that the respondent, whilst Principal of Omihi School:
  - a. *misused Omihi School's fuel card to purchase petrol for his own personal use from September 2014 to June 2017;*
  - b. *between March 2016 and January 2017, claimed reimbursement from Omihi School for travel to professional development on six occasions which he had not in fact attended; and*
  - c. *failed to pay rent for the Omihi School house for a period of 5 weeks in 2014, and failed to disclose his non-payment of rent to Omihi School during this period until June 2017.*
2. The matter was heard on the papers, based on an agreed Summary of Facts. Before a pre-hearing teleconference the respondent filed an application for permanent name suppression and a brief response to the charge, admitting responsibility. He did not file any response to the CAC submissions that were filed in accordance with directions made at that teleconference.

### **Summary of decision**

3. We found that paragraphs a. and b. individually amounted to serious misconduct, and paragraph c. amounted to misconduct. When considered together, all three paragraphs amount to serious misconduct.
4. Under s 404(1) we make the following orders:
  - a. The respondent is censured under s 404(1)(b)
  - b. His registration is cancelled under s 404(1)(g)
  - c. He is to pay 40% of the CAC's costs under s 404(1)(h) and 40% of the Tribunal's costs under s 404(1)(i).
5. We made no orders for non-publication.

## Evidence

6. The agreed Summary of Facts is set out in full:

### **SUMMARY OF FACTS**

1. The respondent, **JAMES BERNARD FLETCHER** (Mr Fletcher), is a fully registered teacher who was employed as the school principal of Omihi School (the school).

#### Personal use of school's fuel card

2. Between September 2014 and June 2017, Mr Fletcher used the school's Allied Fuel card (fuel card) to purchase fuel for his own personal use, totalling \$5,926.70. This total consisted of a series of multiple transactions, all of which are set out in the annexed table of transactions.
3. The invoice for school's fuel card was emailed to the school principal each month. This invoice was then paid automatically by direct debit. Mr Fletcher had been signing the Allied Fuel invoices authorising the school to pay for petrol for his own personal use during this time.
4. On or about 6 June 2017, the Board of Trustees (the Board) became aware that the school's fuel card had been used to purchase fuel over and above that needed to utilise the school bus, and that the fuel purchased was premium unleaded petrol, as well as diesel. The school bus only used diesel. Subsequently, the Board Chair, Ms Sarah Barnes, commenced an investigation into this expenditure.
5. On 7 June 2017, Mr Fletcher admitted the conduct as alleged and undertook to repay the money owed in two instalments.
6. On 13 June 2017, Mr Fletcher provided a written response stating:

*"Firstly I wish to humbly apologise for my actions with the use of the fuel card. I am absolutely disgusted and I feel immensely remorseful with what I have done.*

*I am saddened for how I have made the school, children, staff, BoT, and community feel. I never intended or wanted to hurt anyone, yet I have done so. Through my choices, that I undoubtedly knew would be called upon - yet I was to [sic] embarrassed and guilt stricken to announce...*

*I have put myself in the situation where I have undermined the trust of the BoT and school community, placed my own family under immediate stress and undue pain. i [sic] have tarnished my professional status and put my future at risk, all because of my decisions..."*

7. In explanation for his conduct, Mr Fletcher told the Board on 15 June 2017 that it “happened and it snowballed”, stating that it was “always on my mind”. Mr Fletcher said he thought he would “put a plan in place”, and wished he had disclosed his use of the fuel card earlier.
8. When asked why he used the fuel card on more than one occasion, Mr Fletcher stated that he was “personally in a bit of debt, so used it”, and that that was a “major part in it”. Mr Fletcher stated that he made that choice then, but stated that he did not want it to discuss it in more detail as it was “personal”.

Reimbursement claimed for professional development not attended and unpaid rent for the school house in 2014

9. On 7 June 2017, Mr Fletcher voluntarily disclosed to the Board that he had also claimed reimbursement for travel to professional development which he had not in fact attended, and had not paid rent for the school house for a period of 5 weeks in 2014.
10. In respect to the reimbursement claimed for travel, Mr Fletcher provided the following details of these claims:

<b>Date</b>	<b>Location</b>	<b>Kilometres</b>	<b>Professional Development</b>
26.1.2017	Amuri	80	LCC
12.10.2016	Cheviot	90	Math
10.8.2016	Cheviot	90	Math
10.5.2016	Cheviot	90	Math
7.3.2016	Cheviot	110	Math
30.3.2016	Cheviot	110	Math

11. At a meeting with the Board on 15 June 2017, Mr Fletcher admitted that he “came up with no Cheviot meetings, No Amuri Meeting. I did not attend 6 events over 4 terms but claimed a total of \$330.60 for travel to these events”. Mr Fletcher confirmed with the Board that he would repay the money he had claimed.
12. In respect to the unpaid rent for the school house, Mr Fletcher admitted that he was in the school house for 5 weeks before the Board asked for payment. During the meeting on 15 June 2017, Ms Barnes said to Mr Fletcher that in 2015, the school’s auditor “picked up that underpaying was happening”. When she asked

*Mr Fletcher why, when the auditor had raised that the accounts for the rental were not lining up, he did not come forward with other information, Mr Fletcher stated it was because he had “changed accounts at the time” and that “this was the confusion”.*

13. *When Mr Fletcher was asked when he first became aware of the unpaid rent, Mr Fletcher stated that he had had a “conversation with [the] Board as [the] house was not fully finished re bathroom/carpets”. When asked whether he justified not paying rent because the house was not finished, Mr Fletcher replied that he did, but added that he did ask about this.*
14. *Mr Fletcher’s wife, who was also present at this meeting, said the “conversation was w[ith] someone re condition of house and then not pay rent”. When Mr Fletcher and his wife were asked who they had that discussion with, neither could remember.*
15. *Mr Fletcher stated that he was happy, however, to reimburse the school back for that period.*
16. *Mr Fletcher provided a breakdown of the outstanding school house rent to be paid. Mr Fletcher calculated the five weeks of unpaid rent in 2014 totalled \$1,980.00.*
17. *Mr Fletcher advised that the total owing in respect of both the reimbursement for travel (\$330.60) and the unpaid rent (\$1,980) was \$2,310. Mr Fletcher provided a breakdown of these costs, and undertook to pay this amount back in two instalments.*
18. *On 3 July 2017, Ms Barnes sent a dismissal letter to Mr Fletcher advising him of the Board’s decision to dismiss Mr Fletcher without notice effective immediately.*
19. *On 8 August 2017, Mr Fletcher provided a brief response to the Education Council stating, “...I accept my errors and understand the teachers council process that will follow. I am currently not teaching and have not reapplied for my teachers licence. Until I know what the outcome is.”*
20. *Mr Fletcher has since repaid all amounts owing to the school in full.*

### **Factual Findings**

7. Although the respondent has admitted the charge, the Tribunal is still required to consider the evidence and be satisfied that the CAC has proved the charge.

***Particular 1. a) – misused Omihi School’s fuel card to purchase petrol for his own personal use from September 2014 to June 2017***

8. The evidence to support the allegation that the respondent used the school’s fuel card to purchase petrol for his own use is found in paragraphs 2 to 8 of the Summary of Facts. A schedule of payments shows that between 29 September 2014 and 5 June 2017, the respondent used the fuel card over 100 times. In 2014 he used it six times, for purchases totalling \$320.56; in 2015, 25 times, totalling \$1,372.58; in 2016, 65 times, totalling \$2,988.71; and by 5 June 2017 he had used it 23 time, for a total of \$1,244.85.
9. The respondent admitted that he used the school’s fuel card, and has repaid the \$5,926.70 to the school.

***Particular 1. b) – claimed reimbursement from Omihi School for travel to professional development on six occasions which he had not in fact attended***

10. According to paragraphs 9 and 10 of the Summary of Facts, the respondent voluntarily disclosed to the Board on 7 June 2017 that he had claimed reimbursement for travel to professional development that he had not in fact attended. The schedule shows that he claimed for six trips, covering a total of 570 kilometres, and amounting to \$330.60 in reimbursement. He has repaid this money.

***Particular 1.c) – failed to pay rent for the Omihi School house for a period of 5 weeks in 2014, and failed to disclose his non-payment of rent to Omihi School during this period until June 2017***

11. The evidence of unpaid rent is found in paragraphs 9 and 12 to 14 of the Summary of Facts. Again, the respondent voluntarily disclosed this matter. In essence it seems that the school omitted to collect rent for the first five weeks the respondent was in occupation. Although a school auditor queried it, the respondent did not explain, but said that it was because he had “changed accounts at the time” and that “this was the confusion”.
12. The respondent then implied that he had spoken with the Board and that the rent was unpaid because the house was not fully finished, but neither could he remember who they had that conversation with. The respondent has reimbursed the school.
13. In summary, the particulars of the charge are established.

**Serious misconduct**

14. In the Notice of Charge, the CAC alleges that the conduct either separately or cumulatively amounts to serious misconduct under s 378 of the Education Act 1989

**(the Act)** or alternatively amounts to conduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989

15. Section 378 of the Act defines serious misconduct as follows:

***serious misconduct*** means conduct by a teacher –

(a) that –

(i) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;

(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.

16. The criteria for reporting serious misconduct are found in r 9 of the Education Council Rules 2016 (**the Rules**), and the CAC relies rr 9(1)(h), (n) and/or (o) of the Rules,<sup>1</sup> which are:

**9 Criteria for reporting serious misconduct**

(1) For the purposes of section 394 of the Act, an employer of a teacher must immediately report to the Education Council if it has reason to believe that the teacher has engaged in any of the following kinds of serious misconduct::

...

(h) theft, or fraud:

...

(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.

17. For the CAC, Ms Scott submitted that whether or not conduct reflects adversely on fitness was an issue that came before the High Court in *Professional Conduct Committee v Martin*,<sup>2</sup> a case of disciplinary proceedings against a nurse, where the

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<sup>1</sup> The Education Council Rules 2016 were amended by the Education Council Amendment Rules 2018, and their name changed to the Teaching Council Rules by s 12 of the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018. Because this conduct occurred before 19 May 2018, the pre-amendment rules apply (see Schedule 1 of the Teaching Council Rules 2016).

<sup>2</sup> *Professional Conduct Committee v Martin* (unreported, Gendall J, High Court, Wellington CIV-2006-485-1461), at paragraph 46

Court described “fitness” as:

*“Fitness” often may be something different to competence. ... Aspects of general deterrence as well as specific deterrence remain relevant. So, too, is the broader consideration of the public or community’s confidence and the upholding of the standards of the nursing profession.*

18. Ms Scott referred us to *Collie v Nursing Council of New Zealand*,<sup>3</sup> where Gendall J defined “*bringing discredit to the profession*” as follows:

*“To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard with the question to be asked by the Council being whether reasonable members of the public, informed with the knowledge of the factual circumstances, could reasonably conclude that the reputation and good standing of the nursing profession was lowered by the behaviour of the nurse concerned.”*

19. Ms Scott reminded us that at the time the respondent’s misappropriation of the school’s funds began in 2014, the Code of Ethics for Registered Teachers was in force. This required teachers in their “Commitment to Society” to strive to; *“Teach and model those positive values that are widely accepted in society and to encourage learners to apply them and critically appreciate their significance.”*<sup>4</sup> The Code of Ethics recognised that teachers are vested by the public with trust and responsibility, together with an expectation that they will help prepare students for life in society in the broadest sense.
20. Ms Scott also referred to the Code of Professional Responsibility and Standards for the Teaching Profession which replaced the Code of Ethics from 30 June 2017. Because the respondent’s conduct pre-dates that newer Code, we have not referred to it.
21. Ms Scott submitted that in our consideration of theft or fraud under r 9(1)(h) of the Rules, we may compare the respondent’s conduct to the elements of the offence of obtaining by deception under s 240 of the Crimes Act 1961, as noted in *CAC v Leach* 2016-66.<sup>5</sup>
22. The CAC also submitted that the respondent’s admitted conduct triggers rules 9(1)

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<sup>3</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at paragraph 28

<sup>4</sup> Clause 3(c) of the Code of Ethics for Registered Teachers

<sup>5</sup> See *CAC v Leach* 2016-66, 26 April 2017, at [17] in relation to r 9(1)(h): *“there is utility in comparing Ms Leach’s conduct against the elements of the offence of obtaining by deception under s240 of the Crimes Act 1961.”*

(n) namely “any other act or omission that could be the subject of prosecution for an offence punishable by imprisonment of a term of 3 months or more”.<sup>6</sup>

23. It was further submitted that therefore the conduct also unquestionably calls the teaching profession into disrepute under r 9(1) (o). As the principal of the school the respondent was in a position of trust and responsibility and he abused that by fraudulently and by deception using the school’s money for his own purposes on multiple occasions.
24. The respondent filed a brief affidavit dated 23 July 2018 in which he said:
1. *I deeply regret my actions and acknowledge that I voluntarily accept that I acted in bad faith. As I am not defending the charges and wish to plead guilty to them, I await the Tribunal’s decision.*
  2. *In my defence I wish to point out that reimbursement has been made in full to settle the claims. To my mind this proves that I am genuinely remorseful for my unprofessional conduct.*
  3. *My only hope is that my situation can be improved by getting a favourable response to the offence, and that punishment will be proportionate to the offending.*
  4. *Thank you for giving me the opportunity to respond, and I await your decision on this matter.*

### **Findings on serious misconduct**

25. Dealing first with r 9, we have considered whether the respondent’s actions amount to theft or fraud under r 9(1)(h). Fraud is not defined in the Rules or in the Crimes Act 1961. Baragwanath J observed in *Reed v Wrightson Bloodstock Ltd*:<sup>7</sup>

*“Fraud” is not a term of art with a single defined meaning in the common law and in the statute law of the parties to the Convention. It is always a strong term. But the particular sense alters according to the context as appears in New Zealand domestic law from the spectrum running from Land Transfer Act fraud (Waimiha Saw Milling Co Ltd. (In Liquidation) v Waione Timber Co Ltd. [1926] AC 101, 106) via the tort of deceit through the concept of objective fraud as a test of knowing assistance in restitution (Royal Brunei Airlines Sdu. Bud v Tan [1995] 2 AC 378) to s 28 of the Limitation Act where the statutory concept of “fraud” is not necessarily confined to deceit and may involve no*

<sup>6</sup> The CAC submissions refer to s 240(1A), Crimes Act 1961, saying an offence under s 240 of the Crimes Act 1961 carries a maximum penalty of 3 years’ imprisonment but that appears to be an error. Section 241 provides a gradation of penalties depending on the value of the subject matter.

<sup>7</sup> (unreported, HC AK, CP552/97, 7 May 1996)

*moral turpitude (Beaman v ARTS Ltd. [1949] 1 KB 550).*

26. In *CAC v Gittens NZTDT 2016-59*,<sup>8</sup> where a teacher falsely stated that his colleague had verified moderation of NCEA results, we referred to the definition of fraud in the eighth edition of the 1990 edition of the Concise Oxford Dictionary:<sup>9</sup>

1. *Criminal deception; the use of false representations to gain an unjust advantage*
2. *A dishonest artifice or trick.*

27. In that case, there was no suggestion that the respondent was involved in criminal deception and we were not prepared to find that avoiding doing his job properly could be termed an “unjust advantage”; and we were not satisfied a straightforward lie would be an “artifice” or “trick”. We found that it was possible that r 9(1)(h) was satisfied, but because we had no doubt that by failing to have his assessment of the students’ work verified was an omission that was likely to bring credit to the profession, we refrained from make a finding that the respondent’s conduct amounted to fraud without further legal submissions.

28. This case is different. The respondent gained a clear advantage through dishonesty. We agree that reference to *CAC v Leach*, and s 240 of the Crimes Act 1961 is helpful. The definition of obtaining by deception aligns with the dictionary definition of “fraud”. That section provides:

**240 Obtaining by deception or causing loss by deception**

- (1) *Everyone is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right, —*
  - (a) *obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or*
  - ...
  - (d) *causes loss to any other person*
  - ...
- (2) *In this section, **deception** means—*
  - (a) *a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—*
    - (i) *knows that it is false in a material particular; or*

<sup>8</sup> *CAC v Gittens NZTDT 2016-59*, 14 February 2017

<sup>9</sup> Eighth edition 1990 Oxford University Press, Oxford

(ii) *is reckless as to whether it is false in a material particular; or*

(b) *an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or*

(c) *a fraudulent device, trick, or stratagem used with intent to deceive any person.*

29. We find that the respondent's actions in falsely completing claim documentation, with the intention of obtaining free petrol, falsely claiming petrol allowance for professional development that he had not attended each amount to fraud for the purposes of r 9(1)(h). Telling the school auditor that the discrepancy in rent was because he had "changed accounts at the time" and that "this was the confusion" might also be a false representation.
30. Section 241 of the Crimes Act provides that the penalty for an offence under s 240 attracts a term of imprisonment of up to 3 months where the loss caused or value of what was obtained is less than \$500. Therefore we find that the conduct meets the criterion in r 9(1)(n) namely "any other act or omission that could be the subject of prosecution for an offence punishable by imprisonment of a term of 3 months or more".
31. We are also satisfied that reasonable members of the public, informed of the facts could reasonably conclude that the reputation and good standing of the teaching profession is lowered by the respondent's behaviour, and so it meets the test in *Collie v Nursing Council of New Zealand*,<sup>10</sup> and is therefore conduct that brings discredit to the teaching profession (r 9(1)(o)).
32. Turning to s 378 of the Act, we find that for the same reasons as the respondent's conduct brings discredit to the profession under r 9(1)(o), it may bring the teaching profession into disrepute, as provided in the third definition of serious misconduct. We also find that it reflects adversely on the respondent's fitness to practice.
33. In conclusion, we find that particulars 1 a) and 1 b) each amount to serious misconduct. On its own, the failure to pay rent for five weeks might not have reached the threshold for serious misconduct (but would still warrant an adverse finding). The dishonest response to the school's auditors is more serious, but that is not the subject of the charge. We find that particular 1 c) amounts to serious misconduct when considered cumulatively with the other two particulars.

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<sup>10</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at paragraph 28

## Penalty

34. The Tribunal's powers following a hearing of serious misconduct are found in s 404 of the Act:

### **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.*
35. The CAC acknowledges that the admissions by the respondent and that he volunteered other instances of defrauding the school, are matters of possible mitigation, as is the fact that the respondent advised he was in financial difficulty at the time he stole from the school. The CAC also acknowledges that the respondent repaid the money in full.
36. However, against those matters of mitigation, the CAC submits that the money was only paid after the conduct was identified by the Board of Trustees and after they had commenced their investigation. The CAC says that the multiple transactions by the respondent in using the school's fuel card for personal use each month over an extended period of time spanning a number of years, is a significant aggravating factor. As is the fact that the respondent made up fictitious stories on six occasions and lied to his employer to claim reimbursement for travel for professional development which he had not in fact attended. His conduct was deliberate, intentional, and systematic and extended over a three-year period and it involved theft from the school via a number of different methods.

37. Ms Scott submitted that teachers hold a high position in their communities and in society at large. They are expected to act with honesty and integrity and to be role models of behaviour for children. They are expected to act in the best interests of the school which ultimately serves the best interests of its students. The respondent's conduct was deliberately dishonest, and an abuse of the trust the Board of Trustees and the school community had placed in him. The money that he stole from the school was to the detriment of his employers, the parents and caregivers of children at the school and the children themselves.
38. Ms Scott submitted that most referrals involving dishonest or deceptive behaviour have resulted in deregistration or suspension.<sup>11</sup> However, she also referred us to several cases where that had not happened.<sup>12</sup> The CAC submitted that the respondent should be censured and deregistered.
39. The respondent did not make any submissions on penalty. We were advised that he is overseas. In the absence of any argument from him that he should retain his registration, we agree that censure under s 404(1)(b) and cancellation under s 404(1)(g) are the appropriate penalties. The respondent abused the position of trust that the Board placed in him. Although he has since repaid the funds, that has happened only as a result of his being found out. As noted above, his conduct raises questions about his fitness to be a teacher. His conduct is shameful and sets a very poor example for students.

### **Name suppression**

40. At a pre-hearing conference on 11 July 2018, in the absence of opposition from the CAC, I made an order for interim name suppression, and recorded an application for permanent name suppression would need to be made with supporting evidence.
41. In an application dated 23 July 2018, the respondent asked for permanent name suppression on the grounds that publication of his name would cause hardship to his family. In his application the respondent set out the names of his family members who are involved in education both in New Zealand and overseas. He said that publication of his name would cause them undue stress and prejudice. He further said that it would cause undue hardship to his school-age children, nieces and

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<sup>11</sup> For example *CAC v Blumenthal* NZTDT 2017-38 (benefit fraud); *CAC v a Teacher* NZTDT 2012-29 (pawning a laptop); NZTDT 2008-8 (fraudulent representations of qualifications to secure a higher salary);

<sup>12</sup> *CAC v Swinton-Robertson* NZTDT 2017-20 (theft of toys); *CAC v Hill* NZTDT 2015/59 (misuse of school's credit card); *CAC v Hapuku* NZTDT 2014/32 (mismanagement of school funds and failure to account)

nephews. The respondent did not elaborate. No evidence was filed in support of his application.

42. Section 405(3) of Act provides that all hearings are in public, but this is subject to subsections (4) to (6). Under s 405(6) the Tribunal may make orders for non-publication of various matters if the 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..”*

43. The principles on publication of name have been outlined in several decisions.<sup>13</sup> In particular:
- a. There is a presumption in favour of open justice;
  - b. In exercising our discretion, we must have regard to the interest of any person and to the public interest;
  - c. We must consider whether it is “proper” to make any orders for non-publication;
  - d. If we decide it is proper, we may then make an order.
44. Ms Scott submitted that the respondent has raised no factors that displace the presumption of open publication in order to obtain permanent name suppression. She referred to decisions NZTDT 2015/24, NZTDT 2015/26 and NZTDT 2014/74 where the Tribunal noted that many who come before courts and tribunals can point to an innocent member of their family or close friend who might be affected by the publication of the outcome of the case. The fact that a teacher has a family member(s) who may well be embarrassed by publication of his or her name in connection with professional disciplinary proceedings is not in itself a ground for making an order unless the circumstances are such, so as to demonstrate that publication will have a disproportionately adverse outcome.
45. We accept Ms Scott’s submissions. It is not uncommon for teachers to have other family members involved in education, and this is a ground often raised before this Tribunal. The respondent knowingly used school funds for his own purposes. Teachers should not be under any illusion that if they choose to behave unethically, the consequences may cause some embarrassment to family members. That is not

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<sup>13</sup> See for example, *CAC v Finch* NZTDT 2016-11, *CAC v McMillan* NZTDT 2016-52, 23 January 2017; *CAC v Teacher S* 2016-69, 14 June 2017

a ground for name suppression. In *CAC v Teacher NZTDT 2016-27*<sup>14</sup> we noted:

*It is almost inevitable that a degree of hardship will be caused to the innocent family members of a teacher found guilty of serious misconduct. Such "ordinary hardships" are not sufficient to justify suppression.*

46. We are not persuaded that it is "proper" to make an order for non-publication of the respondent's name.

### **Costs**

47. The CAC seek costs of 50% pursuant to s 404(1)(h) of the Act. In line with recent decisions, we order 40%, given the matter proceeded as a hearing on the papers. We order the respondent to pay 40% of the costs of conducting the hearing, under section 404(1)(h) and (i), that is 40% of the Tribunal's costs and 40% of the CAC's actual and reasonable costs.
48. The Tribunal's costs were estimated as \$1,145, 40% being \$458. We therefore order the respondent to pay \$458 under s 404(1)(i),
49. The Tribunal delegates to the Chairperson authority to determine the quantum of the CAC costs and issues the following directions:
- a) Within 10 working days of the date of this decision the CAC is 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 CAC.
  - c) The Chairperson will then determine the total costs to be paid.




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Theo Baker  
Chair

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<sup>14</sup> *CAC v Teacher NZTDT 2016-27*, 25 October 2016

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).