

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: NZTDT 2024/06

UNDER THE Education and Training Act 2020

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **DIVECK ASHITOSH (BILLIE) LAL** of Auckland, registered teacher (Registration Number 380008)

Hearing held on the papers on Thursday, 3 October 2024

Tribunal: Jo Hughson (Deputy Chairperson),
Ross Brown and Kiri Turketo (registered teachers)

Ayesha Hourston (Tribunal Coordinator)

Appearances: Jessica Ah Koy, Counsel for the Complaints Assessment Committee

Dzintra King, NZPPTA, for Mr Lal

Decision: 13 December 2024

DECISION OF THE TRIBUNAL

Summary

- [1] Mr Lal is a registered teacher and holds a full practising certificate that is not due to expire until 19 July 2025. He is known as Billie Lal.
- [2] At the relevant times in 2022, Mr Lal was employed as a Health and PE teacher at Lynfield College, a co-educational secondary school in Mount Roskill in Auckland. He was aged 26 years old and turned 27 years old during the period in question. Mr Lal was initially employed at Lynfield College as a fixed-term full-time teacher from 28 January 2020 to 21 November 2021, and then from 22 November 2021 to 7 March 2023, as a permanent full-time teacher.
- [3] Mr Lal resigned from his job at Lynfield College on 10 January 2023 after an investigation by the College. He was placed on leave from 28 January 2023 until his notice period ended on 9 March 2023. On 25 July 2023, Mr Lal signed a voluntary undertaking not to teach. He is not currently working in the education sector.
- [4] A Complaints Assessment Committee (CAC) was established to investigate matters about the conduct of Mr Lal that were the subject of a mandatory report that the Principal of Lynfield College made to the Teaching Council on 13 January 2023. At the conclusion of its investigation, the CAC laid a Charge¹ alleging that between 10 August 2022 and 6 December 2022, Mr Lal:
- (a) Breached professional boundaries with Student A, including, but not limited to engaging in inappropriate messaging with Student A on various social media platforms and/or meeting up with Student A outside of school on more than one occasion; and
 - (b) Engaged in unprofessional conduct, including, but not limited to allowing Student A to truant her timetabled classes and/or allowing students to vape in his classroom.

¹ Notice of Charge dated 8 March 2024 signed by the Chair of the CAC, Lynda Harris. During the hearing the Tribunal granted leave as sought by the CAC to amend the charge by removing a reference in the original Notice of Charge that referred to a breach of rule 9(1)(b) of the Teaching Council Rules 2016. The Tribunal accepted the CAC's submission that there was no prejudice to Mr Lal in allowing this change and Mr Lal's conduct is more appropriately captured under rules 9(1)(e) and 9(1)(k).

- [5] These acts charged were alleged, separately and cumulatively, to amount to serious misconduct. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020 (the Act).
- [6] The hearing proceeded on the papers. The evidence produced by the CAC was an Agreed Summary of Facts which Mr Lal had signed on 23 August 2023². Screenshots of relevant social media messages between Mr Lal and Student A were produced. Mr Lal accepted the Charge.
- [7] Written submissions were received from Counsel for the CAC (including reply submissions) and for Mr Lal addressing the issues of liability, penalty, and non-publication orders. Mr Lal also filed an affidavit in support of his application for permanent name suppression which contained evidence relevant to both penalty and name suppression.
- [8] The Tribunal found the Charge made out and that separately and cumulatively Mr Lal's actions amounted to serious misconduct as that term is defined in section 10 of the Act.
- [9] For the reasons given below, the Tribunal's decision is that penalties should be ordered against Mr Lal for his serious misconduct. The Tribunal is making an order cancelling Mr Lal's registration and he is being censured. Mr Lal is also being ordered to contribute to the costs of the CAC's prosecution (a 40% contribution, in the sum of \$5,772).
- [10] To protect the privacy of Student A, and her then-Year-12 friend who was also a student at the College and who is referred to in the evidence that was produced to the Tribunal, there are to be permanent non-publication orders in respect their names. There is also to be a permanent order suppressing from publication the screenshots of the social media messages which contain images of Student A and her friend. It goes without saying that if those screenshots were published there is a real risk that Student A and her friend will be identified.
- [11] Mr Lal sought permanent suppression of his name, on the grounds that were his name to be published, there is a risk that Student A and her friend would be identified

² Agreed Summary of Facts signed by Mr Lal on 23 August 2024.

and that would lead to “*more than simply speculative*” “*real adverse effects*” to the wellbeing of the students.

- [12] The Tribunal decided it would not be proper to exercise its discretion and make a permanent order prohibiting Mr Lal’s name from publication. The public interest factors which favour name publication when a teacher is found guilty of a disciplinary offence, particularly when the offending is of the nature and gravity of Mr Lal’s offending, were considered to outweigh any private interests Mr Lal or any other person may have in his name being suppressed. The Tribunal considered that the interests of Student A and her friend, neither of whom now attend the College, will be sufficiently protected because of the permanent orders that are being made suppressing their names.
- [13] Lynfield College Board of Trustees did not seek an order suppressing the name of the school. The Tribunal believed there is a strong public interest in the school’s name being published, so the Board can, if it wishes, be open and transparent with its community about Mr Lal’s conduct. Further, other potential complainants may come forward and publication would ensure that other staff and other schools are not subject to any suspicion that they could be the subject of the matters the Tribunal has considered in this case. These are public interest considerations which in the Tribunal’s opinion, heavily favour publication of both Mr Lal’s and the school’s names.

Factual Findings

- [14] The onus of proving the Charge was on the CAC, on the balance of probabilities.
- [15] A copy of the Agreed Summary of Facts (minus the attached screenshots) is annexed to this decision and marked “ASOF”. The Tribunal has made factual findings based on the agreed facts.
- [16] For the purposes of this decision, the key factual matters may be summarised as follows:
- [17] Mr Lal encountered Student A after she attended one of his classes with her friend who was a student in Mr Lal’s class. Student A was 17 years old and a student at the College at the start of the period covered by the Charge; she then turned 18 a few weeks later. Student A was truanting from her class at the time she first attended one of Mr Lal’s classes with her Year 12 friend (on or around 10 August 2022). Mr Lal knew that Student A was truanting. Mr Lal engaged in conversation with the two

girls. He told them that he was “*high as fuck*” because he had just had shoulder surgery and was taking medication. He showed them his dating app profile, and they discussed drugs (including Mr Lal telling them about some of his experiences with drugs) and going out to nightclubs.

- [18] In the weeks following, Mr Lal allowed Student A to use his class when she wanted to skip her timetabled classes. Sometimes Student A would join in on Mr Lal’s PE class. On one occasion, Mr Lal encouraged Student A to truant. Mr Lal’s students would ask why Student A was in their class, and Student A would tell them that it was because she had to study. As time progressed, Student A and her friend stayed in Mr Lal’s classroom during lunchtimes and after school.
- [19] Around this time, Student A used vapes and would hide them up the sleeve of her clothing. On one occasion, a student from Mr Lal’s class went up to Student A and told her that Mr Lal did not care if students vape in his class. Mr Lal overheard this and confirmed that he did not care. Mr Lal would allow students to vape in his classroom. He would often leave his classroom open for students during lunchtimes. During some of these lunchtimes, Mr Lal would be in the classroom and would talk to students, and on occasions he would ask to use students vapes.
- [20] Mr Lal and Student A eventually swapped Instagram handles. He accepted her ‘follow’ request and the pair began to message back and forth. This continued for several months. They discussed topics such as alcoholic drinking, vaping, nightclubbing, music, and having sex with celebrities, among other things. Many of the messages included sexual overtones and ended with “x” (referring to a kiss). There were occasions when Student A and Mr Lal were sending each other photos via direct messaging. Student A saved Mr Lal’s name in her contacts as “Jordon”. The messaging often occurred late at night and in the early hours of the morning.
- [21] At one point, Student A and Mr Lal sent each other Snapchats giving a video tour of their bedrooms. Mr Lal’s video showed his door handle that had women’s underwear hanging from it. Mr Lal told Student A that the underwear belonged to all the women that he has had sex with.
- [22] Mr Lal was shirtless in some of the videos he sent to Student A.
- [23] Mr Lal also initiated meetups with Student A and her friend at the beach after school, on three occasions. The first of these was on 26 August 2022. There was no educational purpose to the meetings. On the first occasion, Mr Lal purchased bottles of alcohol (Bombay Sapphire gin RTDs) and brought these to the meetup

and encouraged Student A to drink. When she said no, Mr Lal gave Student A a bottle to take away with her. Mr Lal drank the other three bottles during the meetup. A selfie photograph of Mr Lal, Student A and her friend was taken inside Mr Lal's vehicle.

- [24] When Student A asked about the consequences of the three of them meeting up, Mr Lal told the students that he would be in a lot of trouble. He asked Student A to keep their meetings a secret. They talked about a previous employment issue that Mr Lal had, involving a false accusation from another student.
- [25] The other two beach meetups, Mr Lal referred to as "business meetings". These occurred on weekdays after school. Student A's friend also attended these meetups. During one of these meetups, Student A told Mr Lal that she was bisexual, and Mr Lal replied, "*bisexual girls are hot*". When discussing the dating app, Hinge, Mr Lal told Student A that he had set his age range all the way down to 18 years because "*fresh out of high school girls need to be taught a lesson*".
- [26] Student A decided to stop messaging Mr Lal around October 2022. The messaging and her 'friendship' with Mr Lal had caused her to become very anxious and uncomfortable, in a way that she had not experienced before. Student A's anxiety worsened when she was alone at night.
- [27] Despite Student A no longer messaging Mr Lal, he continued to send her messages, videos, and photographs. These were mostly of Mr Lal vaping and drinking alcohol. He stopped messaging Student A around November 2022. Student A blocked Mr Lal on Instagram on 6 December 2022, on the day she disclosed to the School's guidance counsellor about the concerns she had about her relationship with Mr Lal. Student A blocked Mr Lal on Snapchat on 9 December 2022.

Liability

Legal principles

- [28] The definition of serious misconduct in section 10 of the Act is:

Serious misconduct means conduct by a teacher –

(a) that-

- (i) adversely affects, or is likely to adversely affect, the wellbeing 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 Teaching Council's criteria for reporting serious misconduct.
- [29] This test is conjunctive³. That means that at least one of the criteria under limb (a) as well as limb (b) of the definition must be met for the conduct to meet the test.
- [30] In relation to limb (1)(a)(i), "*likely*" means that the risk or possibility is one that is not fanciful and cannot be discounted⁴.
- [31] Previous Tribunal decisions demonstrate that "*fitness to be a teacher*" in limb (a)(ii) includes conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.
- [32] As for conduct that may bring the teaching profession into disrepute, the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.⁵
- [33] In terms of the Teaching Council's criteria for reporting serious misconduct (limb (b)), broadly, a teacher's employer must immediately report to the Council if they have reason to believe the teacher has committed a serious breach of the Code of Professional Responsibility. Examples of conduct that is of the nature and severity to amount to a serious breach of the Code are set out in rule 9 of the Teaching Council Rules 2016.
- [34] In this case, the CAC relied on rules 9(1)(e) and 9(1)(k)⁶. Rule 9(1)(e) relates to breaching professional boundaries in respect of a young person with whom the

³ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64] with reference to the definition in section 378 of the Education Act 1989.

⁴ *CAC v Marsom* NZTDT 2018/25 adopting the meaning of "likely" in the name suppression context as described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 – "real", "appreciable", "substantial" and "serious" are qualifying adjectives for "likely".

⁵ *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 5 at [48].

⁶ See fn. 1.

teacher is or was in contact because of the teacher's position as a teacher. Rule 9(1)(k) is a "*catch all*" provision⁷ in relation to both acts and omissions that bring or are likely to bring the teaching profession into disrepute.

Relevant standards

- [35] The Tribunal assessed Mr Lal's conduct against the relevant standards of ethical and professional conduct set out in the Code of Professional Responsibility, and as set and maintained by previous cases involving similar conduct. The previous cases the Tribunal reviewed are discussed in the penalty section of this decision, but they were also considered at the liability stage of the hearing.
- [36] Clause 1 sets the expectation that teachers are expected to engage in professional, respectful, and collaborative relationships with colleagues to ensure public trust and confidence in the teaching profession, as well as to contribute to a professional culture that supports and upholds the Code (clause 1.2 and 1.5).
- [37] Clause 1.3 sets the expectation that maintaining public trust and confidence in the teaching profession requires teachers to demonstrate a high standard of professional behaviour and integrity. The guidance to the Code refers to "*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*" as conduct that will breach this section of the Code.
- [38] Clause 2.1 reads:
- I will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm.
- [39] Clause 2.2 is clear that teachers are expected to work in the best interests of learners by engaging in ethical and professional relationships with learners that respect professional boundaries. As examples of conduct that will breach appropriate professional boundaries with learners, the guidance in the Code refers to engaging in a romantic or having sexual or intimate conduct with a learner. It also refers to encouraging a learner to develop an inappropriate emotional dependency on a teacher, privately meeting with a student outside the education setting without a valid context, adopting a role with a learner that is inappropriate and beyond the scope of

⁷ *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

the teaching position, and communicating with a learner about very personal and/or sexual matters without a valid context.

Findings on the Charge

[40] The Tribunal was satisfied that the acts alleged in the Charge were proved based on the evidence in the Agreed Summary of Facts, and the screenshots of relevant social media messages that were produced.

[41] Mr Lal accepted that his conduct was serious misconduct. However, the Tribunal was itself, required to consider whether the conduct was serious misconduct for the purposes of the Act.

[42] The Tribunal concluded that considered objectively, there could be no doubt that Mr Lal's conduct met the test for serious misconduct.

[43] The Tribunal accepted the following submissions of Counsel for the CAC:

Conduct that adversely affects, or is likely to adversely affect, the wellbeing and learning of one or more students

(a) Mr Lal's conduct adversely impacted Student A's wellbeing. During the period when Mr Lal was messaging her, Student A became anxious and began to feel uncomfortable with their friendship. The relationship caused Student A to feel anxiety that she had never experienced before.⁸ The anxiety was manageable while Student A was at school because she was distracted, however she reported it worsened at night when she was alone. The steps that Student A took to cease contact with Mr Lal (she stopped messaging him and blocked him on Instagram and Snapchat) demonstrate that she was uncomfortable.

(b) Further, Mr Lal's conduct in allowing and encouraging Student A to truant from her timetabled classes adversely affected or was likely to adversely affect her learning.

Conduct that reflects adversely on fitness to be a teacher

(c) Teachers are required to maintain appropriate professional boundaries with learners and Mr Lal's conduct plainly did not align with this

⁸ Agreed Summary of Facts at [46].

requirement. His behaviour reflects adversely on his fitness to be a teacher.

- (d) The messaging was repeated over a number of weeks and took place over two social media platforms, both during and outside of school hours. The nature of some of the messages included sexual overtones and adult themes such as drinking, going to nightclubs, and sex. These are inappropriate matters for a teacher to be discussing with a student outside of an educational context, irrespective of the student's age. Mr Lal also met up with Student A and her friend at the beach, outside of school hours on three occasions. He brought alcohol to the first meeting and encouraged Student A to drink it. Mr Lal talked to Student A and her friend about drugs and dating apps and he showed them his profile on a dating app and responded to females' messages in front of Student A and her friend.
- (e) He also allowed Student A to truant from her classes when she knew she had a timetabled class, and there was the further matter of Mr Lal allowing Student A, and other students, to vape in his classroom. Encouraging, and enabling, a student to truant and to vape in his classroom also reflects very poorly on Mr Lal's fitness to be a teacher. This conduct, in the Tribunal's view, is the antithesis of the high standards expected of every teacher to promote the best interests of their students in terms of their wellbeing which includes their learning.
- (f) Mr Lal's course of conduct involved very serious departures from the professional and ethical expectations set under the Code of Professional Responsibility, and in a serious way.
 - a. His behaviour was a significant departure from the expectation that as a teacher, Mr Lal would not behave in a way that damages the trust or confidence that his learners, their family and whānau, his colleagues and others had in him as a teacher, and the trust and confidence they have in the teaching profession as a whole. (Clause 1.3). Mr Lal failed, by quite a margin, to demonstrate the high standard of professional behaviour and integrity that is necessary to maintain public trust and confidence in the teaching profession.

- b. Mr Lal, by his actions, did not contribute to a professional culture that supports and upholds the Code and thereby compromised the maintenance of public trust and confidence in the profession (Clause 1.5).
 - c. Mr Lal failed to promote Student A's wellbeing and protect her from harm (Clause 2.1).
 - d. His professional boundary breaches demonstrate that Mr Lal did not engage in ethical and professional relationships with learners (Clause 2.2).
- (g) When viewed in totality, Mr Lal's conduct establishes that he is someone who is unwilling or unable to maintain proper professional boundaries with his students and there can be no doubt that this reflects adversely on his teaching practice, and his fitness to be a teacher.

Conduct may bring the teaching profession into disrepute

- (h) In the Tribunal's opinion, reasonable members of the public assessing Mr Lal's conduct would consider that the reputation and good standing of the teaching profession was lowered by his conduct. Reasonable members of the public would expect a teacher to maintain professional boundaries and refrain from messaging students on social media without a valid education context. They would not expect teachers to permit students to skip class and use vapes in class. Nor would they expect teachers to meet up with students outside of school and supply them with alcohol in the way Mr Lal did. As was submitted for the CAC *"irrespective of Student A's age, Mr Lal was in a position of power and responsibility and should have adopted and role modelled appropriate behaviour."* In the Tribunal's opinion, Mr Lal's conduct was of a nature and gravity that may bring the teaching profession into disrepute.
- (i) For those reasons each of the criteria in the first limb of the serious misconduct test are met.
- (j) As for the second limb, Mr Lal's conduct meets at least two of the reporting criteria in Rule 9:
- a. Rule 9(1)(e) - there were repeated crossings of the professional boundary with a young person because of Mr Lal's position as a

teacher. Mr Lal's messaging involved sexual overtones. An example is when Student A told Mr Lal over Snapchat that she wanted to get a tongue piercing, Mr Lal's response was "*Fuck it just do it [cry laugh emoji] it looks dope – and other reasons too [cry laugh emoji]*".⁹ Then, as above, during one of their meetups at the beach, when Student A told Mr Lal that she was bisexual, he replied, "*bisexual girls are hot*". As Counsel for the CAC submitted, Mr Lal's messaging was not innocuous in content or subject matter.

- b. Rule 9(1)(k) – the Tribunal was no in doubt that Mr Lal's conduct may, and indeed has, brought the teaching profession into disrepute.

[44] For those reasons the Tribunal was satisfied that the conjunctive test is met. When the particulars of the Charge are considered individually and then viewed cumulatively, plainly Mr Lal's conduct was serious misconduct. The Charge is established.

[45] The Tribunal wishes to re-emphasise that a teacher's obligations to his or her students do not end outside the classroom and that it is critical that teachers respect and maintain the professional boundary between them and students. As Counsel for the CAC noted, the onus is strictly on teachers to ensure they do not become involved in potentially inappropriate situations. Where a teacher engages in social media or text message conversations with a student, even if the communications are not personal or predatory, the risk of professional boundaries blurring is high.¹⁰

Penalty

[46] Having made adverse findings of serious misconduct, the Tribunal was entitled to exercise its powers under section 500 of the Act. The Tribunal could do one or more of the things set out in section 500(1).

Penalty Principles

[47] It is well established that the primary purposes of the imposition of disciplinary penalties against teachers who have been found guilty of a disciplinary offence are to protect the public and maintain professional standards (through general and/or

⁹ Agreed Summary of Facts at [33].

¹⁰ *CAC v Teacher B* NZTDT 2018/10. At [47] the Tribunal noted that it was not necessary to find that the teacher had a predatory purpose in mind when he began to communicate with the student on Facebook.

specific deterrence¹¹ so that the public is protected from poor practice and from people unfit to teach), and to maintain the public's confidence in the teaching profession¹². There is also a punitive element, but this is of secondary importance.

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

[49] 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*¹³. 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 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.

[50] In *Fuli-Makaua*¹⁴ this 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.

Mr Lal's evidence

[51] Mr Lal filed an affidavit he had sworn on 18 September 2024 in support of an application for name suppression, to which he annexed a statement he had written dated 29 July 2024, a letter from EAP Services Limited confirming his attendance at

¹¹ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

¹² As discussed in *CAC v McMillan* NZTDT 2016/52 at [23].

¹³ [2012] NZHC 3354 at [44]-[51].

¹⁴ *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018, at [54].

six counselling sessions in the period from 22 December 2022 to 27 February 2023, and three character references “*from friends who have supported [him]*”.

[52] In his statement, Mr Lal said he understood the gravity of his actions and expressed his “*deep remorse for the impact they may have had on my school, my students, and the teaching profession.*” He said he immediately embarked on a period of self-reflection after he was “*informed of my misconduct by the school principal*”. He said he sought counselling “*to address the emotional toll and the underlying issues that led to my unprofessional behaviour*”. Mr Lal deposed that he began to fall into a “*deep depression and was struck with severe anxiety*”. He stated that in the counselling sessions he delved into the root causes of his actions, explored the need for stronger professional boundaries and better critical thinking skills; and he maintained that he recognised the inappropriateness of “*certain relationships and communications, especially on social media and the negative impact they had on both my personal and professional life*”. Mr Lal stated that he has been actively working towards bettering himself and is committed to ensuring that “*such lapses in judgment [sic] do not recur*”. He deposed that the counselling and ongoing reflection have enabled him “*to implement lessons into my personal and career life beyond teaching.*”

[53] Mr Lal stated that he has chosen to pursue “*alternative career paths*”, “*understanding the necessity for a fresh start and a commitment to positive decision-making*”.

[54] Mr Lal wrote, “*I sincerely apologize for any disappointment or harm my actions may have caused to the teaching profession and the school community. I am grateful for the lessons learned and committed to continual self-improvement. I believe that I will continue to stay away from teaching and education because of this feeling and have chosen to pursue long-term career paths and make positive decisions in other directions. I always wanted to be a good and well connected educator, and I will always reflect on what that means, and how I could have been that, and not here*”.

Discussion

[55] The Tribunal considered the relevant penalty principles including previous cases that involved teachers breaching professional boundaries with learners, and the submissions that were made for the CAC and for Mr Lal. Mr Lal’s evidence relevant to penalty was considered carefully.

[56] It is well settled that assessing the nature and gravity of a teacher’s conduct is an inherently fact-specific exercise. However, the Tribunal was guided in setting the

appropriate starting point, by the penalty outcomes in previous comparable cases that were referred to by Counsel for the CAC:

- (a) *Teacher I*¹⁵, who was 23 years old at the material time, engaged in an inappropriate relationship with a 16-year-old student (A) in his English class. He also breached professional boundaries with another 16-year-old student (B). Teacher I added Student A on Instagram where the conversations changed from being about school work to being “friend-based” and occurred over multiple digital sites. Teacher I lied to the Principal when he was asked about this. Student A’s mother raised concerns about his closeness to her daughter. However, Teacher I continued to engage in text and social media communications with A and used words such as “love”, “affection”, and “I love you”. On one occasion Teacher I delivered a gift of food to A without her father’s knowledge and also transported A and B to and from town late on a weekend night without their caregivers’ permission.
- (b) The Tribunal emphasised the detrimental effect that a teacher’s treatment of a student as a friend can have on a student, noting that the resulting harm is “*sometimes more [in an inappropriate relationship] than a sexual relationship*.”¹⁶ Teacher I’s registration was cancelled, and he was censured.
- (c) *Teacher X*¹⁷; the teacher formed an inappropriate relationship with a Year 13 student, Student F, During 2018, Student F started to visit Teacher X for guidance about his future career options. They began to catch up regularly on a professional basis. Their professional relationship began to develop into a friendship. Student F’s parents messaged Teacher X about concerns they with Student F’s girlfriend. Teacher X encouraged him to seek pastoral care, but Student F did not engage and instead spent more time in Teacher X’s office. The relationship developed further. Student F would go in Teacher X’s car to town to get lunch. They kept in contact via Snapchat and Facebook messenger outside of school hours. Eventually

¹⁵ CAC v *Teacher I* NZTDT 2017/12, 18 January 2018.

¹⁶ At [22].

¹⁷ CAC v *Teacher X* NZTDT 2020/43, 29 March 2021.

they shared with each other that they had feelings beyond what was appropriate for a student and a teacher. The relationship led to Teacher X kissing Student F on multiple occasions. The teacher accepted that her conduct was serious misconduct, and the Tribunal agreed, finding that it was on the higher end of the spectrum of seriousness. Her registration was cancelled, and she was censured.

- (d) In *Owens*¹⁸, the teacher breached professional boundaries by engaging in Facebook Messenger chat with Year 13 students from his school. Mr Owens messaged a group chat late at night about co-curricular topics and using language that was offensive and/or derogatory including discussing students smoking cannabis and asking where a party was, saying that he was going to “*stop in*” on his way home. The Tribunal took into account as mitigating features, the fact that Mr Owens’ conversation did not involve the singling out of a student (they were part of a group chat)¹⁹ and Mr Owens cooperated with the CAC’s investigation, accepted the charges, and had no disciplinary history. The Tribunal censured Mr Owens and placed conditions on his practising certificate requiring that he engage in mentoring and supervision from his employer for two years, and that for two years he advises any current or prospective employers of the Tribunal’s decision.

[57] The Tribunal accepted the submission for the CAC that Mr Lal’s conduct was more serious than Mr Owens’ conduct and most comparable to *Teacher I* and *Teacher X*. It was more serious than Mr Owens’ conduct because Mr Lal’s conduct consisted of conversations isolated to one student (Student A), as well as other conduct involving that student which included meeting up with her outside of school hours on three separate occasions, and on one of those occasions he offered alcohol to Student A. As well as this, Mr Lal allowed, and on one occasion, encouraged Student A to truant. There was also the fact that Mr Lal allowed Student A and other students to vape in his classroom. These were grave departures from the standards expected of a registered secondary school teacher and particularly one who taught Health and PE.

¹⁸ *CAC v Owens* NZTDT 2020/31, 2 March 2021.

¹⁹ The Tribunal in *CAC v Owens* considered that this meant that Mr Owens’ conduct was less serious.

- [58] Although Mr Lal was not actively dishonest in the way *Teacher I* was, it is clear to the Tribunal that there was an awareness that what he was doing was inappropriate and in breach of professional standards. That he told Student A that he could get into a lot of trouble and asked her to keep the beach meetings a secret, is indicative of this awareness. He could have, and should have, immediately ceased his errant behaviour but instead, he chose to continue with it.
- [59] Mr Lal's conduct can be contrasted with *Teacher X's* behaviour which involved physical intimacy. However, in his social media messages to Student A, there were clear sexual overtones and flirtatiousness in them.
- [60] The CAC submitted that "*even without that, the use of social media to communicate with students outside the usual teacher-student context, and in the absence of any professional reason to do so, suggests that Mr Lal was encouraging and grooming Student A to develop a dependency on him through a gradual blurring and testing of boundaries that he hoped might develop into a relationship.*"²⁰ For Mr Lal it was submitted that this is "*purely speculative*" and was not a matter that had been put to him and he had not had the opportunity to respond. It was submitted that had Mr Lal wanted to groom Student A in the hope that a relationship would develop, he would have arranged to meet with her by herself at the beach (rather than accompanied by her friend). The Tribunal was of the view that even if there was no desire to form a co-dependency with Student A or no intention to exploit her, Mr Lal's breaches of professional boundaries were very serious.
- [61] The CAC acknowledged the following further matters, which the Tribunal accepted as relevant to, and took account of, in its consideration of penalty:
- (a) The aggravating features of Mr Lal's conduct were:
 - a. the repeated and on-going nature of the messaging over at least two different social media platforms, lasting between August 2022 to around November 2022 when Mr Lal decided to stop messaging Student A. Mr Lal only stopped messaging Student A several weeks after she had stopped responding to him in October 2022.
 - b. The nature of the messages – as above, they included sexual overtones and adult themes that are not appropriate for a teacher to be

²⁰ CAC's submissions at [5.16] referencing *Teacher I* at [17].

discussing with one of their students, irrespective of the student's age. Mr Lal's video tour of his bedroom during which he said that the underwear that could be seen hanging from his door handle was from women he had had sex with²¹, is one example. Mr Lal would frequently sign off his messages with a "x". He also appeared shirtless in some of the Snapchat videos he sent to Student A²².

- c. It was Mr Lal, rather than Student A, who initiated the three beach meetups with her and her friend.
- d. At the first beach meetup, Mr Lal purchased and offered alcohol to Student A and her friend. There was no evidence they had asked him to do this.
- e. Mr Lal knew what he was doing was wrong and he told Student A to keep their meetings a secret (he told Student A at one of the meetups that their meeting was "TOP SECRET").²³ In the Tribunal's view, this put undue weight on the student's shoulders not to divulge the information. Further, the Tribunal was concerned that had he not been exposed, the likelihood of Mr Lal continuing with his behaviour was high.
- f. Mr Lal allowed, and on one occasion, encouraged, Student A to skip her classes and come to his classroom. Attendance at school is a legal requirement. Mr Lal compromised Student A's attendance record and her learning. He also compromised his school's standards and expectations around attendance as well as the overlapping professional standards he was expected to meet.
- g. Mr Lal, as a teacher of the Health and PE curriculum, allowed students to use e-cigarettes in his classroom, and in his presence. By his actions he endorsed vaping and failed to have regard to the harmful health consequences of vaping on the students who were vaping and/or

²¹ Agreed Summary of Facts at [30].

²² Agreed Summary of Facts at [32].

²³ Agreed Summary of Facts at [36].

present in his classroom at the time. Mr Lal failed to act as a role-model for his students in the way that a teacher of the Health and PE curriculum can reasonably be expected to act.

- (b) The CAC submitted that Mr Lal's conduct sits at moderate-high end of the spectrum for cases involving an inappropriate relationship with a student where there has been no physical-sexual feature of the relationship. The Tribunal agreed with that assessment. The various aggravating features of Mr Lal's course of conduct, referred to above, elevate the seriousness of his conduct to the higher end of seriousness of cases that have come before the Tribunal. Those features include the way in which Mr Lal continually messaged Student A, his use of heart emojis and "x", and the tone of his messages. The Tribunal accepted the CAC's submission that these show a gradual blurring and testing of boundaries suggestive of a willingness to see what developed between them; the Tribunal viewed Mr Lal's course of conduct in totality and with that subtext in mind. The Tribunal agreed with the CAC that had Mr Lal not been intent on blurring the professional boundary he would not have taken steps to meet with Student A outside of the classroom.
- (c) There was no evidence of any aggravating features personal to Mr Lal that are relevant to penalty imposition.
- (d) In terms of personal mitigating features, Mr Lal has cooperated with the CAC's investigation by signing a voluntary undertaking not to teach and by agreeing the summary of facts. He has attended six EAP counselling sessions from December 2022 to 27 February 2023 the themes of which focussed on personal and professional boundaries, coping skills for anxiety, self-reflection, and the effects of alcohol on boundaries. In his response Mr Lal expressed remorse for the impact his actions had on Lynfield College, his students, and the teaching profession.
- (e) Notwithstanding that, Mr Lal does not appear yet to have developed any meaningful insight into how his actions impacted on Student A, and the triggers for his behaviour. In his response Mr Lal commented that he recognised the inappropriateness of "*certain relationships and communications*" but related this more to the negative impact that these

had on his own personal and professional life, and his reputation.²⁴ Mr Lal has not provided any specific comment or demonstrated any insight into how his conduct may have impacted on Student A specifically. He referred only to concern for the “*students’ mental health and anxiety*” were his name not suppressed.

- [62] The Tribunal’s view was that Mr Lal’s apparent lack of insight indicates there is an ongoing risk that he may repeat similar behaviours were he to resume teaching.
- [63] The Tribunal was concerned that there is no evidence that Mr Lal has apologised to Student A or any other students who were subjected to his behaviour, other than through the papers he has filed in these proceedings.
- [64] Further, although there was evidence that Mr Lal had attended six counselling sessions, the Tribunal noted that these were around the time he was under investigation and when his employment as a teacher at Lynfield College was terminated; when it could reasonably be expected that there would have been stress and anxiety for Mr Lal. Although in the three references Mr Lal produced, there were comments referring to positive changes having been observed by them in Mr Lal (including life changes and personal growth) since his conduct came to light and he had reflected on his “*negative practices*”, there was no evidence of any further attendance at counselling beyond 27 February 2023.

Penalty decision

Cancellation and censure

- [65] It was submitted for the CAC that cancellation of registration and censure was the appropriate starting point, consistent with comparable previous cases. The Tribunal agreed and considered that this reflects that Mr Lal’s communications were prolonged, there were boundary breaches of various kinds and in various contexts, and the relationship as a whole caused harm to Student A’s emotional well-being, and potentially, her learning. There were the added serious matters of the truanting and vaping.
- [66] The Tribunal accepted the CAC’s submission that there remains a risk of recurrence, particularly as Mr Lal has not demonstrated sufficient insight into how his conduct would have impacted Student A and the triggers for his prolonged course of

²⁴ Agreed Summary of Fact at [61].

behaviour. The Tribunal considered that Mr Lal has not demonstrated real awareness of why his course of conduct was so bad. In his evidence he has focused on himself and the impact that his conduct has had on his life, both personally and professionally, and his reputation. His lack of insight indicates there is an ongoing risk that Mr Lal might repeat similar behaviours should he resume teaching. The Tribunal's view was that the protection of learners and the maintenance of professional standards through deterrence, support that cancellation is the most appropriate penalty outcome, in those circumstances.

- [67] The Tribunal considered whether it could step back from cancelling Mr Lal's registration and impose penalties with more of a rehabilitative focus. On the limited evidence before it, the Tribunal was unable to be sufficiently satisfied that the causes of Mr Lal's offending have in fact been addressed satisfactorily. Had there been evidence, or stronger evidence of ongoing steps having been taken by Mr Lal to address the triggers for his offending and had Mr Lal demonstrated insight into the impact of his behaviours on Student A, the Tribunal may well have been able to impose lesser penalties.
- [68] Given the Tribunal's concerns about the sufficiency of evidence as to Mr Lal's insight into his conduct and the effects of the counselling he has undertaken, and Mr Lal's indication that he intends to explore career opportunities outside of the teaching profession, the Tribunal agreed with the CAC that penalty orders with a rehabilitative focus will likely have limited utility.
- [69] The CAC also submitted that Mr Lal should be censured. Consistent with the penalties imposed in similar cases, the Tribunal concluded that it would be appropriate to censure Mr Lal to mark its serious disquiet about and disapproval of his conduct.
- [70] Looked at overall, the Tribunal was satisfied that orders of cancellation and censure (combined with a costs order), are the least restrictive penalty response to the very serious nature of Mr Lal's transgressions and the risk of repetition. In making these orders the Tribunal considers that it is meeting its obligation to protect the public and to set and maintain the standards of the teaching profession.
- [71] Accordingly, there will be an order cancelling Mr Lal's registration pursuant to section 500(1)(g) and Mr Lal is censured pursuant to section 500(1)(b).
- [72] The Tribunal wishes to send a message to all teachers, but particularly young teachers, that society (of which teachers are an important part) expects better than

the conduct displayed by Mr Lal. Mr Lal's course of behaviour cannot be tolerated in the profession. Teachers should be on notice that offending of the nature the Tribunal has reviewed in this case, can expect to be met with sanctions at the more serious end of the spectrum of available penalties, to reflect the need to maintain standards and public trust in the teaching profession.

Costs

- [73] In terms of costs, it is usual for an award of costs to be made against a teacher once a charge is established. A teacher who comes before the Tribunal should expect to make a proper contribution towards the reasonable costs that have been incurred. Otherwise, the teaching profession (as a whole) would need to meet all the costs of a proceeding that has been brought about by the respondent teacher's own making.
- [74] Costs are at the discretion of the Tribunal and may be awarded under section 500(1)(h) (any party to pay costs to any other party) and (1)(i) (Teaching Council costs of conducting the hearing).
- [75] The CAC sought an order that Mr Lal pay a contribution to its costs noting the general rule that where a charge is established, the starting point is 50% of the CAC's costs.²⁵
- [76] In cases where the charge has been heard on the papers, these typically attract a costs order of 40% of the costs and expenses incurred by the CAC (exclusive of GST).
- [77] The CAC acknowledged that Mr Lal had engaged with the disciplinary process and a reduced order of 40% for the prosecution costs would be appropriate.
- [78] Mr Lal accepted he was liable to contribute to costs.
- [79] The CAC's costs were indicated to be \$14,429 exclusive of GST, which the Tribunal considered were reasonable²⁶. The Tribunal concluded that an order that Mr Lal make a 40% contribution toward those costs would be reasonable and appropriate.
- [80] The Tribunal is making an order pursuant to section 500(1)(h) that Mr Lal is to pay the sum of \$5772 (exclusive of GST) to the CAC.

²⁵ Practice Note of the Teachers Disciplinary Tribunal, Practice Note 1: Costs, 1 April 2022 at [4].

²⁶ Costs Schedule provided by Counsel for the CAC, dated 24 September 2024.

[81] The Tribunal is not making an order that Mr Lal contribute to any of the costs the Teaching Council has incurred associated with the Tribunal's hearing. As of the date of the hearing, the Tribunal had not been provided with any information about the Teaching Council's costs, and nor had Mr Lal. As Mr Lal did not have the benefit of that information prior to the hearing, the Tribunal considered it would be failing to observe the rules of natural justice were it to make an order. Accordingly, there will be no order under section 500(1)(i).

Non-publication orders

[82] Prior to the hearing, interim orders were in effect in respect of Mr Lal's name and Student A's name. The CAC applied for a permanent order in respect of Student A's name, and Mr Lal also sought a permanent order suppressing his name.

Summary of relevant law

[83] The starting point when considering applications for non-publication orders is the principle of open justice. In a professional disciplinary context, the principle of open justice maintains public confidence in the relevant profession through the transparent administration of the law.²⁷ In previous cases, the Tribunal has endorsed the statement of Fisher J in *M v Police*²⁸ at [15]:

In general, the healthy winds of publicity should blow through the workings of the Court. The public should know what is going on in their public institutions. It is important that justice should be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present a defendant with an opportunity to reoffend.

[84] The Tribunal's jurisdiction to make non-publication orders is found in section 501(6) of the Act. An order can only be made under section 501(6) (a) to (c) if the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.

²⁷ *CAC v Teacher NZTDT 2016/27* at [66].

²⁸ *M v Police* (1981) 8 CRNZ 14 at [15] cited in *CAC v Howarth NZTDT 2019/87*, January 2021 at [57].

- [85] When considering whether it is proper for the open justice principle to yield, the Tribunal needs to strike a balance between the public interest factors and the private interests advanced by the applicant. A two-step approach is usually followed by the Tribunal the first step of which is a threshold question, requiring deliberative judgement by the Tribunal whether, having regard to the various interests, it is “proper” to make a non-publication order. If the Tribunal concludes it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.²⁹
- [86] “Proper” sits below “exceptional” which is required in the criminal jurisdiction in the Courts, and is more aligned with “desirable” which is what is required under the Health Practitioners Competence Assurance Act 2003.
- [87] When deciding whether it is “proper” to make a non-publication order, the Tribunal must carefully evaluate the respective interests (private and public). The Tribunal’s principal objectives of protecting the public, maintaining professional standards, and maintaining public confidence in the teaching profession, are relevant to the balancing exercise. Suppression of the name of a teacher who has been found guilty of serious misconduct has the potential to erode public trust and confidence in the teaching profession.
- [88] The relevant public interests to be evaluated are:
- (a) Openness and transparency of disciplinary proceedings
 - (b) Accountability of the disciplinary process. The disciplinary process needs to be accountable so that members of the public and the profession can have confidence in it.
 - (c) The public interest in knowing the identity of a teacher charged with a disciplinary offence.
 - (d) The importance of freedom of speech and the right enshrined in section 14 of the New Zealand Bill of Rights Act 1990.
 - (e) Unfairly impugning other teachers.
- [89] The public interest in knowing the identity of a teacher charged with a disciplinary offence includes the right to know about proceedings affecting a teacher, as well as

²⁹ *CAC v Teacher NZTDT* 2016/27 at [61]; referred to in *CAC v Howarth* (above).

the protection of the public and their right to make an informed choice about the extent to which they engage with or interact with the teacher.

- [90] In *Dr Tonga v Director of Proceedings*³⁰ the High Court, on the issue of permanent name suppression under the Health Practitioners Competence Assurance Act 2003 following an adverse disciplinary finding, made the following point:

[F]ollowing an adverse disciplinary finding more weighty factors are necessary before permanent suppression will be desirable. This, I think, follows from the protective nature of the jurisdiction. Once an adverse finding has been made, the probability must be that public interest considerations will require that the name of the practitioner be published in a preponderance of cases. Thus, the statutory test of what is 'desirable' is necessarily flexible. Prior to the substantive hearing of the charges the balance in terms of what is desirable may incline in favour of the private interest of the practitioner. After the hearing, by which time the evidence is out and findings have been made, what is desirable may well be different, the more so where professional misconduct has been established.

- [91] Those same points can be made in respect of what is "proper" where a charge of serious misconduct by a teacher has been established.

- [92] As for private interests, Gendall J in *Anderson v PCC*³¹ agreed with Panckhurst J's statement in *Dr Tonga* as follows:

[36] Private interests will include the health interests of a practitioner, matters that may affect a family and their wellbeing, and rehabilitation. Correspondingly, interests such as protection of the public, maintenance of professional standards, both openness and 'transparency' and accountability of the disciplinary process, the basic value of freedom to receive and impart information, the public interest knowing the identity of a practitioner found guilty of professional misconduct, the risk of other doctors' reputations being affected by suspicion, are all factors to be weighed on the scales.

[37] Those factors were also referred to at some length in the Tribunal. Of course, publication of a practitioner's name is often seen by the practitioner to be punitive, but its purpose is to protect and advance the public interest by ensuring that it is informed of the disciplinary process and of practitioners who may be guilty of malpractice or professional misconduct. It reflects also the principles of openness of such proceedings, and freedom to receive and impart information.

³⁰ High Court, 21 February 2006, CIV-2005-409-002244, Panckhurst J.

³¹ *Anderson v PCC of the Medical Council of New Zealand* CIV 2008-485-1646, 14 November 2008, Gendall J.

- [93] The nature of the conduct found to warrant disciplinary sanction, including but not limited to the relative risk of some repetition, as well as the nature of the penalties imposed, are material considerations for the Tribunal when deciding whether it is proper to make a permanent non-publication order³². The Tribunal considers that the public interest in publication of a teacher's name is strengthened when the teacher's registration has been cancelled (or suspended), when there are concerns about a teacher's judgement or decision-making, or where the teacher poses an ongoing risk of harm including but not limited to schools, learners, and school communities³³.
- [94] Put another way, where severe sanctions are imposed such as cancellation or suspension, the Tribunal is entitled to form the view that the established serious misconduct weighs in favour of publication of the teacher's name. This is not conflating name suppression with the imposition of penalties. Nor is declining to make a non-publication order in circumstances such as these a matter of holding the teacher to account publicly. Rather, where there has been a pattern of serious errors or behaviours, publication is usually proper to achieve the Tribunal's objectives of protecting the public and maintaining professional standards. In a situation where the teacher's conduct was highly serious and involved serious professional boundary breaches, for example, the Tribunal's view is that there is a material protective element which heightens the public interest in publication of the teacher's name.

Decisions on non-publication orders

Permanent suppression of Student A's name and the name of her friend

- [95] Mr Lal did not oppose the CAC's application.
- [96] Student A was a student at Lynfield College at all relevant times, but she is no longer a student there. The Tribunal accepted the CAC's submission that there is no public interest in her name being published in connection with these proceedings, and nor is there any public interest in the name of her Year 12 friend being published. Their privacy interests and status as learners at the time of Mr Lal's misconduct outweigh

³² *Ben-Dom v A Professional Conduct Committee of the Medical Council of New Zealand* [2020] NZHC 3094 (23 November 2020), Dobson J; *Johns v Director of Proceedings* [2017] NZHC 2843, Moore J.

³³ *ANG v PCC* [2016] NZHC 2949 and *B v B* HC Auckland HC 4/92, 6 April 1993 at [99].

the public interest in them being named. It is proper, and in the public interest, that their names are suppressed.

[97] The Tribunal was satisfied that it would be proper also to suppress from publication the screenshots of those social media messages that contain pictures/photographs of Student A and/or her friend. If they were published there is a real risk that Student A and her friend would be identified.

[98] There will be orders accordingly.

Mr Lal's name

[99] Mr Lal's application was made on the basis that identifying him would risk identifying Student A (and her friend). and that would lead to "*more than simply speculative*" "*real adverse effects*" to the well-being of the students. The CAC opposed the application.

[100] In his affidavit in support³⁴ Mr Lal stated that he believed naming him would risk identifying the students "*as I haven't left the school too long ago, neither have both of them. This could further have damage on their mental health and anxiety through social media and their employment opportunities. With the popularity of social media in today's society, people would be able to link everything together and post about all that are involved which could have permanent online damage to their names and create more anxiety and trauma around this situation. They will have friends who were in years below at school, which would start rumours and chatter within the school, and within the community. As well as putting harm on the reputation of the school. I accept full responsibility for my actions and their impact on the students. I want to avoid any further negative impact on the students.*"

[101] The Tribunal was of the view that there is no proper basis to displace the principle of open justice and order that Mr Lal's name is not to be published. The Tribunal considered it would not be fulfilling its obligation to protect the public and the teaching profession were it to make a permanent order. The serious nature of Mr Lal's conduct and the potential for repetition means that there is a material protective feature which, in the Tribunal's opinion, heightens the public interest in his name being published.

³⁴ Affidavit of Mr Lal in support of an application for name suppression sworn on 18 September 2024.

- [102] Details of the nature of Mr Lal's offending that the Tribunal has reviewed are likely to already be out in the school community, at least to some extent. There will be people in the community who are likely to know already that Mr Lal was the teacher involved in the conduct the Tribunal has reviewed.
- [103] Members of the profession and the public reading this decision in its entirety will be made aware of all the circumstances of the offending, as well as Mr Lal's approach to the matter subsequently including in these proceedings (including his admissions and acceptance of responsibility). The Tribunal believes that it is not likely there will be adverse consequences for Mr Lal beyond the expected level of discomfort and embarrassment if his name were to be published more widely.
- [104] As Counsel for the CAC noted, Mr Lal's apparent concerns for Student A and her friend have only arisen in the context of an application to prevent his own name being published. Further, in his application, Mr Lal did not indicate any proper insight into the impact of his actions on Student A.
- [105] While association of the students involved, to Mr Lal will arise in the minds of those who know them or knew of his behaviour in 2022, the Tribunal was not satisfied that this will arise from the publication of Mr Lal's name in the collective mind of the general public. Any risk that there may be of harm to Student A's wellbeing can be mitigated adequately by suppressing Student A's name, and the name of her friend, in the Tribunal's view. Put another way, Mr Lal's name does not need to be suppressed to ensure that Student A and her friend are not identified.
- [106] On balance the Tribunal was not satisfied there are sufficient private reasons at play, either alone or in combination, which outweigh the public interest in Mr Lal being named now that he has been found guilty of serious misconduct which has resulted in his registration being cancelled and him being censured. It would not be proper to make an order. The principle of open justice should not yield.
- [107] For those reasons, the Tribunal decided to decline Mr Lal's application for permanent name suppression. His name may be published.

School's name

- [108] Lynfield College Board of Trustees did not make an application for an order suppressing the name of the College.
- [109] However, the Tribunal considered the interests of Lynfield College. The Tribunal believes there is a strong public interest in the school's name being published, so

the Board, if it wishes, can be open and transparent with its school community about Mr Lal's conduct. Further, other potential complainants may come forward

[110] There was no suggestion that there are any concerns held by anyone, including Mr Lal, that publishing the name of the school would give rise to a real risk that the students involved will be identified.

[111] For those reasons, the Tribunal decided it would not be proper to suppress the name of the school.

Conclusion and Orders

[112] The Charge is established. Mr Lal is guilty of serious misconduct.

[113] The Tribunal's formal orders under the Education and Training Act 2020 are:

- (a) Mr Lal is censured for his serious misconduct, pursuant to section 500(1)(b).
- (b) Mr Lal's registration is cancelled, pursuant to section 500(1)(g).
- (c) Mr Lal is to pay \$5,772.00 to the CAC as a contribution to its costs, pursuant to section 500(1)(h),
- (d) There are to be permanent orders under section 501(6) prohibiting from publication:
 - a. the name of Student A and the name of her Year 12 student-friend.
 - b. the screenshots of all social media messages which contain images of Student A and/or her friend.

[114] The CAC is directed to provide a copy of this decision to the Lynfield College Board of Trustees at the same time as it is issued to the parties.

[115] The Tribunal Coordinator is directed to ensure that this decision is published on the Tribunal's website. Given that Mr Lal's registration is being cancelled and he is being censured, there is a public interest in the decision being made available at the earliest reasonable opportunity.

**Dated at Wellington this 13th
day of December 2024**



Jo
Deputy Chairperson

Hughson

NOTICE

- 1 The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
- 3 An appeal under section 504 must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows (section 504(3)).
- 4 Clause 5(2) to (6) of Schedule 3 applies to an appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.