

PERMANENT NON PUBLICATION ORDERS AT [58]-[59]

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-75

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

██████████
(Authorisation)

Kaiurupare | Respondent

Nohoanga | Hearing
Hei Māngai | Appearance

11 September 2024, AVL (Teams).
J Ah Koy, for the CAC
J Martin, PPTA, for the respondent

Tribunal

C Garvey (Deputy Chair), T Rifle and D Shaver

DECISION ON LIABILITY, PENALTY and NON-PUBLICATION

27 SEPTEMBER 2024

Introduction

[1] ██████████ (the respondent) faced a disciplinary charge relating to six criminal charges for which she obtained a discharge without conviction. The respondent is an experienced secondary school teacher and has retained her practising certificate

since the offending came to light. The offending occurred in the course of non-teaching work with a non-profit organisation, the [REDACTED], referred to in this decision as “the organisation”). The respondent held a leading role with the organisation, and used her position to obtain financial benefit through false claims for reimbursement of airfares and travel over the course of 12 months in 2019 and 2020.

[2] The disciplinary charge was undefended and was heard by audio visual link on 11 September 2024. The Tribunal received an Agreed Summary of Facts, an Agreed Bundle of Documents, written and oral submissions from both parties and Reflective Statements from the respondent. Material was also filed in support of applications for permanent non-publication by the respondent and her current employer, [REDACTED]. The respondent attended the hearing with counsel and answered penalty-related questions from the Tribunal. The hearing was held in public and was also attended by a member of the media, and supporters of the respondent including the Associate Principal at the school where she is currently employed.

[3] The Tribunal issued a Minute giving an indication of its findings to the parties, namely that¹:

- (a) the respondent is found guilty of serious misconduct.
- (b) the Tribunal imposes censure, conditions and annotation of the register.
- (c) the respondent’s application for permanent non-publication of her name and that of her family members and employer/former employers is granted.
- (d) the respondent is liable for costs reflecting a contribution of 25% of the costs incurred by the Complaints Assessment Committee (CAC) in the investigation and prosecution of the disciplinary charge.

[4] This decision sets out the reasons for those findings.

The Notice of Charge

[5] The original notice of charge was very brief, and leave was granted to file an amended notice of charge further particularising the allegations. The amended notice

¹ Minute dated 11 September 2024.

of charge reads as follows²:

1. The CAC charges that [REDACTED] (also known as [REDACTED] and [REDACTED] [REDACTED], registered teacher, of [REDACTED], engaged in the following conduct:
 - a. In 2022, [REDACTED] pleaded guilty to six charges of obtaining by deception (two of which were representative charges). Obtaining by deception is an offence under ss240(1)(a) and 241(c) of the Crimes Act 1961, the maximum penalty for which is three months' imprisonment for charges involving a sum under \$500, and one year imprisonment for charges involving a sum of \$500-\$1000, The charges involved the following conduct while [REDACTED] was [REDACTED]:
 - i. Between 14 February 2019 and 17 October 2019, [REDACTED] submitted various expense claims to [REDACTED] that purported to be for taxi expenses;
 - ii. Between 13 March 2019 and 11 February 2020, Ms [REDACTED] submitted two expense claims to NZATE that purported to be for accommodation expenses;
 - iii. On 18 August 2019, [REDACTED] submitted an expense claim to [REDACTED] that purported to be for flights in her name. The original receipt for the flights was obtained and showed the names of [REDACTED] family members whose names had been deleted from the receipt and then submitted to [REDACTED]
 - iv. On 12 September 2019, [REDACTED] submitted an expense claim to [REDACTED] that purported to be for flights in her name. The original receipt for the flights was obtained and showed the name of a family member, whose name had been deleted from the receipt and then submitted to [REDACTED];
 - v. On 7 February 2020, [REDACTED] submitted an expense claim to [REDACTED] that purported to be for flights in her name. The original receipt for the flights was obtained and showed the name of a family member of [REDACTED], whose name had been deleted from the receipt and then submitted to [REDACTED]
 - b. On 26 July 2022, [REDACTED] applied for and was granted a discharge

² Notice of Charge 31 October 2023; Amended Notice of Charge 22 January 2024.

without conviction for the above offending in accordance with s106 of the Sentencing Act 2002.

2. The conduct alleged in paragraph 1 (and its subparagraphs) amounts to serious misconduct pursuant to s 10 of the Education and Training Act 2020 and rules 9(1)(g), (j) and/or (k) of the Teaching Council Rules 2016.
3. In the alternative, the conduct alleged in paragraph 1 (and its subparagraphs) amounts to misconduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

Agreed Summary of Facts

- [6] The parties filed a succinct summary of facts signed on 16 May 2024, which annexed and relied on the Police Summary of Facts³, a copy of the permanent court record⁴, and the ruling on the respondent's discharge without conviction⁵.
- [7] The summary of facts refers to the respondent's voluntary role at the organisation which included three years as [REDACTED]. The respondent was in full-time employment with the Ministry of Education and was also contracted by the New Zealand Qualifications Authority, which roles ended in light of her offending. Since 2020 she has held a series of relief teaching positions until her recent appointment to a permanent role.
- [8] The respondent resigned from the organisation in March 2020 after concerns were raised about her expense claims. The organisation made a Mandatory Report to the Teaching Council, and referral to Police leading to criminal charges, condensed in the summary of facts as follows

5. In or around March 2021, [REDACTED] was charged with six charges of obtaining by deception. The charges related to [REDACTED] conduct while working at [REDACTED]. The charges related to various fraudulent expense claims [REDACTED] had made to [REDACTED] between 14 February 2019 and 11 February 2020. The total amount of money [REDACTED] obtained illegitimately from [REDACTED] was \$2,810.

6. Obtaining by deception is a criminal offence under ss 240(1)(a), 241(b), and 241(c) of the Crimes Act 1961. The maximum penalty where a sum under \$500 is involved is three months' imprisonment and one year imprisonment where a sum of \$500 to

³ Agreed Summary of Facts Tab 1, Police Summary of Facts dated

⁴ n3 Tab 2.

⁵ n3 Tab 3 Ruling under s106 Sentencing Act, dated 26 July 2022.

\$1,000 is involved. When spoken to by Police ██████ stated that she “was terrible at paperwork, and did not have a good system for claiming expenses.

- [9] Drawing from the Police Summary of Facts and the District Court judgment, the false expense claims can be categorised as:
- (a) taxi expenses, where taxi fares were covered by pre-paid taxi vouchers issued by the respondent’s employers, but which the respondent claimed reimbursement from the organisation for as if she had paid the fares personally.
 - (b) hotel expenses for fictitious workshop planning and resource development for the organisation.
 - (c) flights for attendances related to the respondent’s role with the organisation but which were either utilised by family members (who were unaware of the claims being made), or by the respondent unrelated to work purposes.
- [10] Judge Zohrab considered the respondent’s application for discharge without conviction under s106 of the Sentencing Act 2002, and the Ruling sets out the offending and the parties’ submissions in detail. The Judge concluded:
- [12] What is clear to me from the summary of facts and the nature of the charges is that none of these involved anybody in a confused state. All of these matters involved deliberate deception on your part, and involved dishonesty on your part.
- [11] After outlining aggravating and mitigating factors, the Judge describes the offending as ‘mid-range, moderate offending’ involving a gross breach of trust, premeditation and harm to the organisation. In granting the discharge without conviction, the Judge was persuaded by the respondent’s personal circumstances which were detailed at length in supporting evidence from colleagues, family and health professionals; the impact of the offending and a conviction on her employment and her family, the respondent’s willingness to pay reparation and the fact that the Teaching Council and employers were fully aware of the details of the charges.
- [12] The Police notified the Teaching Council of the respondent’s guilty plea and following the discharge without conviction, the matter was considered by a CAC. In

correspondence with the CAC the respondent accepted responsibility for her actions and expressed deep remorse. She advised that the monies had been repaid.

- [13] The respondent has provided further information to the Tribunal relating to her current employment, her personal circumstances and rehabilitative steps, and several character references.

Liability-Principles

- [14] Section 10 of the Act sets out a conjunctive test for serious misconduct. The Tribunal is required to find that one of the limbs under s10(1)(a) is engaged; and that the conduct meets the criteria for reporting to the Teaching Council under r 9 of the Teaching Council Rules 2016 (the Rules).

- [15] The three limbs of section 10(1)(a) refer to conduct that:

- (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 a teacher.
- (c) is an act or omission that may bring the teaching profession into disrepute.

- [16] The CAC rely on a breach of rules 9(1)(g), (j) and (k) of the Rules. Rule 9(1)(g) refers to acting dishonestly in relation to the teacher's professional role, or committing theft or fraud. Rule 9(1)(j) refers to an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more and (k) is a catch – all provision referring to an act or omission that brings or is likely to bring the teaching profession into disrepute.

- [17] 'Fitness' in the context of s10 is not confined to conduct within a school or classroom and can extend more broadly into other work or a teacher's personal life, when the conduct in question may be seen to reflect on the standards described in the Code of Professional Responsibility (the Code). This is relevant in the present case because the offending arose while the respondent was acting in a voluntary capacity and outside of a school setting. However, her membership with and responsible role within the organisation was entirely related to her identity as a subject specialist teacher. The organisation provides resources and support to members of the teaching profession.

- [18] With regard to conduct that may bring the profession into disrepute, this is an objective assessment based on whether a reasonable member of the public armed with the relevant facts may consider that the conduct lowers the standing or repute of the teaching profession.
- [19] Clause 1.3 of the Code expects registered teachers to maintain public trust and confidence in the profession by demonstrating a high standard of professional behaviour and integrity. The Examples in Practice published by the Council to support the Code describes a non-exhaustive list of conduct that does not meet this expectation and includes:
- behaving in a way that damages the trust or confidence that my learners, their family and whānau, my colleagues or others have in me as a teacher, or in the profession as a whole
 - using professional resources (for example, premises, facilities, equipment or finances) inappropriately or for my personal gain
- [20] The CAC submits that limbs (ii) and (iii) of s 10(1)(a) are met, because the respondent used the funds of a voluntary organisation for personal gain, and without proper authorisation. The CAC emphasise that the respondent misused her position and authority repeatedly over a 12-month period, involving a significant breach of trust. Addressing how this reflects on her fitness as a teacher, the CAC submits:
- Engaging in such behaviour, even outside the teaching context, is conduct incompatible with the standards expected of those who are members of the teaching profession, and all the privileges associated with that.
- [21] Bringing the conduct to the threshold required for a finding of serious misconduct, the CAC submits that the expense claims resulting in charges under ss240 and 241, are tantamount to theft or fraud. These are qualifying offences for the purposes of r 9(1)(j), with imprisonment up to 2 years. (It does not matter for the purposes of the rule that the respondent was discharged without conviction). The CAC also submit that the conduct is likely to bring the teaching profession into disrepute, engaging r9(1)(k).
- [22] For the respondent, Ms Martin did not dispute that the conduct meets the threshold for serious misconduct, as no further submissions as to liability were made.

Liability - Findings

[23] We agree that the respondent's conduct in dishonestly obtaining financial benefit from the organisation, warranting criminal charges, was deliberate and repeated and did not meet the standards of integrity and honesty expected of teachers under the Code. We accept the CAC's submissions that s10(1)(a)(ii) and (iii) are engaged, for the reasons outlined. We also agree that the threshold for serious misconduct is met, by reference to rr 9(1)(g), (j) and (k).

Penalty – Principles and Submissions

[24] Having found the charge proved the Tribunal may impose penalties under s500 of the Act. The principles of penalty are well established, being to provide for the protection of the public, and the maintenance of professional standards and public confidence in the teaching profession. The penalty imposed 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. The primary aim is not punishment, although that may be how penalties are experienced by a professional facing disciplinary sanction.⁶

[25] Cancellation of registration is reserved for the most serious cases, in which:

- (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;
- (b) the teacher has not taken adequate rehabilitative steps to address their conduct relevant to the offending, indicating an ongoing risk.⁷

[26] We have set out the parties' submissions in some detail. The character of the offending is serious, and careful consideration was given to the appropriate penalty to be imposed, taking into account the penalty principles, similar cases, and the evidence filed on behalf of the respondent.

⁶ See *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 (12 December 2012) at [41] to [50]. While decided in the context of an appeal from a decision of the Health Practitioners Disciplinary Tribunal these principles have been accepted and implemented by this Tribunal.

⁷ In reliance on *Complaints Assessment Committee v Fuli-Makaua* NZTDT 2017/40.

- [27] The CAC submit that cancellation is the appropriate starting point given the respondent's ongoing, deliberate and repeated misconduct. While the monetary sum involved was not large by comparison to some other cases where a teacher has dishonestly obtained a financial benefit, counsel submits that it is "*not insignificant*" in light of the fact it was taken from a non-profit organisation. The CAC emphasised the abuse of trust involved in the offending.
- [28] The CAC submit that if the Tribunal considers it may step back from cancellation in reliance on the respondent's personal mitigating factors and the evident support from her current employer, the penalty should still be "*robust enough to ensure that it is reflective of the nature and gravity of the offending*". In that event, the CAC submit the following penalties are appropriate:
- (a) Suspension of the respondent's practising certificate for 12 months.
 - (b) Censure.
 - (c) Annotation of the register for a period of 24 months.
 - (d) Conditions on the respondent's practising certificate or any subsequent practising certificate for a period of 24 months:
 - (i) that the respondent is prohibited from holding any position of leadership or financial responsibility in the education sector; and
 - (ii) that the respondent provides a copy of the Tribunal's decision to her employer and any prospective employers in the teaching profession.
- [29] The CAC also seeks an order for payment of costs reflecting 40% of the costs of the investigation and prosecution of the charge. This is in reliance on the Practice Note on Costs, which sets a usual starting point of 50% of reasonable costs, with a reduction of 10% to reflect cooperation by a teacher to expediently dispose of the proceedings. The CAC's costs are \$14,735.80 for the prosecution and attendance at the AVL hearing, meaning the contribution sought is \$5,894.32.

- [30] For comparative purposes the CAC referred to *CAC v Fletcher*⁸, *CAC v Faae-Semeatu*⁹ and *CAC v Parsons*¹⁰. In *Fletcher*, the respondent (a Principal) misused his school's fuel card to purchase thousands of dollars of fuel for personal use, made false expenses claims for professional development he did not attend, and fell into arrears on rent on a school owned property. The total sum involved was over \$7,600 and was repaid. In the absence of evidence on penalty from the teacher the Tribunal imposed cancellation and censure.
- [31] In *Fa'aea-Semeatu*, the teacher was employed by a business which delivered training packages to education providers. Over the course of three years Ms Fa'aea-Semeatu submitted invoices on which she changed the billing information so that she personally received payment rather than her employer, totalling \$19,950. This money was repaid. The teacher was charged under the Crimes Act with obtaining by deception and discharged without conviction. The Tribunal imposed censure, conditions and annotation of the register, a lesser penalty than cancellation based on evidence of rehabilitation and other mitigating factors.
- [32] In *Parsons*, the respondent was a principal who used his school's credit card to purchase an iPad and accessories, and a television for personal use. He then obfuscated about his actions, until finally accepting guilt. The Tribunal did not impose cancellation 'by a fine margin' but suspended Mr Parsons for 12 months and imposed censure and conditions.
- [33] As these cases indicate, it is only where there is significant evidence in mitigation that the Tribunal will not impose cancellation in cases involving serious dishonesty.
- [34] The respondent also accepts that cancellation is the appropriate starting point but submits that the appropriate penalty in the circumstances is censure, conditions (reflecting those proposed by the CAC), and annotation of the register for a period of 24 months. This relies on a Reflective Statement and supporting evidence from a health professional, employers (former and current) and references from colleagues.
- [35] We have summarised the submissions and evidence, namely that the respondent:

⁸ *Complaints Assessment Committee v Fletcher* NZTDT 2018/17.

⁹ *Complaints Assessment Committee v Faae-Semaeatu* NZTDT 2021/29. This is the spelling used on the title page of the decision but the teacher is named throughout as Ms Fa'aea or Fa'aea-Semeatu and this spelling is used in the submissions.

¹⁰ *Complaints Assessment Committee v Parsons* NZTDT 2019/50.

- (a) “*accepted and owned her actions*” and continues to show “*extreme remorse*”. She has fully co-operated with the CAC investigation and proceedings.
- (b) has experienced significant issues in her personal life (described in the evidence in detail) for which she has engaged in counselling, gaining insight into her offending and learning strategies to prevent repeat misconduct, while also positively changing her domestic circumstances.
- (c) has remained “blemish-free” over the past four years of teaching and has no prior disciplinary history.
- (d) is supported by her employer, who is aware of these proceedings.
- (e) has made a significant contribution to the teaching profession over many years.

[36] Counsel for the respondent referred to several further cases to illustrate where the Tribunal has not imposed cancellation for comparable if not more serious offending than the present circumstances. In *Teacher E*¹¹, *CAC v Niuiia-Tofa*, and *CAC v Coldstream*¹² each teacher dishonestly obtained money either from or on behalf of students or parents collected for legitimate purposes but retained for personal use. The sums ranged from \$2000 to over \$4700 in these examples. In *CAC v Fa’amausili*¹³ the teacher stole over \$90,000 from her employer, an early childhood service. Counsel refers to these cases to highlight that repayment, remorse and evidence of rehabilitation and a supportive employer, are weighty factors which may enable a teacher to retain their registration, with conditions in place to protect employers, students and the public as appropriate.

[37] The Tribunal asked the respondent what impact a suspension of her practising certificate would have. She stated that suspension would have “*massive*” consequences for her employer as it was difficult for the school to find a suitably qualified and New Zealand-experienced teacher for her role. The respondent said that she loves teaching and cannot financially afford for herself or her children, to be suspended, with the loss of income this would entail. She expressed serious concern at the impact of a suspension on her [REDACTED] children’s wellbeing, which we

¹¹ *Complaints Assessment Committee v Teacher E* NZTDT 2020/52.

¹² *Complaints Assessment Committee v Coldstream* NZTDT 2019/18.

¹³ *Complaints Assessment Committee v Fa’amausili* NZTDT 2014/22.

understood to mean a loss of security and stability in the context of four years' upheaval and a recent move to a new city.

[38] The Tribunal also asked [REDACTED] [Ms S], Associate Principal at the school, what impact a suspension might have. Ms S confirmed the respondent's evidence as to difficulties the school encountered in appointing experienced staff. She also spoke to the respondent's transparency about her situation, and the skills and experience she brings, such that it would be extremely difficult to replace her if suspended. Ms S also said there would be an adverse impact on students with whom the respondent had built rapport, and who would again have relief teachers.

[39] With respect to costs, counsel referred to the significant legal expenses incurred by the respondent in the course of her criminal proceedings (evidence of which was provided), a substantial loss of income over the four years since her offending and substantial costs over the same period [REDACTED]. [REDACTED] Ms Martin submits that a reduction in costs from the 40% contribution sought by the CAC is therefore reasonable.

Penalty-Findings

[40] The Tribunal was assisted by the detailed submissions and evidence provided, including the attendance by the respondent and Ms S. We accept that the serious nature of the charge means cancellation must be the starting point and any lesser penalty if imposed, must be robust. We are satisfied that this is not a case where the test for cancellation is met. Nor do we consider that suspension of the respondent's practising certificate is appropriate in all the circumstances. Suspension would solely be for punishment, given the time passed since the offending, the rehabilitative steps taken and the absence of evidence of any foreseeable need to protect the respondent's students, or more generally, the public. Several of the character references filed in support of the respondent directly address her remorse, her significant contribution to the teaching profession, and her strong support and promotion of colleagues and her passion for teaching. One Principal who employed the respondent after her offending attended the hearing and provided a written reference which concludes:

I believe she is of sound character to be a teacher. She has reflected on the causes for her self-admitted misconduct and has addressed them, making changes to her personal situation. I believe it is highly unlikely that she will find herself on the wrong

side of the Teaching Council again, and it would be a great loss to the teaching profession if she were to leave. I would happily appoint her in any capacity in any school I lead, as she is an asset to a school.

[41] In declining to order cancellation or suspension, we do not consider this removes the deterrent effect of our penalty. This would only be the case if there was no justification to step back from these penalties. The respondent has been through the criminal system and made reparation as well as incurring substantial legal costs; she has lost employment, suffered reputational damage and adverse publicity, and fronted up to all of this including facing this Tribunal with grace some four years after her initial offending.

[42] We will impose censure, reflecting the finding of serious misconduct. Conditions reflecting those proposed by the CAC are also appropriate, requiring disclosure of this decision and prohibiting the respondent from holding a role with financial responsibility for a period of 24 months. We considered, but determined it was not necessary to impose any mentoring or reporting requirements given the supports in place for the respondent and her transparency with her previous and current employers.

Costs

[43] The respondent is in the somewhat incongruous situation of teachers who are discharged without conviction, but nonetheless incur legal and court costs and non-financial consequences associated with criminal proceedings and remain liable for costs in this Tribunal for proceedings arising out of the same facts. In contrast, teachers who face a disciplinary charge arising from a criminal conviction cannot be the subject of a costs order, given the effect of section 500(2) of the Act.

[44] The evidence provides specific detail of the respondent's financial circumstances, and taken with the costs of her related criminal proceedings we consider it is appropriate to reduce the quantum of costs ordered to 25% (\$3,683.20).

[45] Pursuant to section 500(1)(i) the Tribunal may also order costs in favour of the Teaching Council as a contribution towards the Tribunal's hearing costs. This is currently calculated as a set fee, which is not reflective of the actual costs incurred. However, it is important that in this way also the profession does not bear all of the

costs of proceedings. We will order payment in the sum of \$582.00 to the Teaching Council.

Non-Publication – Principles and Submissions

- [46] The Tribunal may make orders prohibiting publication of names and identifying particulars of persons, or of any evidence produced before the Tribunal, in reliance on s501(6) of the Act. The Tribunal must be satisfied that it is “proper” to make an order, which requires a lower threshold than the exceptional circumstances required in criminal proceedings. Nonetheless the Tribunal needs to assess whether any alleged harm from publicity is likely to follow, meaning a real, appreciable or substantial risk and will in most cases require evidence to substantiate this.
- [47] The starting point is the principle of open justice, meaning that hearings are held in public and the names of teachers who come before the Tribunal will usually be published. In making an order the Tribunal is required to balance the public interest against the privacy interests of any person (to whom an order relates) and can consider the combined interests of a number of persons, which may tip the balance in favour of suppression. It is not uncommon for teachers appearing before the Tribunal to refer to a concern for a family member, and with an evidential basis this may suffice to make an order proper.¹⁴ Bare assertions of harm are not sufficient and sympathy for embarrassment and discomfort caused to those close to a teacher found guilty of a disciplinary offence should not lower the threshold. The Tribunal will usually expect direct evidence from those affected (if adults)¹⁵, or confirmation of any alleged medical or mental wellbeing grounds relied on from an appropriate source.
- [48] The respondent seeks permanent orders suppressing her name and identifying particulars (being her former and current employers, and the name of the organisation), the names of her family members, and sensitive personal and medical information [REDACTED]. The respondent has filed an affidavit, [REDACTED]. Interim non-publication orders were made at a pre-hearing conference.¹⁶

¹⁴ See *Thomas v New Zealand Teacher’s Disciplinary Tribunal and Complaints Assessment Committee* CIV-2023-404-002291; [2024] NZHC 2476 at [73] citing with approval this Tribunal’s reliance on *ABC v Complaints Assessment Committee* [2012] NZHC 1901, [2012] NZAR 856 at [48].

¹⁵ Above n14 at [91], regarding direct evidence from adults.

¹⁶ Minute dated 5 April 2024.

[49] The primary ground is the respondent’s assertion that there is a real and appreciable risk of considerable harm to her children if her name is published. This relies on the impact of previous publicity in 2020 and 2022, in newspaper articles and in material produced by the organisation.

[50] The application is supported by affidavits [REDACTED]
[REDACTED].¹⁷ Counsel for the respondent submits that the respondent did not seek suppression in relation to the criminal proceedings, recognising this as part of her accountability but states:

Any additional public interest in [the respondent] being named again for the same offending needs to be balanced against the now known effects of the ongoing harm to her [REDACTED] [REDACTED] [REDACTED] [REDACTED] Harm, that goes beyond normal embarrassment has already been caused to [the respondent’s] family, especially when viewed in the context of wider family challenges. The risk of more harm being caused and the cumulative effects of the harm to [the children] is real and appreciable.

[51] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[52] The CAC submits that any risk to the respondent’s children can be sufficiently mitigated by an order for non-publication of their names, and the CAC opposes suppression of the respondent’s name. Counsel refers to the previous publicity and the respondent’s own disclosures and submits that “*the cat is already out of the bag.*” Further, the CAC submits that:

¹⁷ Affidavits of [REDACTED] dated 3 April 2024, and 26 July 2024.

...the evidence filed in support of the application for non-publication of [the respondent's] name does not provide sufficient evidence of adverse harm to outweigh the strong public interest in open justice, particularly with regard to the seriousness of [the respondent's] offending. Many of the consequences of publication that [the respondent] has identified have already eventuated, and there is no evidence to suggest that her [REDACTED] would be subject to any further harm beyond the usual consequences associated with disciplinary proceedings for family members connected with teachers charged with disciplinary offending.

- [53] With regard to the applications to suppress the names of the schools where the respondent taught previously, and her current school, the CAC acknowledges that whether orders should be made will likely turn on the decision with regard to the respondent; and that there is limited public interest in the names of schools being published, none being associated with the offending in any way.

Non-Publication – Findings

- [54] After considering the applications carefully, in our view it is proper to grant the orders sought. This is for the reasons following:
- (a) we are satisfied that the evidence establishes a real or appreciable risk of further harm to the respondent's children if her name is published in relation to these proceedings. We accept that the respondent's [REDACTED] has experienced significant harm and holds a genuine fear that further publicity will create a similar situation, particularly given the potential misuse of social media.
 - (b) both children have undergone significant upheaval since the respondent's offending came to light and the evidence supports a cascade of difficult events, meaning the potential for harm is greater. It was clear to the Tribunal that the desire to avoid harm to her children was the respondent's paramount and genuinely held concern.
 - (c) the fact of previous publicity means, as the CAC submits, many people know of the respondent's offending. That does not mean there is no utility in now making an order if it is proper to do so. Ms S gave evidence that a discrete group of the school's strategic leadership team are aware of the respondent's full situation, but she disputed that this was more widely known amongst the

school and local community, and supported non-publication in the interests of the respondent's children and the respondent.

- (d) We consider that there is limited public interest in the respondent's name being published given the consequences already faced, her transparency with employers and those providing professional support to her, and the absence of any need for publication in order to protect students or others, or to 'flush out' other offending.

[55] With regard to the respondent's former and current employers, we agree with the CAC that it is not particularly clear whether there is a need to suppress the names of the schools at which the respondent taught after her offending came to light. The respondent's current employer is obviously an identifying particular. Accordingly, we will also make the additional orders out of caution.

[56] The affidavit evidence and documents filed in support including material from the Family Court contains sensitive information, and the privacy interests of the respondent and those close to her outweigh any public interest in the details of that evidence being published.

Orders

[57] The Tribunal makes the following orders pursuant to section 500 of the Act:

- (a) The respondent is censured pursuant to s 500(1)(b).
- (b) Conditions are to be placed on the respondent's current and subsequent practising certificates for a period of 24 months in reliance on ss 500(1)(c) and (j) as follows:
- (i) that the respondent is prohibited from holding any position of leadership or financial responsibility in the education sector.
- (ii) That the respondent provides a copy of the Tribunal's decision to her employer and any prospective employers in the teaching profession.

- (c) The respondent is to pay costs to the Complaints Assessment Committee in the sum of \$3683 in reliance on s 500(1)(h).
- (d) The respondent is to pay costs to the Teaching Council in the sum of \$582.00 in reliance on s 500(1)(i).

[58] The Tribunal makes the following orders for non-publication in relation to the decision and evidence received by the Tribunal in these proceedings pursuant to section 501(6)(c) of the Act:

- (a) The names [REDACTED] (as the respondent is referred to in the amended notice of charge) and any personal identifying particulars.
- (b) The names of [REDACTED] and [REDACTED], the respondent's children.
- (c) The name of the respondent's current employer [REDACTED] and the name of [REDACTED]
- (d) The name of the organisation [REDACTED]
- (e) The names of the schools at which the respondent was employed subsequent to her offending.

[59] The Tribunal makes the following non-publication orders in relation to the evidence produced in these proceedings, pursuant to section 501(6)(b) of the Act:

- (a) The affidavits of [REDACTED] [the respondent] and [REDACTED] [REDACTED] dated 3 April 2024 and 26 July 2024.
- (b) Family Court documents included at pp138-142 and 198-204 of the Agreed Bundle of Documents.
- (c) Reports of [REDACTED] Counsellor/Psychotherapist.

- (d) Details contained in submissions filed outlining sensitive health information relating to the respondent and X, in particular references to [REDACTED]
[REDACTED]

Dated this 27th day of September 2024.



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