

NOTE: PERMANENT NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/89

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

PAUL ZEEDIJK
(Registered Teacher No 372147)
Kaiurupare / Respondent

Hearing | Nohoanga

29 May 2024

Tribunal

James Gurnick (Deputy Chair), Ross Brown,
John Ruge

Representation | Hei Māngai

H Prashad, Luke Cunningham Clere for the CAC
D King for the Respondent

DECISION

5 June 2024

Introduction

[1] The Complaints Assessment Committee (**CAC**) charged the respondent with one charge of serious misconduct, and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers, in that between January 2023 and April 2023 he sent text messages of an inappropriate and/or sexual nature to Student A (aged 16 years old); and exchanged photographs of an intimate and/or inappropriate nature with Student A.

[2] The parties agreed on the facts. In summary:

- (a) At the beginning of term one in 2023, a student at the school, Student A, who was then 16 years old, began messaging the respondent. She had his phone number from a previous school trip at the end of 2022 where he had distributed his number to students should they need to contact him.
- (b) Around the end of 2022, Student A started to have feelings for the respondent. The feelings got stronger as Student A and the respondent spent time together at school. The messages were initially limited to school-related topics. The messages then became more personal and more frequent. Student A told the respondent that she cared about him and thought he was special. He replied that he felt the same kinds of things, and they began discussing family problems and their feelings for each other, including that they loved each other. They also told each other how much they liked each other face to face and spent time together in class and during lunch breaks on school-related matters.
- (c) The messages began to get more intimate and inappropriate and included the exchange of pictures. In particular, Student A sent the respondent a picture of herself in the mirror wearing clothes, followed by a photo of her stomach and breasts. The respondent responded with a picture of his stomach. The respondent and Student A also sent messages discussing sexual acts they would do together if they could.
- (d) On 2 April 2023, the respondent's wife read the messages and, subsequent to this, the respondent told Student A that they needed to stop messaging and that he needed to tell the principal about their conversations. They deleted each other's phone numbers and have not texted since then.

The law

[3] Section 10(1) of the Education and Training Act 2020 (**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

[4] In order to establish serious misconduct, both limbs of the definition of serious misconduct must be met.

[5] The gateway definitions in limb (a) of the test for serious misconduct have been refined by the Tribunal in various cases:

- (a) In relation to the impact on the well-being or learning of a student, the Tribunal in *Complaints Assessment Committee v Marsom* stated that:¹

... “real”, “appreciable”, “substantial” and “serious” are qualifying adjectives for “likely” and bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

- (b) When considering whether the conduct “reflects adversely on the teacher’s fitness to be a teacher”, the Tribunal has focused on:²

... 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.

¹ *Complaints Assessment Committee v Marsom* NZTDT 2018/25.

² *Complaints Assessment Committee v Crump* NZTDT 2019/12 at [42].

A teacher's obligations under the Code of Professional Responsibility (**the Code**), and whether that Code has been departed from, will be directly relevant to this assessment.³

- (c) Finally, the Tribunal has consistently adopted the following test from *Collie v Nursing Council of New Zealand* when assessing whether the teaching profession has been brought into disrepute:⁴

[28] To discredit is to bring harm to the repute or reputation of the profession. The standard must be an objective standard with the question to be asked by the Council being whether reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good standing of the nursing profession was lowered by the behaviour of the nurse concerned.

[6] If the conduct meets one of the limbs of the definition in limb (a), it will amount to misconduct simpliciter.

[7] For the Tribunal to make a finding of serious misconduct, the conduct must also meet limb (b) of the definition, that is, be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.⁵

The test for serious misconduct

[8] The Teaching Council's criteria for reporting serious misconduct, referred to in s 10(1)(b) of the Act and set out at r 9 of the Teaching Council Rules 2016 (**Rules**), in this case relevantly provide:⁶

- (a) *rule 9(1)(e)*: breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example:
- (i) engaging in an inappropriate relationship with the child or young person;
 - (ii) engaging in, directing or encouraging behaviour or communication of a sexual nature with, or towards, a child or young person;

³ See, for example: *Complaints Assessment Committee v Stokes* [2021] NZTDT 34 at [63].

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

⁵ Education and Training Act 2020, s 10(b).

⁶ As they were drafted at the time of the respondent's conduct.

- (b) *rule 9(1)(k)*: an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[9] The criteria for reporting serious misconduct in rr 9(1)(a) to (k) are given as examples of conduct that is of the “nature and severity” to be a serious breach of the Code.⁷ The Code referred to in r 9 sets out the high standards for 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 on their learning journey and to keep them safe. By acting with integrity and professionalism, teachers and the teaching profession maintain this trust and confidence.

[10] For example, cl 1.3 provides that teachers will demonstrate “a high standard of professional behaviour and integrity”; and cl 2.2 provides that teachers will work in the best interest of learners by “engaging in ethical and professional relationships with learners that respect professional boundaries”.

[11] 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.

[12] Examples of demonstrating a high standard of professional behaviour and integrity are “using information and digital technology appropriately and responsibly”,⁸ “being careful to manage professional boundaries within and beyond the learning environment”,⁹ and “taking steps to ensure that ... learners understand the limits and boundaries of the teacher/learner relationship”.¹⁰

[13] Relevantly, examples of behaviour that may breach professional boundaries are “accessing, creating or sharing inappropriate digital information, such as posting in online spaces that could be easily shared with others”,¹¹ “fostering online connections with a learner outside the teaching context ...”,¹² and “communicating with them about very personal and/or sexual matters without a valid context”.¹³

⁷ The Code of Professional Responsibility, Examples in Practice (Education Council, Wellington, June 2017).

⁸ Clause 1.3 of the Code.

⁹ Clause 2.2 of the Code.

¹⁰ Clause 2.2 of the Code.

¹¹ Clause 1.3 of the Code.

¹² Clause 2.2 of the Code.

¹³ Clause 2.2 of the Code.

Case law

[14] The CAC cited a number of cases where the Tribunal had determined teachers' actions constituted serious misconduct.

[15] In *Complaints Assessment Committee v Teacher M*,¹⁴ Teacher M was charged with sending inappropriate messages to a 17-year-old student on social media, and with sending inappropriate messages "including a photo exposing her breast" to a (second) recent former learner of the school on social media. The teacher accepted her behaviour amounted to serious misconduct. The Tribunal considered that the teacher's conduct clearly amounted to serious misconduct towards the upper end of the scale, pointing in particular to the attempts at setting up contact and the sexualisation in the communication. The Tribunal found both charges reflected adversely on the respondent's fitness to practise and were capable of bringing the teaching profession into disrepute. The Tribunal noted:¹⁵

Maintenance of appropriate professional boundaries is fundamental as a skill, obligation and professional discipline for all teachers. Failure to do so creates serious dangers both for students and for teachers ... [and] may result in even more serious conduct.

[16] *Complaints Assessment Committee v Teacher L* involved inappropriate messaging between Teacher L and a high school student he had taught the previous year.¹⁶ Teacher L set up a private and disposable online chat room, talking to the student often and usually late at night. Teacher L also asked intimate questions. He set up a Facebook page under a false name to communicate with the student. The Tribunal stated that "teachers, and not students, bear the duty to distance themselves from any potentially inappropriate situation".¹⁷ Teacher L accepted his behaviour amounted to serious misconduct. The Tribunal found he blurred the student/teacher boundary through his intimate, private communications, and that serious misconduct had been established.

[17] In *Complaints Assessment Committee v Teacher J*,¹⁸ a concerned student had been in Teacher J's form class. Teacher J then left the school to teach at another high school. Teacher J and the student began communicating on various social media applications. At one point, while intoxicated, Teacher J sent nude photographs of herself to the student. The student was left embarrassed and uncomfortable. The teacher admitted that serious misconduct had been proven. The Tribunal stated there was "no doubt" that the conduct

¹⁴ *Complaints Assessment Committee v Teacher M* [2018] NZTDT 126.

¹⁵ *Complaints Assessment Committee v Teacher M*, above n 14, at [43].

¹⁶ *Complaints Assessment Committee v Teacher L* [2018] NZTDT 23.

¹⁷ At [24].

¹⁸ *Complaints Assessment Committee v Teacher J* [2018] NZTDT 28.

amounted to serious misconduct, noting the conduct adversely impacted the well-being of the student, reflected adversely on the teacher's fitness to be a teacher, and would also be regarded by any reasonable member of the public as bringing discredit to the profession.

CAC's submissions on liability

[18] The CAC submits the respondent's conduct constitutes serious misconduct. It submits that the first limb of the test for serious misconduct is made out in that it:

- (a) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students;
- (b) reflects adversely on the teacher's fitness to be a teacher; and
- (c) may bring the teaching profession into disrepute.

[19] The CAC further submits that r 9(1)(e) and (k) of the Rules are made out such that the respondent's conduct is of a character that must be reported to the Teaching Council. It submits that the conduct therefore meets the second limb of the s 10 test for serious misconduct, in particular:

- (a) The conduct constitutes a breach of the respondent's professional boundaries with Student A who he was teaching at the time. It was an inappropriate relationship with a young person and it involved communications of a sexual nature towards a young person.
- (b) The conduct in exchanging messages and photographs of an inappropriate and intimate nature with a student is of a kind that is likely to bring the teaching profession into disrepute.

[20] The above cases demonstrate that contact with a student with a sexual element constitutes serious misconduct. The CAC submits the respondent's behaviour, involving exchanging inappropriate/sexual messages and inappropriate/intimate photos of the student, amounts to serious misconduct.

[21] In respect of the Code, the CAC submits the respondent's conduct failed to demonstrate a high-level of professional behaviour and integrity and failed to maintain public trust and confidence in the teaching profession. His conduct does not demonstrate an understanding of professional boundaries that promotes learners' well-being or demonstrates his obligation as a teacher.

CAC's submissions on penalty

[22] On the basis that the respondent's actions constitute serious misconduct, the CAC submits that the appropriate penalty is cancellation of the respondent's registration.

[23] The CAC submits that the primary considerations the Tribunal must have regard to in professional disciplinary proceedings regarding penalty are those set out in *Complaints Assessment Committee v McMillan*,¹⁹ which relevantly provide:

- (a) protection of the public through the provision of a safe learning environment for students;
- (b) maintenance of professional standards; and
- (c) maintenance of the public's confidence in the profession.

[24] In discharging the responsibilities to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.²⁰ The Tribunal's task is to identify the least restrictive outcome which meets the seriousness of the case and discharges the Tribunal's obligations to the public and the profession.

[25] The CAC submits that the extent of the conduct is significant. It progressed over a period of around three months and became progressively more serious, ultimately resulting in both telling each other that they loved each other, discussing sexual acts that they would do together, and sending photographs of their bodies to each other.

[26] The CAC acknowledges that the respondent has no previous disciplinary history and expressed remorse and insight into his actions and undertook steps to prevent similar future behaviour. It also notes that the respondent informed the school principal about the behaviour, and has been engaged with the Teaching Council, the CAC and the disciplinary proceedings before the Tribunal.

The respondent's submissions

[27] The respondent accepts that his behaviour constitutes serious misconduct. He accepts that an appropriate penalty would be cancellation of his teacher's registration. As part of the

¹⁹ *Complaints Assessment Committee v McMillan* NZTDT 2016/52 at [16] to [26].

²⁰ As the High Court said in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [51]; and cited in *Complaints Assessment Committee v Teacher* NZTDT 2016/64 at [31].

investigation, the respondent provided a number of responses to the school, the Teaching Council and the CAC.

[28] The respondent had been having problems with his marriage and was undergoing financial strain. He said he should have realised and stopped the communication with Student A from the point where it evolved into more personal messages about caring for each other and confiding in each other about problems they were having.

[29] He said he should have taken responsibility when Student A first sent him her picture and should not have responded to that. He was upset, he had let the situation get out of control, he had made many poor choices and should have stopped any advances from Student A. He acknowledged that the relationship was wrong and that he deeply regrets it. He accepts he behaved unprofessionally.

[30] He reiterated his regret when he met with the Board, stating that he could not believe he let the interactions between him and Student A get as far as they did. He had been getting counselling, was remorseful and was concerned for Student A's welfare.

[31] In May 2023, he advised the CAC that he had resigned from the school and was attending counselling, including participating in a professional boundaries course. He deeply regretted what he had done and the people he had impacted and did not foresee being able to return to the profession, at that stage, having regard to his mental health.

[32] In October 2023, the respondent expressed to the investigator that he no longer wished to be a teacher and did not wish to return to the profession. He was in favour of his registration being taken away.

Discussion

[33] We have had regard to *Complaints Assessment Committee v Teacher M*,²¹ *Complaints Assessment Committee v Teacher L*,²² and *Complaints Assessment Committee v Teacher J*,²³ which we have discussed above. Those cases demonstrate that contact with a student with a sexual element constitutes serious misconduct resulting in cancellation.

[34] We can see no real distinction between those cases and this one. Arguably, this case is more serious because it involved a current student. In *Teacher L* and *Teacher J*, the conduct involved former students. While the conduct in *Teacher M* involved two students, the

²¹ *Complaints Assessment Committee v Teacher M*, above n 14.

²² *Complaints Assessment Committee v Teacher L*, above n 16.

²³ *Complaints Assessment Committee v Teacher J*, above n 18.

conduct in question is very similar, including sending inappropriate messages and a photo of himself to a student.

[35] We are satisfied that the various limbs required to meet the threshold for serious misconduct have been made out.

[36] The actions of the respondent in our view were likely to have adversely affected the well-being and learning of Student A, reflected adversely on the respondent's fitness to be a teacher, and was likely to bring the teaching profession into disrepute. It is also of a character or a severity that meets the Teaching Council's criteria for reporting serious misconduct in that it breached professional boundaries in respect of a child or young person involving engaging in an inappropriate relationship with Student A and engaging in communication of a sexual nature with Student A. The actions most certainly are likely to bring the teaching profession into disrepute.

Liability

[37] For the above reasons, we consider that cancellation is the only available outcome. We note that the respondent accepts cancellation is the appropriate outcome.

[38] The CAC has submitted that censure is also appropriate. We do not consider that censure, together with cancellation, is appropriate in this case. We have taken into account the following factors:

- (a) the respondent has clearly accepted that his actions were unprofessional;
- (b) he deeply regrets his behaviour and is remorseful;
- (c) he has taken some steps to obtain counselling and professional development including participating in a professional boundaries course;
- (d) he is not teaching and has left the profession; and
- (e) he has moved away from the area where he was teaching.

Non-publication orders

[39] The respondent applies for suppression of his name and any identifying particulars. He says that he is concerned that publication would have detrimental effects on his mental health.

[40] The CAC opposes the respondent's application for non-publication.

Legal principles of non-publication

[41] The starting point 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.²⁴ The Tribunal has previously endorsed the statement of Fisher J that:²⁵

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 re-offend.

[42] 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 interest of any person and to the public interest.

[43] We are reminded of *Complaints Assessment Committee v Teacher*,²⁶ where the Tribunal articulated a two-step approach that ought to be taken when determining the issue of name suppression:

Here we have applied the two-step approach to name suppression we described in *Finch*, which mirrors that used in other disciplinary contexts. The first step, which is a threshold question, requires deliberative judgement on the part of the Tribunal whether, having regard to the various interests identified in the section, it is “proper” to make a suppression order. If it is, then at the second stage the Tribunal may exercise its discretion and make the order sought.

Discussion

[44] The respondent supports his application for permanent name suppression based on a very general affidavit. It provides very limited detail as to the specific consequences that may result from publication in respect of his ex-wife and him personally due to his mental health. As is often the case, publication of disciplinary proceedings will often have some impact on respondents and their families. That broad impact alone is insufficient to displace the public interest in publication and is a risk taken on by professionals who fall below the standard

²⁴ *Complaints Assessment Committee v Teacher* NZTDT 2016/27 at [66].

²⁵ *M v Police* (1991) 8 CRNZ 14 at [15], cited in *Complaints Assessment Committee v Howarth* NZTDT 2019/87, 18 January 2021 at [57].

²⁶ *Complaints Assessment Committee v Teacher* NZTDT 2016/27 at [61].

expected of them in a case such as this. Bare assertions will not suffice for displacing the principle of open justice nor will the “ordinary” hardships or expected consequences of a proceeding involving allegations of serious professional misconduct.

[45] In response to the respondent’s claims that publication will affect his mental health, there is simply insufficient evidence provided to support such a claim.

[46] In our view, claims of general feelings of stress and depression, without medical evidence to support such a claim, mean that the respondent’s application falls well short of overcoming the principle of open justice that must apply in cases of this kind.

[47] For those reasons, the respondent’s application for permanent name suppression is declined.

[48] The CAC applies for non-publication orders in respect of Student A. There should be no features of this decision that identify Student A or any student involved in this case. However, out of an abundance of caution, we make a permanent non-publication order in respect of Student A’s name and any identifying details.

[49] We note the respondent does not oppose such an application.

Costs

[50] The Tribunal seeks a contribution by the respondent of 40 per cent of its costs in accordance with the Tribunal’s Practice Note: Costs (1 April 2022).²⁷

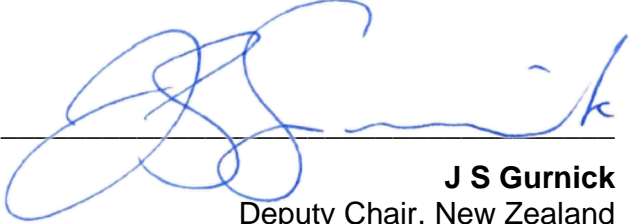
[51] The respondent submits that he has now left teaching and, whilst employed, his income has been reduced. He seeks a reduction in any costs to 30 per cent. Again, the respondent has provided little information other than a one-line submission that his income has been reduced.

[52] In our view, there is no reason to depart from the Practice Note and we direct that the respondent pay 40 per cent of the CAC’s costs in the amount of \$3,858.47.²⁸

²⁷ 8. Without limiting the Tribunal’s discretionary decision-making, in most cases where a teacher has admitted a charge and fully co-operated in bringing the matter to an end in an expedient way, the costs contribution has usually been in the region of 40 per cent.

²⁸ The CAC’s costs totalled \$9,646.18.

[53] It is also appropriate for the respondent to meet the Tribunal's costs on the same terms. We order the respondent to pay 40 per cent of the Tribunal's costs in the amount of \$582.



J S Gurnick
Deputy Chair, New Zealand
Teachers Disciplinary Tribunal

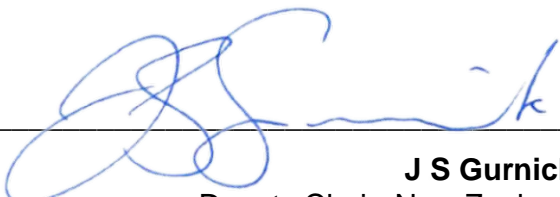
**ADDENDUM
24 July 2024**

[54] After the Tribunal issued its decision on 5 June 2024, it became aware of an application by the school for suppression of the respondent's name and the school's name which the Tribunal had not considered. The substantive decision has been careful not to name the school or the teaching position the respondent held. That is consistent with the submissions received by the CAC to protect the identity of the student. For the reasons set out above, we declined the application for name suppression made by the respondent.

[55] We do not repeat the law in relation to the Tribunal's jurisdiction to grant non-publication orders. The school submits that there is a risk that naming the school and the respondent would risk identifying the student given the close-knit nature of the community where the school is located.

[56] We do not accept that submission. The decision has been careful not to name any identifying features relating to the school, including the subject the respondent taught. The difficulty in not naming the respondent is that the community may speculate about who the respondent is, which may cast aspersions on other teachers teaching at the school when they are completely innocent. One of the purposes of open justice is to make individuals accountable to the community. Granting name suppression to the respondent will have the opposite effect. There will always be risks that a student is identified. The Tribunal cannot eliminate all risk. In our view, the importance of open justice significantly outweighs the risk (which we think is less than negligible) that the student will be identified for the reasons discussed above. We have been cautious about how the decision has been drafted for that reason.

[57] On that basis, the application by the school for permanent name suppression and suppression of the respondent's name is declined.



J S Gurnick
Deputy Chair, New Zealand
Teachers Disciplinary Tribunal