

[PERMANENT NON PUBLICATION ORDERS]

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/29

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

COLIN FREWIN
(Authorisation)

Kaiurupare / Respondent

Nohoanga | Hearing
Hei Māngai | Appearance

18 November 2024, (On the Papers).
K Robinson, Meredith Connell for the CAC
D King, PPTA for the Respondent

Tribunal

C Garvey (Deputy Chair), D Spraggs and S Williams

DECISION ON LIABILITY AND PENALTY

22 November 2024

Introduction

[1] Colin Frewin, the respondent, is a secondary school teacher in Nelson. He faces a disciplinary charge alleging serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers for using inappropriate language to a class,

and offensive language towards a student, in March 2023.¹

[2] The parties prepared an agreed summary of facts signed in September 2024, and the matter was dealt with on the papers by consent on 18 November 2024 following an exchange of written submissions. Notably, some of Mr Frewin's comments were captured on an audio recording and published fairly widely. This recording was submitted as part of the summary of facts. An employment investigation was undertaken by Nayland College after the incidents and Mr Frewin continues to teach at the school.

The Notice of Charge

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

The CAC charges that Mr Frewin, registered teacher, of Nelson, used:

- a. Inappropriate language to [a] year 10 class during period 4 on 14 March 2023.
- b. Offensive language towards a student [REDACTED] during period 4 on 14 March 2023.
- c. Inappropriate language in front of [a] plants for profit class on Wednesday 8 March 2023.

[4] The charge relies on section 10(1) of the Education and Training Act 2020 (the Act), and rule 9(1)(k) of the Teaching Council Rules 2016 (the Rules). The charge also pleads a breach of clauses 1.3 and 2.1 of the Code of Professional Responsibility | *Ngā Tikanga Matatika* (the Code).

The Agreed Summary of Facts

[5] The summary of facts describes the incidents referred to in the charge as follows:

Use of inappropriate language on 8 March 2023

3. On 8 March 2023, Mr Frewin was teaching a year 10 class called 'Plants for Profit'. While teaching the class, Mr Frewin swore multiple times, including saying "fuck".
4. Student A, a 14-year-old student in the class, reported to her Dean, David Munro, that "Mr Colin" swore at them.

¹ The notice of charge was issued in June 2024 alleging serious misconduct and amended on 26 July 2024 to include the alternative pleading of conduct otherwise entitling the Tribunal to exercise its power under s500 of the Education and Training Act 2020.

Use of inappropriate language on 14 March 2023

5. On 14 March 2023 Mr Frewin was teaching a year 10 science class. Mr Frewin became frustrated at the class and started shouting at them. A student then started making a recording of Mr Frewin on their phone. The audio recording is filed alongside this summary of facts, and forms part of the summary of facts.

6. The recording begins with a student commenting that "this class is boring". Mr Frewin then said the following:

CF²: Yes and that has nothing to do with you doing this.

CF: So hurry up and sort your shit out, you guys are being useless today, like actually fucking useless, it has taken an hour to do fucking nothing, actually fucking nothing, you have glued four straws to four bits of fucking paper. Useless.

CF: When it comes time to doing the assessment you guys are going to be fucking about going "what do I do, what do I do" and you're gonna want me to help and I'm gonna go "what did you do last time" and your gonna go "well I fucked about".

CF: Quit fucking about, it's simple shit, this is not even hard.

CF: Holy hell.

Use of offensive language on 14 March 2023

7. During the same class referred to above at paragraphs 5 to 7, Mr Frewin yelled at Student B, a 14 year old student, saying "pack your fucking bags and get out of my class". Student B then got up and left the classroom.

8. Student B reported to Mr Munro that Mr Frewin had a "fat rage" at the whole class, and then swore at her directly, using the language above.

[6] While there is less context apparent from the summary of facts for the use of a swear word in the classroom on 8 March 2023 (particular 1(a)), we infer from Mr Frewin's acceptance of the charge that there was also an element of frustration rather than an inadvertent or reflexive use of an expletive.

[7] It is plain from listening to the audio recording from 14 March that Mr Frewin was very frustrated with the class and sounded increasingly bothered as he spoke. As well as the two students who complained to their Dean, a parent who heard the recording also made a complaint to the Principal.

[8] Mr Frewin promptly admitted shouting at Student B and giving the entire class a "*dressing down*." The matter was addressed by the Board of Trustees of the College resulting in a verbal warning to Mr Frewin, and a requirement that he apologise to the students and undertake further professional development. The Board made a

² CF = Colin Frewin

mandatory report to the Teaching Council, and Mr Frewin acknowledged his conduct was inappropriate in response to that report.

Liability

- [9] While Mr Frewin accepts the charge and agrees with the CAC's categorisation of this as serious misconduct the Tribunal must itself still consider liability and be satisfied that the charge is proved. We can do so relatively briefly given the clear and undisputed facts.
- [10] Section 10 of the Act sets out a conjunctive test for serious misconduct. The first step involves assessing the conduct against the three limbs of s10(1)(a), namely whether it:
 - (a) adversely affects or is likely to adversely affect the well-being or learning of 1 or more students;
 - (b) reflects adversely on a teacher's fitness to be teacher;
 - (c) is an act or omission that may bring the teaching profession into disrepute.
- [11] The second part of the test is to assess the conduct against rule 9 of the Rules, which outlines conduct of such a nature and gravity to warrant reporting to the Teaching Council. The CAC alleges that Mr Frewin's conduct was likely to bring the profession into disrepute: r9(1)(k). This is an objective test, based on whether a reasonable member of the public informed of the relevant circumstances would view the conduct as lowering the standing or reputation of the profession.
- [12] The standards required of teachers are set out in the Code including the need to behave professionally and with integrity (clause 1.3). This includes maintaining professionalism in the face of challenges in the classroom.
- [13] Teachers are also expected to promote the wellbeing of learners and protect them from harm (clause 2.1). The Examples in Practice³ published by the Council as a guide to implementing the Code give as an example "*showing respect for example using a respectful tone of voice*". An example of conduct that does not promote wellbeing is:

using verbal or body language that is unreasonable and inappropriate (for example,

³ Our Code: Examples in Practice, Education Council June 2017.

using aggressive, threatening or humiliating language, or using an intimidating stance and demeanour.

- [14] The CAC submits that each of the limbs of section 10(1)(a) are met. This is, in short, because the language included remarks that were disparaging to students, and he used an “*abusive and demeaning tone*.” The incident was not a one-off and showed a lack of self-regulation and an “*out of proportion*” response which breached clauses 1.3 and 2.1 of the Code. The CAC submits that the conduct is likely to bring the profession into disrepute, given the expectation that the public has of teachers being able to remain calm and professional.
- [15] We agree with the thrust of the CAC’s submissions supporting an adverse finding. Mr Frewin’s conduct offended students and is objectively offensive (in particular repeatedly calling students “*useless*”). The language was not a one-off use of an expletive, but an outburst directed at the class that continued after Mr Frewin’s initial exclamation in response to the comment that the class was “*boring*”. Swearing is not uncommon in New Zealand society; some find it acceptable in a variety of contexts, while others do not. We consider it is not appropriate for a teacher to swear in the classroom, particularly when this is repeated and deliberate and a means of venting frustration (as opposed to say, a reflexive response to an accident). The audio makes it clear that Mr Frewin was criticising the capability of students in a way that in our view tips this matter beyond mere misconduct, with a breach of rule 9(1)(k). We find that a reasonable member of the public informed of the relevant facts would likely consider the standing of the profession to be lowered.

Penalty

- [16] Having made an adverse finding, we are required to consider an appropriate penalty under s500. This is informed by the purposes of disciplinary penalty which are the protection of the public, and the maintenance of professional standards and of public confidence in the teaching profession. Penalty should be fair, reasonable and proportionate, and comparable to those imposed in similar cases. The Tribunal should impose the least restrictive penalty that is appropriate in the circumstances.
- [17] The CAC submits that the appropriate penalty in this case is censure and a requirement that Mr Frewin discloses this decision to a future employer for a period

of two years, as well as annotation of the register. These suggestions are unopposed by the respondent.

- [18] We have considered the comparator cases relied upon by the CAC.⁴ As is often the case, these highlight the importance of prompt recognition of any potential misconduct, insight and engagement. In terms of gravity, we consider the present case is most similar to *Whiu* which involved a teacher allowing some frustration from a brief interaction with a student over the lunchbreak to carry over into the classroom, with the teacher then swearing and using aggressive language directed at the student.⁵ The Tribunal found that this was misconduct which “*borders on is just over the line of serious misconduct*”⁶.
- [19] In *Thorogood*, the teacher was Head of Department for children with additional learning needs, and the SENCO⁷ for the school. The teacher engaged in a so-called ‘mini chat’ in the corridor outside a classroom, venting a significant amount of anger and frustration and making very personalised statements to a student in whose education she had been closely involved. The Tribunal found that the language used psychologically abusive and had no hesitation in finding serious misconduct, imposing censure, annotation for one year and a reporting condition. The Tribunal explained that it stepped back from imposing a two-year penalty period because it was satisfied as to the respondent’s insight and remorse, contribution to education and supportive environment, referring to the “*respondent’s change in [professional] circumstances and admirable record*.”⁸
- [20] In *Hütana* the teacher faced a second disciplinary charge within about a two year period for swearing at students to get them to class, and was found to show no insight or remorse. He did not engage with the CAC. The Tribunal found his conduct and response to the investigation into that conduct, was completely unacceptable and unprofessional, and cancelled his registration.
- [21] Taking these cases and the relevant principles into account, we agree with the nature of the penalty proposed by the CAC but consider a lesser duration for annotation and

⁴ *Complaints Assessment Committee v Whiu* NZTDT 2018/86, 31 October 2019; *Complaints Assessment Committee v Thorogood* NZTDT 2018/85, 26 May 2020; *Complaints Assessment Committee v Hütana* NZTDT 2021/38, 4 July 2022.

⁵ Above, n2.

⁶ *Whiu* at [24].

⁷ Special Education Needs Coordinator

⁸ *Thorogood* at [81].

reporting this decision is adequate. Mr Frewin's actions were made public (including picked up by an Australian news site)⁹, he has cooperated with the CAC and the disciplinary proceedings and was required to take steps as a consequence of the Board's investigation including professional development and an apology (we have nothing to suggest he did not fulfil these expectations). Accordingly, we consider the following penalties are appropriate:

- (a) Censure.
- (b) Annotation of the Register for one year.
- (c) A condition on Mr Frewin's practising certificate that he disclose this decision to his current employer or a future employer in the teaching profession for a period of 12 months.

Costs

- [22] Pursuant to s500(1)(h) of the Act the Tribunal may make an order for costs in favour of a party to the proceedings. In line with the Practice Note on Costs and usual practice, the CAC seeks a contribution reflecting 40% of the costs incurred in prosecuting the charge (the costs of the CAC investigation have not been included). The total costs amount to \$6,094.50, which appears reasonable. Counsel for the respondent indicates that he accepts he will have some liability for costs; no submission is made regarding the quantum. It is appropriate to make the order sought.
- [23] The Tribunal may also make an order that a party contribute towards the costs incurred by the Teaching Council, which are currently represented as a set fee. This goes some way to ensure that the costs of disciplinary proceedings are not solely borne by the profession as a whole. Again, using a 40% contribution, we order that Mr Frewin pay \$582 to the Teaching Council (and note that this does not reflect the actual costs that are incurred).

⁹ Footnote 24 to the submissions of counsel for the CAC cite the articles where the matter was publicised. This includes in the New Zealand Herald, Stuff and the Daily Mail Australia.

Non-Publication

[24] The starting point in disciplinary proceedings is the principle of open justice, and transparency of proceedings conducted by the Tribunal. The usual expectation is that the names of teachers who face a disciplinary charge will be published, and Mr Frewin advised in reply submissions that he would not continue to seek a non-publication order. This is appropriate, particularly given the nature of the earlier publicity and risk of others being wrongly blamed.

[25] In addition to the name of the person charged with a disciplinary offence pursuant to s501(6) of the Act, the Tribunal may also make orders to prohibit publication of the names of other persons, or any particulars of the case if in the Tribunal's opinion, it is proper to do so. The CAC seeks orders in favour of the students involved, one of whom is identified by a first name in the amended notice of charge. The CAC observes that while the matter has been the subject of publicity including public links to the recording made of Mr Frewin on 14 March 2023, there is nothing to suggest that the students have been identified or named (outside of those who are already aware of the matter). We accept that the privacy interests of those students outweigh any public interest in their identity being published.

[26] Counsel for the CAC submits that it may be appropriate to suppress the name of the class (subject) that was involved in the 8 March 2023 incident. The name of that class is likely to only be meaningful to those who already are aware of the incident, and unlikely in our view to have any broader implications for the students. As such we do not consider it necessary to take that step.

Orders

[27] Accordingly, the Tribunal orders:

- (a) Censure pursuant to section 500(1)(b).
- (b) Conditions pursuant to section 500(1)(c) imposed on the respondent's subsequent practising certificate as follows:
 - (i) that the respondent discloses this decision to a current or future employer in the education sector (in a position that requires him to hold registration with the Teaching Council), for a period of 12 months.

- (c) Annotation of the register for a period of 12 months, pursuant to section 500(1)(e).
- (d) Costs in favour of the CAC in the sum of \$2,437.80.
- (e) Costs in favour of the Teaching Council in the sum of \$582.00.

[28] Pursuant to section 501 the following orders for non-publication are made:

- (a) The names of the students referred to in the notice of charge and agreed summary of facts.



Catherine Garvey
Deputy Chair of the New Zealand Teacher's
Disciplinary Tribunal

NOTICE - Right of Appeal under Section 504 Education and Training Act 2020

1. The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under section 498(2) or 500 may appeal against that decision to the District Court.
2. The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under section 498(2) or 500.
3. An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
4. Clause 5(2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3