

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/16

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND
ME

LATHAM JOHN MARTIN

Respondent | Kaiurupare

Hearing | Te Rongonga

19-21 June 2023

Representation | Hei Māngai

HML Farquhar and DP Roche for the CAC
J Brown for the Respondent

Tribunal panel | Pae Taraipiunara

T J Mackenzie (Deputy Chair), N Parsons,
J Ruge

DECISION OF THE TRIBUNAL

TE MENETI O TE RŪNANGA RONGONGA TŌMUA I WHAKATŪRIA
27 October 2023

Background | Tāhuhu kōrero

[1] The Complaints Assessment Committee (CAC) has brought a charge of Serious Misconduct against Latham Martin.¹ Mr Martin was a registered teacher at the time of the alleged serious misconduct and remains so.

[2] The charge involves a number of allegations of inappropriate contact and conduct with several teenage high school boys (who we will refer to as the complainants). Mr Martin was employed at the same school that the complainants attended but in a non-teaching role. He was also on the Board of Trustees including for a time as Board Chair. Mr Martin however was not a teacher to any of the complainants.

[3] Mr Martin denies the charge and many of the factual allegations made. Accordingly the Tribunal held an in person defended hearing, where we heard the CAC evidence and Mr Martin's evidence in response. That hearing was held in Christchurch for three days over 19-21 June 2023. Nine witnesses gave evidence for the CAC. Mr Martin gave evidence. The Tribunal reserved its decision at the conclusion of the hearing.

[4] This is the Tribunal's decision. In this decision we will set out:

- The charge
- The law that applies
- The evidence we have heard from both parties
- Our consideration of the evidence and our factual conclusions
- Whether the charge is proven
- Any required next steps.

The charge | Te/Ngā Hāmene

[5] The charge faced by Mr Martin is as follows:

1. The CAC charges that Latham John Martin, registered teacher, of Hokitika engaged in inappropriate contact and behaviour with secondary school students between 2018 to March 2021 including by:
 - a. Touching [REDACTED] and [REDACTED] on the legs;
 - b. Placing his hand near [REDACTED] crotch;
 - c. Making inappropriate comments to the students, such as:
 - i. telling [REDACTED] and [REDACTED] "I love you" and "I miss you";

¹ Pursuant to section 497 of the Education and Training Act 2020 (the 2020 Act).

- ii. making comments about [REDACTED] and [REDACTED] appearances;
 - iii. telling [REDACTED] words to the effect that he could only eat his (Mr Martin's) chocolate if he repaid him with something;
 - iv. asking [REDACTED] words to the effect of "How would you feel if I asked you to suck cock?";
- d. Sending inappropriate messages to students using Snapchat and Facebook messenger both individually and in groups, including:
- i. asking the students questions to the effect of whether they were still friends with him, whether they were ignoring him, or whether they hated him when they did not respond to his messages or removed him as a contact on social media;
 - ii. sending them photos of himself and of his girlfriend in a bikini/underwear or naked; and
 - iii. asking for photos of the young people; and
- e. Allowing students to drive his vehicle when they did not hold a driver's licence.

The legal principles / Ngā mātāpono ture

[6] The time span of the alleged facts covers a period when the Education Act 1989 (the 1989 Act) still applied, before the 2020 Act came into force. Given however that the serious misconduct test is the same across both Acts we will refer only to the statutory criteria from the 2020 Act.

[7] Section 10 of the 2020 Act defines "serious misconduct" as follows:

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 Teaching Council's criteria for reporting serious misconduct

[8] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.² The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

² *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

[9] The second limb (fitness) has been described by the Tribunal as follows:³

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[10] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.⁴ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[11] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁵ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

[12] The Teaching Council Rules 2016 describe the types of behaviour that must be reported by an employer as part of the serious misconduct test. The CAC relies on rule (9)(1)(k) as follows:

9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

(a) – (j) omitted

(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[13] Here, the CAC relies on (k) (which we have italicised above).

[14] The obligation rests on the CAC to prove the charge. While the standard to which the alleged facts must be proven is the balance of probabilities, the

³ *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.⁶

[15] Here, we are acutely aware that these are, when taken together, serious allegations. If found proven they will likely have a significant personal and professional impact on Mr Martin (regardless of the result of any later non-publication decisions).

[16] In this case Mr Martin has given evidence in his defence. By giving evidence Mr Martin does not assume any obligation to disprove the charge. The obligation remains on the CAC to prove the charge. Mr Martin's evidence needs to be assessed in the overall pool of evidence. Ultimately we must decide whether on all of the evidence we are or are not satisfied that some or all of these events probably occurred, before turning to consider whether the charge is proven.

Evidence / Taunaki

[17] In this case we heard evidence in person for three days, including from Mr Martin for a full day. All witnesses gave evidence by way of brief of evidence, which were read into the record by each witness (or taken as read for some due to time constraints). As the evidence was presented in this way we will copy in each respective brief of evidence below. We will set out the evidence in a logical order with the complainants first, although at the hearing some witnesses needed to give evidence out of this order.

[18] We will then summarise the challenges made to each respective witness by Mr Martin's representative Ms Brown. We will also briefly note the responses to those challenges from each witness.

[19] We were also provided in the evidence with Evidential Video Interviews (EVI's) that Police had undertaken with some of the complainant witnesses, and various other notes and statements taken. The EVI's were played during the hearing as part of the complainant's evidence in chief. We consider however that the briefs of evidence adequately capture and summarise each complainant's evidence, so we will not include the EVI's or other statements in this decision.

[20] We are not required to, and will not, exhaustively set out every word that has been said by each witness when they gave evidence. There was however a lot of evidence of many different allegations, and a response in turn to near all of them. This decision will therefore be of some length.

[21] The evidence for the CAC was as follows:

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

- [REDACTED]
1. My full name is [REDACTED]
 2. My date of birth is [REDACTED]
 3. I first met Latham Martin through friends who were doing labouring work for him - landscaping, mowing lawns, cutting down trees, that kind of thing. My friend [REDACTED] didn't want to work with Latham by himself, so he invited me to come. This was in December 2020.
 4. I saw him several times in early 2021. In my evidence, I will explain interactions we had:
 - (a) After a school athletics day;
 - (b) Moving picnic tables;
 - (c) On a trip to McDonald's in Greymouth;
 - (d) On a trip to the Warehouse in Greymouth;
 - (e) At the Revell Street markets;
 - (f) At Latham's house;
 - (g) Over Snapchat;
 - (h) Regarding his Eftpos card;
 - (i) When he asked me to drive his truck; and
 - (j) When he apologised to me for what had happened.

Athletics day in 2021

5. In 2021, I was in Year 11 at Westland High School.
6. In about February 2021, I attended a school athletics day. I was competing in a number of events - the 100 metre sprint, long jump, high jump and triple jump.
7. By the end of the day, my legs were sore from the exercise.
8. I hopped into the back seat of Latham's truck, so he could drive us to [REDACTED] in Hokitika. I was helping Latham with cutting down some trees and other landscaping work at [REDACTED] house.
9. I didn't want to sit in the front seat next to Latham because I just I felt a bit vulnerable sitting next to him. I preferred sitting in the back because no one could see me through the window.
10. As I got in Latham's truck I said my legs were sore. Latham said "oh, yeah, I know how to fix cramps," and reached with his left hand back and started rubbing my leg around my thigh- I was sitting in the back left seat so it would have been my right thigh .
11. He rubbed my leg for about three seconds.
12. I said: "don't do that, please". Latham stopped.

13. I got another cramp after that, I can't remember how long after, and Latham began rubbing my leg again. I told Latham that my leg was cramping. He rubbed my leg for about three seconds again.
14. At one point after he rubbed my leg [the same day] my friend ██████ got in the car. Latham told him: "you make me so excited whenever I see you". I asked him what he was on about. Latham replied something like "I'm just trying to make you uncomfortable".

Moving picnic tables

15. On one day in March or April 2021, I was walking to the ██████ next to my house when Latham pulled up next to me in his car, and asked me to come with him to do some work. I agreed and got in the car, and we drove to ██████.
16. At ██████ we got out of Latham's car and got in a truck, to load up some picnic tables. We took the picnic tables to a fish and chip shop ██████ and unloaded them.
17. At this point the weather was quite stormy and bad. I asked Latham if I could go home. Latham told me no, we had to return to ██████ so he could pick up his car.
18. We returned to ██████ and Latham drove me home.
19. As I was about to get out of the car I said goodbye to Latham, and he said: "give me a handshake first." So I shook his hand. He said, "I love you ██████".
20. I didn't know what to say to that.

Trip to McDonald's in Greymouth

21. On another day in March or April 2021, Latham drove my friend ██████ and me to Greymouth to get some McDonald's.
22. I met him at Lazar Park in Hokitika. We left after school, around 4pm or 5pm.
23. Everything was fine on the way there, but on the way back Latham started being weird.
24. There was a discussion about my friend ██████ I said we should have bought him something from McDonald's, like a Big Mac.
25. Latham said that ██████
26. I explained that ██████
27. Latham then said: "How would you like it if I asked you to suck dick?"
28. I said that was a bit random and asked why he would say something like that.
29. Latham said he was just joking with me.
30. I asked Latham whether his girlfriend knew about any of this- like if he knew that we had been hanging out with him and doing all this work and going up to Greymouth.

31. He said: "no, she thinks I'm going to meetings."
32. Later on, when we were getting closer to Hokitika, he asked to have some fries.
33. I was in the back left seat.
34. I said he could, but before I could hand them to him, he reached his hand back without looking and held it right over my crotch.
35. I asked him to stop.
36. Latham told me he wasn't doing anything and kept his hand where it was over my crotch. He said: "look, I'm not even touching it." His hand would have stayed there for about five seconds.
37. I tried to tilt my legs away and told him to just take the fries, which I handed to him.
38. I was really weirded out by what had happened and was pretty quiet on the rest of the drive.
39. I got home about 7.30pm and told my parents about what had happened.

Trip to the Warehouse in Greymouth

40. In around March or April 2021, Latham took [REDACTED] and me up to Greymouth. I am pretty sure that it was same day as the McDonalds trip. We visited the Warehouse in Greymouth, and Latham said we could buy something if we wanted.
41. Latham gave me his card and said go and buy whatever you want.
42. I bought a big teddy bear, a phone charger and a digital clock. [REDACTED] bought a phone charger as well.
43. We got back to the car and Latham told us we could buy something else if we wanted, so we went back inside. [REDACTED] bought some cologne and I bought equipment for a PlayStation, it was a PlayStation light/lamp. I also got a teddy bear.
44. Latham asked if we wanted anything else. We felt bad, because we were spending his money, and said it was all good.
45. When we got to Hokitika, Latham dropped me off at my house and said that whenever I looked at the teddy bear, I should think of him. He said I should call the teddy bear Latham Martin so it reminds me of him.
46. I told him I didn't think I would. I got out of the car and went inside my house.

Revell Street markets

47. Sometimes Latham would ask [REDACTED] and me to go to the markets on Revell Street in Hokitika with him and be a cashier. This would have been around February/March 2021. The market is either on Saturdays or Sundays, I think it may be on Sundays.

48. One time, [REDACTED] was running late and it was just Latham and me for half an hour.
49. Latham told me, "oh, you're looking cute today. Why are you dressed up?"
50. I told him I wasn't dressed up and I was just wearing normal clothes.

At Latham's house

51. I went to Latham's house just a couple of times in early 2021.
52. Generally when we were at his house we would just sit around. One time, he told us [me and [REDACTED] to mow the lawns, but he had already mowed them two days earlier.
53. He told us the grass was very long, but he had already mowed it with the lawnmower on the lowest setting, so you couldn't mow anything.
54. On another occasion in March 2021, my friend [REDACTED] and I went to Latham's house. I think we went out there and did some washing and mowed his lawns to get some money for the Wildfoods festival the next day.
55. I remember there was a big Ferrero Rocher chocolate in his fridge. It had been sitting there since I had first been to his house in December.
56. I asked Latham if we could have the chocolate because it seemed like he wasn't going to eat it.
57. He said "yeah, okay - you'll just have to repay me with something."
58. I asked him what he meant, and he gave me a creepy weird smile.

Snapchat

59. At some point I connected with Latham on Snapchat. It would have been around December 2020/January 2021.
60. I think we connected on Snapchat after my friend [REDACTED] and added me to a Snapchat group with Latham. I think my friends [REDACTED] were also in the group.
61. Latham would sometimes message the group in the morning and ask us to come and work that day.
62. If we didn't reply to his message, he would sometimes try send us a message to try make us feel bad for him, like "do you guys even like me anymore", "are we still friends" or "what have I done?"
63. Latham also sent my mates and I photos of his girlfriend in a bikini, or in her underwear and a bra. I don't know why he sent these as I didn't even know his girlfriend- he sent these to a group chat I was in with Latham, [REDACTED]
64. Latham sometimes sent me messages directly to me on Snapchat as well.

65. On one occasion around the time of the Wildfoods festival, so about March 2021, Latham asked to come round to my house. This would have been around 1 pm/mid-afternoon.
66. I said no, and asked him why would I have a 27-year-old man around to my house.
67. He told me something like "come on, we're not gonna do anything." I showed this message to [REDACTED] who was a teacher at Westland High School.
68. Snapchat has a feature that allows you to see your friends' locations.
69. Latham would get mad and upset if I didn't have my location on, he would message us asking why our location was off.

Eftpos card

70. Over the Christmas school holidays, 2020, I would work for Latham every other day. [REDACTED] were also there.
71. The first couple of months he didn't pay us at all. He kept putting it off and saying he would pay us tomorrow.
72. Sometimes he would give me his Eftpos card and just told me to spend some money on it.
73. One time [REDACTED] one of my other mates and me was walking down the main road to the beach to go fishing and he drove past us, and a short time later drove past us again and waved at us.
74. We got down to the beach and started fishing, and Latham called me on my cellphone. He told me "I got you boys some ice cream and my card with money on it".
75. I told him we didn't need any of that.
76. He said, "yes, I'm coming down". I told him not to, but then he came down to the beach anyway and gave me his card and ice creams.

Driving Latham's truck

77. Latham asked me to drive his truck several times. I would have been 14 and 15 years old, I didn't have a license at that point.
78. I never did as I wasn't comfortable driving his brand new \$70,000 truck.
79. However, I know some of my friends like [REDACTED] drove the truck, sometimes with Latham in it, sometimes not. I was in the car with [REDACTED] when he drove it, [REDACTED] also drove it around [REDACTED] place whilst I was in the car.

Apology

80. Later on, potentially April / May 2021, Latham called me up and apologised for what had happened.
81. He asked if he could take me to Greymouth to make up for all the stuff he had done. I asked him why I would go up to Greymouth with him after this.

82. One day around March or April 2021, Latham came into [REDACTED] in Hokitika where I [REDACTED] at the time.

83. He came up to me and asked to get \$50 cash out.

84. I put the transaction through and gave him \$50 cash. He put it [REDACTED] in front of me and tried to leave, so I was left with the money.

85. I told him to take it and that I didn't want his money.

86. I haven't spoken to Latham since

[22] Mr [REDACTED] was challenged across near all of these various alleged incidents. The “creepy weird smile” was suggested to perhaps just have been from pain that Mr Martin was suffering. That refers to a major theme of Mr Martin’s position in this case. Mr Martin suffered a significant injury on 5 January 2021 when he was struck by a flying object in the chest when using a motorised weed eater. Mr Martin had emergency surgery in Greymouth hospital with a thoracotomy being performed before being immediately transferred by air ambulance to Wellington hospital in a very serious condition.

[23] This left Mr Martin physically impeded to some extent for a period of time as he recovered, with various medication and treatment required. We will say more about this injury and impediment later when considering Mr Martin’s evidence.

[24] Mr [REDACTED] accepted that it (the look on Mr Martin’s face) could mean Mr Martin was in pain, but went on to state (when further questioned on this) that “it just felt like it was sexual and it made me uncomfortable”.

[25] It was put to Mr [REDACTED] that being paid money by Mr Martin (for doing work for/with him) was something Mr [REDACTED] had assumed would occur, and was not actually something Mr Martin had offered to him. [REDACTED] maintained that Mr Martin had offered him money directly.

[26] A consistent theme of the challenge to this witness and others was that Mr Martin would not have been driving much if at all because of his injury. Rather he “was impaired at home” and would give evidence for instance that:

...he was impaired for a very long time, many many months, and so in that time that he knew you he couldn’t reach into the back seat at all.⁷

[27] As a result it was put to Mr [REDACTED] that he was being dishonest about being driven around by Mr Martin (save for Mr Martin accepting the drive to Greymouth McDonalds). Mr [REDACTED] however maintained that he had been driven around by Mr Martin. This included the driving after the “athletics day”, and the alleged leg touching.

⁷ As put by Ms Brown, for Mr Martin, to one of the witnesses.

[28] Similarly it was put to Mr [REDACTED] that Mr Martin could never have reached him in the rear passenger seat when driving on the McDonald's trip. Advancing this point, Mr Martin's brief was put to Mr [REDACTED] where Mr Martin produced re-enactment photos (these are found in Mr Martin's brief which is included later in this decision). The photos are of Mr Martin in his vehicle (the same vehicle), sitting in the driver seat with his arm bent as if to simulate the difficulty in reaching behind him.

[29] Mr [REDACTED] responded to those photographs by stating:

"His arm doesn't look fully extended, it looks like he's half doing it";

and

"He did, if he had his shoulder more relaxed and his arm more down, then he could".

[30] More will be said on these photographs later.

[31] The alleged drive to The Warehouse for purchasing gifts with Mr Martin's bank card was also denied and was said to be a lie (both the drive itself and the use of his bank card). Mr [REDACTED] maintained that this had all occurred.

[32] Also challenged by Mr Martin were the snapchat messages and images (allegedly with pictures of Mr Martin's partner in a bikini etc). It was put that there was no evidence of any messages as Mr [REDACTED] had not saved screen shots of them.

[33] Similarly the "I love you" and "suck a dick" comments were also alleged to be dishonesty on Mr [REDACTED] part.

[34] Mr [REDACTED] maintained that this had all occurred.

[35] Ultimately it was put to Mr [REDACTED] and this was to become a significant theme in this case, that he (Mr [REDACTED]) was lying in his evidence due to encouragement from a teacher that he was loyal to, [REDACTED]. As this theory went, it was alleged that Mr [REDACTED] may have disliked Mr Martin after a restructuring had occurred in the school, which Mr Martin had had a hand in, although Mr [REDACTED] employment itself was not affected. Rather, Mr [REDACTED] had a role on the PPTA and was involved in advocating against the restructuring. The theory continues that due to a mixture of loyalty and encouragement from Mr [REDACTED] that Mr [REDACTED] may have then decided that he did not like Mr Martin, and had accordingly made up all of these stories culminating in giving false evidence. Although the term "collusion" was avoided, as this theory came out during the hearing it was essentially one of collusion between Mr [REDACTED] and the complainants and/or between the complainants themselves.

[36] It was also put to Mr [REDACTED] that he felt short changed at not being paid by Mr Martin, which may have also driven these false allegations being made by

him.

[37] Overall, in response Mr [REDACTED] maintained that all of the accounts given by him in his brief of evidence were the truth. He said that he did not like or dislike Mr Martin. He said that he wasn't "too bothered" about not being paid. He denied any collusion with others or encouragement from Mr [REDACTED]

[38] The next witness was [REDACTED] His evidence was as follows:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. In 2021, I was in Year 11 at Westland High School.
4. I met Latham Martin through my friends [REDACTED] [REDACTED] They asked me if I wanted to work with Latham. This was some time in year 11.
5. I think they didn't want to work on their own, because it would be boring.
6. I said I would help.
7. The work involved painting or doing laundry and other jobs around his house.
8. Latham said he would pay me but wasn't very good at paying. At the end of a job, he would often say that he couldn't pay me, or that he would pay me next time. It happened a few times, until one time when I did get paid, I didn't come back.
9. Latham paid me not even half the amount that he said he would. He told [REDACTED] and I to go to the shop on Stafford Street and use his card to get out \$50 for the both of us, which wasn't even half the amount he said he would pay us.
10. I remember one occasion I was at Latham's house with [REDACTED]. We had just finished off some painting.
11. I think we had eaten some chocolate of Latham's, and [REDACTED] asked Latham whether he could eat some other chocolate. I can't remember exactly what chocolate now.
12. Latham said something to [REDACTED] like: "do you want to pay me back - you can in one way." It was just odd, inappropriate tone- [REDACTED] and I were dumbfounded- it was a inappropriate question to ask a young person.
13. [REDACTED] was very quiet after that.

[39] A number of challenges were put to Mr [REDACTED] It was put that the work at Mr Martin's home could have been part of a community initiative after Mr Martin was injured. Mr [REDACTED] ejected this and stated that he was not aware of any other people coming to the house.

[40] It was put that Mr Martin would give him (Mr [REDACTED]) a koha for the work, and that more specific payment had not been discussed. Mr [REDACTED] rejected this and stated that he had to “force to get my money” and “I wasn’t going to do labour for someone that I didn’t know”. Mr [REDACTED] stated that he was told directly by Mr Martin that he would be paid for the work.

[41] It was put that these allegations were made up by Mr [REDACTED] and his “group” because Mr [REDACTED] was loyal to Mr [REDACTED] and that Mr [REDACTED] did not like Mr Martin. Mr [REDACTED] didn’t accept that and noted that he would not “lie to a Police Officer”.

[REDACTED]

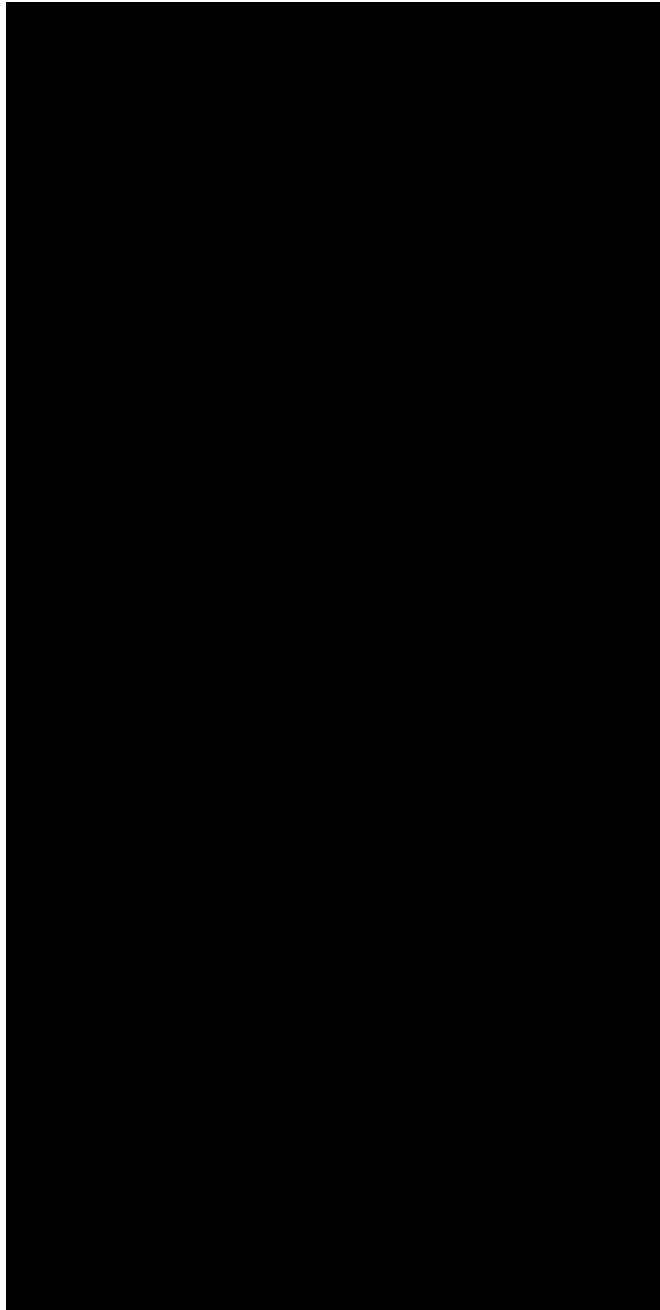
[42] The next complainant witness was [REDACTED]. His evidence was as follows:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. In 2021, I was in Year 11 at Westland High School.
4. I first met Latham Martin through my friend [REDACTED]. [REDACTED] was working for Latham, as were a couple of my other friends.
5. One day we were planting trees at the sports hub at school and [REDACTED] asked me if I wanted to come to Latham’s place. I think this was in early 2021, I remember that [REDACTED] and a few other girls were also planting trees. I said I didn’t really, but Latham said “just come out, [REDACTED]” in a weird voice. I said I would.
6. I thought it was a bit weird, but [REDACTED] said he felt awkward being by himself with Latham, so when [REDACTED] went to work for him, I would go with him.

Snapchat and Facebook messages

7. Latham began messaging me on Snapchat and Facebook about a week after that. He kept sending me Snapchat messages and I wouldn’t reply to them.
8. He asked me why I was ignoring him and I said it was because I had better things to do.
9. He sent me some other messages I thought were weird:
 - (a) Once when he was in Wellington he sent me a message and said it sucked being home alone. I think [REDACTED] told me that he had seen on Snapmaps that Latham was in Wellington and that I was messaging him. I didn’t respond to Latham’s snapchat.
 - (b) He sometimes sent me photos of his girlfriend wearing just a bra and short shorts.

(c) He sent me a photo of him wearing a Trump supporter hat.⁸



(d) He sent me a photo and said he was a casino. In the photo he wasn't wearing anything and you could basically see his balls. The photo was taken by him towards his leg/thigh area- I remember that it was of the corner of his undies and then just his skin. I blocked him after that.

10. He also kept messaging me about a party we were planning at a mate's place one time. He kept asking me why I wouldn't invite him and got angry with me.

⁸ The printed screen shot taken by this witness was produced by him at the hearing and has been included in our decision.

11. I sent him a video of my mate [REDACTED] ripping into him. [REDACTED] called him a weirdo and a paedo- Latham opened it and didn't reply.
12. The next day, he asked me to apologise, I think I blocked him after speaking to [REDACTED] because he told me he had also blocked Latham.
13. Another time he messaged me at 11pm and asked to hang out.

Trip to McDonald's in Greymouth

14. One day I went to the McDonald's in Greymouth with Latham and [REDACTED]. I think this was around May 2021.
15. [REDACTED] wanted to go to the Warehouse and was going to Greymouth with Latham. Then he wanted to go to McDonald's as well.
16. Latham picked me up from my house and I hopped in the front of his truck. [REDACTED] was in the back.
17. Latham said "oh [REDACTED], you make me very excited." I thought it was really weird.
18. We drove to Greymouth and went to the Warehouse. Then we went to McDonald's and got some food and drove back to Hokitika.
19. I was sitting in the front seat because [REDACTED] didn't want to sit there. Latham was driving.
20. By around 8pm, we were about halfway back to Hokitika and passing through the Kumara junction on the way back to Hokitika.
21. I looked over my shoulder and saw Latham was trying to touch [REDACTED]'s penis.
22. [REDACTED] had bought a burger and fries, and he had the fries in between his crotch initially but [REDACTED] had moved the chips so they were on the outside of the seat. So there was nothing for Latham to grab for.
23. I thought it was strange that Latham tried to grab the fries because he had his own in the front seat.
24. He kept trying to touch [REDACTED]'s crotch even though he could see there were no chips there.
25. I was blown away and sat looking at my phone the rest of the way back. I didn't say anything to him the rest of the way back, even when I was getting out of the car.

Touched my leg

26. On one afternoon Latham texted me after my rugby training, I can't remember exactly what he was saying.
27. I was going to go to the bank to get some cash out, but he said "don't worry about that, I'll give you some money." I'm not going to turn down free money so I said ok, righto.
28. We drove past [REDACTED]'s house and pulled over. I texted [REDACTED], but then Latham said he didn't want to hang out with [REDACTED] Latham had pulled

up for about 30 seconds and then he said that “don’t worry about [REDACTED]” so we drove off.

29. Around 6pm or 7pm we got to Subway. I got some toasties and got back in the truck.
30. Latham was on the phone to someone.
31. Latham then said to me: “I love you”.
32. I really wanted to go home and I told Latham that my mum wanted me home.
33. He said “no, we’ll go for a quick drive over the south side”. He asked if I wanted to drive, so I hopped in the driver’s seat. Latham got in the passenger seat.
34. I put the car into drive and put the handbrake down and Latham reached over the centre of the car.
35. At the time, I was 15 and I didn’t have a driver’s licence. I had told Latham that I was only 15 years old and that I didn’t have a drivers licence either.
36. I thought he was reaching for the handbrake or something but he reached across and gave me a horse bite in the middle of my thigh.
37. I told him to fuck off and grabbed his arm.
38. I pulled over and he tried it again, he did the same thing- he gave me a horse bite in the middle of my thigh.
39. We got about halfway to Adairs Road and I said I didn’t want to drive anymore.
40. After that Latham tried to convince me to come into his house. I kept saying no and that I wanted to go home.
41. I was about to get out of the truck and just walk home but Latham said I’ll drop you home.
42. He started having a go at me on Snapchat when I got home and asked “why are you shitty at me”.
43. I told him it was because he touched my leg. I was pretty pissed off about it.
44. I told my mum and she told me to block him and not have anything to do with him.

[43] Mr [REDACTED] was similarly challenged by Mr Martin. It was put to him that Mr Martin was “seriously incapacitated” in January 2021 and would not have been at the tree planting at all. Mr [REDACTED] maintained that it did occur, although was unsure of the precise date.

[44] It was put that the messages (at para [9] of the statement above) were lies. It was suggested to Mr [REDACTED] that he would have taken a screen shot of

them at the time if they had really occurred. This was not accepted.

[45] It was put that the photo [REDACTED] was not sent by Mr Martin. Mr Martin also denied adding the "Trump/Pence" filter to it. Mr [REDACTED] maintained that it was sent to him, by Mr [REDACTED] with the "Trump" filter on it (above).

[46] It was put that Mr [REDACTED] couldn't see what occurred in the car due to the presence of a headrest behind him. This was rejected.

[47] It was again put that Mr Martin couldn't reach a rear side passenger by reaching back from the driver seat. The reconstruction photos were shown. This was rejected.

[48] It was put that there was only the one trip to McDonalds and not a second trip to the Warehouse, which was said to be a lie. This was also rejected.

[49] The various other alleged driving was denied. The phone call and the "I love you" comment was suggested to have been to the person that Mr Martin was speaking with if it occurred. The image sharing (of his partner, and the "casino" photos) were denied.

[50] It was again suggested that any work done was on a voluntary basis and that no money had been promised, and that only a smaller sum had been given to him by Mr Martin. Mr [REDACTED] did not accept this.

[51] The "make me very excited" comment was also challenged, with the witness remaining firm on that.

[52] Consistent with the theory being put to Mr [REDACTED], it was suggested that Mr [REDACTED] had made up his evidence on the encouragement of Mr [REDACTED].

[53] Mr [REDACTED] firmly resisted all of the challenges put to him. He maintained that all of the events happened. He queried why he would collect screen shots of messages at the time, and why he would bother putting a filter on a picture of Mr Martin. He queried why he would give evidence now and "waste his time".

[REDACTED]

[54] The next complainant witness was [REDACTED]. Mr [REDACTED] evidence was:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. In 2020, I was in Year 11 at Westland High School. I left at the end of 2020.

4. For about four or five months in 2020 while I was at school I did after school jobs for Latham Martin.
5. I can't remember exactly how it came about.
6. I knew Latham because he used to teach [REDACTED]
7. I think he may have added me on Snapchat and asked if I wanted to do some jobs for him to get some money.
8. I began working for Latham about mid-2020.
9. I mowed his lawns, did gardening, washed his car, painted his shed — that sort of thing.
10. Often this was at his house, but a few times I did jobs at [REDACTED] School, moving stuff around or cleaning up a classroom.
11. Sometimes he offered me something to eat or we would have a chat afterwards, and he would drop me home, or I would get picked up by my mum or whiz home on my moped.
12. Usually it was just me, but one time my friend [REDACTED] helped out too.
13. Often Latham would muck me around a little bit with payment and take a long time to give me money. It was a little bit frustrating, but he would eventually pay me.
14. Latham would message on Snapchat, but this would be connected to the work I was doing for him at the time.
15. Sometimes Latham would message me to go for a drive. I can remember this was in mid 2020 some time. I would just be chilling at home, and Latham would Snapchat me asking what I was up to, and he would ask if I wanted to go for a drive. We would drive around and just talk.
16. One time, I had done some work around his garden and Latham told me he would not pay me unless I went for a drive with him. I then went for a drive with him and he paid me once I got home.
17. I stopped working for Latham in 2021 when I took a full time job [REDACTED]

[55] Mr [REDACTED] confirmed in cross examination that he was aware that Mr Martin arranged community events. Mr [REDACTED] confirmed that he was in Mr [REDACTED] class during one year. He did not recall Mr [REDACTED] talking about Mr Latham.

[56] Mr [REDACTED] was not directly challenged on the messages above (at [15] – [16]) although Mr Martin appeared to deny them when he gave evidence.

[57] The next witness was [REDACTED] His evidence was:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. In 2021, I was a Year 13 student at Westland High School.
4. I do not remember when I first met Latham Martin, but I knew who he was because he was on the District Council and he did a lot of stuff for the community, so he was well known in Hokitika.
5. I used to see Latham at community events, like the Matariki Festival in 2020. I would also always see him at the Revell Street Market in Hokitika. I would have a yarn with him, and ask him what it was like being on the Council.
6. In 2021, I began helping Latham with his projects around Hokitika. Latham had a lot of projects going on, for example, gardening at the Lions Club.
7. I began helping Latham with his projects after contacting him on Snapchat. I searched for Latham on Snapchat, and added him as a contact. After this, I messaged him offering to help out with his projects in Hokitika. I wanted to help Latham because I knew he had had an accident when he was using a weed whacker, or something like that. He got a big injury when a rock hit him. I had seen the injury on Facebook.
8. I helped Latham with gardening at [REDACTED] place on the West Coast, he organised this and would be there, but he couldn't work because of his accident so he would just supervise and point me in the right direction. I also helped Latham with painting tables for outside the Fish and Chip Shop called Porkies in Hokitika, we did the actual painting in a workshop.
9. I did the gardening for Latham by myself with him there, but when we painted the tables, my friends [REDACTED] [REDACTED] helped too, Latham was there for this too.
10. My friend [REDACTED] told me that he and [REDACTED] went to Greymouth with Latham, and that Latham reached into the back seat of the car and tried to grab some chips, but touched [REDACTED] leg.
11. Latham never did anything like that to me, but I sent Latham a message on Snapchat, asking him about what [REDACTED] had told me. I asked him, "did you, like, do this?". He responded by saying "God no", "why would you even think that" and stuff like that. Then, Latham blocked me and [REDACTED] on Snapchat. He later unblocked me.
12. Sometimes Latham would send me other messages on Snapchat. In the first half of 2021, a few times Latham sent me photos of the scar on his chest, from his accident. They would be pictures of his chest with no top on, and Latham would say things like "Oh it's healing good". I could see the scar in the pictures. Normally he sent these messages in the afternoon.
13. Latham also allowed me to drive his truck even though he knew I was on a learner license. This happened after a time that I washed Latham's car and Latham told me to take his truck for a drive to wash it off.

[58] The only challenge to Mr [REDACTED] was to query the driving (para [13]). It was put that this was on private property with Mr Martin present. Mr [REDACTED] did not accept this.

[59] There was no challenge put regarding the sending of photographs by Mr Martin of his chest. An opportunity to do so was given however it was relayed to the Tribunal by Ms Brown that Mr Martin's position would be that he did not recall sending those pictures.

[60] [REDACTED] evidence was:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. I was a student at Westland High School from aged 12 – 16 (years 7 – 11). My last year at Westland High School was 2018.
4. I first met Latham Martin when he added me on Snapchat. He started messaging me randomly, just like with all the other kids. I can't remember exactly when he started messaging me but I think it would have been in 2019. Hokitika is a small town so I knew who he was when he added me, but at that point I had never talked to him before.
5. I cannot remember what he wanted at first. He used to say, "Oh how's your day going" and, "What have you been up to?". It was weird because I did not know him. This went on for a month.
6. Then Latham started to ask me to come around his house to mow the lawn or do some gardening, and he said he would pay me for this. I think I started working for him in 2019.
7. I think I went around to Latham's house 3 times and just did general labour tasks. I was 15 at the time, I think I had just turned 15 in April. I did the work with my mates [REDACTED] [REDACTED] [REDACTED] are one year younger than me and were 14 at the time. Latham would message a group of us to go around and work for him.
8. I only went to Latham's house three times, but the first two times Latham did not pay me. Latham always said he would pay me the following week but never did. He ended up paying me like 20 dollars at the end for all the work I did.
9. One time I removed him off Snapchat as a friend and then he added me back. He started messaging me on Snapchat and asking me why I removed him. I unfriended him because he had not paid me, so I was done with him.
10. After I unfriended him, Latham started messaging me on Snapchat saying, "If you come for a car ride, I'll take you to KFC or to McDonald's".

I never actually went with him. I thought it was weird being that young and going for a car ride with someone I did not know and who was way older.

[61] Several challenges were made to this witness. It was put that the messages were not sent. He didn't accept this.

[62] It was denied that Mr [REDACTED] attended Mr Martin's house. Mr [REDACTED] rejected this but couldn't be sure of when he attended. He said it was to mow the lawns, do gardening and wash a car. He said he went three times by himself.

[63] It was put that he didn't take screen shots of the messages or raise any concerns with anyone at the time. Mr [REDACTED] said that he just "tried to shrug it off and play dumb and act like it didn't happen".

[64] It was put that payment never happened. It was suggested, similar to how this was put to other witnesses, that there was no payment agreement and instead there was just a koha arrangement for community work. Mr [REDACTED] disagreed. He maintained that he received \$20, once.

[65] It was not put to this witness that he had been persuaded by Mr [REDACTED] to give false evidence or that he had colluded with the other complainants.

[REDACTED]

[66] Mr [REDACTED] is the teacher who has been mentioned in the evidence above. He gave evidence as follows:

1. My full name is [REDACTED]
2. My date of birth is [REDACTED]
3. I am a [REDACTED] teacher at Westland High School. I have been at the school since [REDACTED]

Complaint from [REDACTED] at the Wilfoods Festival

4. Sometime around 14 or 15 March 2021, I was doing security at the Wildfoods Festival in Hokitika. Wildfoods is an annual food festival in Hokitika.
5. We had a campsite set up at the school for the weekend of Wildfoods. I was at the campsite when [REDACTED] who were students at Westland High School, approached me. They were attending the festival.
6. [REDACTED] appeared to be angry, and he told me that Mr Martin was trying to get him on his own, in his house. He told me he thought that was inappropriate, given the age difference.
7. When [REDACTED] told me this, I was concerned, but I also did the classic and embarrassingly inappropriate thing of thinking to dismiss it. It was later on in the afternoon at the Wildfoods Festival, and sometimes kids can get a lot of energy, that sort of thing. So I probably was not a great support to [REDACTED] at that point.

8. But then, [REDACTED] showed me a screenshot on his phone of a text message with Latham's name on it. The message was something along the lines of "I want to come over, when are you free", and [REDACTED] had replied something along the lines of that it was inappropriate, you know, a 14 and a 26 year old or something along those lines, and "why would you be wanting to come round to my house without my parents there".
9. At that point, I realised there was actually something to what [REDACTED] as saying - it was not just kids being mean.
10. [REDACTED] also told me that there was a situation where Latham was saying to him that he wanted to see him, but that he disappeared when he realised [REDACTED] dad was there. [REDACTED] was uncomfortable about the interaction with Latham. I remember that he was also secure in the knowledge that his father could beat up Latham if anything happened.
11. I messaged the Principal, Iain Murray, then and there about what [REDACTED] had told me.

School investigation

12. The following week, on Thursday 18 March 2021, I interviewed [REDACTED] at School. My recollection was that this was more of a informal check in to see that they were okay.
13. I conducted the interviews by asking [REDACTED] to come and see me and recorded what they wanted to say. I just said "tell me what you wanna say" and then I wrote notes down of what they told me.
14. In the interview with [REDACTED] I wrote down the following relevant notes:

He is really weird about it. He can say weird things in person. He called me yesterday. He wanted to come round my house. We went to Maccas. I always sit in the back because I don't want to be there. The chips were between my legs. He kept grabbing for them. I asked him to stop putting his hand too close to my dick. I asked him to stop. But he didn't. It is not the first time this has happened. Still trying to add me back on snap chat.

[REDACTED] used to work for him in December. [REDACTED] got me to work with him because he didn't want me to work with him on his own.

Latham is quite a shit stirrer. He tells [REDACTED] that he does not like us. Then gets us to hang out with him without [REDACTED]. Then [REDACTED] shows me messages of him asking to hang out with [REDACTED] on his own.

He sits and tenses his muscles to show us via snapchat.

He is good at being nice. He is not weird all the time. After his injury he is getting a lot closer around us more open. He is really confusing.

He called me like 5 times on Wednesday. I spoke to him about the things he has been doing and about how it made me feel. He said he knew it was disgusting. It sounded like he was crying. But then asked me to keep him on snapchat.

I wouldn't want him on my own at my house.

It's that if adults are there he is fine. It's just like if they go away for a min to go for something. It just feels weird. By saying stuff or pushing you but in a weird way.

I had cramps this one time and he would not stop touching my leg even when I told him to stop. He said he knows how to deal with cramps.

He had this chocolate in his fridge. I asked him for it and he said "You'll have to do something for me first".

15. In the interview with [REDACTED], I wrote down the following relevant notes:

He is weird.

He wouldn't touch me, but if I'm being honest he would touch someone else. I've blocked him. He messages me weird. He offered to buy [REDACTED] a phone. When we went to Greymouth he was being a little bit weird.

I only hang out when [REDACTED] asks me to come with him, because he does not want to be on his own with him.

Some of the stuff he was saying to [REDACTED] in the car was weird. When he saw me and dad he went away and hid inside. I'm hoping someone would complain about his behaviour. He grabbed my knee a few times and I told him to back off. Its better sitting in the front but I always have a knife in my pocket.

I hopped in the truck on Tuesday ... and he said "Hi [REDACTED] You make me so excited".

16. At the time of the Wildfoods Festival, and later in the interviews, [REDACTED] were animated and upset about what they thought was inappropriate behaviour.

17. After I interviewed [REDACTED], I also spoke with another student at the School [REDACTED], I recall that [REDACTED] had said something suspicious about Latham which is why I spoke to him- I can't remember exactly what it was that he disclosed about Latham.

18. [REDACTED] wanted to speak to me initially, from memory he didn't say anything particularly damning about Latham.

19. In the interview with [REDACTED], I wrote down the following relevant notes:

Weird comments. "I love you [REDACTED]. I miss you [REDACTED]". We haven't even known him he is 26 and we are 14 and 15. The boys would not want to see him on their own because he is a bit weird when they are by themselves. [REDACTED]s fine because he is older and so he knows what to do, but we are younger. He offered me to drive his Hilux but then when I go to drive it he says na. It is a way that means we go with him. Sort of like teasing us. He has done nothing towards me. But mostly [REDACTED] he is weird with. Latham said "I love you" to [REDACTED] and that was weird. [REDACTED] and [REDACTED] told me to go into the front seat. I don't care because what's the worse that could happen?

He says sex jokes in front of us like "I've got a present and it is 1.5cm long". It was a cactus.

20. After the interviews that I did with the students, the matter was reported to Police. From memory I was involved in that process alongside the Principal, Mr Murray.

[67] We note firstly that to the extent that Mr ██████ recounted issues or potential allegations from others that we did not hear direct evidence of, we have put to those to one side.

[68] Cross examination of Mr ██████ centred around the issue mentioned in relation to the complainant witnesses - whether Mr ██████ had a "grudge" against Mr Martin due to a restructuring that had occurred whilst Mr ██████ had a representation role on the PPTA. It was put to Mr ██████ that he had criticised Mr Martin to the students and that this had led to their allegations now being made.

[69] This was not accepted by Mr ██████. He noted his embarrassment at not initially believing the first complaint when approached at the Wildfoods festival, as an example of how he was not out to get Mr Martin.

[70] It was also put that Mr ██████ was lying in his evidence that he had seen the text message or that there was a text message, as part of the wider challenge that the text message was never sent by Mr Martin. Mr ██████ maintained that he had seen the message from Mr Martin on the phone as set out in his brief.

Iain Murray

[71] Mr Murray was the Principal of the relevant high school at the time of these events. His evidence was as follows:

1. My full name is Iain Murray.
2. My date of birth is 27 August 1964
3. I am the Principal at Westland High School.
4. At the end of Term 1 2023 I am leaving Westland High School to take up a Principal role at Hornby High School (Christchurch).
5. On or about the 22nd March 2021, ██████ came over to me with a letter and the statements that he had received from students who made allegations about Latham Martin. I then spoke to my Board of Trustees Chairperson Dave Ritchie with potential concerns about Latham who was a current Board Member.
6. I told Dave Ritchie that I would pass this on to the Police as there appeared to be criminal allegations. I then contacted the local Police about the allegations.
7. Bruce Pearson (Police) came to the school about 15 minutes later, Dave Ritchie came into the school 5 minutes after that.

8. They both read the statements from the students, Bruce Pearson took the matter from there.
9. The Police did keep me up to date with their progress a couple of times and did come to school. They advised they were going to speak to families involved and Latham himself.
10. The Police later advised that they passed the matter on to the Teaching Council.
11. At that time of the allegations, Latham was on our payroll as an employee, he was not on site here at school- he was doing data analysis work around student achievement part time remotely.

[72] In cross examination by Mr Martin's representative, Mr Murray gave a wider account of Mr ██████ alleged dislike of Mr Martin. This included acrimony over the restructuring that had occurred, and specific comments Mr ██████ had allegedly said about Mr Martin. Mr Murray said that Mr ██████ had said on two different occasions that he (Mr Martin) was "a paedophile". Mr Murray said that he cautioned Mr ██████ about making such comments. Mr Murray also said that Mr ██████ made it clear that Mr Martin "needed to be gotten rid of" and shouldn't be teaching or on the Board of Trustees. Mr Murray considered it a "vendetta" and a "grudge" that Mr ██████ held about Mr Martin.

[73] This evidence arrived via cross examination and after Mr ██████ had given evidence. Therefore it had not been raised earlier or put to Mr ██████ for a response. However, as will be discussed later we see the issue about Mr ██████ and the restructuring episode he was allegedly involved in as not requiring detailed determination in this decision.

Tom Eathorne

[74] Mr Eathorne was the final witness. He is a Teaching Council investigator. He received the complaint once referred on from Police, and undertook several enquiries and interviews which have been produced to us.

Evidence from Mr Martin

[75] Mr Martin gave evidence via a written brief of evidence. That was supplemented by lengthy further oral evidence, and cross examination by counsel for the CAC.

[76] Mr Martin's brief was as follows:

1. My full name is Latham John Martin
2. My date of birth is 2nd May 1994.

My Background

As a teacher –

3. I have been a classroom teacher, acting assistant principal and digital fluency facilitator, first starting as a beginning teacher teaching year 2, then year 3/4 and year 4,5,6. I have also taught year 4/5 and year 0/1.
4. I have a full practicing certificate which is due to expire on 20th December 2023.

On the Board of Trustees of Westland High School -

5. I have served on the Westland High School Board of Trustees (Board) from 2016-2022. During the two trienniums, I served as Board Chair for over 5 years.
6. When I started as Board Chair the school was in a very poor state. The governance and management in the school was dysfunctional, the school administration block and hall was destroyed by a fire and student achievement was at a low.
7. During this time, I was involved in considerable change at Westland High School, including requesting assistance from a Limited Statutory Manager and working with the Ministry of Education to address issues within the school. We were involved in appointing several acting principals, and then the appointment of Mr Iain Murray as principal. The board oversaw considerable property development including the DWC Westland Sports Hub, covered courts, and upgrade of the gymnasium, fields and classroom.
8. During my last year as Chair of the Board there was a restructuring of the Senior Leadership Team at the school. This was an incredibly difficult and unpopular task at the time and became very personal for some involved. This concluded during Covid-19 lockdowns.

Westland District Council -

9. I have served on the Westland District Council (Council) from 2013-2022. During the three trienniums, I served as Deputy Mayor, Chairperson of Finance, Audit and Risk, Chairperson of the Community Development Committee and Planning and Regulatory Committee Chair. I served as Chair of the Creative Community Scheme Funding Committee for 9 years and served as a Member of Te Tai o Poutini One Plan Committee for 6 Years.

Community Work -

10. The Lions
 - a. I have served as a Member of the Lions Club of Hokitika (Lions) from 2013-Current. During that time I have served as Treasurer for 7 Years and President for the last two years.
 - b. During my time in the Lions Club of Hokitika I have attended numerous working bees and projects and supported:
 - i. 10 Children's Day Festivals in Hokitika.
 - ii. 2x Westland Puanga-Matariki Festivals in Hokitika.
 - iii. Founded the Market Stall at the Revell Street Market and Cool Little Market in Hokitika.
 - iv. Fundraised and Upgraded Lazar Park Hall, Playground and Community Garden in Hokitika (\$790,000).
 - c. Within our club, there is a diverse membership of volunteers ranging in age, gender, ethnicity and background. These volunteers support a range of community events and projects, involving the elderly, youth, working

bees, fundraising projects etc. The Lions Club of Hokitika has a large financial turnover and is involved in over 100 projects per annum. These projects bring us into contact with most of the Hokitika Community. Volunteers are often supported with financial compensation for direct costs (petrol, equipment etc, presented gifts/koha as a sign of appreciation and whenever there is a working bee or event food is provided either at a cost to the Club or individual members). Rewarding and acknowledging service, keeping it fun and encouraging fellowship are all outcomes Lions strive for.

11. Other community work

- a. As a result of my involvement with Lions, and my connection with [REDACTED], a number of other community projects have been supported by me as an individual and The Lions Club of Hokitika. This included a major fundraiser for the All Saints Church Roof Restoration and Strengthening where the proceeds from the sale of my car were pledged to the Church.
- b. In late 2020 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- c. In January 2021 I was injured while undertaking community work in Hokitika and was unable to complete the work at [REDACTED]
[REDACTED]
- d. I have and continue to support a number of charities and community organisations in Hokitika and on the West Coast and serve on a number of Boards currently. These include:
 - i. Lions Club of Hokitika Charitable Trust
 - ii. West Coast Technology Education Trust
 - iii. Lake Kaniere Scenic Triathlon Inc
 - iv. Lake Kaniere Lodge Trust Inc

2021

12. My Accident

- a. I was injured in an accident on 5th January 2021. A news article about this accident is attached at "B".
- b. During the summer of 2020/21 I was leading and involved in a number of community volunteering and fundraising exercises. These included waterblasting, painting, mowing, weedeating, gardening, selling plants, garage sales, online sales of donated items etc. These activities were supported by volunteers, some paid, ages ranging from 8-70 and of both genders. My girlfriend [REDACTED], was present at many of these events during her summer break. To allege this work was only done with young males is entirely incorrect.
- c. On 5th January 2021 I was hit by a blunt instrument when I was voluntarily weedeating with a friend, a 65-year-old, near the railway lines in Hokitika. This impact created a concussion wave that resulted in the veins and arteries around my heart and lung exploding and my chest filling with blood. I was rushed to Greymouth Hospital and underwent lifesaving surgery. I was transferred to Wellington that evening/early morning for further surgery and woke up in ICU the following day. I

received many blood transfusions, was on intense medication and had two chest drains and two direct lines of drugs into my body. I was in Wellington Hospital for eight days and was flown to Greymouth with the Flying Doctors Service at low altitude due to having a pneumothorax. I was completely medically disabled and unfit for the months of January-May 2021. During this time I was on intense pain medication, had district nursing, received home help for cleaning and cooking, had to be showered by [REDACTED], received daily treatment from a range of health professionals including physio, occupational therapists, psychologists, massage therapists etc. I attended a number of health appointments in Hokitika and Greymouth. Additionally, I received continuous visitors during the summer. I suffered significantly both physically and mentally during this time. In May I returned to work 1 day a week, which has grown to 15 hours a week. I still receive regular counselling/psychologist support, medical support, dietitian support, OT support, and physiotherapy to this day. I have significant pain daily in my left side, the area where I received my thoracotomy and have fractured and subluxed ribs and a range of other issues with this area.

- d. As well as providing personal care, [REDACTED] did all of the domestic tasks. Trevor, who was the school's grounds keeper helped by doing my lawns.

13. Further surgery

- a. In November 2021 I underwent an additional surgery to address a thoracic complication. This was undertaken under general anaesthetic.

14. Ongoing impacts of my accident

- a. Additionally, I suffer psychologically from the trauma of my near-death experience. I want to get well and focus a lot on becoming physically and mentally well.
- b. Even two years after my accident I am not fully recovered. To look at me, I would appear to be physically able. I have a large scar on the left side of my body from my sternum to my spine. This has left me with very little sensation in this area, is incredibly sensitive. I attend the gym weekly and receive massage therapy weekly to continue with my recovery. My medical records are attached at "C".

15. The Allegations

- a. The first that I knew of the allegations was when I received a home visit on 27th May 2021 from Jason Martin asking me if he could have a conversation with me regarding my interactions with two youth. I was in the middle of a meeting online and we organised to meet at 5:30pm at the Hokitika Police Station following the conclusion of my council meeting. The boys at the centre of the allegations were volunteers undertaking community work.
- b. These boys were like all other volunteers to me. I was friendly in my manner to them, but they were not my friends.
- c. I deny all allegations of a sexual or intimate nature with the boys.
- d. Over the course of the summer break, I occasionally purchased food and provided a cash koha as a way of saying thanks for their service, in the same way I did for all volunteers.
- e. I did occasionally allow students to drive on private property in the presence of [REDACTED]. The students held their learner's license.

16. The Briefs of Evidence

17. [REDACTED]

18. The notes from [REDACTED] interview with [REDACTED]
 - a. I have never touched [REDACTED] nor attempted to touch him intimately.
 - b. There was a trip to McDonald's. I did not reach for his fries or attempt to touch him sexually. Because of my injury I could not turn around/reach around in a vehicle while driving. This would have been physically impossible.
 - c. I recall [REDACTED] undertaking community work at the market and at [REDACTED] property but nowhere else.
 - d. I have not seen the messages with [REDACTED] that he refers to in paragraph 8 and can't comment on them. My communication with [REDACTED] focused on organising community work.
 - e. I don't know anything about the communications between [REDACTED] and [REDACTED] as I wasn't party to them. I did not ask [REDACTED] to "hang out". I have not seen the message that [REDACTED] refers to so cannot comment on it. Any messages between myself and [REDACTED] were to organise community work.
 - f. I did not become more open with the boys after my accident.
 - g. There were no conversations about personal matters. I did not request to keep him on snapchat. I did not speak to [REDACTED] 5 times on a Wednesday.
 - h. [REDACTED] visited my home after my accident with [REDACTED] [REDACTED] and his mother. We did not have a sexual conversation about chocolate.
19. The notes from [REDACTED] interview with [REDACTED] [REDACTED]
 - a. I did not grab [REDACTED] knee.
 - b. I have no comment to make about his opinion that I was weird.
 - c. I did not offer to buy [REDACTED] a phone.
20. The notes from [REDACTED] interview with [REDACTED]
 - a. I did not tell [REDACTED] that I loved him or [REDACTED] that I missed him.
 - b. I did not tell sex jokes with the boys.
21. In all of the years I have known [REDACTED] he has never once approached me about any of these allegations.
22. Whilst I was on The Board of Trustees of Westland High School there were a number of matters that were undertaken including: replacing of the principal, appointment of a new principal, and a restructuring of the Senior Leadership Team. The restructuring resulted in [REDACTED] becoming heavily involved as Westland Branch Chair of PPTA. There was a lot of acrimony at the time and I believe that [REDACTED] holds some grudges about what happened.
23. [REDACTED]
24. Athletics Day February 2021
 - a. This event did not occur. I never gave him a ride, let alone reach back and touch his leg.
25. Moving Picnic Tables
 - a. Picnic tables were moved with the assistance of Mr Butch Symons.

b. I did not tell [REDACTED] that I loved him.

26. Trip to McDonald's Greymouth

a. This occurred the evening that [REDACTED] ([REDACTED]'s mother) had booked Lazar Park Hall for a meeting. I met her there and let her in along with [REDACTED] and [REDACTED]. She gave permission for [REDACTED] and [REDACTED] to travel with me to Greymouth to get McDonald's.

b. I have no recollection about any conversation about him [REDACTED]
[REDACTED]

c. I did not make the statement "How would you like it if I asked you to suck dick?"

d. I did not reach around the back of the truck to grab fries and put my hand near his crotch. I could not have done this.

e. I never received any complaint from his parents.

27. Trip to The Warehouse in Greymouth

a. This trip to the Warehouse as alleged did not occur.

b. [REDACTED] has never been given my card to buy what he wanted.

c. [REDACTED] did not buy a teddy bear, phone charger or a digital clock in my presence.

d. [REDACTED] did not buy a phone charger in my presence.

e. [REDACTED] did not buy PlayStation equipment in my presence.

f. [REDACTED] did not buy cologne in my presence.

g. I have never discussed naming a teddy bear with [REDACTED], nor told him what it should be called.

28. Revell St Markets

a. I did not comment on how he looked.

29. At My House

a. The only time [REDACTED] came to my house was with [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. She brought him around after my accident when I was at home recovering. They stayed for an hour or so and left together. There was no sexual discussion with [REDACTED] about chocolate. [REDACTED] has not undertaken any work at my house, before or after my accident.

30. Snapchat

a. At the time my snapchat settings were open. They have since been closed down to "friends only".

b. I did not consider [REDACTED] and his friends as being my personal friends. They were volunteers to me. I had no interest in their location.

c. I did not send a photo of [REDACTED] to them in a bikini.

d. [REDACTED] came to visit me with [REDACTED] [REDACTED] after my accident, otherwise [REDACTED] didn't visit and I didn't invite him.

31. Eftpos Card

a. [REDACTED] and the boys were volunteers and there was no expectation of payment.

b. I did not allow them to use my card.

c. I did not buy them ice cream at the beach.

32. Driving My Truck

a. To the best of my knowledge, [REDACTED] has never driven my vehicles. The only vehicles that I recall being driven were mine driven by [REDACTED] and [REDACTED] at [REDACTED] and [REDACTED] 4WD SUV by [REDACTED]. Additionally, [REDACTED] and possibly [REDACTED] had driven her 4WD Motorbike.

33. Apology

a. This event did not occur. I did not give him \$50.

b. I have not spoken to him since around Wildfoods in 2021.

34. [REDACTED]

a. [REDACTED] painted picnic tables for Porky's. This was done at Butch Symon's painting yard.

b. There was never an agreement about payment.

c. The allegation about sexual payment for chocolate in my fridge did not occur.

d. I have no recollection of [REDACTED] ever being in my house.

e. [REDACTED] has not done any work for me around my house. The only way that this could have happened would have been when I was not at home.

35. [REDACTED]

36. Planting trees at DWC Westland Sports Hub

a. This occurred under the supervision of Sharon Wilson, teacher at WHS. I was the Board Chair at the time and was leading the Sports Hub development. Sharon's Science Class planted the trees. I did not invite him to my house.

37. Snapchat and Facebook messages

a. I did not message him about being home alone.

b. I did not send him a message with a picture of [REDACTED] in her bra and shorts.

c. I did not send him a message of me wearing a Trump supporter hat. While this is a photo of me, someone has added a filter to include the Trump hat and face paint. I do not support Trump's politics.

d. I did not send him a naked photo of myself from inside a casino.

e. I did not send him a photo from a party.

f. I did not ask him to hang out.

38. Trip to McDonald's Greymouth

a. This occurred the evening that [REDACTED] ([REDACTED]'s Mother) had booked Lazar Park Hall for a Meeting. I met her there and let her in along with [REDACTED] and [REDACTED]. She gave permission for [REDACTED] and [REDACTED] to travel with me to Greymouth to get McDonalds.

b. I did not say to [REDACTED] that he made me very excited.

c. I did not reach into the back seat to grab fries or attempt to touch [REDACTED] penis. This would have been impossible because of my injury.

39. Touched My Leg

a. This trip did not happen.

b. I did not touch his leg.

c. I did not tell him I loved him.

40. [REDACTED]

a. I know [REDACTED] through his [REDACTED] whom I am on [REDACTED] Committee with.

b. [REDACTED] was often at [REDACTED] (adjoining property effectively the same property) during the summer as he was apparently [REDACTED]

c. [REDACTED] had contacted me on Snapchat. My communications with him were professional and around completing community/voluntary work.

d. [REDACTED] did work at [REDACTED] property and painted the [REDACTED] picnic tables.

e. Photos of my scar and chest are publicly available on Stuff.co.nz as part of story done about me following the accident.

f. [REDACTED] has driven my vehicle in line with New Zealand Law i.e. Learner's License and with a full license holder supervising. This was at [REDACTED] property.

41. [REDACTED]

a. With the permission of his parents, [REDACTED] did mow my lawns after school and undertook community work in Hokitika including the gardens around the town clock and hanging Christmas Lights. [REDACTED] was paid for this work.

b. [REDACTED] did help move boxes of classroom equipment one school holidays. This was also in the presence of a number of staff members. This happened as a result of [REDACTED] being at the school during the summer holidays.

c. At all times communication was clear with his mother around what [REDACTED] was doing and where he was.

d. I have no recollection of [REDACTED] ever helping.

e. From my perspective, there was never an agreement for payment.

f. At the time [REDACTED] drove my vehicles he had a Learner's License.

42. [REDACTED]

a. I have no recollection of communicating with or [REDACTED] ever being at my house or undertaking any community work.

b. I do not know him and have had very little interaction with him. [REDACTED] has not been to my house before nor after my accident.

c. I have never taken [REDACTED] to McDonalds or KFC or paid him for any work.

43. [REDACTED]

- a. [REDACTED] did undertake some community work at [REDACTED], by invitation of [REDACTED].
- b. I have no recollection of paying [REDACTED] at the Market on 20th February 2021.
- c. The communications that I have had with [REDACTED] were all to do with community/volunteer work.
- d. I cannot comment on the exchange between [REDACTED] and himself as I was not privy to that.

44. Iain Murray

- a. I cannot comment on the details of Iain's statement as I was not privy to the conversations of informed of the steps that were undertaken at the time. The first I became aware of the allegations was when Jason Martin visited my home on 27th May 2021.

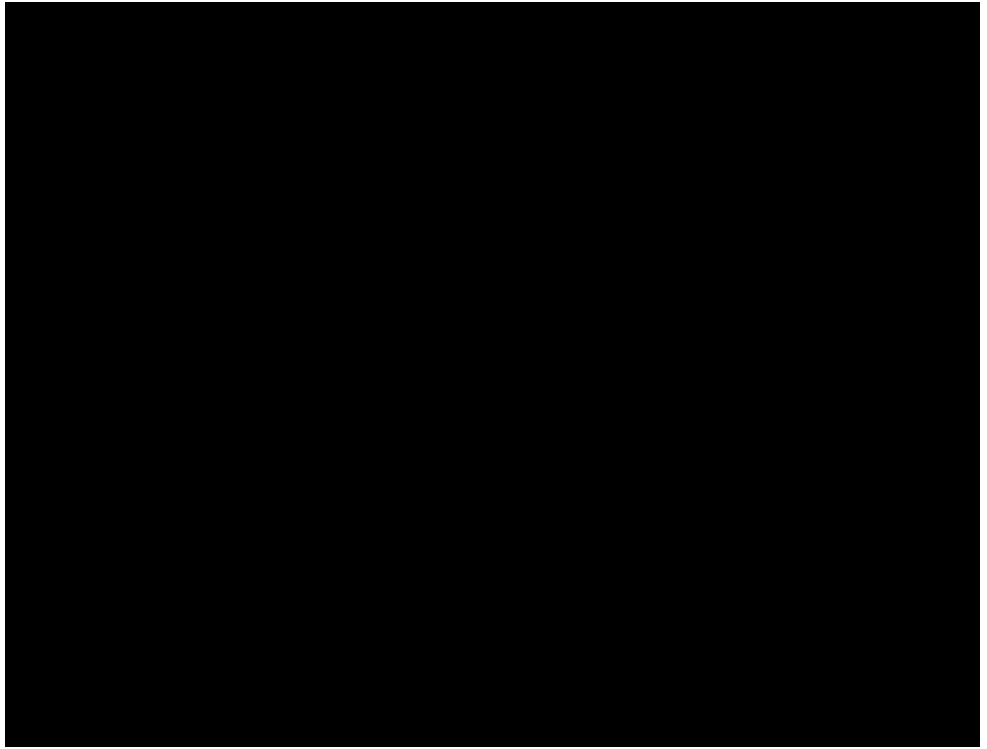
45. Tom Eathorne

- a. Tom's statement is my understanding of the Teaching Council's timeline of events.

My Truck

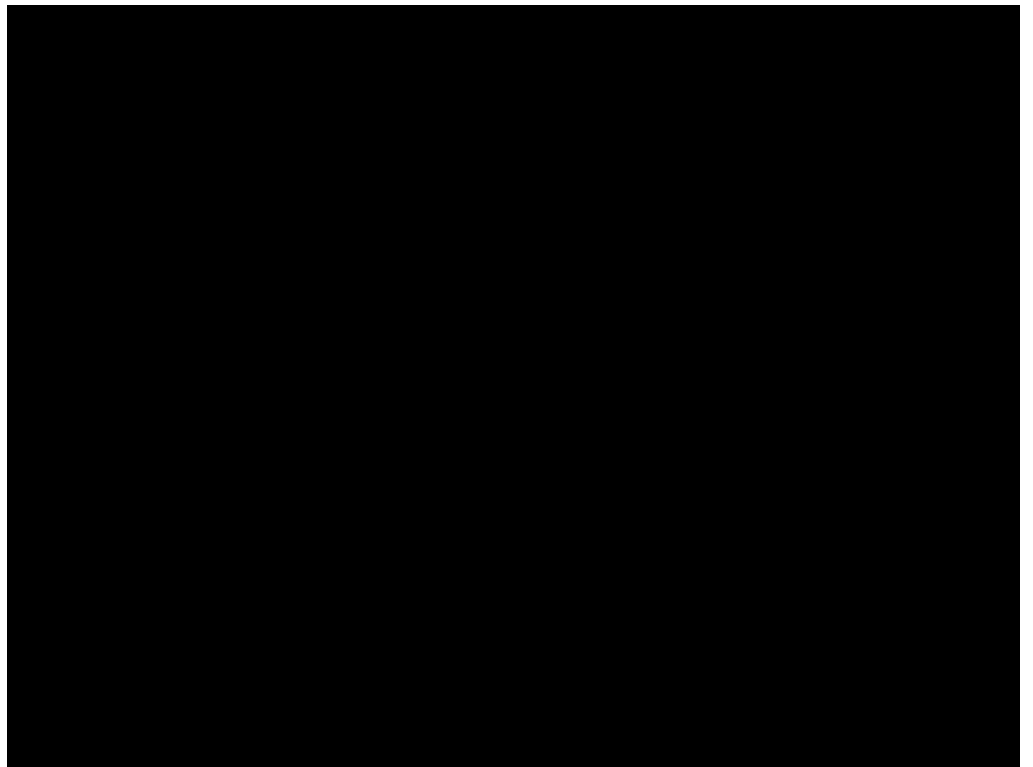
- 46. The truck that I was driving on the trip to McDonald's in Greymouth is my 2018 Toyota Hilux. I still own this truck.
- 47. The width of the truck from door to door is about 1.8m. The back seat would be narrower than this due to the depth of the doors and a small gap between the seat and the door. Nevertheless, this is a wide truck with a wide back seat.
- 48. Even without any physical impairment it would have been impossible to reach [REDACTED] in the back left seat due to the size of the truck.
- 49. Some photos of me were taken in my truck on 23rd April 2023 to show the limits of my reach. I still have not fully recovered from my accident and I experienced pain as I reached. In 2021 when the events were alleged to have occurred, even this level of reaching would have been excruciating.
- 50. The next photo shows me as I would be seated if I was driving. As shown, my left hand barely reaches past the front seats.

51. (photos redacted due to non publication order)



52. The next photo shows the maximum reach with my back as far back against the seat as I can manage.

53.



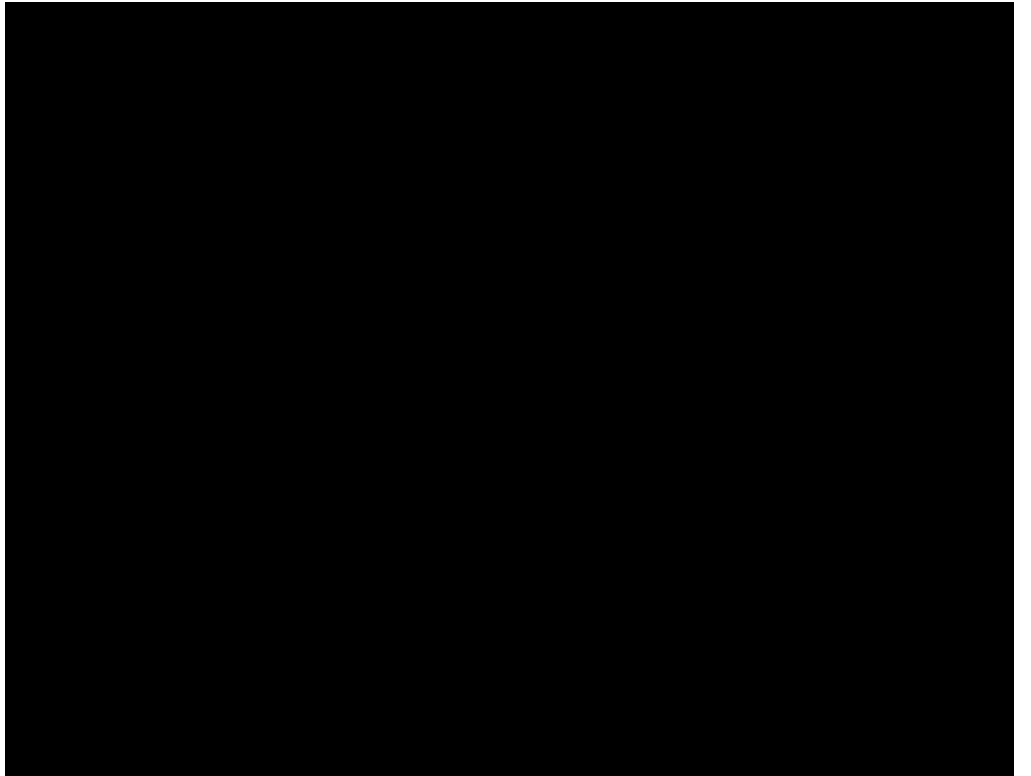
54. The next photo shows how far I can reach if I am looking backwards, which I would not be doing while driving.

55.



56. The next photo shows the back seat of my truck looking toward the left side. It would be impossible to reach [REDACTED] in the back left seat, let alone put my hand near his crotch.

57.



Latham Martin 24th April 2023

[77] Mr Martin's evidence (both in his brief and in further evidence in the hearing) saw a large number of contests over the alleged incidents. Of those few scenarios that are accepted to have occurred, there is disagreement about what occurred and whether any particular connotations should be taken from it or not.

[78] We will also summarise below Mr Martin's further evidence on some of the particular allegations at issue.

[79] Regarding the McDonalds trip, Mr Martin explained that Hokitika doesn't have McDonalds or other fast food, such as Kentucky Fried Chicken. He said that "for those students...we heard...that they'd been wanting to go there". He said that it was an acknowledgement to the students for some services and support of projects, and work undertaken. Mr Martin said that "with their parents' permission that's what I did".

[80] There was extensive further evidence about Mr [REDACTED] Mr Martin described him as a "ring leader behind those boys". When Mr Martin was asked by the Tribunal why the boys have said all of these things, his answer was:

...these allegations, are kind of just all snowballed and built, and were encouraged and grew by [REDACTED] to the point where, you know, he was the continuous theme throughout.

[81] And later:

...this feels like an absolute witch hunt to me.

[82] Similarly, Mr Martin stated in cross examination:

(Ms Farquhar): Right. [REDACTED] out to get you. As a result these boys have told lies for more than two years about you. That's what you're saying? Yes?

(Mr Martin): Yeah.

[83] Later in his evidence Mr Martin stated that he believed Mr [REDACTED] had been contacting the Teaching Council to encourage the investigation. This hadn't been put to Mr [REDACTED] for a response however. In any event we don't consider we need to determine issues such as these to that level.

[84] As to the various allegations of driving the boys around, Mr Martin described how he had a ban on driving for at least six weeks from mid-January after his hospital discharge. He says that due to this he was not driving. He only recalled driving a small amount of times by March of 2021. He said that, as an example, in mid-March he flew to Christchurch for an event when he would usually have driven.

[85] The alleged (and denied) Warehouse trip was discussed. Mr Martin initially said that his card PIN would be needed to use his card at the Warehouse, and that he had not given the PIN to the boys (as the trip had not occurred on his evidence). However when queried on this issue Mr Martin

accepted that PayWave may have allowed purchases without a PIN. Mr Martin noted that if so, that there was a relatively low amount allowed for PayWave. The Tribunal however queried whether there were increased monetary limits on PayWave at that time.⁹ Mr Martin accepted in any event that several transactions could have been made if there had been a lower monetary limit.

[86] Mr Martin said in response to the evidence of ██████████ that he is “a really nice person and I know his parents”. Mr Martin did not allege that Mr ██████████ was dishonest about the “scar” photos being sent by him to Mr ██████████. Nor the alleged driving of Mr Martin’s truck. Rather Mr Martin said that he had no recollection of sending them or letting Mr ██████████ drive his truck. He added that he didn’t think Mr ██████████ was “involved in the particular group that’s brought about these...where these charges stem from”.

[87] Mr Martin expanded on the physical limitations he had described in his brief and the re-enactment photographs from inside the vehicle. He initially confirmed that to him the photographs demonstrated that when driving he could not reach a rear side passengers leg or crotch, regardless of whether there was an injury/mobility issue or not. It was then put by the Tribunal to Mr Martin that he may have been able to try a little harder in the photos, given he was leaning forward and his arm was bent, not straight. Mr Martin’s position appeared to evolve to then state that it was impossible for him to have reached back in the way alleged, because of his injury.¹⁰

[88] Mr Martin was asked by the Tribunal about his pain medication and management in the weeks after the medical procedures. Mr Martin confirmed that he had been prescribed and was taking a range of medication, including tramadol and morphine. He accepted that the pain fluctuated from time to time and that this is why he was still able to drive around on some (limited) occasions.

[89] The “Trump photo” saw Mr Martin clarify that he had taken the photo of himself. He maintained that he had not applied the filter and had not sent it to Mr ██████████. Mr Martin could not explain how Mr ██████████ had otherwise obtained the photo from Mr Martin’s phone.

[90] Ultimately Mr Martin’s position, as stated in cross examination, was that all the boys were lying (save it appears for ██████████) and that Mr Martin was the only one telling the truth.¹¹

Assessment of the evidence / Aromatawai o te taunaki

[91] We have assessed all of the evidence carefully both during the hearing and in reaching this decision. We have had the opportunity to see and hear

⁹ It being generally known that PayWave limits were increased during social distancing regimes brought about as a result of the COVID-19 pandemic.

¹⁰ Notes of evidence page 57.

¹¹ Notes of evidence page 159.

from the witnesses in person, through their EVI's, their evidence in chief and cross examination. Likewise we have seen and heard Mr Martin give lengthy evidence to us, with a number of opportunities to address us directly on particular points.

[92] Overall, our assessment of all of the complainants is much the same. We have found them all to be credible and reliable young persons. We were impressed by the way these witnesses gave their evidence, albeit some were a little robust when pushing back in cross examination. But they are young men being accused of lying in sworn evidence, and so that reaction was not a surprise to us.

[93] They expressed surprise that they were being accused of dishonesty and a predetermined plan to take down Mr Martin. Several of the complainants consistently stated that they wouldn't be wasting their time in giving evidence against Mr Martin, given their other commitments since they have left school (They have now left school and most are gainfully employed in trades and apprenticeships).

[94] We found their responses to be natural, logical and reasonable. They didn't appear to have any connection to Mr Martin nor any axe to grind. They didn't want to be giving evidence or to be involved in this at all.

[95] We did not detect anything in their evidence that might suggest they were being untruthful. That includes their recorded EVI's with Police. There were no signs of rehearsal, duplication or sticking to a script that one might expect from a group of young boys trying to give similar dishonest evidence.

[96] Rather, the boys had slight variations and minor impreciseness in their evidence, such as to dates, times, locations, presence of others, and exactly what was said. Such variations are to us a sign of truthful evidence having been given.

[97] Another matter that lends support to these accounts is the number and similarity of the allegations made. Mr Martin of course would have it that this is consistent with the allegation of collusion and dishonesty. As already stated we do not accept that the boys acted in that way.

[98] That then leaves us with a set of accounts of very similar evidence. We have noted the particular following similarities and patterns in the allegations:

- All of the complainants are teenage male school boys of similar ages (generally 15/16 at the time).
- Regular phone messaging on snapchat including making first contact with two of the complainants.
- Touching or attempted touching in the region of the leg(s):
 - rubbing Mr [REDACTED]'s legs, twice

- "Horse bite" of Mr [REDACTED] leg, twice, whilst driving
- Attempted touching/hovering hand over Mr [REDACTED]'s crotch.
- Lewd and/or sexualised comments:
 - Oh [REDACTED] you make me very excited
 - Just come out, [REDACTED]
 - You make me so excited whenever I see you
 - I'm just trying to make you uncomfortable
 - I love you [REDACTED]
 - How would you like it if I asked you to suck dick?
 - Oh you're looking cute today. Why are you dressed up?
 - You'll have to repay me with something
 - Come on we're not going to do anything.
- Image sending through snapchat:
 - Pictures of Mr Martin's partner in a bikini/underwear/bra sent by Mr Martin
 - Pictures of his chest injury to [REDACTED]
 - The "Trump" picture
 - The "casino" picture in underwear.
- Repeated attempts to have social contact:
 - Asking the boys to come to his house to work
 - Attempting to go to their houses, including the message seen by Mr [REDACTED] on Mr [REDACTED]'s phone
 - Asking repeatedly about a party
 - Asking to come to the beach and turning up with ice cream
 - Asking them to come for a drive
 - Offering money or payment to come for a drive
 - Asking why they are not responding.
 - Apologising.
- Driving the boys around:
 - Several instances of this with several boys, often one on one.

- Regularly offering or giving money, food and gifts (and rides in the car for food).
- Offering or allowing the boys to drive his vehicle (often without the correct license and/or alone).

[99] Propensity reasoning is not limited to just criminal trials. It has been applied in Tribunal settings on other occasions.¹² Here, we consider that the subject matter of the allegations would demonstrate an unusual tendency on Mr Martin's part, whilst aged in his mid to late 20's, to have an over-interest in contact with teenage school boys. This tendency extends to excessive and at times unwanted attempts at communication and contact, often with sexual innuendo, or more directly at times.

[100] We consider that the number of similar allegations of this unusual behaviour makes the case against Mr Martin stronger. We consider that this further supports the truth of the allegations, although even taken in isolation we would have accepted the evidence of each complainant. Indeed if required to we would likely have found the allegations proven to the criminal standard of proof.

[101] It follows from the findings we have made that we have not accepted Mr Martin's evidence. Below we will discuss some of the specific issues and challenges that arose from it. We will not go through every single point, as there were many. Suffice to say that we have accepted the complainant's evidence on all contested points and have not accepted Mr Martin's.

[102] Regarding the McDonald's trip and alleged leg touching, and more broadly the denial of the allegations of driving and offering to drive the boys. We do not accept Mr Martin's evidence that he was physically incapable of moving his hand to near Mr ██████'s crotch. The precise date of that trip cannot be pinned down but it appears to be somewhere around late February or early March 2021. It certainly was a few weeks after the surgery though. Mr Martin accepted that he drove to Greymouth and back for this trip – an hour or more on an open road. We also note that Mr Martin had a number of pain medications and told us that his pain would fluctuate from day to day. Given that he was clearly able to do the drive, the time that had elapsed since the surgery, and the medication he was on, we consider that the movement in the car was able to occur as alleged by Mr ██████ and Mr ██████. It may have even hurt to reach back, but it was not impossible for someone that wanted to do it.

[103] We are not persuaded by the "re-enactment" photos Mr Martin has produced. They appear somewhat contrived, which is essentially how the witnesses responded to them. They show Mr Martin leaning forward and holding his arm in a contorted manner so as to be unable to reach the back

¹² See for example *Morahan v Wellington Standards Committee 2* [2019] NZCA 221 (at [35]); *OY v Complaints Hearing Committee* [2011] NZAR 323.

seat. Mr Martin appeared in evidence to accept that the photos were not particularly persuasive in showing absolute impossibility, and moved to claiming that they showed what his own limitations were due to the injury.

[104] In support of the argument that this movement could not occur due to the injury (and that more generally he was not driving for at least several weeks and therefore didn't drive or offer to drive some of the boys around), Mr Martin in his brief and in his oral evidence discussed his situation after the surgery. He described a general lack of mobility, the assistance required from visitors, and the care provided by his partner and health professionals. As noted in his brief this included having to be showered by his partner daily and receiving daily treatment from various professionals including a physiotherapist and an occupational therapist.

[105] Mr Martin provided us with DHB discharge summaries from the time of the incident. He also provided us with an outpatient follow up report of 4 February 2021 from a doctor at the hospital where Mr Martin's initial surgery had been performed. That report noted (as of 4 February 2021) relevantly as follows: "He has no particular pain apart from some occasional discomfort on deep inspiration which he notes mostly around the left side of his back".

[106] This may be seen to actually support the proposition that it was physically possible, then or some weeks later, for Mr Martin to have reached into the back seat of his car when driving.

[107] A further follow up appointment occurred on 8 March 2021 where no issues of concern were noted and Mr Martin was discharged from care. That letter also noted that "He is going to fly to Wellington tomorrow for work and this should hopefully be fine".

[108] We were also provided with medical certificates in the standard ACC format, completed by Mr Martin's GP. These declared Mr Martin as unfit for work through February 2021 initially. A second ACC medical certificate completed by Mr Martin's doctor confirmed that he was unfit for work through March 2021 and that "muscular pain continues". A further certificate declared unfitness for April, followed by a limited return to work in May. The certificates however do not advance anything helpful in terms of whether the actions in the car could or could not have occurred.

[109] Some pain did continue however and we accept that. A referral to radiology and a surgeon occurred in June 2021 due to ongoing pain. The surgeon's opinion of 28 June 2021 notes a lump on Mr Martin's 6th rib, a result of the incident in January, which was tender on palpation and interfered with sleep. The end result was that lump was to be left for three months for review.

[110] We have summarised the medical evidence we have been provided with because we do not consider that it supports the proposition that it was impossible, or even particularly difficult, for Mr Martin to have reached back in his car toward Mr [REDACTED]'s crotch area several weeks (or more) after the

surgery, nor to have been driving generally and offering to drive boys around.

[111] We also must note that we are struck by the absence of any evidence that may have been of more assistance to Mr Martin's position of claimed physical immobility in the car, and general inability to drive. This would have been fact (and potentially opinion) evidence from some or all of Mr Martin's partner, GP, physiotherapist, occupational therapist and massage therapist. Evidence from these potential witnesses would have been an obvious response to the allegation of Mr ██████, and to strengthen Mr Martin's challenge to Mr ██████. We would have expected Mr Martin to have called some or all of these witnesses, and their absence is unexplained.

[112] As a matter of law a court (and in this case, a tribunal) can consider such an absence as an indication that the potential witness may not have given favourable evidence. Originally described as the "rule" from *Jones v Dunkel*,¹³ it has been described by the New Zealand Court of Appeal as a principle of evidence, as follows:¹⁴

[153] ... There is no rule. Rather, there is a principle of the law of evidence authorising (but not mandating) a particular form of reasoning. The absence of evidence, including the failure of a party to call a witness, in some circumstances may allow an inference that the missing evidence would not have helped a party's case. In the case of a missing witness such an inference may arise only when:

- (a) the party would be expected to call the witness (and this can be so only when it is within the power of that party to produce the witness);
- (b) the evidence of that witness would explain or elucidate a particular matter that is required to be explained or elucidated (including where a defendant has a tactical burden to produce evidence to counter that adduced by the other party); and
- (c) the absence of the witness is unexplained.

[154] Where an explanation or elucidation is required to be given, an inference that the evidence would not have helped a party's case is inevitably an inference that the evidence would have harmed it. The result of such an inference, however, is not to prove the opposite party's case but to strengthen the weight of evidence of the opposite party or reduce the weight of evidence of the party who failed to call the witness.

[113] We do not go as far however as inferring that these witnesses would definitely *not* have given favourable evidence. However, the lack of evidence does seem to strengthen the weight of the evidence of Mr ██████ (and Mr ██████) that this event was able to occur, and more generally the allegations of driving and offering to drive. And its absence further reduces what weight we could have put on Mr Martin's evidence denying the event and claiming immobility.

¹³ *Jones v Dunkel* [1959] HCA 8; (1959) 101 CLR 298.

¹⁴ *Ithaca (Custodians) Ltd v Perry Corporation* [2004] 1 NZLR 731.

[114] We also note however that even if those potential witnesses were not in existence, or had not treated (or lived with) Mr Martin, or there was a good reason for their absence, we would still remain unconvinced that Mr Martin was unable to reach over to the back seat in the way described by the two witnesses. We have accepted their account as truthful and would do so simply on their evidence and our rejection of Mr Martin's evidence. Simply, it could occur and we are quite sure that it did.

[115] A similar evidence point arises in relation to the alleged trip to The Warehouse and spending of money on Mr Martin's bank card. The allegation was that Mr Martin handed over his card and the boys used it in the Warehouse. Mr Martin says they are lying. It would have been of some interest to examine Mr Martin's bank account records (or accounts, plural). Mr Martin did not produce any bank records/statements for the relevant periods, (which may have needed to be two to three months' worth to be safe given the uncertainty over the exact date of this alleged trip). Banks generally provide regular account statements to their customers either in hard copy or electronic form, or both. And they can be requested, or even Mr Martin's mother may have been able to assist him.¹⁵

[116] If Mr Martin's card had not been used by the boys at The Warehouse (as was Mr Martin's position) then those account statements might have been expected to have shown an absence of any transactions at The Warehouse (particularly given that during this time Mr Martin says he was doing very little driving i.e. he was not otherwise going to Greymouth for shopping trips at this store). We also note on this aspect that Mr Martin gave other evidence about an incident of another boy (not one of the witnesses) who had taken his card without permission and had spent money on it in Christchurch. Mr Martin became aware of where the card was after seeing the spending occurring via online banking.¹⁶ Mr Martin also confirmed in that evidence exchange that it was a PayWave card (as that boy had not had his PIN number).

[117] We again are left wondering if this evidence (bank statements) may have been adverse to Mr Martin. We will again not go as far as a full *Jones v Dunkel* type inference that it would have been adverse, but again we consider that Mr Martin's denial is weaker in its absence and the evidence in support even stronger. Even without this approach however we would accept the evidence that this event occurred and reject Mr Martin's evidence that it did not.

[118] Returning to some of the contested points. We accept Mr ██████'s account of an apology and of \$50 being given to him as part of that. This is supported by the wider pattern of similar behaviour.

[119] We also accept the evidence of ██████ that Mr Martin would

¹⁵ Mr Martin stated that he banked at the only local bank in town and that his mother had worked there for 47 years.

¹⁶ Page 109 Notes of Evidence.

contact him for “drives” and offered to pay him if he went for a drive. Likewise we accept the evidence of ██████████ that the scar photo was sent to him by Mr Martin, and that he was left to drive the Hilux on a learner license.

[120] We also accept that the ‘Trump hat photo’ was sent to Mr ██████████ by Mr Martin. That evidence fits the pattern of similar evidence before us, which also includes ██████████ ██████████ evidence which didn’t appear to be contested as being dishonest (including images sent to him). It is also consistent to us of the ongoing attempts at creating and persisting with channels of communication and contact with these boys. Mr Martin stated that he “didn’t agree with Trump’s politics” as part of his answer to this. That may well be so. But neither the image nor any witness has actually suggested he did have such an interest. What cannot be ignored though is that Mr Martin had a much greater interest in politics (local body politics at least) than these young boys.

[121] We have also accepted the various evidence of other messages and images sent to Mr ██████████, including the ‘casino’ episode where Mr Martin was in underwear which apparently nearly revealed his genital area. This again fits the various similarities and overall pattern demonstrated by the evidence. We do not think that it is plausible that the witness has made up such nuanced details.

[122] It will be clear by now that we do not accept the evidence of Mr Martin that these boys (or some of them) have been led into a plan to give false evidence by Mr ██████████. Whilst there remains a contest over whether Mr ██████████ was or was not aggrieved with Mr Martin and if so to what extent, we see that as somewhat of a red herring. We do not intend to determine all of the factual issues that arise on that front. We are content to appreciate that there probably was some level of dislike from Mr ██████████ to Mr Martin, although the original reason for that is not entirely clear to us on the evidence.

[123] In our view however even if Mr ██████████ was more aggrieved than it appears, that would not have enabled us to place sufficient weight on the theory such as to displace our findings on the complainants evidence. It would be a very long bow to draw to find that Mr ██████████ (and some of the complainants) have acted in the way alleged. That level of finding would require us to conclude that Mr ██████████ has rounded up several students (now ex-students); then somehow encouraged them to give false statements to the Police and the Teaching Council across a number of made up events; then encouraged them to take time away from work to give false sworn evidence to this Tribunal; and then for Mr ██████████ himself to have given false evidence. And all of this in order to ‘get’ someone who they (the students) have little or no connection with and no gripe with and who he (Mr ██████████) seems to have had no further dealings with.

[124] This theory also ignores that some of the complainants were not alleged to have been a part of the ‘plan’. But yet, their evidence still fits the wider pattern that emerges.

[125] The simple and logical alternative we find ourselves driven to on the evidence is that the boys have told the truth and that Mr ██████ has not spent two years or more trying to damage Mr Martin's life.

[126] We must add that we found Mr Martin's evidence on this point, both in chief and cross examination, to be entirely unconvincing. A further attempt at providing foundation to his theory for instance was found in his evidence that he "did not fit in" in this town, because he had different interests, tertiary education and was visible from a young age as a Councillor (and Deputy Mayor). We again were not persuaded that this means these boys have made this evidence up and that Mr ██████ was a part of that (indeed if anything Mr ██████ would come from a similar tertiary education background).

[127] Whilst there is no onus on Mr Martin to prove this theory, those sorts of findings would require very cogent evidence. The evidence in this case does not take us anywhere close to this theory being plausible.

[128] Before moving on we pause to note that we could have not been convinced of the theory advanced by Mr Martin, but could also not rejected it out of hand i.e. we did not see it as all or nothing. That could have left us in a state of doubt of such significance that we considered the factual allegations brought by the CAC had not been adequately proven (whilst we would have remained unsure on the "Mr ██████ theory). However, the theory advanced by Mr Martin has been rejected in its entirety. We have put it to one side and focused on the remaining evidence, which we have accepted.

[129] It follows then that we have found all of the allegations in the particulars of the charge to be proven.¹

Finding on liability / Kupu mō te taumahatanga

[130] Some of the proven facts if considered in isolation may appear innocuous. For instance a lift home, a group trip to Greymouth, or a message about doing some work might well be harmless. We must however consider the proven conduct cumulatively. When taken together a different reality emerges of an ongoing pattern of inappropriate conduct and behaviour for a registered teacher with school students. The fact that Mr Martin was not their teacher is really just the lack of something that might have made this even more serious, but it does not take away from what has occurred.

[131] We consider that the conduct we have found proven meets all and any of the tests for serious misconduct.

[132] It was likely to adversely affect students, particularly the leg touching, the image sharing and the lewd comments. Several of the boys were left querying the behaviour, some were miffed by it, and others agitated.

[133] The behaviour reflects adversely on Mr Martin's fitness as a teacher. That is particularly so given the several instances of physical touching, the lewd

¹⁷ Although we note that strictly speaking there was no "naked" photo per particular (1)(d)(ii), although nothing turns on that.

comments, the image sharing, gift buying, persistent contact, apologies, and allowing unlicensed school boys to drive his car on public roads.

[134] The conduct also brings the profession into disrepute in our view.

[135] We also consider that the Reporting Rules test is made out for the same reasons.

[136] Taken together then the test for serious misconduct has been met and the charge has been proven.

Next steps

[137] It was accepted at the hearing by Ms Brown that cancellation would be difficult for Mr Martin to resist if these allegations were proven. We can give a preliminary indication now that we are considering cancellation of registration. However we are happy to hear from the parties and particularly Mr Martin before making any decision on outcome.

[138] If Mr Martin and/or the CAC wish to make any penalty submissions, we ask that they advise the Tribunal within five working days that they wish to do so, and suggest a suitable submissions timetable for consideration, which the Tribunal will then set. If Mr Martin does not wish to make penalty submissions then we will not expect the CAC to, save that that the CAC may wish to be heard on costs (and Mr Martin will be entitled to reply if he wishes to).

[139] Mr Martin will also need to address final non-publication orders. Current interim orders for non-publication in place until final disposition concern the following names/information:

- Mr Martin
- All complainant witnesses names (including any other school students they referred to who were not witnesses)
- The name of the school and town save for "West Coast".
- That Mr Martin was a Westland District Councillor.
- The name and profession of the person whose property some work occurred at.

[140] To that we now add the names of Mr Murray and Mr ██████ – an interim non-publication order is now made over their names and any identifying details including the name of the school they worked at and its town.

[141] Given the contested and undetermined evidence concerning these two, including some that Mr ██████ was not able to respond to, we consider it appropriate to grant these orders for now. The CAC is asked to canvass their views on any permanent order being made.

[142] We can indicate now however that permanent non-publication orders will be made regarding the names and any identifying details of the complainant witnesses and any other school students that have been referred to (who were not witnesses in the hearing).

[143] Assuming that Mr Martin will wish to advance an application for permanent non-publication, we ask that this be filed and served within 10 working days and any response from the CAC 10 working days thereafter.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/16

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND
ME

LATHAM JOHN MARTIN

Respondent | Kaiurupare

Representation | Hei Māngai

HML Farquhar and DP Roche for the CAC
MR Gibson for Respondent

Tribunal panel | Pae Taraipiunara

T J Mackenzie (Deputy Chair), J Ruge, N
Parsons

DECISION OF THE TRIBUNAL ON PENALTY, PUBLICATION AND COSTS

4 June 2024

Introduction

[1] On 27 October 2023 the Tribunal released its decision on the charge of serious misconduct faced by Mr Martin. The Tribunal found the charge and all particulars proven.

[2] Subsequently the Tribunal has set about determining penalty, non-publication issues, and costs orders. A sequence of extensions were granted to Mr Martin who wished to obtain and produce various information, mostly in support of an application by him for permanent non-publication of his name.

[3] Mr Martin also changed representatives during this process to Mr Gibson from Ms Brown. Mr Gibson sought and was granted time to produce further evidence and legal submissions on penalty and non-publication.

[4] After considering all material, on 6 May 2024 the Tribunal issued its decision on penalty, publication and costs. Subsequently Mr Martin sought recall of that decision, to raise a number of further non-publication issues. The Tribunal has allowed that application, in part. The 6 May 2024 decision was recalled and this decision now stands in its place.

[5] In our decision below we will address penalty, publication and costs, in that order.

Penalty

Legal Principles

[6] We will first set out the general legal principles which apply.

[7] In *CAC v McMillan* the Tribunal summarised the role of disciplinary proceedings in this profession as:¹

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

[8] The Tribunal in *McMillan* noted that there are three primary purposes when imposing penalty. These are:²

- I. to protect the public through the provision of a safe learning environment for students;

¹ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[9] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.³

[10] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents to us. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[11] In *CAC v Fuli-Makaua* this Tribunal noted that cancellation may be required in two overlapping situations:⁴

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

[12] Each case presents a different set of facts. And, a different teacher. Some cases might see conduct at such a serious level that the enquiry ceases at that point, with cancellation being the only appropriate outcome. In others, the conduct can be finely balanced so that the end result may depend on the Tribunal's assessment of the teacher's insight and future prospects. Given the assessment required, a like for like approach with other cases can often yield only general patterns.

Cases referred to by the CAC

[13] A number of cases have been cited to us by both parties as being relevant in the area of "inappropriate conduct". The cases cited by each party are set out below, including their respective summaries.

[14] *CAC v Teacher X*:⁵ In this case the respondent worked closely with a student over a two-year period. The student later disclosed that the respondent would touch the student during this period, including putting his arm around the student's shoulder, rubbing the student's neck and touching the student's upper thigh. The respondent also told the student that he was gay and discussed kissing and sexual behaviour with the student. The respondent contacted the student outside of school hours and told the student that he really wanted to see him and be alone with him. The Tribunal imposed a penalty of censure and

³ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

⁴ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

⁵ *CAC v Teacher X* NZTDT 2018-64, 24 June 2019.

cancellation of the respondent's registration.

[15] *CAC v Hanson*.⁶ In this case the respondent over a period of five months, had put notes in the student's locker asking him to text her, as well as sent primarily sexual messages to them, and met up with the student in her car to talk. The Tribunal found that serious misconduct was made out. The Tribunal considered the matter was one of "extreme seriousness". The respondent eventually accepted the conduct, showed remorse, and attended counselling to treat her depression. However, the initial and continued denials by the respondent and the highly sexualised nature of the contact was such that cancellation was appropriate.

[16] *CAC v Teacher M*.⁷ The respondent sent inappropriate messages to a current student and sent inappropriate messages (including a photo of her breast) to a recent former student. The Tribunal found that serious misconduct was made out. The respondent showed some insight, remorse, and underwent counselling. However, her counselling was targeted towards her distress about the situation rather than to facilitate her rehabilitation as a teacher. The Tribunal did not see the behaviour as a one-off error of judgment and therefore cancellation was imposed.

[17] *CAC v Coad*.⁸ The respondent engaged in an Instagram group conversation with students from his former school discussing sexual innuendo, prostitution, binge drinking of alcohol and drugs. The Tribunal imposed a penalty of censure and conditions on the respondent's practising certificate that he advise any prospective employer of the decision for three years and complete a course on professional boundaries following any return to teaching.

Cases referred to for Mr Martin

[18] *Teacher A 2018/27*: The teacher had multiple instances of inappropriate contact with intermediate age students. These included:

- i. Attempting to throw a female student into a pool against their will on two occasions.
- ii. Wrapping his arms around the chest and neck of a disruptive male student and removing him from class.
- iii. Held a male student to the ground by his knees against the students' legs and hands on his shoulders when the student was agitated.
- iv. Made inappropriate comments to a female student about them being friends.

⁶ *CAC v Hanson* NZTDT 2018-94, 12 December 2019.

⁷ *CAC v Teacher M* NZTDT 2018/126, 10 June 2020.

⁸ *CAC v Coad* NZTDT 2020/18, 21 September 2020.

- v. Had students in his office during breaks on multiple occasions against school policy despite being reminded not to.
- vi. Went into a female tent on camp to comfort a homesick student, when the policy was for a female teacher / parent to provide this comfort.
- vii. Communicating with students on Instagram, including requesting to follow students on Instagram, and making contact with a student during the holidays regarding setting up computers. He believed that these relationships had started because he was concerned about the students and had become friendships.

[19] In this case the teacher was not teaching and did not intend to return. The Tribunal imposed a penalty requiring mentoring regarding behaviour management and boundaries; and a disclosure requirement to prospective employers as well as a censure and annotation to the register.

[20] *CAC v Jarman 2022/44*: Over about a two-year period Mr Jarman regularly made inappropriate physical contact with students that included touching bottoms, waists, legs and placing arms around shoulders and kissing the tops of student's heads. Some of this contact occurred while playing sports, but at other times it occurred while sitting on the sofa in his classroom. He admitted some of the conduct and denied other conduct. He considered that his conduct was caring and that he touched students to build relationships. He latterly did research and concluded that there were issues with boundaries. He had not taught since the allegations (about 17 months). The Tribunal turned their mind to suspending his practicing certificate for 6 – 12 months, but because he had not taught for 17 months they considered that this suspension had been served. In addition to censuring Mr Jarman and annotating the register, the Tribunal required him to undertake mentoring and disclose the decision for a period of time.

[21] *CAC v Driver-Burgess 2019/69*: The teacher tickled girls who were about 10 – 11 years old around the shoulders, sides and waist. He considered that this was a playful interaction, but these interactions were very unwelcome by the girls. His conduct was a serious breach of professional boundaries. In penalty, the Tribunal censured the teacher and imposed conditions that included professional development around boundaries, mentoring and a disclosure requirement.

[22] *Scully v CAC*: Mr Gibson also referred us to the appellate decision of *Scully*.⁹ Whilst the facts are markedly different, we would endorse the following general comment of Judge Tuohy:

⁹ *Scully v Complaints Assessment Committee of the New Zealand Teachers Council* [2010] DCR 159.

[21] There is no question that for a teacher to have a sexual relationship with a student at the school where she is teaching is serious misconduct at a high level. Cancellation of registration will often be the only appropriate outcome. However, it is well established that it is not the only possible outcome. That must depend upon a careful scrutiny of all the circumstances of an individual case. Those principles are well-established, both by decisions of the Courts and those of the Tribunal itself: *Young v College of Teachers* (BC) [2001] 87 BCLR (3rd) 189; NZTDT 2005/1; NZTDT 2007/10; NZTDT 2008/3.

[23] The cases above demonstrate the various differing types of inappropriate conduct that might come before us. *X, Hanson* and *Teacher M* involved more direct and sexual conduct than the present case, and came about in each case from a more direct student-teacher relationship than existed here. However, the conduct in those cases was not as widespread as in the current case. *Coad* involved some similar inappropriate group messaging but overall is quite far removed from the various facts we are dealing with here. *Teacher A* whilst seeing a range of conduct did not traverse into the more inappropriate areas seen in the present case. *Jarman* saw a finding that the touching lacked any indecent intention, and that Mr Jarman had accepted responsibility and was remorseful. *Burgess* saw conduct occur that was not in private and not intended to be improper. Further Mr Burgess was found to have quickly taken responsibility.

[24] We have considered all of the above cases. Whilst they assist at a general level, it is rare that a case in this area of conduct will be so similar as to significantly inform our decision. That is particularly so given we must consider not only the conduct but also make an assessment of the respondent's position. We will now turn to that exercise.

Assessing the conduct

[25] We begin by reminding ourselves of the conduct that we have found proven. The particulars of the charge, all of which were found proven, were:

1. The CAC charges that Latham John Martin, registered teacher, of Hokitika engaged in inappropriate contact and behaviour with secondary school students between 2018 to March 2021 including by:
 - a. Touching [REDACTED] and [REDACTED] on the legs;
 - b. Placing his hand near [REDACTED] crotch;
 - c. Making inappropriate comments to the students, such as:
 - i. telling [REDACTED] and [REDACTED] "I love you" and "I miss you";
 - ii. making comments about [REDACTED] and [REDACTED] appearances;
 - iii. telling [REDACTED] words to the effect that he could only eat his (Mr Martin's) chocolate if he repaid him with something; and

- iv. asking [REDACTED] words to the effect of "How would you feel if I asked you to suck cock?"
- d. Sending inappropriate messages to students using Snapchat and Facebook messenger both individually and in groups, including:
- i. asking the students questions to the effect of whether they were still friends with him, whether they were ignoring him, or whether they hated him when they did not respond to his messages or removed him as a contact on social media;
 - ii. sending them photos of himself and of his girlfriend in a bikini/underwear or naked;¹⁰ and
 - iii. asking for photos of the young people
- e. Allowing students to drive his vehicle when they did not hold a driver's licence

[26] At [97] of our liability decision we noted the similarities that emerged across the conduct:

- All of the complainants are teenage male school boys of similar ages (generally 15/16 at the time)
- Regular phone messaging on snapchat including making first contact with two of the complainants
- Touching or attempted touching in the region of the leg(s):
 - Rubbing [REDACTED] legs, twice
 - "Horse bite" of [REDACTED], twice, whilst driving
 - Attempted touching/hovering hand over [REDACTED] crotch
- Lewd and/or sexualised comments:
 - Oh [REDACTED] you make me very excited
 - Just come out, [REDACTED]
 - You make me so excited whenever I see you
 - I'm just trying to make you uncomfortable
 - I love you [REDACTED]
 - How would you like it if I asked you to suck dick?
 - Oh you're looking cute today. Why are you dressed up?
 - You'll have to repay me with something
 - Come on we're not going to do anything
- Image sending through snapchat:
 - Pictures of Mr Martin's partner in a bikini/underwear/bra sent by Mr Martin

¹⁰ We note there were no fully "naked" photos so technically not all of this particular was proven, although nothing turns on that.

- Pictures of his chest injury to [REDACTED]
- The “Trump” picture
- The “casino” picture in underwear
- Repeated attempts to have social contact:
 - Asking the boys to come to his house to work
 - Attempting to go to their houses, including the message seen by [REDACTED] on [REDACTED] phone
 - Asking repeatedly about a party
 - Asking to come to the beach and turning up with ice cream
 - Asking them to come for a drive
 - Offering money or payment to come for a drive
 - Asking why they are not responding.
 - Apologising
- Driving the boys around:
 - Several instances of this with several boys, often one on one
- Regularly offering or giving money, food and gifts (and rides in the car for food)
- Offering or allowing the boys to drive his vehicle (often without the correct license and/or alone)

[27] At [98] we found that the conduct displayed an unusual tendency:

Here, we consider that the subject matter of the allegations would demonstrate an unusual tendency on Mr Martin’s part, whilst aged in his mid to late 20’s, to have an over-interest in contact with teenage school boys. This tendency extends to excessive and at times unwanted attempts at communication and contact, often with sexual innuendo, or more directly at times.

[28] As we recorded in our liability decision, in isolation some of these incidents could be seen as innocuous – a ride to Greymouth, or the offer of some work. Doing so however is entirely artificial. When taken together the conduct is in our view at the more serious end of inappropriate conduct. This is due to its nature and extent. The highly inappropriate nature of much of the contact speaks for itself – we need not repeat it all again here.

[29] We do not consider that this case is automatically “less serious” than cases of physical or intimate relationships simply because there was not one. Whilst some of the more extreme intimate relationship cases could be classified as “the most serious”,¹¹ most of the more direct inappropriate relationship cases are different cases on their own facts. They often involve one victim and a more concentrated set of facts over a shorter time period. This case is quite different to those, and perhaps unusual. It requires our consideration of its own facts as

¹¹ A recent example of such would be *CAC v Taurapa* NZTDT 2022/27.

a specialist tribunal in this area.

[30] Looking at all of the conduct overall, on its face we consider it so serious that no penalty short of cancellation would be appropriate. We say that given the number of students, the types of conduct, and the ongoing pattern that emerged.

[31] Mr Martin however asks us to accept that the conduct was essentially an aberration, occurring at a time when he was significantly affected from his accident. If accepted by us, this would go to his culpability and therefore potentially reduce how seriously the conduct might be viewed.

[32] In support of this position, Mr Martin has claimed that the emotional and mental effects of the injury and surgery of January 2021 were causative of this conduct. His representative Ms Brown stated via Mr Martin's first submissions for instance:

The aberrant interactions occurred in the months following his accident. Putting aside the aftereffects of anaesthetic and side effects of medication, and psychological trauma; people become very emotional and often irrational after near death experiences. They are emotionally dysregulated and behave in ways that surprise and confuse everyone, including themselves. For someone like Mr Martin, who prizes rationality and order, this behaviour is more confusing and totally inexplicable.

[33] It was also said in the submissions that "This is common knowledge and does not need a specialist report."

[34] We do not accept the submission that it is "common knowledge" that people act strangely after an accident (particularly one which did not involve a brain injury). The submission made seems to attempt to invoke the principle of judicial notice. Section 128 Evidence Act 2006 provides:

A Judge or jury may take notice of facts so known and accepted either generally or in the locality in which the proceeding is being held that they cannot reasonably be questioned.

[35] We take the same approach as section 128 above. What is suggested to us is not something that in our view is known and accepted generally. It is something that *can* reasonably be questioned.

[36] There is a further problem with claiming that the accident led to this behaviour, which appears to have been overlooked by Mr Martin in blaming his accident: some of the proven evidence in this case includes conduct which occurred *before* Mr Martin's January 2021 accident, indeed occurring as far back as during 2019.

[37] The conduct prior to the accident is similar to the conduct that occurred after it. There was a pattern of conduct spread over around two years. We cannot therefore accept that, but for the accident, this conduct would not have occurred.

[38] We would accept however that there is on the evidence an increase in the frequency of the conduct after the accident. But we do not accept that the increase came from alleged emotional instability caused by the accident. We consider it more probable that the increase in the conduct occurred due to Mr Martin having more idle time at his disposal. We also consider that Mr Martin used his accident and injury to attract attention, given the finding of sending a topless photograph of himself displaying the injury to one of the students (and discussing the healing progress in those messages). Further, Mr Martin has provided evidence to us of media reports of the accident, including photographs taken of him for the reporting and published online, including a photograph of the healing scar (we will discuss the media attention again later in this decision).

[39] Overall, we do not find that there is a causative link between the conduct and Mr Martin's accident, or moreover that his culpability is less due to any suggested acting out after the accident.

[40] That leaves us back essentially where we started. The conduct in combination is very serious. At this point we consider that the appropriate response is cancellation of Mr Martin's registration.

[41] We will turn now to consider Mr Martin's personal position and whether that might tip the balance back in his favour.

Mr Martin, insight and responsibility

[42] Mr Martin seeks a finding that he has learnt from his mistakes, is contrite and has shown responsibility. Mr Martin for instance makes comments in his recent statement to us such as:

I acknowledge that my professional and personal boundaries have been weak and this has led to the blurring of my professional, private, and community roles and boundaries.

... I accept that I should not have put myself in a position where I was alone with students or communicated directly with them.

Regardless, I am sincerely remorseful for having blurred and overstepping professional boundaries in the past and the consequences that this has had on those impacted by my doing so.

..... I am sorry for the impact my actions and this series of events has had on a wide range of people including the student witnesses who gave evidence through this process. This series of events has been a considerable wake-up call for me.

...I am willing to learn and change and welcome ongoing professional and personal support. I am willing to undertake professional development, specifically in relation to professional boundaries and supervision of my teaching practice. I understand the Disciplinary Tribunal is considering Cancellation of my Registration. However, I believe with the changes that I have made in my life and the commitment to seeking ongoing support that this is not necessary

[43] In considering Mr Martin's position now, we cannot ignore that his current claims are difficult to reconcile with how the matter was defended. Although not fatal to his claim, the way that a charge is defended may make a subsequent quest for a positive personal finding quite difficult.

[44] Here, Mr Martin's position across many of the issues at the hearing was that they were made up by the witnesses as a joint enterprise of collusion on their part. Mr Martin via his representative put this position to several of the witnesses. They were essentially accused of lying on oath. Likewise Mr Martin gave sworn evidence that most of the boys were lying, most of the particular incidents didn't happen,¹² and an experienced teacher was also lying in sworn evidence as part of the plot against him.

[45] Now however we appear to be being told that Mr Martin accepts that it did happen. Or perhaps some of it, as it is not particularly clear if all of the findings are now accepted. In terms of addressing the various conduct with any specificity, Mr Martin touches on this only as follows in his final statement to us:

My desire to complete all of the projects and tasks that I had committed to prior to my accident led to a blurring of professional boundaries concerning students. I viewed these students as being able to help with or complete projects and tasks when I was unable to. The expectations around voluntary or paid work were never expressly made clear and willingness to undertake work was assumed by me without any formal arrangement with the students.

[46] The paragraph above is revealing as to whether Mr Martin really has shown acceptance and insight. The conduct of course was far wider than just asking students to help with projects, or clarifying any remuneration for their work. The work carried out by students was not even a particular of the charge, yet receives the sole mention by Mr Martin in terms of the conduct itself.

[47] Another revealing piece of evidence in this exercise comes from the recent report of a psychologist contracted to provide assessment reports to ACC for [REDACTED] related to physical injuries. [REDACTED] That report however stated, relevantly, as follows:

He also endorsed an item about being singled out and others plotting against him. Latham confirmed that this was related to the complaint against him and the angst he feels about this and how stories "grow legs" and that it is hard to control the narrative when he is not allowed to talk about the allegations.

[48] This report was dated 29 February 2024 and was based off consultations of 27 and 28 February 2024. The sentiment in the ACC report above is more consistent with how the matter was defended. When considered

¹² By way of example, the 'reaching back for chips', the trip to the Warehouse, and various photo sharing were all firmly denied. Where some were accepted it was only in part, with very different intentions and meanings advanced.

¹³ We have made a non-publication order regarding the purpose of the ACC work.

alongside the other matters mentioned above, we consider it a more accurate insight into the position that Mr Martin truly maintains.

[49] A further aspect of interest to us is how candid Mr Martin has or has not been with Westland High School, where he has continued to be employed on a further fixed term contract. Mr Martin, in his recent statement to us has stated that he has taken various steps, including:

Engaged in professional conversations with my Principal around Professional Boundaries and perceptions, particularly as they relate to small communities and the dilemmas that can pose.

[50] We were surprised on receiving Mr Martin's statement to see that he was employed by Westland High School in a new fixed term employment relationship, given the proven conduct. We queried with Ms Brown whether the school (as employer) had been provided with our earlier charge decision.¹⁴ Ms Brown confirmed that the school had not. To us, that Mr Martin has entered into further employment relationships with the same school, and has not provided a copy of our decision, further undermines how he has attempted to portray himself to us now.

[51] Having considered all of the material before us, we reach the view that Mr Martin has not displayed any real acceptance of the actual proven conduct. We consider that his claimed insight is not genuine across the entirety of the conduct and that he has not taken responsibility for it.

[52] This does not mean that the situation is now aggravated or a particular penalty must be imposed. But it does mean that Mr Martin is unable to avail himself of the positive personal findings that would be needed to make some inroads into how we view the proven conduct.

[53] We also note that even if we had made a more positive finding, we would still struggle to step back from our overall view of the seriousness of the conduct and whether it calls for cancellation.

[54] We have taken into account that Mr Martin has no previous disciplinary issues. Although, we must temper that with the reality that he is a relatively young teacher and the conduct occurred on and off over a period of two years.

[55] We have also taken into account that Mr Martin has participated productively in the disciplinary exercise. The fact that he defended it does not detract from his positive cooperation with the process, any respondent is entitled to defend a charge.

[56] Overall, we consider that the conduct is at a level that cancellation is the only appropriate sanction. We are galvanised in that view by our views on

¹⁴ As to interim non publication orders then in place, the Tribunal regularly sees a teacher's employer as falling within 'genuine interest' category identified in *ASG v Hayne* [2017] NZSC 59, [2017] 1 NZLR 777.

insight and remorse.

[57] We now make an order cancelling Mr Martin's registration pursuant to s 500(1)(g) Education and Training Act 2020.

Publication

[58] We now turn to consider non-publication orders.

Legal principles

[59] The default presumption is that Tribunal hearings are to be conducted in public. This of course is the case for most courts and tribunals in New Zealand.

[60] The Tribunal can only make one or more of the orders for non-publication specified in section 501(6) if we are of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and to the public interest.

[61] The purposes underlying the principle of open justice are well settled. As the Tribunal said in *CAC v McMillan*, the presumption of open reporting "exists regardless of any need to protect the public".

[62] Nonetheless, that is an important purpose behind open publication in disciplinary proceedings in respect to practitioners whose profession brings them into close contact with the public. And all the more so when the particular public we are considering are children.

[63] In *CAC v Finch*,¹⁵ the Tribunal described a two-step approach to name suppression that mirrors that used in other disciplinary contexts. The first step, which is a threshold question, requires deliberative judgment on the part of the Tribunal whether it is satisfied that the consequence(s) relied upon would be "likely" to follow if no order was made. The second step is often described as a discretionary exercise after the first threshold has been met.

[64] In terms of what "likely" means, this means that there must be an "appreciable" or "real" risk. Consistent with the approach taken in *CAC v Teacher*,¹⁶ we have adopted the meaning of "likely" described by the Court of Appeal in *R v W*.¹⁷ The Court said there that "real", "appreciable", "substantial" and "serious" are all qualifying adjectives for "likely". They bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

[65] In deciding whether there is a real risk, the Tribunal must come to a judicial decision on the evidence before it. This does not impose a persuasive burden on the party seeking suppression. If so satisfied, the Tribunal must determine whether it is proper for the presumption to be displaced. This

¹⁵ *CAC v Finch* NZTDT 2016/11, at [14] to [18].

¹⁶ *CAC v Teacher* NZTDT 2016/68, at [46].

¹⁷ *R v W* [1998] 1 NZLR 35 (CA).

requires the Tribunal to consider, “the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression”.¹⁸

[66] In *NZTDT 2016/27*, the Tribunal acknowledged what the Court of Appeal said in *Y v Attorney-General*.¹⁹ While a balance must be struck between open justice considerations and the interests of a party who seeks 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”.²⁰

[67] The Court of Appeal in *X v Standards Committee (No 1) of the New Zealand Law Society* similarly stated:²¹

The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

[68] The High Court in *J v New Zealand Institute of Chartered Accountants Appeals Council* touched on the same point again, in a chartered accountant’s disciplinary decision.²² Gwynn J stated:

[85] Publication decisions in disciplinary cases are inevitably fact-specific, requiring the weighing of the public interest with the particular interests of any person in the context of the facts of the case under review. There is not a single universally applicable threshold. The degree of impact on the interests of any person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error). Nonetheless, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.

[86] I do not consider the use of the word “appropriate” in r 13.62 adds content to the test usually applied in the civil jurisdiction or sets a threshold lower than that applying in the civil jurisdiction. The rule is broad and sets out neither a specific threshold nor mandatory specific considerations. The question will simply be, having regard to the public interest and the interests of the affected parties, what is appropriate in the particular circumstances.

[69] Although teachers do not have “clients” per se, we consider that the principle is of equal application for practitioners in the teaching field given that

¹⁸ *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4, at [3].

¹⁹ *Y v Attorney-General* [2016] NZCA 474, [2016] NZFLR 911, [2016] NZAR 1512, (2016) 23 PRNZ 452.

²⁰ At [32].

²¹ *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

²² *J v New Zealand Institute of Chartered Accountants Appeals Council* [2020] NZHC 1566.

they are trusted to work closely with children.

[70] We would also add the following points to all of the above. First, although the standard in this jurisdiction is (as noted in *Finch*) in statutory terms lower than the standard found in the criminal jurisdiction,²³ at the same time the professional jurisdiction differs from the criminal given the extra layer of public interest in open justice for professions and professionals. Hence the “general favouring” of naming practitioners, as noted in the decisions of *Y*, *X* and *J* (above).

[71] Second, rehabilitation can often be better served via the making of a non-publication order. There will often be a public interest in ensuring rehabilitation of appropriate candidates, sometimes trumping the presumption of open justice. However, that approach is generally going to be found in situations where the professional’s conduct might not be at the most serious levels, and/or has not caused any harm, and importantly – where they have shown significant insight and taken commensurate rehabilitative steps. As determined earlier, we do not see this case as falling into that territory.

[72] Third, we take heed of the principle that publication can ensure others are not mistakenly identified as the offender. That is all the more so where the conduct occurred in a small town such as the present. In *Grave*, the Lawyers and Conveyancers Disciplinary Tribunal took a similar approach to a “small town” type argument, stating:²⁴

We also consider that, in a smaller centre, other practitioners are potentially “under a shadow” should the practitioner who has been disciplined not be named.

[73] Fourth, that a respondent is well known or may have a significant fall from grace is not something we place weight on in and of itself. The criminal law takes the same approach, with section 200(3) Criminal Procedure Act 2011 stating:

The fact that a defendant is well known does not, of itself, mean that publication of his or her name will result in extreme hardship for the purposes of subsection (2)(a).

[74] In *Grave*, the LCDT did not accept this type of claim, stating:²⁵

On behalf of the practitioner, Mr Gallaway strongly advanced the notion that a practitioner in a smaller centre risks greater reputational damage, as does his firm, than a lawyer in a larger metropolitan area. We consider that argument somewhat analogous to that put forward by Mr Hart, who submitted that a practitioner with a higher public profile ought to be given a greater consideration when name suppression is considered. That notion was firmly rejected by the Supreme Court.

²³ “Extreme hardship” (to the applicant), per s 200(2)(a) Criminal Procedure Act 2011.

²⁴ *Canterbury-Westland Standards Committee No. 1 v Grave* [2016] NZLCDT 8 at [39].

²⁵ At [38], citing *Hart v Standards Committee No. 1 of the New Zealand Law Society* [2012] NZSC 4.

[75] We have set out our general approach to publication above. [REDACTED]

[REDACTED]

[REDACTED] We will go on to discuss those in more detail later.

[76] Courts and tribunals have many times had to determine such issues. It is something that must be considered and weighted. It would be a misconception for an applicant to consider that they will be entitled to a non-publication order as of right if an opinion (or several) is provided declaring [REDACTED]

[REDACTED]

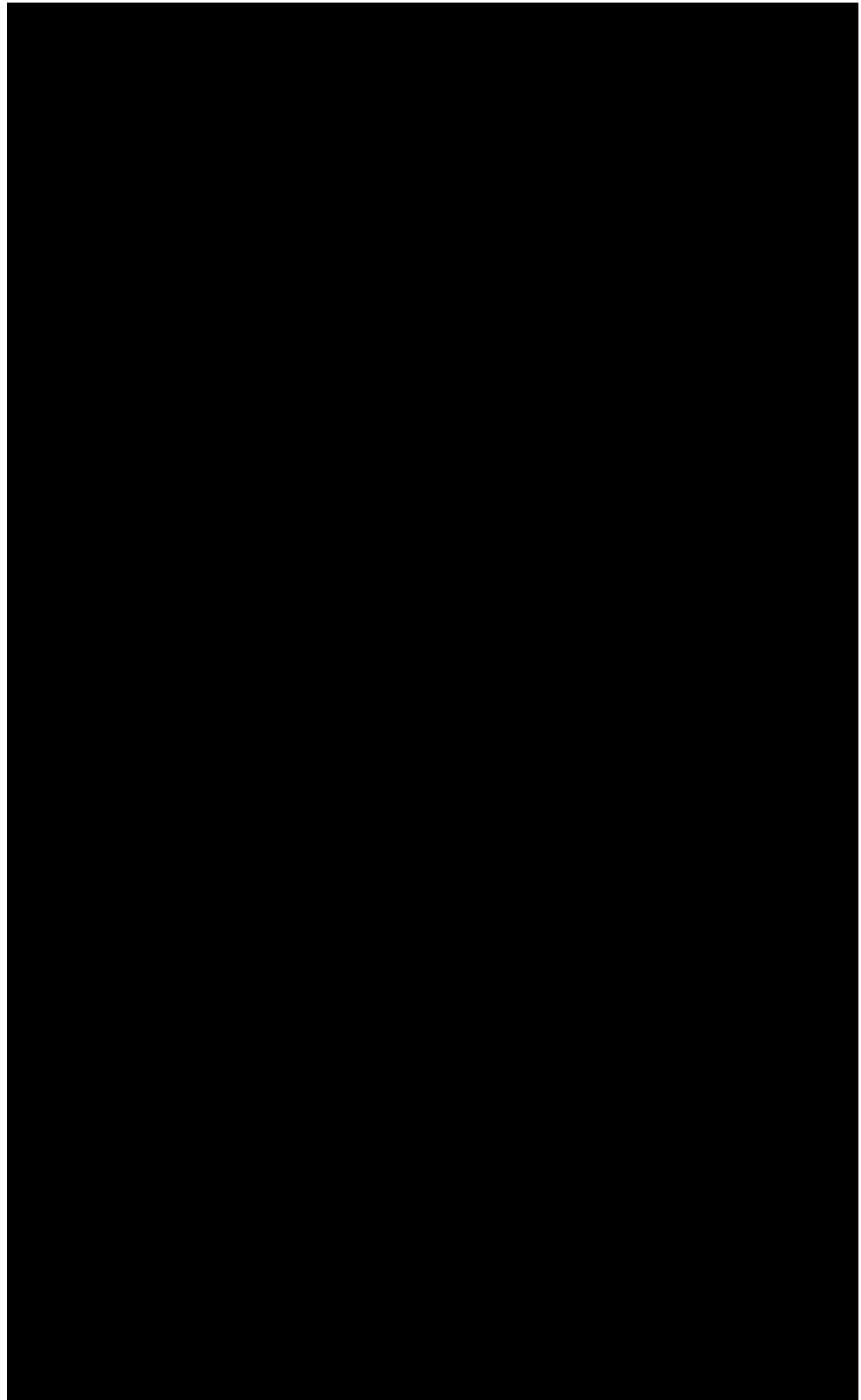
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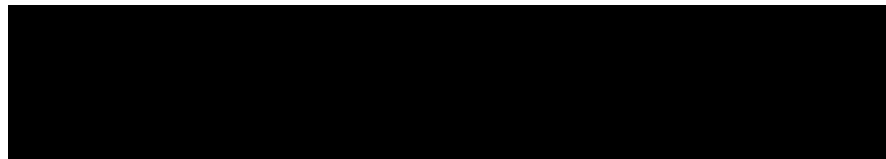
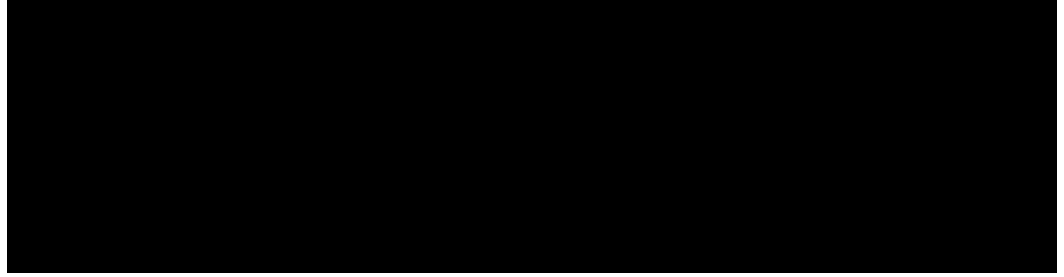
[REDACTED]

[REDACTED]

⁴⁷ At 6.



████████ Many examples exist of courts declining name suppression applications in this context. Each is decided on its own facts. By way of example, ██████████



[82] We appreciate that the decisions above come from a criminal law context, where the issue is more commonly raised. We also appreciate that in terms of the statutory wording the test is seen as higher. But, the professional element is also missing, which can make the presumption of open justice difficult to displace. Generally, we consider the approach in the criminal courts helpful in demonstrating that the ████████ evidence must be considered and weighted, but a court or tribunal may still see the presumption of open justice as prevailing.

[83] Having considered all of the applicable principles, we will now turn to our publication decisions.

Our decisions on publication

Students and staff

[84] To begin with, we consider it proper to make final non-publication orders for:

- The names of all student/former student witnesses mentioned in the evidence or in our October 2023 decision.
- Any other names of students/former students mentioned in the evidence or our decision.



- The name of the teacher who gave evidence (and was accused of being a part of the plan to give false evidence against Mr Martin).

Name of school

[85] We have declined to order permanent non-publication of the name of the school concerned – Westland High School. The school raised concerns about naming of the school leading to naming of the students. We appreciate the concern raised, however we do not accept that this is a real and appreciable risk, and not a risk at the level required to rebut the presumption of open justice. It is not a small school. We also note that Mr Martin was not the teacher of the students, making further remote the possibility of a linkage leading to identification.

Mr Martin's doctor

Mr Martin has sought non publication of the name of a doctor.

[89] We will therefore prohibit Dr [redacted] name from publication. All references to [redacted] will be redacted.

School principal at time of conduct

[90] We have also declined to order permanent non-publication in favour of Mr Murray. As noted in our earlier decision, Mr Murray was the principal at the time of the events (he has since moved on to another role at another school, which does not have anything to do with this case). His position as principal explains his role in the narrative as it unfolded. His involvement was fairly limited – he was made aware of the emerging complaint, he spoke with his Board Chair, and with Police. In our experience of inappropriate behaviour cases, that was a typical set of facts. We do not see the issues that the CAC

has raised on his behalf as justifying a non-publication order.

[91] There is a brief and fairly meaningless mention of this person in the liability decision. Simply because someone is not a witness or doesn't have a bearing on the case is not a reason in and of itself to make non-publication orders.

[92] [REDACTED] Therefore a non-publication order will now be required for [REDACTED]

[93] This is Mr Martin's partner. He is concerned that her reputation may be impugned and her employment affected if the case is published. These concerns can exist in any case however.

[94] Of more import is that the evidence and findings reference photographs of her in her underwear being sent by Mr Martin. This may well cause her some embarrassment if published.

[95] [REDACTED] That, and potential embarrassment to her, result in open justice having to yield here.

[96] We will therefore make an order prohibiting publication of her name in our decision. It will simply refer to "my partner" or "Mr Martin's partner" and/or her name will be redacted.

[97] We cannot however remove all references to Mr Martin's partner. Her presence, as his partner, explains part of our liability findings in relation to the absence of evidence as to the extent of the alleged physical restrictions which Mr Martin attempted to portray to us.

Clubs, Council and other organisations

[98] Mr Martin has sought non-publication of various other organisations as he considers that the decision and his involvement with them may cause them harm.

[99] The organisations themselves have not sought such an order. Mr Martin's argument is that it is "unnecessary" and may be "damaging" to the organisations. That is entirely speculative. These organisations receive some background mention but have no relation to the actual conduct. We do not see their alleged interests as displacing the presumption of open justice.

Reference to Mr Martin's mother

[100] Non-publication is sought for the reference in our liability decision to Mr Martin's mother. It is said that the reference to her is potentially damaging to her and her employer.

[101] These are not grounds to make a non-publication order. The reference to his mother working at the bank also explains a part of the Tribunal's reasoning regarding the rejection of Mr Martin's evidence that his bank card was not used at the Warehouse by the complainants.

Photographs included in decision

[102] Mr Martin seeks that the several photographs in our liability decision be removed via a non-publication order. These are of Mr Martin with the "trump hat" and the several of Mr Martin sitting in his car. Mr Martin considers that he may be embarrassed by these photographs being used by media.

[103] There is no rule or principle that a court or tribunal is limited in what types of admitted evidence it can and cannot record in its decision. Court decisions across various jurisdictions often include items of documentary evidence, such as maps, plans, and photographs. Simply because (on counsel's account) this Tribunal's decisions have apparently not included any photographs before does not equate to a principle of law that it never can or should.

[104] However, the decision in regard to the car and the hat photos does not lose comprehension without the photos. Given Mr Martin's concerns and his overall situation, we are (a little generously) prepared to make a non-publication order regarding these.

Other names

[105] A number of other names (and a store) which are briefly mentioned in the decision are raised. Again the mere presence of a name, and the person having no real part in the narrative, is not a ground for non-publication.

Medical evidence in liability decision

[106] Mr Martin seeks a non-publication order (and redaction of) the discussion of medical evidence in our liability decision.

[107] The discussion in the liability decision regarding medical evidence is sought to be removed.

The evidence in the liability decision concerned Mr Martin's physical injury and alleged impairment level. Our explanation of it goes directly to our finding that the physical touching,

and other general driving around etc, was able to have occurred. Our decision loses too much comprehension without that discussion. Mr Martin's privacy concerns over this do not trump open justice on this point. We also note that his own media story, provided by him to us, is more revealing as to medical issues and the injury than our discussion in the decision.

Mr Martin

[108] Mr Martin also seeks a permanent order for non-publication of his name.

[109] The issues raised are essentially twofold. First, Mr Martin is concerned for the effect on him in his community if his name was able to be published. He says that he is well known and engaged in the community.

[111] Dealing first with potential effects in the community. Mr Martin is concerned that he may lose various professional and community relationships. He is also concerned that he lives in a smaller town and is reasonably well known, particularly through involvement in local government as a councillor and deputy mayor.

[112] There are really two aspects to this first issue. One is that he is well known in the town and therefore the fall out would be greater. We accept that if Martin's name was published that there would likely be some fall out for him along the lines of his concerns. But, and it has been said many times before, that is a common by-product of a misconduct finding in professional disciplinary cases. We also note again, as touched on earlier, that having a high public profile does not generally result in a finding of hardship.

[113] The second and related aspect relates to the potential loss of various community and public relationships and enterprises that Mr Martin is involved in. The difficulty here is that it appears the horse may have already (partially) bolted.

[114] Recently, the Tribunal has become aware that there is already some knowledge in the community that Mr Martin has faced this charge. Since the charge decision was released in this matter, the Teaching Council and separately the Tribunal (being an independent body) have received contact querying this case. A message from the Hokitika Guardian received recently by the Teaching Council stated as follows:

Morning (name), Just wondering if there was anything to update on this. Even an ETA on when the decision is likely to be published. I'm being asked every day, as this is well known in the community.

[115] Media were however present at the hearing and reported on the case at the time. There is nothing particularly unusual about media checking in on when a decision may be released. However, the comment about the case being "well

known in the community” is of note.

[116] Of probably even more significance is the following correspondence received by the Tribunal administrator:

27 February 2024

Good morning.

I am under the belief a resident and active community member of Hokitika, Westland is currently going through your hearing process with the disciplinary tribunal.

Latham John Martin has numerous roles within our community, many of them including involvement with children and teenagers.

I, as Mayor of Westland have now been contacted by some of the community groups and schools in Hokitika who are voicing their concern at Latham having the roles he has - to the extent they are withdrawing from community activities where he will be present through direct involvement - whether it be as a member of Lions or his role as events co-ordinator for our local theatre (they host a lot of school activities).

I am seeking some form of clarification on timeline to findings and release of this information as we now find ourselves in a very compromising situation with this regarding the roles Latham plays within our wider community and councils responsibilities regarding our communities.

I am contactable via this email address or my phone: [REDACTED]

Kindest regards

Helen Lash

Mayor Westland District.

36 Weld St, Private Bag 704, Hokitika 7842

[117] This information was provided to the parties so that they could be heard on it. Mr Martin’s position in response is that there is still much to protect, as there will be many who are unaware of this case and his involvement in it.

[118] We accept Mr Martin’s position to an extent, and do not write off his application based solely on the above information. However, it is highly relevant to hear from a local journalist and the Mayor of this small town with the direct comments they have made about community knowledge. We cannot ignore the reality that the effects for Mr Martin have already been felt to some extent. This reduces what weight we can put on his arguments about community fall out and personal impact for him.

[119] Overall we do not consider then that this first part of Mr Martin’s application results in an interest that makes it proper to order non publication. Community fall out and loss of relationships (that have not been lost already) generally will not displace the presumption of open justice. Even in the absence of information having already been known we would have reached the same decision.

[120] We turn now to consider [REDACTED] raised by and for Mr Martin. A number of extensions were granted to Mr Martin. [REDACTED]

considered all of it. We will attempt to summarise the key material received.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32 [REDACTED]

33 [REDACTED]

[REDACTED]

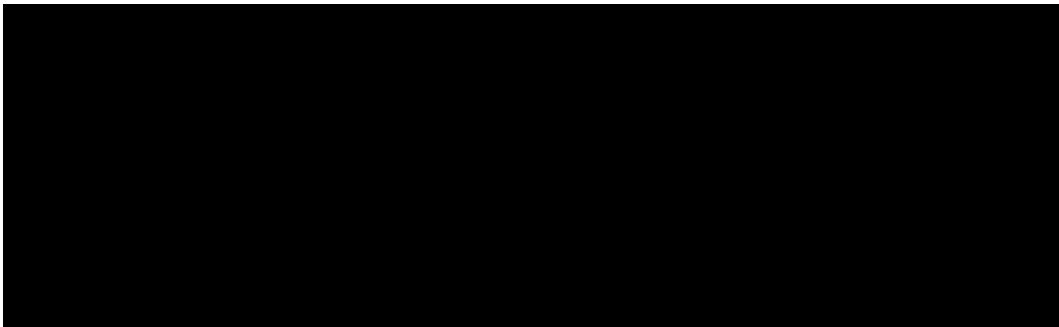
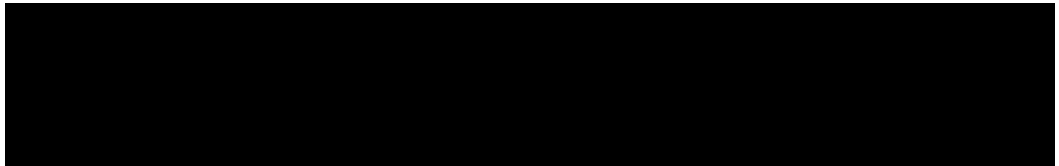
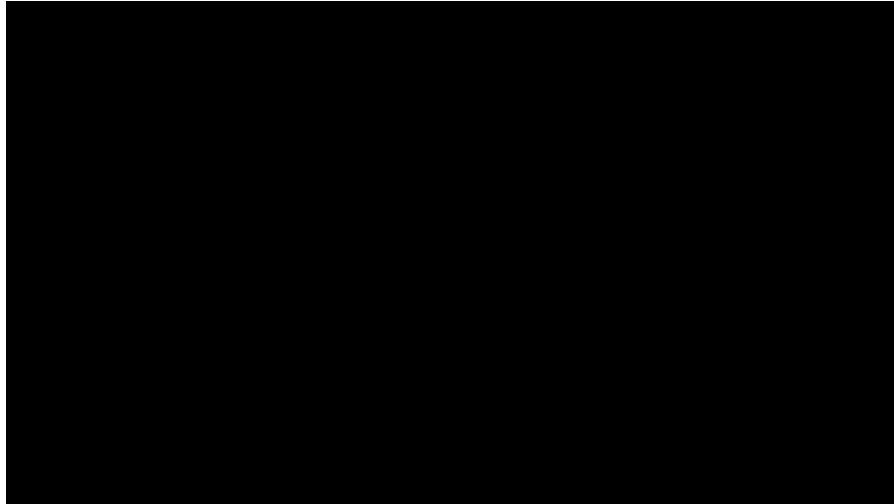
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[135] We have also noted that the self-reporting by Mr Martin may have gone a little too far. One paragraph of [REDACTED] report records:

...He feels very sensitised to the large scar that he has on his chest and this contributes to ongoing anxiety, shortness of breath and fearfulness of complications.

[136] This claim by Mr Martin is difficult to reconcile with the finding in our liability decision of Mr Martin snap-chatting a topless photo of himself to one of the students, specifically focusing on and discussing the healing of his injury. There was also the media coverage of Mr Martin and his injury, as noted earlier. Mr Martin provided that to us for the liability hearing as part of his evidence. The media story published online on national news website Stuff included a fairly graphic photograph of his torso with the full extent of the surgical scar shown, and a video interview with Mr Martin where the injury was also freely

displayed.³⁴

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[141] Standing back, we consider that Mr Martin's situation if publication occurred is not as [REDACTED] as has been pressed upon us. There are elements of over-doing it as set out above. [REDACTED]

[REDACTED] And as set out earlier, it appears many in the community already know something of these proceedings and Mr Martin

³⁴ <https://www.stuff.co.nz/national/health/123982216/westland-councillors-neardeath-experience-with-a-weedeater>

³⁵ n 25.

has had to adapt to that reality.

[142] A separate matter raised by Mr Martin was that publication of his name might lead to identification of the students involved. We do not accept that this is a real or appreciable risk. As we have already noted in regards to the name of the school, it was a large school and Mr Martin had no direct teaching relationship with the students concerned.

[143] We have therefore concluded that the matters raised, on our view of them, do not reach the threshold of making it proper to order non publication. The real and appreciable risk we consider is not at the level pitched to us.

[144] If we had reached that first threshold, we would also have not found in Mr Martin's favour on the second phase of the non-publication test – whether we should or shouldn't make the order.

[145] Debate remains as to whether this second step is truly discretionary, or perhaps evaluative.³⁶ We do not see a material difference here in result. We consider that the nature of the conduct and its consequent penalty, the lack of genuine insight and remorse, the general principle of publication for professionals, the risk of others being suspected, and that some or many in the community already know of the conduct, would all have militated against non-publication.

[146] It follows from our decision above that we also decline to order non publication of Mr Martin's town or roles he has held.

[147] Overall we do not consider it proper to make a non-publication order in favour of Mr Martin.

[148] We therefore decline Mr Martin's application for non-publication. We revoke the interim non-publication orders and all associated interim orders including of the town concerned, school, and community and professional roles Mr Martin holds or has held.

[149] We do however consider it proper to order non-publication of the various [REDACTED] information and arguments raised above. A redacted version of this decision will be published, with the redactions reflecting our non-publication orders.

Costs

[150] Costs follow the event in the usual way in this Tribunal. Some brief mention of financial difficulty has been suggested, but little real evidence of impecuniosity provided. Mr Martin is directed to pay 50% of the reasonable CAC costs and Tribunal costs, as is our standard approach to unsuccessfully defended cases.

³⁶ See the Supreme Court recently in *M v R* [2024] NZSC 29 (at [47]).

CAC costs

The CAC costs are as follows:

Complaints Assessment Committee Costs	Amount
Costs of Complaints Assessment Committee (GST exclusive)	\$1,618.94
Legal costs and disbursements for Tribunal proceedings (GST exclusive)	\$51,446.63
TOTAL COSTS	\$53,065.57
TOTAL COSTS SOUGHT (50% of costs)	\$26,532.78

[151] We are advised that the CAC costs included disbursements. The disbursement costs sought are:

- Printing (including bundles), USBs for electronic bundles, and courier of bundles: \$755.15
- Travel costs for hearing (return flights and taxis, 1 counsel): \$566.42
- Accommodation and meals during hearing (1 counsel): \$1339.63

[152] We accept the first disbursement as reasonable.

[153] We note that ordinarily we would be cautious to order costs incurred by using out of town counsel. Disciplinary litigation in tribunals is not so particularly specialised that there would not be lawyers and firms in Christchurch (where the case was heard) that could undertake it. We are also concerned to try and keep costs orders against teachers down where possible – the total costs incurred here for instance (CAC and Tribunal) likely exceed many bands of the teaching pay scales. We also note that teachers are usually not indemnified for costs like other professionals might be (not that there is a principle of burdening more costs onto an indemnified litigant).

[154] Here however, these disbursement costs were always going to be incurred as this was a Hokitika case. Indeed if heard in Hokitika it would have cost more. We therefore grant the travel disbursements as well.

[155] In terms of the balance of CAC legal costs, we also consider those to be reasonable. This was a file at the heavier end of matters that comes before the Tribunal. There was an earlier application required for production of Police EVI files. That was opposed by Mr Martin, unsuccessfully. The opposition was not particularly compelling or meritorious. That process incurred costs. We also then of course had the three day hearing (which were a dense three days), followed by numerous filings and submissions subsequent to the hearing.

[156] Mr Martin is directed to pay \$26,532.78 as per the schedule above.

Tribunal costs

[157] Tribunal costs³⁷ are as follows:

Tribunal Member fees:	\$13,012.50
Venue and catering	\$2172
Accommodation	\$796
Airfares	\$528.62
Total:	\$16,509.12

[158] Mr Martin is directed to pay 50% of Tribunal costs, being \$8,254.56.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa

³⁷ The Tribunal often also imposes administrator costs. Given the combined size of the costs award we will exercise our discretion not to in this case.