

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2021/45**

**UNDER/WĀHANGA**

the Education Act 1989

**IN THE MATTER/MŌ TE TAKE**

of a charge referred to the Tribunal

**BETWEEN/I WAENGA I A**

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**

Prosecutor/Kaiwhiu

**AND**

**SEAN GERARD CASSIDY**

Respondent/Kaiurupare

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**DECISION – 16 AUGUST 2023**

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Hearing/Te Rongonga 19 July 2023

Representation/Hei Māngai Elena Mok & Henry Steele, Meredith Connell for the CAC

No appearance for or by the respondent

Tribunal

Catherine Garvey (Deputy Chair), Rose McInerney, Simon Walker

## **Introduction**

1. Sean Gerard Cassidy is a registered teacher but does not hold a practising certificate and he currently resides overseas.
2. On 22 November 2018 the Limited Statutory Manager (LSM) then appointed to Ōtorohanga College lodged a mandatory report alleging inappropriate use of Mr Cassidy's school-issued laptop during school time, which he also reported to the Police. The CAC obtained a voluntary undertaking not to teach from Mr Cassidy on 30 November 2018, and commenced an investigation once the Police advised they would not pursue criminal charges. The CAC determined to lay a charge in September 2021. In February 2022 a copy of further data saved on the school server and attributed to Mr Cassidy's user profile was added to the investigation. After a forensic analysis of the material and further investigation, the CAC amended the charge.
3. Mr Cassidy was represented by the PPTA up until May 2023, when counsel withdrew. The Tribunal are satisfied that Mr Cassidy had an opportunity to receive all relevant material and was on notice of the hearing. He sent emails to his representative and to the Tribunal outlining his response to the charge but made it clear he would not participate in the hearing.
4. The hearing took place by way of formal proof in Hamilton on 19 July 2023.

## **The Disciplinary Charge**

5. The second amended charge reads:
  1. The CAC charges that Sean Gerard Cassidy, registered teacher of Ōtorohanga, between around August 2017 and 22 November 2018, engaged in any or all of the following conduct:
    - a. On one occasion between 20 and 21 November 2018 (inclusive) while using a school-issued laptop during school hours (including while in a classroom), Mr Cassidy engaged in inappropriate online conversations with unknown female/s, which included messages of a sexually explicit nature being changed and/or Mr Cassidy viewing nude photographs of an unknown male which had been sent to him;

- b. On at least one occasion (in addition to the occasion referred to above), Mr Cassidy shared and/or accessed inappropriate and/or sexually explicit material on his school-issued laptop, including images and messages.
- 2. The conduct alleged in paragraph 1 (and its subparagraphs) separately or cumulatively, amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and rule 9(1)(o) of the Education Council Rules 2016 (for conduct before 19 May 2018) or rule 9(1)(k) of the Teaching Council Rules 2016 (for conduct after 19 May 2018); or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.
- 6. There is no difference between the earlier r 9(1)(o) and the current r 9(1)(k): both refer to an act or omission that brings or is likely to bring discredit to the teaching profession.
- 7. The Tribunal received electronic copies of the material referred to in the charge. In preparation for the hearing, we separately viewed the surveillance footage of Mr Cassidy's in-school use of his laptop relied upon in particular 1(a), and samples of the material referred to in particular 1(b).

### **Evidence of the Complaints Assessment Committee**

- 8. The CAC called evidence from four witnesses:
  - (a) Jacqueline Wallace, Digital Technologies and English ICT Teacher, responsible for facilitating IT and ICT at Ōtorohanga College.
  - (b) Paul Matthews, LSM at Ōtorohanga College between September 2018 and October 2020.
  - (c) Antony Drake, computer forensics expert.
  - (d) Kate Henderson, investigator for the CAC.
- 9. A brief affidavit by the current principal Lyndsay Kurth was taken as read, confirming that she arranged for a copy of the material stored under Mr Cassidy's user profile on the school server to be provided to the CAC in February 2022.

10. Ōtorohanga College received laptops for staff use through the Ministry of Education TELA scheme<sup>1</sup>. Mrs Wallace was one of the teachers in charge of facilitating IT matters in the school. To her knowledge, Mr Cassidy had uninterrupted access to a school-issued device during the relevant period. Mr Cassidy was issued a laptop in August 2017 and signed a Laptop/Device Agreement as to its use. The CAC's bundle of documents (the bundle) contained an excerpt from the Agreement setting out the terms for responsible use, which include:

[113] Provide suitable care and security of the laptop at all times ...The leasing company has ongoing ownership rights to the laptop or device. Avoid having sensitive personal data stored on your laptop or device. E.g. emails, images, etc.

...

[116] In accordance with school policies you will be held responsible for any involvement by yourself or any other user of your laptop or device in activities associated with downloading, accessing or deliberately attempting to access copyrighted, inappropriate or illegal materials.

[117] You are responsible for the use of the laptop or device as a professional workplace tool; this includes how you allow others to use and access your machine and data. You are liable for physical damage and corrupt or inappropriate data.

11. The school's Cyber Safety Policy guiding staff and student use of the internet issued in March 2017 outlines that internet activity is logged and saved by the firewall, with random checks to ensure that access and communications are appropriate. The policy includes the following stipulation:

Users must not download or copy any material which is either illegal for them to possess or would cause embarrassment to Ōtorohanga College. Users are responsible for any material that they download or copy.

12. Mrs Wallace advised that the school's server is configured to automatically synchronise (sync) with school-issued devices only. Mrs Wallace was adamant that Mr Cassidy's personal device would not connect automatically to the school server had he brought it to

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<sup>1</sup> A digital device leasing scheme for eligible teaching staff in state and state integrated schools.

the school. This would require his personal device to have been manually connected to the school server by the school's IT provider. In her brief Mrs Wallace said:

Only our official school laptops, provided by the Ministry, connect to the network automatically and sync to our server. Personal laptops or other devices would not connect automatically, as they are not configured to perform network sync tasks on the network, as is the case with our school laptops.<sup>2</sup>

13. Mrs Wallace confirmed in her oral evidence that the school and external IT provider which has oversight of the IT system does not allow personal devices such as a smartphone, laptop or tablet to sync with the school server. She said:

That would be considered bad practice to allow personal data to go near an organisational server. So we don't do it and we have never done it in fact that I know of, ever. So yeah, no, our personal data doesn't get backed up on our server at all from a personal device.<sup>3</sup>

14. When asked whether to her knowledge personal data had been stored from a personal device on the school server Mrs Wallace said:

No...and I've double checked with [the IT provider] as well on that. They've never allowed that. Their firm policy is to not ever do that at any school, let alone ours.<sup>4</sup>

15. Mrs Wallace also confirmed that logging into a social media app on a school device would show that history on the browser, but content from the app such as messages or photos would not automatically download.

16. In November 2018 an IT technician from the school's external provider was working onsite and spoke to Mr Matthews about "*unusual*" internet activity indicating someone using Mr Cassidy's user profile to make a series of short visits to sites including chatrooms.<sup>5</sup> He was sufficiently concerned to authorise two members of the ICT Committee to monitor Mr Cassidy's device, one being Mrs Wallace. Mr Matthews advised that the decision to procure devices for staff was made by the Board of Trustees before his appointment as LSM and that the Board documented their authority to monitor device use. Mr Matthews

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<sup>2</sup> Brief of evidence Jaqueline Wallace 16 April 2023 at [8]

<sup>3</sup> Transcript of Evidence p 14

<sup>4</sup> n3 at p15

<sup>5</sup> n3 at p 29

said he acted in reliance on that authority, having assumed the responsibilities of the Board, in consultation with the Principal.

17. On 20 November 2018, the IT technician assisted Mrs Wallace to move the AB Tutor monitoring software from her classroom desktop console to her laptop. Mrs Wallace explained that AB Tutor is a device monitoring software programme that can be used to manage large groups of computer devices in schools, and it allows real-time remote screen watch. Mrs Wallace opened AB Tutor and saw that Mr Cassidy was using his account at that time. After observing for long enough to ascertain that the activity was not school related and appeared inappropriate, the technician assisted Mrs Wallace to record the activity as it was occurring. They stopped recording so that Mrs Wallace could take her laptop to her ICT Committee colleague, and then continued to remote watch and record Mr Cassidy' screen activity for about 40 minutes.
  
18. Mr Cassidy's online activity involved personal chats and the exchange of selfie photographs. The footage shows Mr Cassidy taking a selfie in what appears to be a classroom. He was engaged in two online conversations under the pseudonym "Adam", with two women who appear to have been in the Philippines. Some excerpts are set out below as examples of the nature of the chat and include content that is relevant to how we have viewed Mr Cassidy's responses to the charge (typographical errors have not been corrected):
  - (a) Mr Cassidy writing "Whyt am I constantly on heat for you?" on one thread.
  - (b) On the other thread, Mr Cassidy receives a selfie of the woman's face and writes "*Letss see full body hon*".
  - (c) Mr Cassidy refers to doing some work then writes "*Hope u chatting with some guys hon*" then "*Your homework today is to chat to 3 guys*" then "*And copy paste me conversation*".
  - (d) Me Cassidy goes on to clarify he does not mean the recipient chat in person, "*I mean today on line*". When the recipient asks if he has made her account to do this Mr Cassidy replies in successive messages "*Noyt yet hon*" "*I am using school computer*" "*So need to do at home*" "*On my laptop*".

19. In a chat that is date and time stamped 21 November 2018 beginning at 10.56am, Mr Cassidy and the recipient exchange greetings before Mr Cassidy writes that he has been reading and teaching and “*I am at work lol*” but “*Its ok class gone now hon*”. After a brief exchange about the age of the students he teaches, Mr Cassidy and the woman refer to a separate conversation she is having with another man “Max.” As requested by Mr Cassidy to copy and paste the chat, the woman sends screenshots of a sexualised conversation and a naked photograph of the man she is chatting with. In the footage, Mr Cassidy can be seen to scroll through the messages. The chat includes (with Mr Cassidy as Adam, again typographical errors have not been corrected):

Woman: If u focus talking to me, and u forget u have class, they scold u.. Haha

Adam: Yes lol

Adam: But ok for now hon

Woman: Max watching porn now haha

Adam: Good hon

Adam: You talking to him

Woman: He really want to have sex now but I am not there, lol

Woman: But he have a big cock hon

Adam: That is ok mhon

Adam: Hon

Adam: U will be fine

Adam: He said he had lube [a reference to a comment in a screenshot of the conversation between Max and the woman].

20. On 21 November 2018 Mrs Wallace emailed Mr Matthews and senior staff about Mr Cassidy’s conduct. Mrs Wallace expressed concern for students and gave advice on how to uplift Mr Cassidy’s laptop to ensure that he could not damage or dispose of the device.

Mrs Wallace referred to Mr Cassidy being previously reluctant or obstructive when his school-issued device was required for upgrading and repairs.

21. Mr Matthews and the then Principal Lindsay Dunn entered Mr Cassidy's classroom after students had left and uplifted the computer and obtained Mr Cassidy's passwords. Mr Cassidy was placed on paid discretionary leave. A copy of activity through Mr Cassidy's user profile was stored on an external device and Mr Cassidy's laptop was placed under secure storage and then given by Mr Matthews to Police on 22 November 2018.
22. The CAC investigator became aware on 8 February 2022 that further material was available that had been provided to Police but not to the CAC. The investigator requested a copy of the saved files from Mr Cassidy's user profile, and this was provided on 11 February 2022.
23. In May 2022, the CAC instructed Antony Drake to carry out a forensic analysis of the material. Mr Drake is a self-employed digital forensic analyst, with several years' experience in the New Zealand Police Electronic Crime Laboratory and as Manager of Digital Forensics at a large multinational company. As he was given a copy of, rather than personally downloading the material, Mr Drake took care to state that he did not verify the authenticity of the data or how it was obtained, but he did not raise any concerns about this. Mr Drake reviewed a total of 4385 images, many of which were not relevant to the CAC's investigation (Mr Cassidy had school related material as well as innocuous personal images and content stored). Mr Drake placed the material he considered to be inappropriate into groups labelled images, movie files and surveillance files. The images were further categorised as follows:
  - (a) Child Exploitation Related (29)
  - (b) Adult Male Unclothed (11)
  - (c) Adult Female Unclothed (47)
  - (d) Adult Female Underwear Exposed (19)
  - (e) Adult Male Genitals (122)
  - (f) Adult Female Genitals (26)



- (g) Message with sexual content (546)
  - (h) Miscellaneous Interest (2)
  - (i) Original Sexual Activity (11)
  - (j) Pornographic Material (27)
  - (k) Unlawful Sexual Connection (8)
24. Other than the surveillance footage the evidence does not establish when the material was accessed, seen, or saved by Mr Cassidy. Mr Drake explained that to examine the timing of the files he would have been required to first confirm the accuracy of the laptop's system clock and further, to account for the fact that it appeared some of the activity in files saved by Mr Cassidy was created overseas. Mr Drake confirmed some of the material was sent to Mr Cassidy, and some he had downloaded.
25. Mr Drake agreed that the volume of inappropriate material indicates that Mr Cassidy was motivated to access it (by which we mean receiving it or searching for and downloading it himself) and by inference, interested in it.<sup>6</sup> Mr Drake confirmed the likelihood that given the material was attached to Mr Cassidy's school user profile it represents what was on his school-issued laptop and there was no comingling or other device interaction.<sup>7</sup> Mr Drake noted a particular concern with the content of screenshots received by Mr Cassidy showing messaging between other parties including reference to forced sex with women, which we discuss below.

### **The evidence – Sean Cassidy**

26. Mr Cassidy emailed the Tribunal on 17 May 2023 with documents he had previously sent to his representative and a page indicating that these had been sworn on oath. In the absence of objection from the CAC we received these documents, which were included in the bundle, and have considered them in reaching our findings. The fact Mr Cassidy was unavailable for cross-examination limits their weight. Mr Cassidy refers to the fact that he taught for nearly 40 years and has suffered and continues to suffer "*enormous*" stress as

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<sup>6</sup> n3 at p 49

<sup>7</sup> n3 at p 52

a consequence of the events leading to his resignation and these proceedings. It was originally alleged that Mr Cassidy had accessed a pornographic site while at school, but this allegation was not pursued. Mr Cassidy writes that he “*would never have accessed an improper website knowingly*” at school and that his colleagues were motivated by malice.

27. Mr Cassidy acknowledges talking to many women online in his search for a “*life partner*”. He states:

Overview: the background for all of this was to find a life partner at a time when I was under extreme emotional and financial pressure. Legal adult websites were used to find a life partner. I have never intentionally engaged in anything illegal. Everything was done in a private respecting manner.

28. In relation to the screen shot messages of the conversation between “Max” and the woman Mr Cassidy was also talking to and which were seen on the real-time recording (part of which is set out at paragraph 19 above), he says:

In summary the allegations made by the school were incorrect. I was trying to offer advice to a person about how to keep a relationship with a man (Max) she was in a relationship with. She asked me to create a dating profile for her but I declined and informed her I was on the school computer and believed that was against school computer usage. I was trying to follow my understanding of appropriate use of a computer and the document that I had signed in exchange for using the computer.

29. In relation to the material that was located on the server Mr Cassidy appears to not deny it is his, but to say that it is derived from his personal computer and was stored on the school server without his permission and accessed by staff without his knowledge. Mr Cassidy states that at times he was required to use his personal device at school for teaching and that he was not told he could not connect to the school internet. He says:

I believe the school server downloaded documents and communication automatically from social apps that I was using. When you sign into a social app it downloads all the messages you have not seen and I believe also the history attached to the app...

30. Presumably in response to Mr Drake’s report, Mr Cassidy writes that he has no “*unlawful sexual interest in children*” and no personal interest in pornography and denies that he

used the school-issued laptop to access this. He says that others told him their fantasies as a “*private matter*” and that:

A number of conversations that were sent to me were bizarre and crazy, but they were not mine. I also did not choose what was sent to me by others. I had no control over what was sent.

31. Some of the screenshots that Mr Cassidy implies he was an unwitting recipient of include reference to forced sexual activity. Mr Cassidy denies knowing the man involved in that chat but admits:

[X] [the author of the messages of forced sexual activity] did have a connection with a woman who I was communicating with. The nature of their relationship I was not fully aware of and did not know what was fact and what was fiction. That woman did pass on some details of her relationship with that man. She had relationships with a number of men which she told me about. Her connection with [X] was of her doing not mine. She ended up scamming me a number of times.

32. Other screenshots received by Mr Cassidy include disturbing references by males to wanting to observe or engage in sexual activity between family members, or with young girls whom they can pretend are their daughter.

### **Liability – Serious Misconduct**

33. The burden of proof is on the CAC to establish the charge to the balance of probabilities. Mr Steele submitted that the Tribunal could proceed by way of formal proof where it was clear that Mr Cassidy was aware of the charge, on notice of the hearing and had no intention of participating, in reliance on the Tribunal’s authority to regulate its own procedure.<sup>8</sup>

34. The charge is laid under the now-repealed Education Act 1989, under s 378 of which “serious misconduct” means conduct by a teacher:

- (a) That –

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<sup>8</sup> Teaching Council Rules 2016, r 24

- (i) Adversely affects, or is likely to 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 Teaching Council criteria for reporting serious misconduct.
35. We are required to find both that there is serious misconduct as defined in s 378, and that one or more of the criteria for reporting acts or omissions that are reasonably believed to amount to serious misconduct in r 9 are met. As well as r 9(1)(k) and the former 9(1)(o) we have considered r 9(1)(f) after discussion with counsel in closing submissions.
36. We accept the evidence of the witnesses from Ōtorohanga College regarding the provenance of the material, it being stored under Mr Cassidy's user profile on the school server. We also accept that it was Mr Cassidy's school-issued laptop that this material was linked to, not a personal device. We accept that the data was accessed and/or created and/or downloaded to Mr Cassidy's school-issued laptop. Even were it Mr Cassidy's personal device and the material had been stored in error on the school server, an inquiry would be valid into when this material was accessed, created or downloaded on a personal device that was used at school, or within school hours.
37. We find that Mr Cassidy was in knowing possession of inappropriate images, and that the content of the conversations captured when he was under surveillance was inappropriate on a school-issued laptop and in school hours.
38. Particular 1(a) pertains to the material obtained from recording Mr Cassidy's real-time use of his school laptop on 20 and 21 November 2018. As pleaded, the content includes messages of a sexually explicit nature and Mr Cassidy viewing a nude photograph of an unknown male. The content may have been unproblematic in his personal time but becomes inappropriate by virtue of the fact it was accessed or created on a school device, during school hours and outside of the agreed terms of responsible use of the laptop. The surveillance footage also shows that Mr Cassidy solicited screenshots of sexualised conversations between others. Even the short period of surveillance provides evidence rebutting his explanation that he was a passive recipient of such material.

39. We accept the submission for the CAC that this conduct reflects adversely on Mr Cassidy's fitness to be a teacher: s378(1)(a)(ii). We also find that his disregard for the Laptop/Device Agreement and the school's Cyber Safety Policy, reflects adversely. Mr Cassidy showed no insight into this.
40. A further factor is Mr Cassidy's characterisation of his colleagues' conduct as malicious, which does not reflect well on his professionalism. We do not accept that they had an improper motive in monitoring Mr Cassidy or acting upon what they observed. We consider that Mr Matthews and Mrs Wallace acted correctly when the IT technician raised concern. We found their evidence to be credible and unembellished.
41. Mr Cassidy's conduct also has the capacity to bring the profession into disrepute: s378(1)(a)(iii). An objective member of the public would not consider engaging in sexualised chat and viewing a nude photograph sent within the context of a sexual conversation, during school hours on a school device, is appropriate behaviour for a teacher.
42. It follows that r 9(1)(k) and the former r 9(1)(o) are met, with Mr Cassidy's conduct involving an act that brings or is likely to bring the teaching profession into disrepute, being conduct that in the eyes of members of the public, reasonably informed is capable of lowering the reputation and good-standing of the profession.<sup>9</sup>
43. We find particular 1(a) is proved.
44. Particular 1(b) requires us to find that on at least one occasion Mr Cassidy shared and/or accessed inappropriate and/or sexually explicit material on his school-issued laptop. Having accepted the evidence establishes on the balance of probabilities that the material was shared or accessed by Mr Cassidy on his school laptop and not a personal device, we find the factual basis of this particular established.
45. The nature of the material accessed via Mr Cassidy's school user profile makes Mr Cassidy's claims of passivity and a lack of interest in pornography unbelievable. Again, that may not have been problematic had he used his own device in his own time, although

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<sup>9</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28] relied on by this Tribunal as setting out the relevant consideration when considering whether the conduct of a teacher has or may bring the profession into disrepute. See for eg *CAC v Teacher X* NZTDT 2020/33.

of significant concern are the images ostensibly involving fathers or grandfathers engaged in sexual intercourse or other sexual activity with their daughters or teenaged girls. Mr Drake identified 29 images of this nature. For anyone, let alone a teacher responsible for teaching and conducting themselves professionally around young women, this is troubling. In a similar vein, the screenshots of messages containing extremely disturbing content about sexual activity with young family members casts a concerning light on Mr Cassidy's role as a professional member of a school community. Mr Cassidy professed no interest in the content yet appears to have received it on multiple occasions and retained it.

46. We consider that this conduct is serious and ss 378(1)(a)(ii) and (iii) are met for essentially the same reasons as for particular 1(a). Mr Cassidy's conduct involved the misuse of school property, provided with funding from the Ministry of Education to Mr Cassidy at no charge. Mr Cassidy spent working hours involved in inappropriate activity. Even if he used the device in his own time, the Laptop/Device Agreement leaves no room for ambiguity that it was not intended for this purpose. We also consider that Mr Cassidy's lack of recognition that his behaviour was unprofessional is concerning. This is a matter which reflects adversely on him and has the ability to bring the teaching profession into disrepute.
47. We also find that Mr Cassidy's actions are likely to lower the public regard for the profession, given his inappropriate use of a school-issued device: r 9(i)(k).
48. Rule 9(1)(f) refers to:
- Viewing, accessing, creating, sharing or possessing pornographic material while at a school or early childhood education service, or while engaging in business relating to a school or an early childhood education service.
49. Having accepted the material was accessed via Mr Cassidy's school-issued laptop, and that his user profile was secure and not tampered with from the time his laptop was seized by Mr Matthews and the Principal, r 9(1)(f) is also engaged. The rules do not define "*pornographic material*" but we consider it can encompass something less than material that is "*objectionable*" under s3 of the Films, Videos and Publications Classification Act 1993 (noting Mr Drake's evidence that some of the material could potentially be

objectionable)<sup>10</sup>. Mr Cassidy possessed images of masturbation, sexual intercourse, pornographic movies and screenshots of conversations about sexual activity on a school device. This material meets the ordinary meaning of pornographic to refer to images or writing that is designed to stimulate sexual excitement.

## Penalty

50. Having found the charge proved, we are to consider the penalties available under s 404 of the Act, and the principles applied when imposing a penalty are very well established. The purpose of a penalty is primarily to protect the public and assist the maintenance of professional standards. The Tribunal is to impose the least restrictive penalty in the circumstances to meet those purposes. Where appropriate, a penalty may assist the rehabilitation of the teacher, such as through the imposition of conditions.
51. Counsel for the CAC referred us to *CAC v Fuli-Makaua*<sup>11</sup> as authority for the overlapping considerations relevant to cancellation of registration:
- (a) Where 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) Where the teacher has not taken adequate rehabilitative steps to address his or her conduct. This may indicate a level of ongoing risk that leaves no option but to deregister.
52. Other cases involving teachers who have deliberately or inadvertently downloaded or viewed inappropriate material on a work device at work or in a way that has led to a student discovering this, show that it is not necessarily conduct that requires suspension or cancellation.
53. For example, in *CAC v Teacher A*<sup>12</sup> the teacher used a school laptop to access pornographic material, dating and chat sites outside of the school. The teacher did not

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<sup>10</sup> Section 3(1) defines a publication to be objectionable "if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty or violence in such a manner that the availability of the publication is likely to be injurious to the public good." Specific reference is made to the exploitation of children or young persons for sexual purposes: s 3(2)(a).

<sup>11</sup> NZTDT 2017/40, 5 June 2018 at [54]

<sup>12</sup> [2018] NZTDT 16 (8 July 2019)

intentionally download the material and attempted to erase his internet browser history regularly, including when on notice that his laptop was to be uplifted. The teacher apologised for using the school laptop in this way but did not see his conduct as serious. The laptop did not synchronise with the school server and was not used by the teacher in the school environment. The Tribunal noted that viewing pornography at home on a personal computer was unlikely to amount to serious misconduct unless the content was objectionable. It was not established that the teacher had used the laptop at school or while on school business, but the misuse of school equipment was sufficient to find the charge proved. The teacher was censured, and conditions imposed.

54. In *CAC v Witana*<sup>13</sup> the teacher received and retained pornographic material on a school device, some of which he shared by email with other staff. He was also charged in relation to inappropriate financial practices. Some of the material was considered to meet the definition of “*objectionable*” and was considered by the Tribunal to be highly offensive. No children were exposed to the images, and the material had not been accessed (i.e. searched for) by the teacher or viewed at the school. Significant weight was given to the teacher’s contribution to the community and Māori education and the desire for rehabilitation and ongoing contribution. Censure and conditions were imposed.
55. We consider this case is distinguishable in terms of gravity for the following reasons:
- (a) the volume of material and the potentially objectionable nature of some of it, accessed on a school-issued device.
  - (b) Mr Cassidy’s lack of insight and acceptance of responsibility for his actions. The information he provided gives no indication that he understands that the use of a school device to conduct his personal and intimate life is not appropriate.
  - (c) Mr Cassidy’s explanation that he was a passive and perhaps unwilling recipient of some of the more concerning content is not credible.
  - (d) On at least one occasion he had inappropriate material open on his screen in a classroom which brings an inherent risk that it might be seen by students or colleagues. To be engaging in sexualised conversations in the school environment

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<sup>13</sup> [2016] NZTDT 24 (30 January 2017)



is not appropriate for a teacher, and aspects of the observed interactions were not private or respectful, contrary to Mr Cassidy's assertion.

56. There is nothing in Mr Cassidy's responses that indicate he is amenable to rehabilitative steps. Accordingly, we find that censure and cancellation are the appropriate penalties.

### **Costs**

57. In accordance with the Practice Note<sup>14</sup> the CAC filed a schedule of costs following the hearing. While this guidance post-dates the charge, the principles are those that would have applied in any event. It is open to the Tribunal to make an order for costs in favour of any party and to the Council under s 404(1)(h) and (i) of the Education Act 1989. The Practice Note guides that the starting point is a 50% contribution which may increase or decrease depending on various factors.
58. The costs of the CAC are \$29,427.50 covering the period 22 October 2021 to 24 July 2023. The costs of the Tribunal are \$12, 256.12. An attempt was made to provide a copy of these costs to Mr Cassidy together with an opportunity to make submissions and provide any relevant information about the financial implications of a costs order. No response was received.
59. The CAC filed a memorandum dated 31 July 2023 submitting that the starting point of a 50% contribution is reasonable, but acknowledging a small reduction may be appropriate taking into account the level of costs is relatively high for a formal proof hearing, and the fact that the delay in the CAC receiving the second tranche of material resulted in further investigation and amendments to the charge. The CAC also refers to the absence of any evidence as to Mr Cassidy's financial position such as a statement of financial means or bank account transaction history.
60. The hearing was achieved within one day including the Tribunal's deliberations on liability and penalty. The need for witnesses to attend in person was largely due to Mr Cassidy's denial of inappropriate conduct and his decision not to co-operate with the preparation of an agreed summary of facts. Mr Cassidy delayed filing evidence despite his defence of the charge, took no part in the hearing and in fact deleted or otherwise disabled the only

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<sup>14</sup> Practice Note of the Teachers Disciplinary Tribunal, Practice Note 1, Costs, 1 April 2022

known contact details the Tribunal had for him in the lead up to the hearing.<sup>15</sup> The charge was proved in its entirety. Mr Cassidy has not provided any formal evidence of his financial means; his evidence to the Tribunal included reference to not having money to defend the proceedings, but no further financial detail.

61. We consider that a contribution by Mr Cassidy to the costs of the Tribunal and CAC is appropriate, in the amount 45% of costs incurred, being \$13,242 and \$5,515 respectively.

### **Non-publication orders**

62. Pursuant to s 406(6)(c) of the Act the Tribunal may if it considers it is proper to do so and having regard to the interests of any person and the public interest, make an order prohibiting the publication of the name or any particulars of the affairs of the person charged, or any other person. The starting point is a presumption that hearings will be conducted in public, and teachers who are the subject of a disciplinary charge will be named. The principle of open justice applies to the Tribunal, and any decision to limit what may be published must be addressed by balancing the public interest and the private interests of any particular individual who may be affected by publication. The requirement that it be “proper” to make an order is something less than the “exceptional” grounds required in criminal proceedings<sup>16</sup>, but a fairly robust approach is taken to permanent orders for those who are concerned solely for reputational harm or the embarrassment and upset that may ordinarily accompany involvement in professional disciplinary proceedings.
63. Prior to the hearing, interim non-publication orders were made suppressing the name and identifying details of Mr Cassidy, Ōtorohanga College and staff at the school who were expected to give evidence. In support of the interim order, Mrs Kurth outlined that the College has experienced some “*turbulent*” years, changes in leadership and a loss of trust between the community and the school, which trust is being rebuilt. Concern was expressed that publication of the school’s name could result in a further decline in trust.

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<sup>15</sup> On 23 May 2023 an email sent to Mr Cassidy by the Disciplinary Tribunal Co-ordinator returned an automated message which reads: “I am currently overseas and not expected in NZ till Christmas 2023. Contacting me till I am back will be difficult for a range of circumstances.” Following a further attempt to contact Mr Cassidy on 14 June 2023 an error message was received, stating that the email was unable to be delivered and that the email account does not exist.

<sup>16</sup> *ABC v Complaints Assessment Committee* [2012] NZHC 1901, [2012] NZAR 856 at [44]

64. Mr Cassidy supported the school's interim application on the basis that publication of his name would also lead to the identification of Ōtorohanga College but did not put forward any personal grounds for suppression.
65. At the conclusion of the hearing, we indicated that we were inclined not to continue the orders. No application had been made by Mr Cassidy, and we considered on the evidence that there would be no criticism of the school or its staff in terms of managing the situation. We also considered the fact that well over four years has passed since the period covered by the charge. Through counsel, the College then indicated it did not intend to file any further evidence.
66. Given the need to allow time for a schedule of costs and submissions as to the same, Mr Cassidy was invited to provide evidence if permanent orders were to be sought. No response was forthcoming.
67. We acknowledge the subject matter of the charge and some of the details within this decision are likely to cause embarrassment to Mr Cassidy. However, beyond that potential, we know of no grounds for Mr Cassidy to support a permanent order. There were no students involved whose privacy requires protection and with no orders made for the College and staff, there is no argument that Mr Cassidy's name will lead to their identification.

### **Orders**

68. We make the following orders:
- (a) Mr Cassidy's registration is cancelled pursuant to s 404(1)(g);
  - (b) Mr Cassidy is censured, pursuant to s404(1)(b);
  - (c) Costs amounting to 45% of the costs of the CAC and Tribunal are payable by Mr Cassidy.
69. The parties may appeal or all part of the decision pursuant to s409 of the Education Act 1989.
70. Any appeal is to be made within 28 days of receipt of written notice of this decision, or within such further time as the District Court allows.

71. A copy of this decision is to be published on the Teaching Council website.



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**Catherine Garvey**

**Deputy Chair**