



EDUCATION COUNCIL
NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Thornton:

NZ Disciplinary Tribunal Decision 2015/63

This case considers the importance of integrity in the teaching profession.

Ms Thornton was a school principal who was referred to the New Zealand Teachers Disciplinary Tribunal (the Tribunal) by the Complaints Assessment Committee (CAC) for her poor management of school funds.

The Tribunal's decision sets out the facts of the charge as follows:

- *forging the signature of the Board Chair on cheques (for which the payments had already been approved by the Chair) (3.1),*
- *forging signatures on the Maori Immersion Allowance form (3.2),*
- *and forging her own application for renewal of her practising certificate (3.3).*

The Tribunal found that each one of these charges amounted to serious misconduct in their own right.

The teacher was also charged with mis-stating the number of students on an annual return (3.4) and failing to address obvious conflicts of interest (3.5 and 3.6).

The Tribunal did not find particular 3.4 amounted to serious misconduct, as there was no evidence that the teacher intended to mislead. However, the Tribunal did find that particulars 3.5 and 3.6 cumulatively amounted to serious misconduct.

The teacher accepted her wrongdoing and, in explanation, cited the breakdown of her relationship with the Board Chair, and the lack of proper financial procedures with the Board, as influential factors that lead to her poor decision-making, which gave rise to the charges brought against her.

The Tribunal censured the teacher and imposed the following annotated conditions on her practising certificate:

- i. not have any position of financial responsibility;*
- ii. hold no leadership roles within a school or kura; and*
- iii. tell any future employers of this decision.*

No suppression orders were sought by the parties.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2015-63

IN THE MATTER of the Education Act 1989

AND

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **MARIE HINEHOU THORNTON**

Respondent

TRIBUNAL DECISION

MARCH 2017

HEARING: Held at Wellington 1 December 2016

TRIBUNAL: Theo Baker (Chair)
Nikki Parsons and Sheila Grainger (members)

REPRESENTATION: Mr Lewis for the CAC
The respondent was linked by telephone

1. The Complaints Assessment Committee (CAC) has referred to the Tribunal a charge of serious misconduct arising from her management of school funds when she was Principal of Te Kura Kaupapa Maori o Te Hiringa in Tokoroa. The evidence was presented in an agreed summary of facts. The respondent admitted the charge and that it amounted to serious misconduct. We heard from the parties as to penalty. The respondent joined us by telephone.
2. The particulars of the charge were that the respondent:
 - a) forged the signature of the Chair of the Board of Trustees on cheques;
 - b) forged the signature of the Chair of the Board of Trustees on the Maori Immersion allowance form;
 - c) forged the signature of the Chair of the Board of Trustees on her application for renewal of practising certificate;
 - d) misstated the number of students on the annual return;
 - e) failed to act appropriately in light of an obvious conflict of interest between herself and family members; and
 - f) failed to follow appropriate professional practice to safeguard against conflicts of interest in respect of Novopay pay forms for her own pay and travel allowance for staff.
3. The parties presented an Agreed Summary of Facts ASF, which is set out in full below under Undisputed Facts. We also heard from the respondent over the telephone.:
4. After hearing from the parties, the Tribunal issued a brief oral decision that the charge of serious misconduct was upheld and imposing penalty. This is expanded upon later in this decision.

Undisputed facts

Introduction

1. *The Respondent is a fully registered teacher (Registration No. 253435). Her current practising certificate expires on 8 July 2017.*
2. *At the time of the events the subject of the Notice of Charge, the Respondent was employed as the Principal of Te Kura Kaupapa Maori o Te Hiringa ("School"), in Tokoroa.*

Mandatory report

3. *On 24 July 2016, the Education Council of Aotearoa New Zealand (“Council”) received a mandatory report from the Chairperson of the Board of Trustees (“Board”) of the School alleging serious misconduct by the Respondent.*
4. *The background to the mandatory report is set out below.*
5. *In September 2014, the Chair of the Board asked the Respondent to investigate a cheque that had been dishonoured by the School’s bank. The reason given by the bank for dishonouring the cheque was that the bank considered the signature on the cheque, supposedly from the Board Chairperson, did not match the signatures on record.*
6. *In mid-October 2014, the Principal walked out of a meeting with the Board Chairperson and subsequently took leave of absence from the School due to stress.*
7. *The Respondent went on sick leave from the beginning of Term 4, 2014. She was informed by the Board not to do any work for the School while on leave.*
8. *Following an investigation the Board made a formal decision on 14 January 2015 to dismiss the Respondent.*

Board investigation

9. *The Board took over the management of the School and investigated a number of issues relating to the Respondent’s management of the School.*
10. *In relation to the cheque dishonoured by the bank (referred to in paragraph 6 above), a bank teller confirmed that the Respondent presented the cheque. The cheque was made out to the Respondent’s husband.*
11. *The Board’s investigation found that the Respondent had forged the signature of the Chairperson and a finance member on the Board on four cheques, and that the Respondent had cashed cheques made out to the Respondent, her husband and her sister, all of whom had been employed by the School. [copies of the cheques were attached to the Summary]*

12. *The Board accepted that the payment had been approved by the Board. However, the cheques were signed by the Respondent in the name of the Board Chairperson without the Chairperson's agreement.*
13. *Also, the Board found that the Respondent forged the Board Chairperson's signature on the Respondent's practising certificate renewal application and forged the Board Chairperson's signature on Novopay two forms relating to the Respondent's pay details. Annexed and marked "B" is a copy of the New Zealand Teachers Council TC3 form Application to Renew Registered Teacher's Practising Certificate with Ms Karepe's forged endorsement, and a copy of Novopay forms dated 21 August 2014 and 15 February 2013.*
14. *The Board found that, in a 2014 July roll return, the Respondent indicated that the School had 46 students on the roll when in fact the actual figure at the time was 36. The Respondent advised the Ministry that the School roll would drop by only one in 2015 to 45 students, when, in fact, in 2015 the School began with 24 students. The Respondent was aware that parents had indicated unhappiness with behaviour of two teacher aides, who were the Respondent's sisters, and intended to remove their children from the School. [copies of the roll returns were attached to the summary]*
15. *As a consequence of the Respondent's actions above, the School was required to urgently review its budgets and staffing for the 2015 year.*
16. *In December 2014, during the Respondent's leave of absence, and contrary to a request from the Board, the Respondent accessed and processed payroll information for certain staff at the School, namely her family members. One approval included a travel payment for the Respondent's sister who was on leave at the time. Annexed and marked "D" is a copy of Novopay forms approved by the Respondent.*

Police investigation

17. *On 2 July 2015, the Board referred information to the New Zealand Police.*
18. *The Police decided to take no further action on the referral. While the Police considered that there was deemed fraudulent behaviour, the Police were not*

satisfied it was in the public interest to prosecute and there was insufficient evidence of a direct financial benefit to the Respondent.

Response to CAC

19. *The Respondent acknowledged, in a response to the mandatory report received on 18 August 2015, that she made poor decisions in 2014. She says that those decisions were made in the context of a declining relationship with the Board Chairperson.*

Acceptance of Notice of Charge

20. *The Respondent accepts that the conduct alleged in the Notice of Charge, including the Particulars alleged in paragraphs 3.1 to 3.6, amounts to serious misconduct pursuant to section 401 of the Education Act 1989 and Rules 9(1)(a), (c) and (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004. CHECK THEO*

5. The respondent provided some explanations of the situation she found herself in. She was very careful to make it clear that she accepted her wrongdoing and was not trying to make excuses. Essentially there was a breakdown in her relationship with the Chair of the Board of Trustees, and a lack of proper financial procedures with the Board.
6. The respondent has been a teacher since 2002 and a principal since 2005. She was principal of the kura from 2008. She told us that difficulties with the Board started in 2011 and in 2014 the respondent indicated she was going to resign, but was talked into staying. She said that sometimes she did not see Board Trustees for a number of weeks. She said that members of the Board did not always turn up to meetings.
7. The respondent told us that her teaching and classroom management was being undermined by a whanau member of the Chair sitting in on the classroom. The respondent felt undermined and isolated.
8. In answer to questions from the panel, the respondent said that in the absence of Board meetings, payments would be approved by text. There was no documentation of the Board's approval. There were also no procedures in place to ensure that the payment of whanau members for any work done presented a conflict of interest.
9. No-one from the school was available to respond to these matters, and we have no criticism of the CAC for that. This was a hearing based on an agreed statement of facts.

Without hearing from the school, we make no finding on the matters raised by the respondent, but we observe that all monies paid were owed to the recipients.

The charge

10. The respondent has admitted the charge. The Tribunal is satisfied that the charge is proven as discussed below:

3.1 forged the signature of the Chair of the Board of Trustees on cheques;

3.2 forged the signature of the Chair of the Board of Trustees on the Maori Immersion allowance form;

3.3 forged the signature of the Chair of the Board of Trustees on her application for renewal of practising certificate

11. The evidence to support particulars 3.1 to 3.3 is found in paragraphs 10 to 14 of the agreed summary of facts. The cheques referred to in particular 3.1 were made out as follows:

- KM Thornton - \$800.00
- K Thornton - \$830.14
- H Thornton - \$992.07
- L Sydney - \$278.40

12. The respondent accepts that she did forge the Chair's signature on all these documents. These particulars are proven.

Particular 3.4 – misstated the number of students on the annual return

13. The evidence of misstating the number of students is found in paragraph 15. In saying that there were 46 students, when there were only 36 students, she overstated the number of students. This particular is proven.

Particular 3.5 – failed to act appropriately in light of an obvious conflict of interest between herself and family members;

14. The forged cheques were made out to whānau members, and as outlined in particular 3.6 the respondent ensured payment to her family members at a time when she was on leave of absence. If this allegation relates to the employment of whānau, we see the Board as having a significant role in the setting of policy and procedures and approval of employees. We are not sure what other conflict of interest there was. Therefore it seems the evidence in support of particular 3.5 is the same as that under 3.1,3.2, 3.3

and 3.6.

Particular 3.6 – failed to follow appropriate professional practice to safeguard against conflicts of interest in respect of Novopay pay forms for her own pay and travel allowance for staff

15. The evidence to support this particular is found in paragraph 16 of the ASF. While on leave of absence and contrary to a request from the Board, the Respondent accessed and processed payroll information for certain staff at the School, namely her family members.

Serious misconduct

16. Serious misconduct is defined in s 378 of the Education Act 1989:

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 or more students; or

(ii) reflects adversely on the teacher’s fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) *that is of a character or severity that meets the Education Council’s criteria for reporting serious misconduct.*

17. The parties agreed that the charge amounts to serious misconduct. The charge refers to rules 9(1)(h) and (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004. In other words, that it meet the following reporting criteria:

(h) theft, or fraud:

(o) any act or omission that brings, or is likely to bring, discredit to the profession.

18. The charge invites us to find that the particulars separately amount to serious misconduct.

Particulars 3.1 to 3.3

19. As noted above, the funds were legitimately owed to the recipients and had been approved. The respondent’s explanation was that she was having difficulty getting them authorised by the Board and so she forged the signature in order to effect payment.

20. However, we are in no doubt that forging the signature of the Chair of the Board is serious misconduct. As Mr Lewis submitted, the allocation of funding is based on a high

trust model in New Zealand. Forgery of signatures is a very serious matter that cannot be tolerated by the profession. We agree. This conduct was fraudulent and brings discredit to the profession. We find that each of the particulars 3.1, 3.2 and 3.3 separately amounts to serious misconduct.

Particular 3.4

21. The significance of the inconsistency in the rolls is that the higher roll increases funding allocations for teacher aides. The respondent had signed the summary of facts in which she had agreed that she was aware that parents were not happy with the behaviour of two teacher aides, and intended to remove their children from the school. In answer to questions from the Tribunal, the respondent confirmed that she gave the forecast for each year using based on the number of pre-schoolers. She told us that she did not intentionally misstate the number of students in the annual return. We are reluctant to find this particular amounts to serious misconduct. We are not persuaded that there was an intention to mislead.

Particular 3.5

22. Irrespective of the conflict of interest, the respondent engaged in conduct that was dishonest and contrary to instructions from the Board. The conflict of interest is minor in comparison. In any event, the evidence in support of this particular is identical to that in support of other particulars. We find that cumulatively with particular 3.6, it amounts to serious misconduct.

Particular 3.6

23. Having been instructed not to access the Novopay system, the respondent went ahead and paid her family. She disobeyed an express instruction from her employer, and took action to look after the interests of her family. Adopting the test in *Collie v the Nursing Council of New Zealand*,¹ that is, that reasonable members of the public, informed of these facts could reasonably conclude that the reputation and good-standing of the teaching profession is lowered by the respondent's conduct, we find that coupled with particular 3.5 this amounts to serious misconduct.

Penalty

24. The disciplinary functions of the Education Council and Disciplinary Tribunal are found in

¹ (HC, Wellington AP 300/99, 5 September 2000)

Part 32 of the Education Act 1989, and the purpose of the Education Council is set out in s 377:

The purpose of the Education Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.

25. This section provides for protection of the public in the sense that the Council must ensure safe and high quality leadership, teaching and learning for the children and young people, in other words, the “users” of teaching services. As with the other professional regulatory acts, professional discipline is only one of the means by which this purpose may be achieved.
26. We have previously stated that the purpose of disciplinary proceedings is therefore to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.
27. Mr Lewis reminded us that when discharging the responsibilities owed to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.²
28. Mr Lewis invited us to cancel the respondent’s registration. He referred to the Code of Ethics for Certificated Teachers which confirms that teachers are vested by the public with trust and responsibility and those teachers must exert every effort to maintain and raise professional standards. He submitted that the respondent’s conduct was a fundamental breach of teacher ethics. It cuts to the very heart of the system for funding for schools and amounts to a very serious breach of trust.
29. Mr Lewis cited the following cases involving fraud or theft in a teaching context:

² *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

2010/15 – where a Principal was convicted of offences against sections 219, 223 and 228(b) of the Crimes Act 1961. The offence against section 228(b) related to a scheme to defraud the Ministry of Education. The teacher was censured and had his registration cancelled;

2008/8 – where a teacher’s fraudulent representation of his teaching qualifications, secured him a better position at a higher salary. Penalty included cancellation.

2008/12 – where an early childhood education centre teacher stole money from the centre. She was censured and suspended for a period of 9 months; and

2012/12 – where a former principal pleaded guilty to 14 offences against the Crimes Act 1961 that related to altering class attendance registers, Ministry of Education annual returns of students and six monthly reviews of performance. Though there was no personal gain in those cases, the Tribunal had little difficulty in finding serious misconduct and the teacher was censured, where respondent was not currently working in New Zealand and was not intending to resume teaching in New Zealand at any time in the future.

30. Mr Lewis acknowledged that the respondent’s decisions were made in the context of a declining relationship with the Board, but that this could not excuse the seriousness of the breach of trust. In particular forging signatures on cheques, or on forms to obtain funds from the Ministry of Education is not so excusable; it is conduct at the extreme end of the spectrum and warrants cancellation. There was a repeated failure to comply with the Code of Ethics over a period of time.
31. Mr Lewis submitted that if there was to be no cancellation of registration, suspension followed by supervision was required.
32. The respondent told as that she is currently looking after children in the home. She said that she loves teaching and she loves being with students. She acknowledged her conduct was a breach of the Code of Ethics, but she would be “gutted” to lose her registration.

Discussion

33. We do not condone the respondent’s actions in any respect, as reflected by our finding of serious misconduct. It was appropriate that the CAC asked us to consider cancellation but in considering a penalty, we acknowledge that the sums were owed to

the payees for services rendered. We believe that the school community can be protected by the imposition of conditions. We therefore impose the following penalty:

- a) Censure pursuant to s 405(1)(b)
- b) Pursuant to s 405(1)(c) conditions on practice for a period of five years that she:
 - i. Not have any position of financial responsibility
 - ii. Hold no leadership roles within a school or kura
 - iii. Tell any future employers of this decision.
- c) Under s 405(1)(e) the role is to be annotated with the above

Costs

34. The Tribunal orders the respondent to pay 40% of the costs of conducting the hearing, under section 404(1)(h) and (i), that is 40% of the Tribunal's costs and 50% of the CAC's actual and reasonable costs. The Tribunal delegates to the Chairperson authority to determine the quantum of those costs and issues the following directions:

- a) Within 10 working days of the date of this decision:
 - i. The Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs
 - ii. CAC to file and serve on the respondent a schedule of its costs
- b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal or CAC.
- c) The Chairperson will then determine the total costs to be paid.



Theo Baker
Chair