

Decision Summary Huggard

- Aaron John Huggard has been censured and his teacher registration cancelled.
- In a consent memorandum of 19 August, 2016 to the New Zealand Teachers Disciplinary Tribunal, he sought censure and cancellation of registration.
- He faced charges of serious misconduct and/or conduct otherwise entitling the New Zealand Teachers Disciplinary Tribunal to exercise its powers.
- The particulars of the charges were that he formed an inappropriate relationship with a year 9 student in that he:
 - engaged in prolific texting with her
 - sent texts to her that were of a personal nature
 - engaged in lengthy texts and phone calls late at night with her.
- The Complaints Assessment Committee brought the charges to the New Zealand Teachers Disciplinary Tribunal, which is an independent entity, for a decision.
- Mr Huggard is to pay 50 per cent of the costs of this disciplinary process.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2016/33

IN THE MATTER of the Education Act 1989

AND

IN THE MATTER of a charge referred to the New Zealand Teachers
Disciplinary Tribunal

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **AARON JOHN HUGGARD**

Respondent

DECISION OF TRIBUNAL

DATE: 14 November 2016

HEARING: held on the papers

TRIBUNAL: Ms Theo Baker (Chairperson)

Ms Sue Ngarimu and Mr David Spraggs (Members)

COUNSEL: Mr Adam Lewis for the Complaints Assessment Committee

Ms Dzintra King for the respondent

The Charge

1. The respondent faces a charge of serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. The Tribunal convened to consider the matter on the papers on 26 September 2016. As outlined below, further information regarding non-publication orders was then sought from the parties and the last submissions and evidence were received on 25 October 2016 and considered by the Tribunal.
2. The particulars of the charge are that the respondent:
 - 3.1 *Formed an inappropriate relationship with a student of his, namely a Year 9 girl, then aged thirteen years old ("the student"), in that he:*
 - (a) *Engaged in prolific texting with the student;*
 - (b) *Sent texts that were of a personal nature, including suggesting hugs, asking to see her outside of school, discussing her boyfriend, and telling her he can't call until his wife was out;*
 - (c) *Engaged in lengthy text communications and phone calls late at night with the student.*
3. The respondent accepted that he had engaged in this conduct and it amounted to serious misconduct. The parties responsibly conferred and filed a joint memorandum recording their agreement on suitable penalty. They were asked to file a summary of agreed facts, containing further information regarding the context in which the texting developed, more details about the nature and number of the texts, how the relationship was discovered, the respondent's initial response and what events had happened since, including the student's situation.

Evidence

4. A detailed agreed summary of fact was then filed. The Tribunal was told that in 2015 the respondent was teaching at a high school. He was also employed as a Learning Coach, a role that involved working with a small group of no more than 15 students for about five hours a week. This role was defined as:

...to act as the academic and pastoral mentor for each of the students. In this way, the Learning Hub is a support system for the learner and is a bit like an

extended family. Within the system every student has an adult in the School who cares about him or her deeply.

5. In 2015, the student was 13 years old, in Year 9 and a member of the Learning Hub. It was in the context of this mentoring relationship that the respondent and student exchanged phone numbers. In the latter part of 2015 when two people close to the student committed suicide only weeks apart. She turned to the respondent who provided support by speaking with her, checking in to see how she was, and leaving her some chocolate and tissues in her mailbox. The student's father texted the respondent a heartfelt message thanking him for his support of the student.
6. The respondent arranged to meet with the student each morning to see how she was coping. He advised his Learning Community Leader and later the Deputy Principal in charge of student welfare about the morning check-ins, and the texting and occasional telephone conversations. The Deputy Principal advised him to be cautious that the student did not become too dependent on him.
7. What transpired was that the respondent in fact seemed to become dependent on the student. He was experiencing high levels of stress, and used the one-on-one time to talk about his own problems.
8. The respondent attended the student's other teaching modules and staff members began to notice contact between the two, and expressed concerns about the appearance of a growing dependency between them. Other students spoke to the Deputy Principal about the relationship and said that the respondent had shared confidential information with the student about award nominations and student reports. When the Deputy Principal asked the respondent about this, he said that the student initiated the one-on-one meetings.
9. The Deputy Principal spoke with the student who said that things had got out of hand, and that the respondent instigated a lot of the meetings which had become more about the respondent and the stress he was feeling. She said that she had started turning her phone off because of the volume of texts she was receiving from the respondent. She had stopped going to school early, to avoid catch-ups with him.
10. The Deputy Principal told the respondent that his only contact with the student was to be about Learning Hub issues via email. He was told that the student was not comfortable and he was not to arrange one-on-one meetings.

11. However, the respondent continued to contact the student both directly and through her friends. The Principal and Deputy made it clear to the respondent that he was not to have any contact with the student.
12. A misconduct report was prepared and in early 2016, a formal investigation was commenced.
13. The student's father provided the Principal with 112 pages of screen shoots between the respondent and student. They spanned a four-week period. Direct quotes include:

This is confidential. I trust you.

I really want to see you. For a good bit of time if possible.

Tempted to steal you away. Technically I could steal you away

You[r] hugs are awesome

Thank you so much for that hug

Wake me up if you want to talk

I care about you more than anything

Get your butt here. I want to hug the hell out of you

I might explode. This hug needs to get out

14. It is not clear which these texts were sent by the respondent or the student. There were texts which clearly came from the respondent when he referred to his marriage. There was evidence of texts being sent at 4.16am and 4.45 am, as well as conversations, video chat and texts between 10.30pm and 12.15am.
15. In March 2016 the respondent resigned and in April 2016 he gave an undertaking to the CAC not to teach.

Serious misconduct

16. The parties agree that the particulars amount to serious misconduct under section 378 of the Education Act 1989 and rules 9(1)(e) and (o).
17. Section 378 provides:

serious misconduct means conduct by a teacher—

(a) that—

(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

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

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

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

18. The criteria for reporting serious misconduct are found in rule 9 of the New Zealand Teachers' Council (Conduct) Rules 2004,¹ (referred to in this decision as the 2004 Conduct Rules). They include:

9 Criteria for reporting serious misconduct

(1) *The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*

...

(e) being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher:

...

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

19. We find that the respondent's conduct amounts to serious misconduct based on all three limbs under s 378, and meets each of the above criteria under r 9. This was an inappropriate relationship that brings discredit to the profession. It brought harm to the student, reflects adversely on the respondent's fitness to practise and brings the teaching profession into disrepute.
20. In particular, the respondent exploited both his position as a teacher and his involvement with the mentorship programme to meet his own needs. When a student feels uncomfortable with a teacher's interactions, it is difficult for the student to tell a teacher to leave her alone. This is even harder when a student has been feeling very vulnerable and has been grateful for some kindness and concern. It can be very confusing for

¹ These rules apply to this proceeding under the transitional rules in the Education Council Rules 2016, which came into force on 1 July 2016

anyone, especially a teenager to find they no longer welcome the attention which had initially been of value.

21. Even if this student had wanted to continue the contact at this level, it would have been unacceptable for the teacher to do so. As the adult and a teacher, the respondent had a responsibility to maintain professional boundaries. The two were not contemporaries. They could not be friends. He was in a position of power and responsibility, where he should role model appropriate behaviour. His actions should attract esteem, not discomfort or fear. Students and parents should be able to trust that when a student seeks mentorship, counsel or comfort from a teacher, the teacher will respond in a way that has the student's wellbeing as paramount. This did not happen here.
22. As a final comment, we observe that within the role of the Learning Coach was this statement: *Within the system every student has an adult in the School who cares about him or her deeply.* It is not the role of this Tribunal to proscribe the policies of schools, but we wonder whether the school might reflect on the interpretations and expectations that such a phrase might evoke.

Penalty

23. In a consent memorandum dated 19 August 2016 the respondent sought censure and cancellation of registration.
24. Given the respondent's request and in the absence of any further submissions, we agree that is an appropriate penalty. Apart from some health issues referred to in support of an application for name suppression, we have no information about the circumstances which led the respondent to behave so inappropriately. It is therefore difficult to consider any options short of cancellation. The Tribunal therefore makes the following orders:
 - a. Censure pursuant to s 404(1)(b).
 - b. Cancellation of registration pursuant to s 404 (1) (e).

Suppression orders

25. In the absence of opposition by the CAC, on 15 June 2016 the respondent was granted interim name suppression. In an application dated 16 September 2016 the respondent applied under r 32 (1) of the 2004 Conduct Rules for an order prohibiting publication of his name and that of the school, and any particulars that might lead to the identification of the student, himself or the school.

26. The Tribunal's powers to order non-publication are now located in s 405(6) of the Education Act. Rule 32 of the 2004 Conduct Rules conferred an identical jurisdiction. It can make one or more of the orders for non-publication specified if it believes it is proper to do so, having regard to the interest of any person and to the public interest.
27. In *CAC v Teacher (NZTDT 2014/52P)*, this Tribunal considered the threshold for non-publication under r 32 of the Conduct Rules. We said that our expectation is that orders suppressing the names of teachers (other than interim orders) will only be made in exceptional circumstances, and that the test will be satisfied where an individual's interests "demand" such an order. This decision was then referred to in (*CAC v Kippenberger NZTDT 2016/10S*), where we said:
- The term "exceptional" in that passage may overstate the position. But otherwise the approach described in NZTDT 2014/52P is the approach which the Tribunal adopts.*
28. The Court of Appeal recently said that while a balance must be struck between open justice considerations and the interests of the party seeking suppression, "[A] professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure".²
29. In the present case, the respondent submitted a very brief affidavit in which he said that his main concern was that publication of his name could lead to identification of the student. He then referred to his own mental health and said that publication of his name would be harmful to his mental health. This details of this are discussed in paragraph 34, which is suppressed on the basis that there is no public interest in this information.
30. Before the hearing, the Tribunal received a letter from the principal of the school advising that it supported suppression of the respondent's name essentially because it was in the best interests of the young person. The principal helpfully provided some more information about the impact of these events on the student. The CAC agreed to an order suppressing the name of the respondent
31. It was not immediately apparent that the suppression of the teacher's name was necessary to protect the student's interests. The Tribunal wanted to know what the student or her family thought about publication of name, and therefore asked counsel for

² *Y v Attorney-General* [2016] NZCA 474, at [32].

the CAC to make further enquiries. The Tribunal issued a minute accordingly. It was stipulated that affidavit evidence was not required.

- 32. Counsel for the CAC was able to speak with the student's father who provided a statement confirming that the family had wanted the respondent's name to be suppressed, but that they had now discussed it fully with the student, and had changed their position. We were told that she has thought about it carefully and now opposes suppression of the respondent's name.
- 33. Counsel for the respondent then advised the CAC that a statement directly from the student was required. Given that the Tribunal had made it clear that direct evidence from any witness was not needed, we are perturbed at the respondent's insistence on requiring an affidavit from a 14-year-old girl who has already been adversely affected by his actions. Nonetheless an affidavit was produced. The student made it clear that she was not at all happy that she had been required to do so.
- 34. We are satisfied that the student and her family understand that naming the respondent carries a risk of her identity becoming known. While preferring to preserve her anonymity, it seems that she and her family have undertaken the same balancing act which the Tribunal must perform when considering orders for non-publication. In other words, they appear to have reached the conclusion that any risk of her being identified is outweighed by the public interest in knowing the name of the respondent. Therefore, this ground in the respondent's application for name suppression fails.
- 35. The respondent's second ground was to do with the impact it would have on him. The next paragraph is suppressed on the basis that there is no public interest in knowing the personal circumstances relied on.

[REDACTED]

[REDACTED]

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37. While we appreciate that the respondent may have been suffering from some anxiety, there is nothing in the information provided which discloses any significant mental health issues, or an independent assessment of the impact of publication on the respondent. We have no doubt that his anxiety has increased as a result of the mandatory report to the Education Council and these disciplinary proceedings, but see this as an ordinary consequence of his actions. We do not find anything unusual in his circumstances that that rebuts the presumption in favour of publication.

Costs

38. The parties agree that the respondent should pay 50% of the costs of the CAC.
39. The Tribunal orders the respondent to pay 50% of the costs of conducting the hearing, under section 404(1)(h) and (i), that is 50% of the Tribunal's costs and 50% of the CAC's actual and reasonable costs. The Tribunal delegates to the Chairperson authority to determine the quantum of those costs and issues the following directions:
- a) Within 10 working days of the date of this decision:
 - i. The Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs
 - ii. CAC to file and serve on the respondent a schedule of its costs
 - b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal or CAC.
 - c) The Chairperson will then determine the total costs to be paid.

Theo Baker
Chairperson