

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-77

RARO TE MANA O TE UNDER THE	the Education and Training Act 2020 (the Act)
MŌ TE TAKE IN THE MATTER OF	of a charge referred to the Tribunal
I WAENGA I A BETWEEN	COMPLAINTS ASSESSMENT COMMITTEE (CAC) Kaiwhiu Prosecutor
ME AND	PRAISE LOYAL (Authorisation 334492) Kaiurupare Respondent

Hei Māngai Appearance	M Shaw/J Avia, Luke Cunningham Clere for the CAC C Shannon/J Gunn for the respondent
Te Taraipiunara/Tribunal	C Garvey (Deputy Chair), Lynette Evans, Rose McInerney (members)

DECISION ON LIABILITY, PENALTY AND COSTS

5 August 2024

Introduction

[1] The Complaints Assessment Committee (CAC) laid a notice of charge dated 4 April 2024 alleging serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers, in relation to incidents between 2011 and 2016 when Ms Loyal was

a teacher at Gloriavale Christian School. The charge arises from a Police notification to the Teaching Council after broad inquiries undertaken by various agencies into conduct within the Gloriavale community.

[2] Ms Loyal is not currently teaching but has maintained her registration and intends to return to teaching in the future. Ms Loyal accepted the charge, signed an Agreed Summary of Facts (the summary of facts), and appeared by audio link at a hearing on 29 July 2024 and answered questions from counsel, and the Tribunal.

[3] The particulars of the charge are as follows:

1. The CAC charges that Praise Loyal, registered teacher, of Haupiri:
 - a. In or around 2015, smacked two unidentified students on the hand with a ruler;
 - b. In or around 2013, smacked Child B (aged approximately [REDACTED] years old) twice on the hand with a ruler; and
 - c. Between 19 December 2011 and 2016, poked an unidentified male student in the back.
2. The conduct alleged in paragraph 1, and its subparagraphs, separately or cumulatively, amounts to serious misconduct pursuant to:
 - a. Section 139AB (conduct prior to 1 July 2015) and/or section 378 (conduct from 1 July 2015) of the Education Act 1989; and
 - b. Any or all of rule 9(1)(a), (n) and/or (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (conduct prior to 1 July 2016) and any or all of rule 9(1)(a), (n) and/or (o) of the Education Council Rules 2016 (conduct from 1 July 2016);

or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 139AW (conduct prior to 1 July 2015) and section 404 (conduct from 1 July 2015) of the Education Act 1989.

Agreed Summary of Facts

[4] The summary of facts does not capture the unique circumstances of the respondent, who was born, raised and educated in Gloriavale. Members of the community including Ms Loyal signed a commitment against corporal punishment in 2015.¹

[5] Ms Loyal first registered on 19 December 2011.² She told the Tribunal that she obtained a Diploma in Early Childhood Teaching from the Open Polytechnic between

¹ ASOF [14]-Ms Loyal signed the commitment against corporal punishment in September 2015.

² Summary of Facts at [1]. Ms Loyal's practising certificate expired on 8 March 2024.

2009-2011. Her sole practical experience teaching outside of Gloriavale was at an early childhood centre on the West Coast of the South Island.

[6] Ms Loyal admitted using physical force for correction as outlined in the charge.³ Her explanation was that the students ignored instructions that she had given them, or she acted in response to difficult behaviour. Further:

Ms Loyal acknowledged that smacking children was unacceptable. She said it damages learners' confidence and is not helpful for them to modify their behaviour or to develop and grow. Ms Loyal said that, at the time, she was impacted by her upbringing and the culture of corporal punishment that was at Gloriavale in the past. Ms Loyal explained she did not have strategies to handle difficult behaviour at the time.⁴

Liability – principles, submissions and findings

[7] Over the period covered by the charge, the Education Act 1989 (the Act) was amended including the definition of serious misconduct. Section 139AB and s378 are the same but for the addition from 1 July 2015 of the third limb under s378(1)(a)(iii), which introduced "*conduct that may bring the teaching profession into disrepute*". Both sections require a conjunctive test for serious misconduct, being conduct that engages one of the limbs of s139AB or s378(1)(a), and which is of a character or severity that meets the Teaching Council's criteria for reporting.

[8] The first two limbs of s139AB(1)(a) and s378(1)(a) are conduct that:

- (a) adversely affects, or is likely to adversely affect the wellbeing or learning of 1 or more students; or
- (b) reflects adversely on the teacher's fitness to be a teacher.

[9] The criteria for reporting are set out in r 9 of the 2004 Rules, and for conduct after 1 July 2016, r 9 of the Education Council Rules 2016. The only relevant change is the introduction of "*an act or omission that brings or may bring discredit to the profession.*"⁵

[10] The pertinent rules are the same, referring to:

³ The summary does not state when Ms Loyal was interviewed, but it was in or after September 2021 and notification was made to the Council on 20 September 2022: Summary of Facts at [3] and [4].

⁴ Summary of Facts at [13]

⁵ Rule 9(1)(o) of the 2016 Rules.

- (a) r 9(1)(a) -physical abuse of a child or young person (which includes physical abuse carried out under the direction or with the connivance or the teacher).
- (b) r 9(1)(n) - any other act or omission that could be the subject of an offence punishable by imprisonment for a term of 3 months or more.

[11] We also note s139A of the Act, introduced on 23 July 1990, prohibiting the use of corporal punishment in schools.

[12] The CAC submit that Ms Loyal's use of force engages the first limb of ss139AB(1)(a) and s378(1)(a) and this was accepted by Ms Loyal. We agree. In short:

- (a) the use of force for corrective purposes was likely to adversely affect the wellbeing of the learners involved.
- (b) such conduct is expressly prohibited under s139A of the Act for the purpose of protecting students.

[13] With regard to the conduct reflecting on Ms Loyal's fitness to be a teacher, the CAC submitted that the conduct was "*a serious lapse of professional judgment and a clear departure from the standards expected of a teacher.*"

[14] Mr Shannon relied on *CAC v Disciple*⁶ in which the Tribunal did not find this limb was satisfied, considering the influence of the respondent's upbringing and that she had "*made huge strides*" since the events, including leaving Gloriavale.⁷ Counsel submits the cases are analogous and referred the Tribunal to the evidence of professional development that Ms Loyal has undertaken, with a focus on behaviour management.⁸ Mr Shannon submits that subjective matters such as acting out under stress are different from "*conduct occurring in a wider culture of corporal punishment.*"⁹

[15] Every case is nuanced, and in this case the respondent's background and confined teaching experience are significant features which make for a challenging assessment. However, we have reached a different view to the Tribunal in *Disciple*, based on the expectation that any child in any New Zealand school should receive certain immutable protections. In doing so we adopt the statement in *CAC v Rangihau*¹⁰:

⁶ *Complaints Assessment Committee v Victory Disciple* [NZTDT] 2023/23, 6 November 2023.

⁷ n6 at [24].

⁸ Evidence of completion of several courses was provided to the Tribunal indicating a significant effort towards professional development.

⁹ Submissions for the respondent at [17].

¹⁰ *Complaints Assessment Committee v Rangihau* [NZTDT] 2016/18.

The abolition of corporal punishment in schools was a fundamental change and there can be no toleration of any portion of the teaching profession or any school in which there is a failure to fully appreciate and implement that change.¹¹

[16] Similar statements followed in *CAC v Teacher V*¹² involving a case of the domestic use of force by a teacher against her grandchild, where the Tribunal said:

We emphasise that the use of force as a disciplinary measure against children is an outmoded practice, and one that has been prohibited under the criminal law for a significant period of time...We have said that it is incumbent on all in the teaching profession to have a clear appreciation of the legislative prohibition on the use of force for a corrective or disciplinary purpose. That prohibition applies both inside and outside the classroom.¹³

[17] The conduct in the charge is clearly relevant to the respondent's professional role. Ms Loyal acknowledged to the Tribunal that her conduct was wrong. We recognise that teachers are sometimes expected to show considerable restraint in difficult circumstances. In this instance, it seems that Ms Loyal's behaviour was in response to fairly unremarkable disobedience. We consider that the conduct did reflect adversely on her fitness, but this does not mean Ms Loyal is in fact unfit to teach.

[18] The third limb of s378 addresses conduct that may bring the teaching profession into disrepute. We do not find this limb met, as we agree with the respondent in this regard that the Gloriavale context is determinative. We accept the respondent's submission that "*the conduct occurred in a unique culture of corporal punishment in the School which is not reflective of the wider teaching profession*" and an informed member of the public would understand this.¹⁴

[19] We also find the conduct to engage r 9(1)(a) of both the 2004 and 2016 Rules, relating to physical abuse, as it was force solely for corrective purposes by a teacher against a student where such conduct is prohibited by the Act and the criminal law. There was no dispute from the respondent in this regard. This elevates the conduct to the threshold of serious. We do not consider it necessary to make a finding in relation to r 9(1)(n), and for the reason set out at [18] above, do not find r9(1)(o) of the 2016 Rules is engaged.

¹¹ At [8].

¹² *Complaints Assessment Committee v Teacher V* [NZTDT] 2020/2, 17 June 2020.

¹³ at [7].

¹⁴ Respondent's submissions at [19].

Penalty

[20] Once a charge has been found proved we are required to consider penalty, in this case under s139AW/s404 of the 1989 Act. The purposes of penalty are the protection of the public, and the maintenance of professional standards and public confidence in the profession. The penalty imposed should be the least restrictive that is appropriate, and is fair, reasonable and proportionate in the circumstances. Finally, penalty should reflect consistency with similar cases.

[21] It is always relevant to consider the current position and future intentions of a teacher in determining an appropriate penalty. Ms Loyal does not hold a current practising certificate but told the Tribunal that she would like to return to teaching in the next year or two. Ms Loyal has expressed significant remorse and described how she would manage behavioural issues in the classroom in the future.

[22] The parties took a relatively close position on penalty. We agree that the more serious penalties of cancellation and suspension are not necessary, and that conditions will meet the purposes of the Act. The difference between the parties is whether censure is imposed, and the nature of conditions that are appropriate. The CAC submits:

- (a) censure; and
- (b) conditions on a current and any future practising certificate to:
 - (i) undergo an appropriate professional development course before returning to teaching;
 - (ii) undergo professional mentoring and supervision for 12 months; and
 - (iii) provide a copy of the decision to any current or prospective employer for a period of two years.

[23] The respondent does not accept censure is necessary, in keeping with the *Disciple* decision, and refines the proposed conditions to suggest that Ms Loyal:

- (a) works under the guidance and support of a mentor/coach from an independent external education agency approved by the Teaching Council for a period of 12 months. The respondent suggests Judith Price of InterLEAD, who has an existing relationship with the Gloriavale community as an external provider of professional educational services.
- (b) provide a copy of the Tribunal's decision to any current or prospective employer for a period of two years.

[24] The respondent has provided evidence of professional development undertaken

between 2016 and 2022, and it was submitted that a further course of learning was not required. Mr Shannon submitted orally that the Tribunal also should be mindful of difficulties in securing external supervision given the relative isolation of the Gloriavale community. We agree that practical considerations are important when imposing conditions that are intended to support a teacher to work; conditions which are difficult to meet may have the undesired effect of preventing a return to practise or achieving 'rehabilitation'.

[25] We have taken into account Ms Loyal's circumstances at the time of the misconduct, her subsequent professional development, her evidence to the Tribunal, and practical considerations for fulfilling any conditions imposed. We do not impose a censure. This is consistent with the recognition in *Disciple* of the unique circumstances of the offending, Ms Loyal's remorse, and her explanation of her current understanding of appropriate behaviour management.

[26] We will impose conditions, taking into account the nature of the charge, Ms Loyal's break from teaching and her current plan to return to teaching at Gloriavale Christian School.¹⁵ One of the Tribunal's concerns was that Ms Loyal has not been exposed to broader teaching practices and norms in the wider community, and that any personal professional development needs to be supported by good practice within a teaching environment. For this reason, we consider that mentoring and oversight from a suitably qualified person independent of the Gloriavale school and community is important. Mentoring should include one-to-one meetings and observation, discussion of behaviour management strategies and plans, and reporting to the Teaching Council. We recognise the difficulties raised by Mr Shannon mean the proposal to utilise existing professional relationships may be necessary. This is a matter for the Manager of Professional Responsibility at the Teaching Council, who will be required to approve a mentor.

Costs

[27] The CAC sought a contribution of 40% of the costs outlined in a schedule,

¹⁵ Evidence provided in support of the respondent's submissions included detail from Ms Price of InterLEAD regarding current work with Gloriavale Christian School. The same organisation was also put forward in by the respondent in *CAC v Pilgrim*. As Ms Price records work is currently being done in the Gloriavale community around many matters including working with the principal, teaching staff and community as well as external agencies. This work is ongoing and some continued difficulties are evidenced in the October 2023 ERO special review and report into the school (a matter of public record).

totalling \$8,384.86.

[28] The evidence regarding Ms Loyal is that she is not working in paid employment; she has eight children aged 6 months to 14 years, and her family has one income. We apprehend that Ms Loyal has no personal means by which to pay a costs award, and we make an order in respect of a party. We reach the same view as the Tribunal did in *Disciple*, that this is not an ordinary case, and the circumstances are such that we do not consider Ms Loyal should bear an order for costs.

Non-Publication

[29] The CAC sought permanent non-publication orders on behalf of the students referred to in the charge and summary of facts. It is proper that this order is made given the privacy interests of the students clearly outweigh the public interest in their identity.

[30] No application was made for non-publication orders by Ms Loyal or Gloriavale Christian School.

Orders

[31] The Tribunal makes the following orders under s139AW/s404:

- (a) Conditions to be placed on Ms Loyal's practising certificate:
 - (i) to disclose the Tribunal's decision for a period of two years.
 - (ii) to undertake mentoring for a period of 12 months after commencing teaching with a suitably qualified person approved by the Teaching Council Manager of Professional Responsibility, such mentoring to:
 - (A) involve face to face meetings between Ms Loyal and her mentor.
 - (B) include termly reporting to the Teaching Council.
 - (C) cover the Code of Professional Responsibility, behaviour management and the implementation of policies and procedures around behaviour management.

[32] With regard to non-publication the following orders are made:

- (a) The names and identifying particulars of the students referred to in the charge are not to be published.

[33] No order is made as to costs.

Dated: 5 August 2024

A handwritten signature in blue ink, reading 'C Garvey'. The signature is written in a cursive style with a large 'C' and a long, sweeping tail on the 'y'.

C Garvey

Deputy Chair of the New Zealand Teacher's
Disciplinary Tribunal