

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**DECISION NO:** **NZTDT 2023/11**

**UNDER THE** **Education Act 1989**

**IN THE MATTER** of a referral by a **COMPLAINTS ASSESSMENT COMMITTEE** against **ANA FAKAMALUNGA SUI POLONIATI** also known as **ANA VEIKOSO** registered teacher, of Auckland (Registration Number 258002)

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**Hearing held on the papers on Wednesday, 16 October 2024**

**Tribunal:** Jo Hughson (Deputy Chairperson),  
Kiri Turketo and Maria Johnson

Ayesha Hourston (Tribunal Coordinator)

**Appearances:** Pip McNabb, Counsel for the Complaints Assessment Committee

Ms Poloniati (represented for part of the proceedings  
by Ms Talaki)

**Decision:** 4 December 2024

## DECISION OF THE TRIBUNAL

### Summary

- [1] Ms Poloniati was first registered as a teacher in 2005. She does not hold a valid practising certificate. Her last practising certificate expired in 2017.
- [2] On 1 October 2019, Ms Poloniati, along with her son Mr Michael Poloniati, was convicted in the Manukau District Court after pleading guilty to four charges of theft by a person in a special relationship. These charges are offences under sections 2019 and 223(d) of the Crimes Act 1961 and each charge carries a maximum sentence of seven years' imprisonment.
- [3] The offences related to Ms Poloniati's theft from the Tokaikolo Education Trust Board (the Board). The Board is the governing body of Akoteu Faka-Kalisitiane Ko Namoan Preschool, a Tongan-language early childhood centre in Mangere Bridge, South Auckland (the Preschool). Between January 2014 and April 2015, Ms Poloniati was employed as the supervisor of the Preschool and Mr Poloniati was employed a part time IT assistant. Ms Poloniati and her son jointly authorised payments to their respective bank accounts for work hours not completed. In total, they stole \$37,773.10, of which \$2,639.40 was attributed to Ms Poloniati and \$35,133.80 was attributed to her son.
- [4] On 4 February 2020, Judge Earwaker in the Manukau District Court sentenced Ms Poloniati to seven months' home detention followed by ten months of special post-detention conditions. She was ordered to pay \$3000 in reparation at \$20 per week.
- [5] A Complaints Assessment Committee (CAC) was established to investigate these convictions. At the conclusion of its investigation, the CAC referred the convictions to the Tribunal alleging that Ms Poloniati's conduct underlying her convictions entitled the Tribunal to exercise its disciplinary powers pursuant to section 139AW of the Education Act 1989<sup>1</sup>.

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<sup>1</sup> The Notice of Referral was first amended with leave of the Deputy Chair at a pre-hearing conference on 5 April 2024. During the hearing, on the application of the CAC, the Tribunal further amended the Notice of Referral to reflect that the CAC referred the matter to the Tribunal in accordance with section 139AT of the Education Act 1989 and the conduct that is the subject of the referral entitles the Tribunal to exercise its powers pursuant to section 139AW of the Act. The Tribunal was satisfied those sections of the Education Act (as it was then) applied to Ms Poloniati's offending which occurred on dates between January 2014 and April 2015; and that there was no prejudice to Ms

[6] The hearing proceeded on the papers. The evidence produced by the CAC was an agreed summary of facts which Ms Poloniati had signed on 4 April 2024<sup>2</sup>. The accepted Police Summary of Facts for sentencing and a copy of Judge Earwaker's sentencing notes were attached to the agreed summary of facts. Although she was directed to file any evidence that she wished the Tribunal to consider, no additional evidence was filed by Ms Poloniati that raised any mitigating personal circumstances that may have been relevant to penalty or costs.

[7] Written submissions were received from Counsel for the CAC addressing the issues of liability, penalty, and non-publication orders. No submissions were received from or on behalf of Ms Poloniati.

[8] The Tribunal was satisfied that Ms Poloniati's conduct was of a nature that warranted an adverse finding as to her fitness to practise as a teacher, and that the Tribunal should exercise its disciplinary power to impose orders under section 139AW of the Education Act 1989.

[9] The Tribunal is making an order cancelling Ms Poloniati's registration as a teacher and she is being censured. Ms Poloniati is also being ordered to contribute towards the costs of the CAC associated with the prosecution.

[10] No suppression orders were made in the criminal proceedings in the Manukau District Court. Ms Poloniati did not apply for name suppression in these Tribunal proceedings. Accordingly, her name may be published.

[11] The Tokaikolo Education Trust applied for a non-publication order in respect of the names of the Trust and the Preschool, on the basis of potential reputational harm at a time when the Trust is in the process of reapplying for a licence (and wishes to avoid negative media exposure). The Tribunal was not satisfied this private interest was a factor that was sufficient to outweigh the public interest factors which favour open reporting now that there is an adverse finding. In any event, the names of the Trust and the Preschool are already a matter of public record in connection with Ms Poloniati's offending as their names were not

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Poloniati associated with the amendments. The further amendments simply correct the references to the applicable legislation. Section 139AW was repealed on 1 July 2015 by section 6 of the Education Amendment Act 2015. Cf section 404 of the Education Act 1989 (which applied at the time the convictions were entered).

<sup>2</sup> Agreed Summary of Facts dated 4 April 2024 and jointly signed by Counsel for the CAC and Ms Poloniati.

suppressed in the criminal proceedings. For those reasons the Trust's application is being declined.

## **Factual Findings**

[12] The Tribunal was satisfied the following facts were established on the evidence in the Summary of Agreed Facts, and the accepted Police Summary of Facts that was produced.

### *Ms Poloniati's theft*

[13] At the relevant times, Akoteu Faka-Kalisitiane Ko Namoa Preschool operated from the Tokaikolo Christian Church premises in Mangere Bridge and was licensed for up to 26 children and employed seven people, including Ms Poloniati, also known as Ana Veikoso, and her son.

[14] Ms Poloniati had been employed as the supervisor of this learning centre from 2011 to March 2017. Mr Poloniati was employed to work three hours each week as a part-time IT assistant, but on occasions he worked more hours without the approval of the governing body (the Board).

[15] The Preschool operated an ASB Business Banking account. This account was used to pay creditors and wages.

[16] For payments to be made, they had to be authorised by both Ms Poloniati and Mr Poloniati who were given authorisation codes to complete any withdrawal/payment transactions. Payments to creditors and other one-off payments had to be authorised by the Board and payments were made in the same manner with both Ms Poloniati and Mr Poloniati having to input their respective authorisation codes.

[17] Between 14 January 2014 and March 2015 wages were paid by direct credit to the seven employees' bank accounts that included Ms Poloniati's account and her son's account.

[18] All employees completed a daily timesheet that recorded the hours they worked which they signed at the end of their weekly pay period.

[19] Between January 2014 and March 2016, Mr Poloniati was the only employee who did not sign his timesheet.

- [20] At the end of each week a schedule of wages payments for employees was sent to the bank and Ms Poloniati and her son authorised the payments.
- [21] In March 2016 a new governing management committee was established for the Preschool and an audit was completed in relation to wages paid to Mr Poloniati, one- off payments made to him, and one-off payments to Ms Poloniati. This audit revealed that between 13 January 2014 and 22 March 2015, Mr Poloniati was paid for more hours than he worked and was overpaid \$28,308.40. These payments were made directly to Mr Poloniati's bank account using his and Ms Polonisti's authorisation codes. The audit also revealed that on ten occasions between 14 January 2014 and 14 April 2015, Mr Poloniati was paid \$6,825.30 from the Board's bank account without the Board's authority. The payments were made directly to Mr Poloniati's bank account using his and Ms Poloniati's authorisation codes.
- [22] The audit also revealed that on two occasions between 7 July 2014 and 5 January 2015, Ms Poloniati was paid from the Board's account without the Board's authority, totalling \$1,539.40. The first two of four payments were made to her bank account using her and Mr Poloniati's authorisation codes.
- [23] In addition, the audit revealed that on 14 January 2014 Ms Poloniati was paid \$1,100 from the Board's bank account, without the Board's authority. This payment was made directly to Housing New Zealand to cover Ms Poloniati's rent, using her and Mr Poloniati's authorisation codes.
- [24] The total amount that was taken from the Board's bank account without authority for the benefit of Ms Poloniati and her son was \$37,773.20.
- [25] The offending in the period from January 2014 to April 2015, involved around 70 individual unauthorised transactions.<sup>3</sup>
- [26] When Ms Poloniati was notified by the Board of the audit findings, she was very apologetic and said that she was sorry. She explained her actions by saying that was how work was done, and she quoted a Tongan proverb, '*the spilt glass of water cannot be replaced*'.

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<sup>3</sup> Sentencing Notes of Judge Earwaker at [12].

[27] Ms Poloniati said she would repay all the money taken but that she wanted her son to be left out of all matters relating to the theft. Later she agreed to repay the debt at \$20 per week.

[28] Mr Poloniati advised the Board, when he was asked for an explanation, that he did not want to answer any questions and was seeking legal advice.

[29] The Board reported the matter to the Police, which resulted in the criminal proceedings. Ms Poloniati and her son declined to answer any questions when Police interviewed them.

[30] As of the sentencing date in the Manukau District Court, Ms Poloniati had not repaid any money, and her employment had been terminated. Through her counsel at sentencing, Ms Poloniati sought to attribute more responsibility for the offending, to her son. She said she was led along by her son. Judge Earwaker did not accept this given that Ms Poloniati knew what was happening, her authorisation code was required to make the payments, and she had acknowledged her responsibility for the offending.

[31] Ms Poloniati did not provide any comment as part of the CAC process.

## **Liability**

### *Relevant legal principles*

[32] The CAC referred Ms Poloniati's convictions to the Tribunal under section 139AT of the Education Act which applied at the time of the conduct.

[33] The onus of proof rested on the CAC, on the balance of probabilities.

[34] The purpose of the Tribunal's exercise of its disciplinary powers in respect of a conviction is not to punish the teacher a second time.<sup>4</sup> Rather, the primary purpose is to ensure safe and high-quality leadership, teaching and learning through raising the status of the teaching profession. As was said in *CAC v Fuli – Makaua*<sup>5</sup>, disciplinary proceedings further this purpose by protecting the public through the provision of a safe learning environment for students and maintaining professional standards and the public's confidence in the

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<sup>4</sup> *Z v Dental Council Complaints Assessment Committee* [2008] NZSC 55, CAC v Korau NZTDT 2017/17, 26 August 2017 at [3].

<sup>5</sup> CAC v Fuli-Makaua NZDT 2017/40, 5 June 2018.

profession.<sup>6</sup> This is achieved through holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required.<sup>7</sup>

[35] A referral of a criminal conviction does not need to be framed as a charge of serious misconduct, but the Tribunal needs to reach an adverse finding.<sup>8</sup> In particular, the Tribunal needs to decide whether the circumstances of the behaviour that resulted in the convictions reflect adversely on the teacher's fitness to practise as a teacher, before it may exercise its disciplinary powers.

[36] To reach the conclusion that an adverse disciplinary finding is warranted, the Tribunal must assess the circumstances of the offending that lead to the convictions that have been referred, and the seriousness of that offending. The assessment must be an objective one made against the accepted professional standards that applied to teachers at the time of the conduct that is being reviewed by the Tribunal. The Tribunal has previously observed that the standards "*might include pedagogical, professional, ethical and legal [standards]. The departure from the standards might be viewed with disapproval by a teacher's peers, or by the community*"<sup>9</sup>. Contrary to what was observed in *CAC v Crump*<sup>10</sup> the Tribunal in this case considered that the views of all members of the Tribunal (including the Chair as the lay member) should inform the view taken about the standards and the departure from them, not just the views of the teachers on the panel. As was said by Elias J (as she was then) in *B v Medical Council*, the inclusion of lay representatives in the disciplinary process and the right of appeal to [the District Court] "*indicates that usual professional practice, while significant, may not always be determinative: the reasonableness of the standards applied must ultimately be for the court to determine taking into account all the circumstances including not only practice but also patient interests and community expectations...."* [emphasis added]

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<sup>6</sup> *CAC v McMillan* at [23], *CAC v Korau*.

<sup>7</sup> *CAC v Bird NZTDT* 2017/15, 3 July 2017 at [32].

<sup>8</sup> *CAC v Bird NZTDT* 2017/5, 22 June 2017.

<sup>9</sup> *CAC v Crump NZTDT* 2019/12, 9 April 2020.

<sup>10</sup> Above at fn. 7.

[37] Although the Tribunal is not required to find the respondent teacher guilty of “serious misconduct”, previously the Tribunal has indicated that the “*serious misconduct yardstick*” may be useful in determining whether an adverse finding is warranted<sup>11</sup>.

[38] Section 139AB of the Education Act 1989 defined 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 1 one more students; or
  - (ii) Reflects adversely on the teacher’s fitness to be a teacher; and
- b. Is of a character or severity that meets the Teachers Council’s criteria for reporting serious misconduct.

[39] Previous Tribunal decisions demonstrate that “fitness to be a teacher” in limb (a)(ii) of the definition of serious misconduct includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.

[40] It is not necessary that the proven conduct should conclusively demonstrate that the teacher is unfit to practise. The conduct will need to be of a kind that is inconsistent with what might be expected from a teacher who acts in compliance with the standards normally observed by those who are fit to practise teaching. However not every departure from recognised standards will reflect adversely on a teacher’s fitness to practise. It is a matter of degree and one that calls for the exercise of judgement.

[41] The Tribunal assessed Ms Poloniati’s conduct against the relevant standards of ethical and professional conduct set out in the Code of Ethics for Certificated Teachers which applied at the time of her conduct. The Code set expectations of honesty, professionalism and integrity.

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<sup>11</sup> *CAC v Lyndon NZTDT 2016/61, 26 April 2017 at [18].*

[42] Maintaining public trust and confidence in the teaching profession requires teachers to demonstrate a high standard of professional behaviour and integrity. Behaviour which damages the trust or confidence that learners, their family and whānau, colleagues or others have in the respondent teacher will breach the Code.

## **Liability Findings**

[43] The Tribunal was satisfied that Ms Poloniati's conduct underlying her four theft convictions was established. Over a period of around 16 months, Ms Poloniati used her authorisation code on multiple occasions to facilitate unauthorised payments to herself and her son. The total sum taken by Ms Poloniati and her son, was more than \$37,000. This was criminal offending involving theft from Ms Poloniati's employer, when she was in the role of supervisor of an early learning centre.

[44] In this case, the Tribunal considered the four convictions cumulatively in terms of its assessment of whether Ms Poloniati's conduct reflects adversely on her fitness to practise as a teacher and warrants an adverse finding.

[45] Considered objectively, the Tribunal was in no doubt that Ms Poloniati's conduct reflects adversely on her fitness to be a teacher. While most of the money taken went to Ms Poloniati's son, Ms Poloniati played an integral part in facilitating payments. Her dishonest conduct occurred over an extended period and in the context of her professional role. As the CAC put it, her conduct was fundamentally incompatible with the expectations of honesty, professionalism, and integrity in the Code of Ethics for Certificated Teachers. Her offending involved a serious and significant breach of trust for her own personal gain.

[46] The Tribunal formed the view that both limbs of the test for serious misconduct in section 139AB(1) of the Education Act are met. Ms Poloniati's conduct reflects adversely on her fitness to teach, and for the purposes of Rule 9(1)(h) of the applicable New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 met rules 9(1)(h), (n) and (of)<sup>12</sup>. The conduct was theft which involved significant dishonesty and thousands of dollars and in the Tribunal's view, was of a type that negatively affects the teaching profession's reputation

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<sup>12</sup> Rule 9(1)(h) – theft or fraud. Rule 9(1)(n) – conduct that could be subject to prosecution, and Rule 9(1)(o) – conduct that brings discredit to the profession.

in the eyes of the public and has brought discredit to the profession.<sup>13</sup> Ms Poloniati's criminal actions occurred at a small early childhood centre and deprived the Preschool of funds that could have been used for the benefit of the children who were attending at the time. Reasonable members of the public, informed and with the knowledge of all the factual circumstances could reasonably conclude that the reputation and good-standing of the teaching profession was lowered by Ms Poloniati's behaviour.

[47] These conclusions supported the Tribunal's opinion that Ms Poloniati's conduct is of a nature and gravity that warrants an adverse finding, and the exercise of the Tribunal's disciplinary powers under the applicable section 139AW of the Education Act.

## **Penalty**

### *Penalty Principles*

[48] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who are the subject of an adverse disciplinary finding are the protection of the public and maintenance of professional standards (through general and/or specific deterrence<sup>14</sup> so that the public is protected from poor practice and from people unfit to teach), and the maintenance of the public's confidence in the teaching profession<sup>15</sup>.

[49] Each purpose must be addressed in its own right; a particular case may not give rise to significant protection concerns but the maintenance of professional standards may require certain orders to be made.

[50] In previous decisions the Tribunal has accepted as the appropriate sentencing principles those identified by Collins J in *Roberts v Professional Conduct Committee of the Nursing Council*<sup>16</sup>. His Honour identified eight factors as relevant whenever an appropriate penalty is being determined in proceedings of this nature. Those factors have been referred to in previous decisions of the

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<sup>13</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28].

<sup>14</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

<sup>15</sup> As discussed in *CAC v McMillan* NZTDT 2016/52 at [23] and *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018 at [51].

<sup>16</sup> [2012] NZHC 3354 at [44]-[51].

Tribunal and need not be repeated here. Importantly, the Tribunal should endeavour to impose a penalty that is the least restrictive that can reasonably be imposed in the circumstances, and the Tribunal must assess whether the penalty it is to impose is fair, reasonable and proportionate in the circumstances presented to the Tribunal.

[51] In *Fuli-Makaua*<sup>17</sup> the Tribunal recognised that cancellation of a teacher's registration will be appropriate in two overlapping situations, namely where:

- a. The offending is sufficiently serious that no outcome short of deregistration sufficiently reflects the adverse effect on the teacher's fitness to teach, or its tendency to lower the reputation of the profession; and
- b. The teacher has not taken adequate rehabilitative steps to address the issues underlying their conduct. This may indicate a level of apparent ongoing risk that leaves no option but to deregister.

#### *Discussion*

[52] The Tribunal considered the relevant penalty principles including aggravating and mitigating factors and the penalty outcomes in previous cases that involved teachers who engaged in dishonesty offending.

[53] As to the aggravating factors relating to Ms Poloniati, the Tribunal accepted those were the factors identified by the CAC:

- a. The offending was prolonged, occurred over a 15 -month period from January 2014 to April 2015, was "*sustained and intentional*"<sup>18</sup> and involved around 70 individual unauthorised transactions.
- b. A significant amount of money was stolen. Although Ms Poloniati received only a small amount of the total amount taken and her son received the bulk of the benefit of the money, she was dually

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<sup>17</sup> CAC v *Fuli-Makaua* NZTDT 2017/40, 5 June 2018, at [54].

<sup>18</sup> Sentencing notes of Judge Earwaker at [12].

responsible for the money her son received as her authorisation code was required to be used for all the payments.<sup>19</sup>

- c. As a supervisor at what was a small Preschool, Ms Poloniati was in a position of trust. She exploited her position for her own financial gain, and for her son's financial gain, and there was a significant breach of trust.

[54] Further the Tribunal noted that the conduct involved Ms Poloniati stealing from her community, which the Tribunal considered was shameful.

[55] The Tribunal accepted the CAC's submission that there are no mitigating factors relating to the offending but there are some personal matters that could be regarded as mitigating:

- a. In the criminal proceedings, Ms Poloniati pleaded guilty and accepted responsibility for her offending. However, as Counsel for the CAC pointed out, her guilty pleas came close to the scheduled trial date ("really on the eve of trial" as the Judge put it) rather than at the earliest opportunity. She participated in a restorative justice conference.<sup>20</sup>
- b. In these proceedings, Ms Poloniati accepted her conduct by agreeing a summary of facts with the CAC. That said, Ms Poloniati has not provided any evidence of remorse or insight.
- c. Ms Poloniati does not have any previous criminal convictions (she had not previously appeared before the Court<sup>21</sup>) and nor does she have any disciplinary history.

[56] As above, although Ms Poloniati was initially apologetic when she was confronted about her offending after her employer's audit, and indicated she would repay the money that had been stolen, she explained her actions by

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<sup>19</sup> Judge Earwaker noted at [19] of his sentencing notes that although "*Mr Poloniati ...received the lion's share of the money, I have no doubt that the money you received provided assistance to all of the family including you [Ms Poloniati]*"

<sup>20</sup> Sentencing notes of judge earwaker at [14].

<sup>21</sup> Police Summary of Facts.

saying that was how work was done and quoting a Tongan proverb (“*the spilt glass of water cannot be replaced*”). Ms Poloniati then claimed she was led along by her son, which the Judge did not accept. As of the date of the Tribunal’s hearing it was not known whether Ms Poloniati had paid the reparation she was ordered to pay when she was sentenced in the Manukau District Court.

[57] As for similar cases which have involved teachers who engaged in dishonesty by stealing from a school, all that needs to be said is that penalties at the most serious end of the spectrum of available penalties have been imposed (cancellation of registration) particularly where no evidence had been provided that any rehabilitation had been undertaken (*Teacher A*)<sup>22</sup> or where there was an absence of evidence in mitigation (*Marsh*)<sup>23</sup>.

[58] In *Coldstream*<sup>24</sup> the teacher was employed as a centre manager and between September 2017 and April 2018, she dishonestly took cash the centre had received (including from parents) in the sum of around \$4,735.00. Although the Tribunal considered Ms Coldstream’s actions to have been serious and unacceptable given her managerial position and involved a serious breach of trust, the Tribunal took into account the teacher’s genuine and meaningful engagement with the disciplinary process, the fact that she had repaid the money in full and was open and honest with her employer. Ms Coldstream had also taken steps to deal with her gambling addiction and had expressed a clear intention and passion to remain a member of the teaching profession. She was also able to demonstrate that she had a solid support network, including her current manager, and had no previous disciplinary history. Taking those factors into account the Tribunal stepped back from cancelling Ms Coldstream’s registration and censured her, as well as imposed strict conditions on her practising certificate. The conditions precluded Ms Coldstream for three years from any role which involved handling money or managing finances. Ms

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<sup>22</sup> For example, *CAC v Teacher A* NZTDT 2020.50, 29 June 2021.

<sup>23</sup> *CAC v Marsh* NZTDT 2021/50, 16 January 2021 (an early childhood teacher who unlawfully took a credit card of the centre’s director and used the card twice, withdrawing \$1600 cash total from two ATMS. She was convicted of two charges of obtaining by deception).

<sup>24</sup> *CAC v Coldstream* NZTDT 2019/18, 10 February 2021.

Coldstream was also required to enrol in an approved gambling support service for 18 months.

[59] The Tribunal agreed with the CAC that Ms Poloniati's conduct was more prolonged and involved a higher level of theft than the offending in *Coldstream*. It was more prolonged but involved almost half the amount of loss than in *Teacher A*. Both *Teacher A* and *Marsh* had pleaded guilty during the criminal proceedings but did not engage with the Tribunal process and there was little information available about their personal circumstances. Both those cases resulted in cancellation and censure. While in this case Ms Poloniati has engaged, no other mitigating information was provided to the Tribunal. Unlike in *Coldstream* there is no evidence of rehabilitation or genuine remorse. Nor has Ms Poloniati provided any indication to the Tribunal about whether she wishes to continue teaching or not, or an apology.

### **Penalty Findings**

[60] Cancellation of registration was sought by the CAC taking into account the gravity of Ms Poloniati's offending, the limited mitigating circumstances, and the principles and purposes of disciplinary penalties.

[61] The Tribunal agreed. It considered that cancellation of Ms Poloniati's registration combined with a censure would be the least restrictive penalty. Cancellation is regarded as the only outcome that adequately reflects the nature and gravity of Ms Poloniati's offending and that will meet the Tribunal's obligation to protect the public and maintain the standards of the teaching profession. This is in circumstances where there is no evidence of rehabilitation or remorse, or other personal mitigating features, which meant the Tribunal was unable meaningfully to assess whether a penalty short of cancellation would be appropriate. A censure is necessary to mark the Tribunal's serious disquiet about and disapproval of Ms Poloniati's conduct.

[62] Accordingly, there will be an order cancelling Ms Poloniati's registration and Ms Poloniati is censured pursuant to section 139AW of the Education Act.

### **Costs**

[63] Where a criminal conviction is referred to the Tribunal, arising from a report made under section 139AP, costs are not payable by the teacher. Section 139AW(2) required holders of practising certificates and the Registrar of every

court to report convictions of teachers where the offence was punishable by imprisonment for 3 months or more. This case did not arise from a report made under section 139AP or the equivalent provision which applied when the convictions were entered. Ms Poloniati did not self-report her convictions. Counsel noted in her submissions that the convictions were the subject of a mandatory report made by the Tokaikolo Education Trust and the police notified the CAC's investigator when the convictions were entered.

- [64] For those reasons, the Tribunal was satisfied that it had jurisdiction to order Ms Poloniati to pay a contribution to the costs of the CAC's prosecution.
- [65] The CAC's prosecution costs were indicated to be \$15,148.50 exclusive of GST, which the Tribunal considered were reasonable<sup>25</sup>.
- [66] The Tribunal concluded that an order that Ms Poloniati make a contribution in the region of 20% toward those costs would be reasonable and appropriate, to ensure that the teaching profession as a whole does not have to bear the burden of all the costs that have been incurred by the CAC (that have arisen out of Ms Poloniati's own making). This reduced order takes into account Ms Poloniati's cooperation which meant the matter could be dealt with on the basis of agreed evidence, the fact that there is a possibility she may still be paying the reparations the Court ordered her to pay, and as she lost her employment as a teacher which will likely have had at least some impact on her financial situation.
- [67] Accordingly, the Tribunal is making an order pursuant to section 139AW(2) that Ms Poloniati is to pay the sum of \$3,0000 (exclusive of GST) to the CAC<sup>26</sup>.
- [68] The Tribunal is not making an order that Ms Poloniati contribute to any of the costs the Teaching Council has incurred conducting the hearing, As of the date of the hearing, the Tribunal had not been provided with any information about the Teaching Council's costs. As Ms Poloniati did not have the benefit of that information prior to the hearing, the Tribunal would be failing to observe the rules of natural justice were it to make an order.

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<sup>25</sup> Costs Schedule provided by Counsel for the CAC, dated 11 October 2024.

<sup>26</sup> Costs Schedule of the CAC at paragraph [9.3] of Submissions on behalf of the Complaints Assessment Committee.

## **Non-publication orders**

[69] Ms Poloniati did not seek an order suppressing her name from publication. Her name may be published.

[70] The Tokaikolo Education Trust applied for a non-publication order in respect of the names of the Trust and the Preschool, on the basis of potential reputational harm at a time when the Trust is in the process of reapplying for a licence (and wishes to avoid negative media exposure). The CAC indicated that it would abide the Tribunal's decision on the Trust's application. The CAC accepted that reputational harm is not usually a sufficient basis for non-publication orders for centres and schools where a teacher has offended. However, the CAC acknowledged that in this case the Trust and the Preschool are both victims of Ms Poloniati's criminal offending; and the public interest in their details being known is more limited than the public interest in Ms Poloniati being named. The Tribunal agreed.

[71] While the Tribunal has some sympathy for the Trust and the Preschool, it was not satisfied that potential reputational harm is a factor that was sufficient to outweigh the public interest factors which favour open reporting now that there is an adverse finding. Further, and in any event, no suppression orders were made by the District Court in the criminal proceedings, and the names of the Trust and the Preschool are already a matter of public record because of those proceedings. For those reasons, the Trust's application for a non-publication order is declined.

[72] The Tribunal considers that members of the public and the profession who read this decision will learn that the Trust Board has acted entirely responsibly throughout, and that Ms Poloniati has not worked at the Preschool since March 2017.

[73] The Tribunal Coordinator is directed to ensure this decision is published in unredacted form on the Tribunal's website, forthwith. As Ms Poloniati's registration as a teacher is being cancelled it is a matter of public interest that there are no delays in publishing the decision. The public and the profession have a right to know of the serious conduct the Tribunal has reviewed in this case and that Ms Poloniti's registration has been cancelled.

## **Result and Orders**

[74] The Tribunal was satisfied the established circumstances of Ms Poloniati's four theft convictions reflect adversely on her fitness to teach. Accordingly, an adverse disciplinary finding is warranted.

[75] The Tribunal's formal orders under the Education Act 1989<sup>27</sup> are:

- a. Ms Poloniati is censured pursuant to section 139AW(1)(b).
- b. Ms Poloniati's registration is cancelled pursuant to section 139AW (1)(g).
- c. Ms Poloniati is to pay \$3,000.00 to the CAC as a contribution to the Committee's costs pursuant to section 139AW(1)(h).

**Dated at Wellington this 4th day  
of December 2024**



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**Jo Hughson**  
Deputy Chairperson

## **NOTICE**

- 1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 139AT and 139AW of the Education Act 1989 may appeal to a District Court.
- 2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.

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<sup>27</sup> Clauses 2 and 3, Schedule 1, Education and Training Act 2020 noted.