

NZTDT 2021/48

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

IN THE MATTER of a charge of serious misconduct referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **JUSTIN DANIEL FOWLER**

Respondent

DECISION OF THE TRIBUNAL

Tribunal: Ian Murray (Deputy Chair), Kiri Turketo and Lyn Evans

Hearing: Held at Wellington on 29 March and 27 May 2022 (on the papers)

Decision: 23 August 2022

Counsel: David Neild and Adelaide McCluskey for the CAC
Gretchen Stone for the respondent

Charge

1. The Complaints Assessment Committee (CAC) has referred to the Tribunal a charge alleging serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. In an Amended Notice of Charge dated 19 January 2022, the CAC alleged that the respondent:
 - a. Encouraged two [REDACTED] students to assault young people trespassing on the grounds of the College and/or
 - b. Failed to provide due care to a person who was injured on the College grounds and/or surrounding area after being tackled by a College student.
2. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (the Act) and rr 9(1)(d) and/or (k) of the Education Rules 2016 (the Rules); or alternatively it is conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

Procedural History

3. The hearing took place on the papers. Before the hearing, the parties conferred and submitted an Agreed Summary of Facts (ASF), signed by the respondent and counsel for the CAC. However, when the panel was preparing for the first hearing date of 29 March 2022, it was apparent to the panel that there were important factual matters that appeared to still be in dispute. The CAC had also filed a memorandum prior to the hearing raising similar concerns. Additionally, the respondent provided significant additional information that was not contained in the ASF. We were not willing to proceed with a hearing on the papers in those circumstances.
4. As a result, a prehearing conference was convened to discuss the Tribunal's concerns. Following that the parties conferred and redrafted the ASF. While there were still matters not completely agreed between the parties, we decided to proceed with a hearing on the papers.

Factual background

5. The ASF is set out in full below:

Background

1. The respondent, JUSTIN DANIEL FOWLER, is a registered teacher with a full practising certificate, expiring on 28 March 2022. Mr Fowler was first registered

and obtained provisional certification on 18 December 2002. He has worked as a teacher at St Kevin's College, Oamaru since 2011.

Circumstances of the conduct

2. Mr Fowler is the Assistant Principal and the Director of Boarding (House Master). He teaches Junior PE and is the Teacher in Charge of Rugby and coach of the St Kevin's College of First XV rugby team.

3. On 8 July 2020 the Teaching Council received a Mandatory Report from St Kevin's College ('the College') about Mr Fowler's conduct. The conduct arose in the context of a rivalry between the College and another school relating to their annual Rugby interschool fixture.

4. On 24 June 2020, a group of about 15-20 young people went onto the grounds of the College to throw eggs at buildings and vehicles. Mr Fowler lives on the College grounds. He called the Police when the group threw eggs at his car. He was told the Police were coming to the scene. He got in his car with his 14-year-old son and drove to locate the group to "scare them off".

Allegation one

Mr Fowler encouraged two [REDACTED] students to assault people who were trespassing

5. Mr Fowler drove past two [REDACTED] students, Student A ([REDACTED] years old) and Student B ([REDACTED] years old). They lived at the College Hostel. Mr Fowler asked them to get in his car and they drove to locate the group.

6. When they caught sight of the group, Mr Fowler stopped the car and encouraged Student A and Student B to chase after and physically apprehend the trespassers, saying: "Go get them boys, pick them up"¹ and "get one for the Police for me".

7. Student A and Student B ran after the group.

8. Student A tackled Person X (18 years old) to the ground and punched him. Person X broke his collarbone as a result of the tackle and sustained bruising to his chest. He was off work for at least two weeks because of his injuries.

9. Mr Fowler said to Student A, "Get him up! No no don't hit him just hold him. Pick him up".¹

¹ This is a Rugby term, meaning to identify a person, track them and make a tackle.

Allegation two

On 24 June 2020, Mr Fowler failed to provide due care to a person who was injured after being tackled by a College student.

10. Mr Fowler, who had followed Student A and Student B, pulled Person X back on to his feet. He said to Person X: "mate you're in trouble, what's your name?". Person X said he had hurt his collarbone. Mr Fowler told Person X: "Get up, I don't care" and "Well you shouldn't be out here causing shit should you." Mr Fowler held Person X by the back of his shirt and walked Person X to his car.

11. Mr Fowler congratulated Student A who had tackled Person X, saying "Good chase [Student A]".

12. Mr Fowler was on the phone with emergency services throughout the incident to ensure that the Police were coming to the scene to arrest the group of teenagers. Person X requested an ambulance from Mr Fowler. Mr Fowler told the emergency services operator "he thinks he needs an ambulance, he's got a broken collarbone", approximately four minutes and forty five seconds after Person X first told Mr Fowler that he had a broken collarbone.

13. Police Officers arrived at the scene. A Police Officer described Person X as being "very pale" and said that Mr Fowler was "quite jovial" that Person X had been caught and was taking pictures of Person X. The Police Officer told Mr Fowler that the matter would be investigated as it involved a serious assault. Mr Fowler stated that he would take full responsibility and that the boys were only doing what he told them to.

14. The police referred Student A to the Police Youth Aid Service for assault. Student A said in his Police interview that he wanted to catch Person X so that he could be held responsible for throwing the eggs, and that Mr Fowler had asked him to go and get them. Student A said that Person X was resisting so Student A didn't know what to do, so Student A hit him. On advice, Mr Fowler declined to make a statement to Police.

15. Person X received a formal written warning for being unlawfully on the property. No charges were laid against Mr Fowler.

16. Mr Fowler remains employed at the College.

Mr Fowler's Response

17. The respondent informed the Teaching Council that he was worried that the group may have made its way up to the hostel to attack the hostel and put the hostel students at risk. He said that he told the students in the car with him, let's go catch someone.

18. He said at the time when he was quickly assessing the situation, he did not think that Student A and Student B were at risk because he was with them, and they are both physically big and strong. However, he said in hindsight there was an element of risk involved in what he asked them to do. He states it was a "spontaneous decision made at a time when my family (wife and children), my school, our students and school property were under attack. I reacted to protect those I love and care for."

6. We must be satisfied on the balance of probabilities that the CAC has proved the charge. On the basis of the ASF we are satisfied that both of the particulars of the charge are established.

Serious misconduct

7. The respondent does not accept that his conduct amounts to serious misconduct so we must decide whether the conduct we found to be established amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).

8. Section 378 of the Act provides:

serious misconduct means conduct by a teacher—

(a) *that—*

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

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

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

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

9. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on rr 9(1)(d) and (k).

Criteria for reporting serious misconduct

- (1) *A teacher's employer must immediately report to the Education 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:

(d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:...

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

CAC submissions

10. The CAC describe the respondent's conduct as "an extreme overreaction to young people coming onto the College grounds to play pranks". Further it is submitted that Mr Fowler put the two students in a dangerous situation. He did not know who he was "sending the students to chase after, so had disregard for their safety." They argue that Teachers are expected to face challenging behaviour from students and stressful situations within the workplace. The CAC noted the impact on Student A and reminded the tribunal of the callous way the respondent treated Person X.
11. They submit that all three parts of s 378 are established. Further they argue that the respondent's behaviour put the students at risk of harm. Further they are that those actions brought the teaching profession into disrepute.

Respondent's submissions

12. The respondent accepts responsibility for wrongdoing but does not accept that his conduct amounts to serious misconduct. He accepts that with the benefit of hindsight there was an element of risk to the students in what he did. The essential basis for this submission was that Mr Fowler has accepted that his actions were balancing conflicting harms, and it is submitted that his failure to correctly balance the competing risks and potential harm does not amount to actions of serious misconduct.
13. The respondent "reminds the Tribunal the "requirement [for the respondent] to keep the hostel students safe must be taken into account". It is further submitted that "in hindsight he should not have requested that the [REDACTED] students apprehend the intruders, and that he would not do so in the future were the same situation to arise." Further the Respondent submits he does not pose a risk and has shown insight with respect to his actions.
14. The respondent argues "the CAC submission that Mr Fowler could have been a party to a serious assault is conjecture." The respondent reminded the tribunal that the police investigation had not led to any charges.

15. The respondent submits “members of the public would have a huge amount of empathy for the situation in which Mr Fowler found himself and acknowledge that he acted instinctively and for good motive in protecting the school from the intruders.
16. Further “his actions in seeking to locate the intruders was admirable.” The respondent submitted that “the harm caused to Person X was accidental.” The Respondent argue the incident was a “spontaneous decision made at a time when my family (wife and children), my school, our students and school property were under attack”. It is submitted hat members of the public would not consider that his actions discredit the profession.

Analysis

17. We must be satisfied that the respondent’s conduct meets at least one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in r 9.
18. The Tribunal has considered the use of force by teachers before. Cases like *CAC v Teacher H*,² *CAC v Astwood*,³ and *CAC v Taylor*⁴ are representative of the orthodox position we have adopted in previous cases. We recognise a key difference in this case is that it was not Mr Fowler who used the force, but rather it was students at his request that did it. Further the violence was not directed at students. That said we consider there are important similarities between this case and cases of force used by teachers so that we can apply the principles from those cases by analogy.
19. We now turn to assess the behaviour in this case against the two-stage test in s 378 and rule 9.⁵ Starting first with the effect of the behaviour on students. In our view, it is significant that the incident occurred in the school environment, involving students who at the respondent’s direction physically assaulted another person. He put these students in a very difficult situation. [REDACTED]
[REDACTED] Subsequently there were likely to be feelings of fear and shame engendered in the students. In those circumstances. we have no hesitation in concluding that the respondent’s conduct was likely to adversely affect the wellbeing or learning of the students involved in particular Student A.

² *CAC v Teacher H* NZTDT 2019/119.

³ *CAC v Astwood* NZTDT 2018/6

⁴ *CAC v Taylor* (NZTDT 2017-41).

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].

20. While undoubtedly the history of animosity between the schools and the earlier events provide context to this incident and the respondent's actions, we did not find this background particularly material to our deliberations. What cannot be overlooked is that the respondent persuaded impressionable students to use physical force against others. One man was injured. The respondent could have and should have shown better judgment and tried to deescalate the situation. But he did not. It is troubling that he knew police were coming but he still carried on. We have concluded that this was because the red mist descended, and he had stopped thinking or acting rationally or appropriately. We do not accept that his actions were designed to protect the students in the hostel or his family but rather was done in anger and out of a desire for retribution.
21. His lack of good role modelling was also concerning. He showed the students that physical force was an appropriate and acceptable way to solve your problem. We were also troubled by his callous response to the injured man. We view this behaviour as utterly inconsistent with his training as a teacher.
22. So, for all these reasons, we are satisfied his conduct reflected adversely on his fitness to be a teacher.
23. The test for deciding whether a teacher's actions are likely to bring the teaching profession into disrepute is set out by the Court in *Collie v Nursing Council of New Zealand*.⁶ It is an objective test and requires consideration of 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 respondent's actions.
24. Ordinarily but not invariably the use of physical force against a student for corrective or punishment purposes will bring the teaching profession into disrepute. We are satisfied that a similar approach should apply where a teacher instructs a student to use force against another person. However, we obviously must still make a fact specific assessment.
25. Having considered all of these circumstances, we concluded that reasonable members of the public aware that a senior teacher at a school instructed impressionable students to chase and assault someone else then was ambivalent to the injuries inflicted, would reasonably conclude that the reputation and good standing of the profession was lowered by the teacher's actions.

⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

26. Moving on to our analysis of Rule 9, we have already decided that this was an act or omission that was likely to bring the teaching profession into disrepute. So, we need only consider whether the respondent failed to protect a child or young person. This was undoubtedly a volatile situation. In this case the respondent by asking the two students to chase down and become involved in a physical altercation with others, potentially placed them in harm's way.
27. So, we are satisfied that the respondent's actions clearly placed students at risk of harm (in breach of the National Administration Guidelines (NAGs) particularly NAG 5).
28. As a result, we find the respondent's conduct amounted to serious misconduct.

Penalty

29. In *CAC v McMillan*,⁷ we summarised the role of disciplinary proceedings against teachers as:

... 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.

30. Our powers on a finding of serious misconduct (or an adverse finding) are contained in section 404 of the Act which provides:

404 Powers of Disciplinary Tribunal

(1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:

- (a) any of the things that the Complaints Assessment Committee could have done under section 401(2):*
- (b) censure the teacher:*

⁷ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, paragraph 23.

- (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
- (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
- (e) *annotate the register or the list of authorised persons in a specified manner:*
- (f) *impose a fine on the teacher not exceeding \$3,000:*
- (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
- (h) *require any party to the hearing to pay costs to any other party:*
- (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
- (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

CAC position

31. The CAC referred to the rationale for cancellation of a teacher's registration set out in *CAC v Fuli-Makaua*⁸. It does not submit that cancellation was required. Their essential submission was:

52. We consider that it would be sufficient for the Tribunal to mark its disapproval with a censure, and that Mr Fowler should be required to notify a prospective employer of the Tribunal's decision and for the register to be annotated, given the risk to the two students and the young person involved.

53. There is no evidence in Mr Fowler's response to the Teaching Council that he had any real insight or remorse for his actions - he seems to believe that his conduct was a proportionate response to a legitimate threat. The need for Mr Fowler to rehabilitate and develop appropriate responses in stressful situations, should be met by a condition requiring Mr Fowler to attend a course aimed at mental resilience and self-regulation, or anger management. Further, the CAC seeks a condition that Mr Fowler completes a reflection on the Code, to enable further professional development.

Respondents position

32. The respondent argues that his behaviour does not amount to serious misconduct but "in the event that the Tribunal considers it necessary to impose a penalty, it is submitted that a censure alone is adequate and proportionate."

⁸ *CAC v Fuli-Makaua* NZTDT 2017/40

Analysis

33. Looking at the ordinary approach to violence in a teaching setting, we consider that this applies by analogy. The approach is encapsulated in the following quote:⁹

We repeat as we have said in a number of cases in the past that the use of physical force – even at a lower level such as evident in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to section [139A] puts his or her status as a teacher in peril.

34. Ultimately, we agree with both parties that cancellation of Mr Fowler’s registration is not required. However, we were troubled both by the respondent’s conduct and his lack of remorse and sense of entitlement. The respondent shows a fundamental lack of appreciation of the seriousness of his actions and how unacceptable it is for a teacher to behave like this. He has minimised his behaviour and reconstructed what happened as protecting students and his family rather than what we see as his real purpose of seeking retribution against perceived wrongdoers. We do not accept that he was acting protectively. His actions leading up to the assault and his behaviour when police arrived are not consistent with that at all.
35. We are mindful of the importance of protecting students from the risk of harm that student A and B were exposed to. We are concerned that the respondent’s current management and leadership positions provide him positions of considerable influence over students. This is concerning given his lack of appreciation of the seriousness of his conduct. In order to minimise that risk to students we are imposing the following conditions:
- a. Censure;
 - b. Conditions requiring the respondent to:
 - i) complete course(s) approved by the Manager of Professional Responsibility of the Teaching Council covering resilience, self-regulation and/or anger management
 - ii) Not be a position of management and leadership for 12 months commencing at the start of term four of 2022.
 - iii) advise his current and prospective employer(s) of the Tribunal's decision, and to provide them a copy of the decision for a period of two years from the date of the Tribunal's decision; and

⁹ *CAC v Teacher NZTDT* 2014-49, 20 May 2014.

- c. annotation of the censure for two years, and of the conditions until completion.

Costs

36. The CAC sought a contribution of 40% of its costs under s 404(1)(h). The respondent argues that no costs should be imposed.
37. The Tribunal has previously indicated that costs of 40% will ordinarily be appropriate in cases determined on the papers. We see no reason to depart from our usual approach.
38. Therefore, the Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i).
39. The Tribunal delegates to the Deputy Chair authority to determine the quantum of those costs and issues the following directions:
- (a) Within 10 working days of the date of this decision the CAC is to file and serve on the respondent a schedule of its costs; and
 - (b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions he wishes to make in relation to the costs of the Tribunal or CAC.
40. The Deputy Chair will then determine the total costs to be paid.

Non-publication

41. We make an order prohibiting publication of the names of the students involved in the incident, Students A and B, in accordance with the protections afforded to young persons under Rule 34 of the Teaching Council Rules 2016. We also suppress that they were [REDACTED].
42. The respondent seeks an order for permanent non-publication of his identifying details, and the name of the school. The respondent's grounds for non-publication are set out succinctly in his submissions. In essence it is argued that publication of the respondent's name and the name of the school will:
- a. Lead to the identification of the [REDACTED] students involved in the incident;
 - b. Adversely and unfairly impact on St Kevin's College students (and the neighbouring school) as a result of intense media scrutiny;
 - c. Adversely and unfairly impact on St Kevin's College students and lead to further instances of actual and threatened violence with the neighbouring school;

- d. Adversely impact Mr Fowler's family who live at the College and place them at risk from further intruders;
- e. Seriously compromise Mr Fowler's ongoing employment at St Kevin's College; and
- f. As otherwise set out in the affidavits of Justin Fowler and [REDACTED], which are filed in support of this application.

General Principles on Non-Publication

43. Section 405(3) provides that hearings of this Tribunal are public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:

(6) If the Disciplinary Tribunal is 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, it may make any 1 or more of the following orders:

(a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:

(b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:

(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.

44. In deciding if it is proper to make an order prohibiting publication, we must consider relevant individual interests as well as the public interest. If we decide that it is proper, then we may make such an order.

45. As we noted in *CAC v Finch*,¹⁰ we apply a two-stage approach. The first stage involves an assessment of whether the particular consequence is "likely" to follow. This simply means an "appreciable" or "real" risk. If we are so satisfied, our discretion to forbid publication is engaged and we must determine whether it is proper for the presumption in favour of open justice to yield. There is no onus on the applicant and that the question is simply whether the circumstances justify an

¹⁰ *CAC v Finch* NZTDT 2016/11

exception to the fundamental principle.¹¹

46. The correct approach is to strike a balance between open justice considerations and the interests of the party who seeks suppression.¹²
47. We have recently comprehensively reviewed the principles for suppression of school's name or associated people such as students at the school.¹³ We made the following observations:

29. Where the request for a non-publication order is made by a school or other person involved in the disciplinary proceedings, the threshold can possibly be somewhat relaxed, as the public interest in publication of the name of a teacher who has engaged in professional misconduct, and the protective effects which publication can produce, are not involved. But nevertheless, the underlying and fundamental principle is that of open justice, and the presumption of open justice must be displaced by more than mere assertion.

30. In order to justify a conclusion that it is proper to order name suppression for a school there must be some evidence of a real risk that publication will cause real adverse effects which are at least more than speculative. It must be clear that such potential effects are likely to go beyond the normal embarrassment or disruption a school might suffer where one of its teachers is found to have engaged in professional misconduct. A bare assertion by a school, without evidence, that it will suffer beyond the norm will not usually be enough, although that possibility cannot be excluded.

Identification of the students

48. Starting with the first ground on which suppression is sought, we consider the suppression orders we have made will adequately protect Students A and B from identification. We do not accept that there is that there is any real risk that the students will be identified if the school and the respondent are named. Further there is no evidence of a risk to [REDACTED] generally if suppression orders are not made. Accordingly, we are not satisfied that suggested consequence is likely.

¹¹ *ASB Bank Ltd v AB* [2010] 3 NZLR 427(HC) at [14].

¹² *Hart v Standards Committee* (No 1) of the New Zealand Law Society [2012] NZSC4 at [3].

¹³ *CAC v Taylor* (NZTDT 2019/ 92).

Effect on the students at the school: media scrutiny and possible violence

49. We acknowledge the history of animosity between St Kevin's College and Waitaki Boys High School and the history of violence and disorder around their annual rugby match. We also accept that the schools have worked hard to address this. However, even accepting all of that, we consider the possibility of adverse effects on the students is speculative and we concluded that these consequences are not likely. So, we have concluded that this ground does not justify suppression. We were left with the impression that really the school was seeking suppression to protect the reputation of the school rather than because there was a real possibility of effects on the students.

Adversely impact the respondent's family

50. Again, we acknowledge the background of animosity between the two schools. However, we consider the prospects of harm to the respondent's family is speculative and unlikely. We simply cannot see any realistic connection between publication of the respondent's name and any potential risk of harm to his family. We do have sympathy for them but unfortunately publicity is an unavoidable consequence of a family member being found guilty of serious misconduct in their role as a teacher. We do not find the effects in this case go beyond those ordinary consequences.

Seriously compromise the respondent's employment

51. We were troubled by this ground because it seemed to suggest that publication would compromise the respondent's employment but that his actions (which we found to amount to serious misconduct) would not. That appears to align with the school and principals' underlying attitude to the respondent's conduct as we could discern it from the material before us. Having carefully considered the evidence before us we could see no evidence that the respondent's employment would be in jeopardy from publication. As a result, we reject this as a ground for suppression. However, before we leave this topic, we wish to make some observations.
52. While we acknowledge it is important for a school and principal to provide support to a teacher going through the disciplinary process, we were concerned by what we saw as the school and principal essentially condoning and minimising the respondent's conduct. We remind the school that we have found the respondent to be guilty of serious misconduct. Further the respondent involved two vulnerable students at the school in a highly volatile situation. This led to one of the students committing an act of moderately serious violence which harmed someone else and

could have had ongoing consequences for the student. The respondent showed little remorse or contrition after the police arrived. He continued to minimise his conduct right through the disciplinary process. We ask the school and principal to reflect on the appropriateness of how they have responded to the respondent's misconduct.

Other grounds justifying suppression

53. As far as we could tell there were no other grounds raised in the affidavits supporting name suppression.

Conclusion

54. Having rejected all of the grounds for suppression in support of the application for name suppression, there is no basis on which we could make an order under s 405(6) for non-publication of the respondent's name.



Ian Murray

Deputy Chair