

**NOTE: PERMANENT NON-PUBLICATION ORDERS**

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023/02**

**UNDER | WĀHANGA**

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

**IN THE MATTER | MŌ TE TAKE**

of a charge referred to the  
Tribunal

**BETWEEN | I WAENGA I A**

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

**AND | ME**

**TEACHER S**

(Registration XXXXXX)

Kaiurupare / Respondent

Hearing | Te Rongonga

20 November 2023 – on papers

Representation | Hei Māngai

H M L Farquhar/H N Prasad for the CAC  
J Brown, NZEI Legal Officer, for Respondent

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**DECISION DATED 19 December 2023**

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Tribunal

James Gurnick (Deputy Chair)  
Lynnette Evans  
Louise Arndt

## Introduction

[1] The Complaints Assessment Committee (**CAC**) referred this matter to the Tribunal by charge dated 19 January 2023, pursuant to s 497 of the Education and Training Act 2020 (the **Act**). The referral followed information received from the New Zealand Police about the conduct of Teacher S in that, between March 2020 and May 2021, he accessed and viewed child pornography and downloaded a social media application with the intention of contacting an ex-student of secondary school age who Teacher S thought had a crush on him.

[2] The CAC alleges that the above conduct amounts to serious misconduct pursuant to s 378(1) of the Education Act 1989, s 10 of the Act and r 9(1)(j) and/or (k) of the Teaching Council Rules 2016 (**Rules**), or alternatively amounts to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to s 500 of the Act.

[3] The parties filed an agreed summary of facts dated 17 August 2023, which is set out below:

### Background

1. The respondent, [Teacher S], is a registered teacher. [Teacher S] was first registered on 26 January 2017. [Teacher S] held a full practising certificate at the time of the relevant events described below. [Teacher S]'s practising certificate expired on 26 July 2022.
2. At the time of the events described below, [Teacher S] was employed as a teacher at [the school]. [Teacher S] began working at the school in 2017, and resigned from the School on 17 May 2021. In March 2021, [Teacher S] self-referred to WellStop, a community-based organisation that aims to prevent sexual abuse. [Teacher S] advised WellStop that he had been accessing and viewing child pornographic material online since March 2020. In May 2021, [Teacher S] signed a safety plan with WellStop.
3. On 14 May 2021, the New Zealand Police received notification of [Teacher S]'s self-report and subsequently interviewed [Teacher S]. [Teacher S] admitted to Police that since the Covid-19 lockdown in March 2020, he had spent three to four hours per night looking at child pornography on various websites through the dark web. [Teacher S] also admitted to downloading a social media application for the purpose of contacting a former student, who was by then of secondary school age, who he believed had a crush on him.
4. Police examined [Teacher S]'s phone and located evidence of website activity and internet searches likely relating to child pornography from 26 March 2021, and a Google search of 'how to get over a porn addiction'. However, [Teacher S] advised Police that he had previously used a different cellphone and desktop computer for accessing and viewing the child pornography material, but had destroyed and disposed of both devices.
5. [Teacher S] was formally warned by the Police on 28 May 2021 for the possession of objectionable material (child exploitation).

6. [Teacher S] voluntarily deregistered as a teacher on 31 May 2021.

*Accessing and viewing child pornography*

7. Between March 2020 and May 2021, [Teacher S] accessed and viewed child pornography material online for approximately three to four hours per night.

*Downloading a social media application with the intention of contacting an ex-student*

8. On one occasion during the period between March 2020 and May 2021, [Teacher S] downloaded Snapchat, a social media application, with the intention of making contact with a female ex-student, who [Teacher S] believed had a crush on him. At the time that [Teacher S] downloaded the application, the ex-student was of secondary school age.
9. However, [Teacher S] subsequently decided not to contact the student, and there is no evidence that contact was attempted.

**Teacher's response**

*Accessing and viewing child pornography*

10. As outlined above, [Teacher S] admitted to Police in May 2021 that since March 2020 until the beginning of May 2021, he had spent three to four hours per night looking at child pornography material online.
11. Prior to the CAC meeting on 8 December 2022, [Teacher S] advised the CAC that his position was that he had watched child pornography on fewer occasions than what had been reported to Police.

*Downloading a social media application with the intention of contacting an ex-student*

12. In his interview with the Police, [Teacher S] admitted to downloading a social media app with the intention of contacting the ex-student.
13. In his response provided to the CAC, [Teacher S] explained that he deleted the application within two minutes of downloading it, and there was no actual contact made with the ex-student.
14. The response to the CAC further indicated that [Teacher S] did not intend to teach again.

**Process**

[4] The parties agreed that the hearing could proceed on the papers. We have received written submissions from both parties, although we only received submissions from the respondent in relation to an application for permanent name suppression.

[5] Teacher S voluntarily de-registered as a teacher on 31 May 2021.

**Law**

[6] Section 10(1) of the 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

[7] In order to establish serious misconduct, both limbs of the definition of “serious misconduct” must be met.<sup>1</sup>

### **CAC’s submissions**

[8] The CAC submits that the conduct meets the test in para (a) of the definition of “serious misconduct”.

[9] The conduct must at the same time meet one or more of the Teaching Council’s criteria for reporting serious misconduct.

[10] The CAC relies on r 9(1)(j) and (k) and (2).

[11] The CAC submits that r 9 sets out the high standards of ethical behaviour that are expected of every teacher, and states that teachers must “respect [their] trusted role in society”. Learners, families and whanau, and the wider community, place a significant amount of trust in teachers to guide their children and young people in their learning journey and to keep them safe. By acting with integrity and professionalism, teachers and the teaching profession maintain this trust and confidence.

[12] Clause 1.3 of the Code of Professional Responsibility (**the Code**)<sup>2</sup> provides:

(a) clause 1.3 – teachers will demonstrate a high standard of professional behaviour and integrity;

<sup>1</sup> *Evans v New Zealand Teachers Disciplinary Tribunal* [2020] NZDC 20062.

<sup>2</sup> The Code of Professional Responsibility, Examples in Practice (Education Council, Wellington, June 2017).

- (b) clause 2.2 – teachers will work in the best interests of learners by engaging in ethical and professional relationships with learners that respect professional boundaries.

[13] The Code was issued with examples in practice which provide positive examples of what the principles look like in practice, and include behaviours that are unacceptable and breach the Code. Examples of demonstrating a high standard of professional behaviour and integrity as required by cl 1.3 are “using information and digital technology appropriately and responsibly” and “taking care that my actions outside of work do not interfere with my performance as a teacher, affect the trust and confidence others have in me or reflect badly on the integrity or standing of the teaching profession”.

[14] Relevantly, an example of behaviour that may breach professional boundaries is “accessing, creating or sharing inappropriate digital information, such as posting on on-line spaces that could be easily shared with others”.

[15] The CAC submits that it is clear that Teacher S’s conduct constitutes serious misconduct. The conduct reflects adversely on the teacher’s fitness to be a teacher. Viewing child exploitation material on a regular basis over a prolonged period of time, and for a number of hours and downloading Snapchat with the intention of contacting a former student who Teacher S thought had a crush on him, clearly departs from the standards expected of a teacher, including professional and ethical standards, but also legal standards.

[16] The CAC also submits that Teacher S’s actions may bring harm to the reputation of the profession. It submits that reasonable members of the public would conclude that the reputation and good standing of the teaching profession may be undermined by the behaviour of Teacher S, both in terms of viewing child exploitation material and downloading the social media application with the intention of contacting a former student.

[17] The CAC further submits that the Tribunal will have no trouble determining that the threshold in r 9(1)(j) and (k) of the Rules is met, in that:

- (a) Rule 9(1)(j) – Teacher S’s conduct could have been the subject of prosecution for an offence punishable by imprisonment of three months or more under s 131A of the Films, Videos, and Publications Classification Act 1993 (possession of objectionable publications involving knowledge); and
- (b) r 9(1)(k) – the viewing of child exploitation material, and downloading a social media application with the intention of contacting a former student who he thought

had a crush on him, is of the kind that is likely to bring the teaching profession into disrepute.

## Penalty

[18] The CAC submits that the only available penalty in this case is cancellation of Teacher S's registration. It submits the following aggravating factors are relevant:

- (a) viewing child exploitation material will always be serious – the CAC notes that Teacher S repeatedly engaged with child exploitation material over a prolonged period and for a number of hours at a time, while employed as a primary school teacher;
- (b) Teacher S downloaded the social media application with the intention of contacting a student whom he thought had a crush on him (although it is accepted, he never attempted contact with the student).

[19] The CAC acknowledges the following mitigating factors:

- (a) Teacher S has no previous disciplinary history.
- (b) Teacher S has expressed remorse and insight into his actions. The Teaching Council was only alerted to his actions when he voluntarily sought help from Wellstop. He has since taken steps to prevent similar future behaviour.
- (c) Teacher S has been engaged with the Teaching Council, the CAC and the disciplinary proceedings before the Tribunal.

[20] In considering cancellation of Teacher S's registration, we have been referred to the following decisions:

- (a) *CAC v Teacher (2011)*.<sup>3</sup> In that case (involving a conviction referral for a teacher with 12 convictions for possession of objectionable publications), the Tribunal determined censure and deregistration to be the appropriate outcome. The Tribunal commented that:<sup>4</sup>

... We have in a number of cases made it abundantly clear that this Tribunal would regard it as falling short of its responsibilities to the public, the profession and school

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<sup>3</sup> *CAC v Teacher (2011)* NZTDT2011/11, [date].

<sup>4</sup> At 7.

age children were it to countenance a teacher with convictions of this nature continuing to hold registration.

- (b) *CAC v Teacher (2012)*.<sup>5</sup> The respondent had 15 convictions on charges relating to the possession of objectionable material under the Films, Videos, and Publications Classification Act 1993. Following criminal proceedings, the respondent was sentenced to 150 hours' community work and eight months' home detention, with special post-detention conditions for six months to undertake and complete appropriate treatment and/or counselling. The Tribunal commented that while it had considered all alternatives:<sup>6</sup>

Realistically ... in case such as this, which involves serious offending including the exploitation of young children, and where both parties accept that deregistration is the appropriate outcome, there is no realistic alternative to that."

The Tribunal censured and cancelled the teacher's registration.

[21] We have also considered *CAC v Teacher (2012)*<sup>7</sup> and *CAC v Teacher (2014)*.<sup>8</sup>

[22] While Teacher S was not charged by Police in relation to his conduct, that is not determinative in circumstances where the summary of facts is accepted, and Teacher S acknowledges accessing and viewing child pornography (child exploitation material).

[23] We have no difficulty in finding that the conduct reflects adversely on the teacher's fitness to be a teacher, may bring the teaching profession into disrepute, and meets the threshold under r 9, being criteria for reporting serious misconduct.

## **Outcome**

[24] In the circumstances, we have no hesitation in finding that cancellation of Teacher S's registration is the only appropriate outcome.

## **Non-publication**

[25] Teacher S has sought permanent non-publication. A permanent non-publication order has also been sought on behalf of the school.

[26] The CAC seeks permanent non-publication for the complainant of the second particular of the charge involving the downloading of a social media application with the intention of

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<sup>5</sup> *CAC v Teacher (2012)* NZTDT2012/18, [date].

<sup>6</sup> At 4.

<sup>7</sup> *CAC v Teacher (2012)* NZTDT2012/17, [date].

<sup>8</sup> *CAC v Teacher (2014)* NZTDT2014/34, [date].

contacting the ex-student. We make the permanent non-publication order in relation to the complainant.

[27] The starting point when considering the issue of permanent non-publication for a teacher is the principle of open justice. Section 501(3) of the Act sets out the presumption that Tribunal hearings be held in public. The principle of open justice in a disciplinary context maintains public confidence in the profession through the transparent administration of the law.<sup>9</sup> The Tribunal has previously endorsed the statement of Justice Fisher in *M v Police*:<sup>10</sup>

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

[28] Section 501(6) of the Act gives the Tribunal the power to make one or more orders for non-publication if it is of the opinion that it is proper to do so, having regard to the interests of any person and to the public interest.

[29] The Tribunal in *CAC v McKay* confirmed that:<sup>11</sup>

“Proper” sits somewhere between exceptional as in the case of the courts and desirable as is required by the [Health Practitioners’ Disciplinary Tribunal].

[30] The CAC has taken a neutral position in respect of each application for permanent non-publication, submitting that it will abide the Tribunal’s decision. Teacher S seeks permanent non-publication of his name, identifying details and the details of evidence advanced in support of his application. We have had evidence provided to us confirming:

- (a) Teacher S has been diagnosed with bipolar disorder. The medical evidence has confirmed Teacher S, and his son are very vulnerable with an appreciable risk of suicide.
- (b) An emergency department discharge summary dated 14 April 2023 confirmed Teacher S, at the time of presentation, as having increasing feelings of suicidal ideation, with publication of Teacher S’s name likely to cause significant distress to Teacher S’s son and a corresponding negative impact on his mental health.

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<sup>9</sup> *CAC v Teacher* NZTDT2016/27 at [66].

<sup>10</sup> *M v Police* (1991) 8 CRNZ 14 at [15], cited in *CAC v Howarth* [2021] NZTDT2019/87, 18 January 2021 at [57].

<sup>11</sup> *CAC v McKay* NZTDT2018/69 at [76].



[31] We note that the conduct for which Teacher S appears before the Tribunal only became known after Teacher S self-referred to Wellstop, a community-based organisation that aims to prevent sexual abuse. He advised Wellstop that he had been accessing and viewing child pornographic material on-line since March 2020 and signed a safety plan with Wellstop. Following his contact with Wellstop in March 2021, on 14 May 2021 the New Zealand Police received notification of Teacher S's self-report and subsequently interviewed him. Teacher S was formally warned by Police on 28 May 2021 for possession of objectionable material (child exploitation).

[32] As discussed above, Teacher S voluntarily deregistered as a teacher on 31 May 2021.

[33] Had Teacher S not self-referred and taken steps to rehabilitate himself by attending Wellstop and voluntarily deregistered as a teacher over two years ago, we would have treated the application for non-publication of Teacher S's name quite differently. It is clear to us that Teacher S has taken significant steps to, first, identify he has an issue and, secondly, to take steps to ensure that he does not engage in this type of activity again. Based on the evidence we have been provided, the impact that publication of his name is likely to have on his mental health, and that of his son's, we are satisfied is likely to be significant.

[34] While we accept that the effect of publication on family members is likely to be inevitable, and that "ordinary" hardship is not sufficient to justify suppression,<sup>12</sup> it is clear that the consequences of publication are likely to be more than ordinary in this case.

[35] We consider that by a slim margin, and for the reasons set out in the medical evidence provided to us, the risk to Teacher S's mental health and that of his son, together with the impact that is likely to have on Teacher S's rehabilitative efforts to date, warrant the granting of a non-publication order.

[36] We also consider it significant that the CAC has not opposed the application.

[37] It follows then that the application by the school for non-publication must also be granted. Identifying the school would almost certainly lead to the identification of Teacher S. If we are wrong about that, at the very least it may create suspicion of other teachers at the school, were we not to grant a non-publication order in favour of the school as well.

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<sup>12</sup> *CAC v McKay* NZTDT2018/69 at [65].

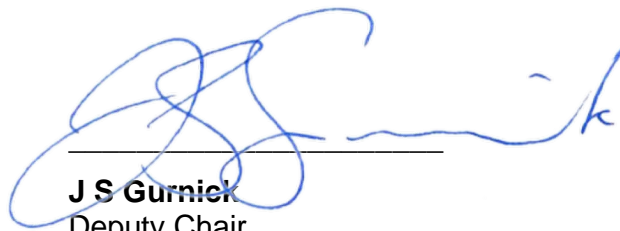
## Costs

[38] The Tribunal has a discretion to limit the award of costs where a teacher has admitted a charge and has fully co-operated in bringing the matter to an end in an expedient way. The costs contribution in such a case is usually in the region of 40 per cent.<sup>13</sup>

[39] Counsel for Teacher S has filed submissions supported by an affidavit regarding Teacher S's financial circumstances and requests that he pay less than the normal 40 per cent of actual and reasonable costs sought by the CAC and Tribunal.<sup>14</sup>

[40] The CAC's total costs are \$9,659.94. We consider those costs are on the high side for a matter that proceeded on the papers. On that basis, we are prepared to reduce the award of costs below the usual 40 per cent and we direct that Teacher S pay \$3,000 towards the CAC's costs, which is just over 30 per cent.

[41] In terms of the Tribunal's costs, we see no reason based on the information we have been provided to depart from the usual 40 per cent costs contribution where a matter proceeds on the papers. The Tribunal's costs totalling \$582 are ordered to be paid by Teacher S.



**J S Gurnick**  
Deputy Chair  
New Zealand Teacher's Disciplinary Tribunal

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<sup>13</sup> Tribunal's Practice Note 1: Costs (1 April 2022).

<sup>14</sup> Being 40 per cent of the actual costs of the CAC in accordance with the Education and Training Act 2020, s 500(1)(h) and Practice Note 1 of the Teachers Disciplinary Tribunal relating to costs.