

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-57

RARO TE MANA O TE
UNDER THE

the Education and Training Act 2020
(**the Act**)

MŌ TE TAKE
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A
BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Kaiwhiu | Prosecutor

ME
AND

ABDULWAHHAB DAWOOD
(Authorisation 379853)
Kaiurupare / Respondent

Nohoanga | Hearing
Hei Māngai | Appearance

30 July 2024, AVL (Teams).
S McMullan/M Purcell, Meredith Connell for the CAC.
Respondent, self represented.

Tribunal

C Garvey (Deputy Chair), Simon Walker and Louise
Arndt (members)

DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION

12 AUGUST 2024

Introduction | Whakataki

[1] The respondent, Abdulwahhab Dawood, faces a disciplinary charge alleging serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers in relation to a single course of conduct on 2 May 2022. The charge is particularised as follows:¹

¹ Notice of Charge dated 14 September 2023.

1. The CAC charges that ABDULWAHHAB DAWOOD, registered teacher, of Auckland, on or about 2 May 2022, sent messages of an inappropriate nature to a [REDACTED] female student.

[2] Mr Dawood accepted the charge at the earliest opportunity. He also immediately acknowledged his conduct to senior management at Alfriston College (the school), and resigned.

[3] By consent, the hearing proceeded on the papers with an agreed summary of facts², submissions from counsel for the Complaints Assessment Committee (CAC), and documentation in support of the respondent's application for non-publication orders and in relation to costs.

The Agreed Summary of Facts

[4] Mr Dawood held a provisional practising certificate in 2022 and was aged 28 years. The summary of facts states:

At 4.23pm on 2 May 2022, Mr Dawood emailed [REDACTED] [Student X] at her College email address saying, "I wanna talk to you privately / What's your number? / Just between us". [Student X] responded by email providing her personal number...³

[5] Screenshots of the messages are annexed to the summary of facts. Mr Dawood wrote that he wanted to speak to the student but when she said she could not call, he sent messages stating "*I wanna return something you said to me a while back*", and then "*I love you*" and used a heart emoji. He followed this with "*I've been thinking about you more and more since then*" and "*I want you.*" He also acknowledged that he could get "*in a lot of trouble saying this as a teacher.*"⁴

[6] The summary of facts explains that it was not unusual for the student to tell her favourite teachers in a friendly manner and in a public setting "I love you." The student responded to Mr Dawood stating that she would not tell anyone but that he could not say things like that. Then:

11. Mr Dawood messaged back, "Thanks for keeping it a secret" and "I won't take it further if you don't want me to." When [Student X] responded that she only saw him as a teacher, Mr Dawood responded "That's fine" and "I told you because I trust you."

12. He then messaged her "What we talked about doesn't leave the chat" and requested that she delete his messages and email.

[7] The student reported the messages to senior management. Mr Dawood met with the Principal and another senior staff member on 5 May 2022, and acknowledged his actions and expressed concern about the harm caused.⁵ The respondent resigned at a disciplinary meeting on 10 May 2022. His letter of resignation described his actions as "condemnable" and expressed his "shame" and "guilt."⁶

² Agreed Summary of Facts [ASOF] signed on 5 June 2024.

³ ASOF at [6].

⁴ ASOF Tab 1, screenshots of WhatsApp messages.

⁵ ASOF at [16].

⁶ ASOF at [18].

[8] The school submitted a mandatory report to the Teaching Council, and the respondent cooperated with the ensuing investigation including meeting with the CAC. The summary of facts records that Mr Dawood took responsibility for his actions including that he said, amongst other things, that he had acted against his better judgment and religious ethics and has no intention of repeating his behaviour. When he met with the CAC, he advised that:

...as soon as he messaged [the student] he regretted it and tried to recant, which he admitted was awkwardly expressed in his messages to her. He said that, following the conversation, he immediately deleted [the student's] details and the messages.⁷

Liability

[9] The test for serious misconduct is conjunctive, requiring that one or more of the limbs of s10(1)(a) of the Act are engaged, together with a finding of conduct that is of a character or severity to warrant reporting pursuant to rule 9 of the Teaching Council Rules 2016.

[10] Section 10(1)(a) refers to conduct 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.

[11] The notice of charge pleads a breach of rules 9(1)(e) and/or (k). The first refers to conduct that involves breaching professional boundaries in respect of a child or young person with whom the teacher is in contact as a result of their position as a teacher, and includes "*engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person*".

[12] Rule 9(1)(k) refers to an act or omission that brings, or is likely to bring the profession into disrepute.

[13] The CAC made comprehensive submissions as to liability, including reference to relevant cases. We agree that each of the limbs of s10(1)(a) are met. First, the respondent's conduct was likely to affect Student X's emotional wellbeing. The student's response to the WhatsApp messaging was to politely deflect Mr Dawood by referring to his role as her teacher, that she only saw him as such, and the potential for his actions to cause him trouble. She was concerned enough to raise the messages with the school. As well as the content of the messages, asking Student X to delete them and stating that he only "*told you because I trust you*" placed her in a very uncomfortable position.

⁷ ASOF at [29].

[14] As the Tribunal has said previously, it is a teacher's responsibility to exercise professionalism and restraint and to avoid placing a student in the position of being subject to romantic or sexual interest or otherwise acting outside of appropriate boundaries.⁸ Students and their whānau necessarily place a high degree of trust in schools and in individual teachers. Such a breach of boundaries may cause confusion and disrupt a student's learning and emotional wellbeing.

[15] The conduct reflects adversely on Mr Dawood's fitness for the same reasons. He acted in breach of the Code of Professional Responsibility (in particular, clauses 2.1 and 2.2). He has acknowledged this conduct was inappropriate.

[16] With respect to s 10(1)(a)(iii), following the accepted objective test, the CAC submit that reasonable members of the public informed of the relevant factual circumstances would expect teachers to maintain professional boundaries with a student, and to not make "romantic advances".

[17] We also agree with the CAC's submission that the threshold for serious misconduct is met by a breach of rule 9(1)(e)(ii). Mr Dawood's conduct was confined to a single afternoon and lapse of judgment, which is a mitigating feature, but his messages were not written with a platonic intention. For the same reason as summarised at [16] above, we also find the conduct in breach of r 9(1)(k).

Penalty

[18] Having found the charge proved we are required to consider an appropriate penalty pursuant to s501 of the Act. The main purposes of penalty in disciplinary proceedings are to protect the public, and to set and maintain professional standards. Penalty should be fair, reasonable and proportionate in the circumstances, and consistent with that imposed in similar cases.

[19] The CAC have referred to a number of cases for comparative purposes. These include:

- (a) *CAC v Teacher V⁹* which involved a breach of boundaries with a 16-year-old student. No sexual motive was imputed, and the conduct was characterised as "a clumsy attempt to engage with the student" which made the student uncomfortable, including the use of language not appropriate within the professional relationship. The conduct invariably occurred at school and in the presence of others. The respondent was found guilty of misconduct. The Tribunal was not satisfied that r9(1)(e) was engaged because of the lack of inappropriate motive, and the conduct was not of sufficient severity or character. The Tribunal ordered mentoring, and that the teacher disclose the decision for a period of one year.

⁸ For example: *Complaints Assessment v Huggard* [2016] NZTDT 33, 14 November 2016; *Complaints Assessment Committee v Teacher I* [2017] NZTDT 12, 18 January 2018; *Complaints Assessment Committee v Luff* NZTDT 2016/70 at [11].

⁹ *Complaints Assessment Committee v Teacher V* NZTDT 2020/22.

- (b) In *CAC v Luff*¹⁰, a young male teacher formed a relationship with a year 13 student on social media, messaging after school hours including late at night, and meeting in person. The teacher persisted with the relationship despite guidance and caution from the school that he should not. The Tribunal imposed cancellation.
- (c) In *CAC v Teacher I*¹¹, a young male teacher used social media to form a relationship outside of school with a 16-year-old student. This persisted over several months and despite discussions about it with the student's mother, and the school. The teacher also drove the student and a friend at night on one occasion, without their caregivers' consent. The Tribunal imposed censure and cancellation.

[20] The present case does not involve the prolonged contact, or persistence in the face of clear guidance, as in *Luff* and *Teacher I* (or other similar cases). The respondent's misconduct was limited to one afternoon, and he expressed immediate remorse and recognition that his behaviour had the potential to cause harm.

[21] We agree with the CAC that these mitigating factors mean it is not necessary to impose a penalty of cancellation. (Suspension is not an available penalty given that the respondent does not hold a current practising certificate). Conditions, annotation and censure are warranted. The CAC proposes that we impose conditions on a subsequent practising certificate (pursuant to s500(1)(j)), requiring the respondent to:

- (a) complete a professional development course approved by the Teaching Council on maintaining professional boundaries; and
- (b) provide a copy of the Tribunal's decision to any prospective employer in the teaching profession for two years following the issue of any new practising certificate.

[22] We agree those conditions are suitable to meet the purposes of penalty. We considered whether a further condition was warranted in reliance on a lengthy submission filed by the respondent in support of name suppression. This includes a chronology of some interactions with Student X attempting to contextualise his conduct. It describes difficulties he has experienced since leaving teaching, alluding to a significant issue with mental wellbeing that he suggests was present in May 2022. We are not in a position to offer any expert view, but the content of the submission may make it advisable for the Teaching Council to consider whether review by a suitably qualified health professional is indicated, in the event Mr Dawood renews his practising certificate. This is not a condition and should not be construed as such.

Costs

[23] The CAC seeks a contribution to costs pursuant to s500(1)(h) of the Act. Reflecting the common approach set out in the Practice Note¹² where a teacher has cooperated to expediently deal with the proceedings, a contribution of 40% is sought. The CAC's schedule

¹⁰ above n 8.

¹¹ above, n8.

¹² Practice Note on costs dated April 2022.

of costs shows total costs (exclusive of GST) in the sum of \$11,215.40, 40% of which is \$4,486.16.

[24] The respondent's evidence as to his financial position discloses some unsuccessful attempts to secure various types of employment. He refers to several attempts at tertiary study, and the need to live from savings, and has provided some evidence of bank account details. The CAC acknowledges that the matters raised by Mr Dawood are relevant to a costs order. We consider that some contribution is reasonable, so that the full burden of costs is not borne by the profession but that a discount is appropriate given the evidence of some impecuniosity. The Tribunal may also order costs in relation to the hearing pursuant to s500(1)(i), reflected in a contribution to a reasonable set fee. We order a 20% contribution to the CAC and Tribunal.¹³

Applications for non-publication orders

[25] The Tribunal may make orders for non-publication pursuant to s501 if it considers that it is proper to do so, balancing the public interest and the private interests of any person. The test is not the "exceptional" threshold required by the criminal jurisdiction but must be something more than the ordinary consequences that are anticipated to arise from an adverse finding in disciplinary proceedings. Where matters of mental well-being are relied upon, it is usual for the Tribunal to expect some form of evidence from a qualified person, addressing the likely impact of publication.

[26] Interim non-publication orders were made by consent by the Chairperson of the Tribunal, on 6 May 2024, in favour of the respondent, the students named in the charge and any personal details that may lead to their identification. Applications for permanent orders have been made as follows:

- (a) by the CAC for non-publication of the name of Student X.
- (b) by the respondent, for non-publication of his name, which he is concerned will identify Student X, and likewise the name of the school.

[27] No separate application has been made by the school.

[28] There is no public interest in the identity of Student X being published, and as a student at the time of the conduct, she has a right to protection of her privacy recognised by the Rules.¹⁴ The view of Student X in relation to publication of the respondent's name and any concern that this may identify her, is not known. Student X is named in the charge, the summary of facts including the annexed screenshots, and in the material filed by the respondent in support of his application. In that application Mr Dawood has also identified other students by name or description, as well as teaching colleagues. We consider it is proper to order non-publication of those names and identifying details as they are not relevant to the charge or to our findings, and the privacy interests of those persons should prevail.

¹³ The fee currently imposed by the Council is nominal and does not reflect the actual costs incurred. 20% is \$291.00.

¹⁴ Rule 34 of the Teaching Council Rules 2016.

[29] With regard to the school, in the absence of an application it is not clear that an order is needed to protect the identity of the student, who will have left the school some time ago.¹⁵ The school acted promptly to address the concerns raised by Student X, and the usual expectation of transparency and open justice applies to schools as it does to individuals appearing before the Tribunal. Given that the respondent has expressed concern that the student will be identifiable and that this may cause her harm, we intend to allow for continuation of the interim non-publication orders for the duration of the appeal period. This is to enable the school and/or the CAC time to file an application, supported by evidence, if permanent orders are sought in the interests of the student.

[30] With regard to Mr Dawood's application, we acknowledge his remorse and his cooperation, and the evidence of difficulties he has experienced since his resignation. Based on his submission, it is difficult to know what is attributable to his misconduct and what to other issues. There has been no publication in relation to this matter up to the proceedings, so publicity has not been a hindrance. The decision reflects that the conduct was short-lived, and the penalty is not aimed at preventing Mr Dawood from teaching but to ensure transparency and that appropriate rehabilitative steps are taken should he return to teaching. Transparency is also important if he does not do so. The respondent's financial information discloses that he is tutoring students online; he may pose no risk, but the Council has no ability to oversee that space, so this is a factor favouring publication. The respondent has also elected not to provide evidence from a health professional as to the likely impact of publication, even though he relies heavily on references to his wellbeing.

[31] Taking these matters into account, we do not consider it is proper to order non-publication of the respondent's name.

[32] The interim orders made prior to the hearing remain in place until the expiry of the appeal period. This includes the interim orders for non-publication of the respondent's name, the name of the school, and the name of the students and other staff. Permanent orders are as described at paragraph 34 below.

Orders

[33] Accordingly the Tribunal makes the following orders pursuant to s500:

- (a) Mr Dawood is censured pursuant to s500(1)(b) of the Act.
- (b) The register is to be annotated for a period of two years pursuant to s500(1)(e) of the Act.
- (c) Conditions are to be imposed on a subsequent practising certificate held by Mr Dawood, pursuant to s500(1)(j) of the Act, requiring that he disclose this decision to a potential employer in the teaching profession, for a period of two years.
- (d) Mr Dawood is to pay costs in the sum of \$2,243.00 to the Complaints Assessment Committee pursuant to s500(1)(h) and to the Teaching Council in the sum of \$291.00 pursuant to s500(1)(i).

¹⁵ Compare for example *CAC v Teacher I*, above, where the school provided a detailed application for non-publication addressing concerns for the students, who remained at the school.

[34] The Tribunal makes the following permanent orders for non-publication pursuant to s501:

- (a) The name and identifying particulars of the student identified in the Notice of Charge and in the Agreed Summary of Facts (and in this decision as Student X), including her age.
- (b) The names of the students and staff referred to by name and/or description in the respondent's submissions on name suppression.



Catherine Garvey

Deputy Chair of the New Zealand Teacher's Disciplinary Tribunal