

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**UNDER**

**the Education Act 1989**

**IN THE MATTER**

**of disciplinary proceedings pursuant to Part 10A of the said Act**

**BETWEEN**

**THE COMPLAINTS ASSESSMENT COMMITTEE**

**Complainant**

**AND**

**XXXXXXXXXX**

**Respondent**

**DECISION OF TRIBUNAL**

**Tribunal:** Kenneth Johnston (Chair), Megan Cassidy, Judith Catton, Lorraine Skiffington and Patrick Walsh

**Hearing:** 16 December 2010

**Decision:** 21 April 2011

**Counsel:** Adam Lewis for the Complainant  
Respondent in person

## Introduction

The Complainant charges the Respondent with serious misconduct.

The Notice of Charge dated 21 September 2010, particularises the charge in the following terms:

*“3. The CAC, pursuant to section 139AT(4), charges that [the Respondent] behaved in an unprofessional manner amounting to serious misconduct in that she:*

*(i) was shown in various poses of nudity, in the ... edition of ... magazine, both in Australia and New Zealand, under the heading ... and in the Australian version ...*

*(ii) did not prevent, in an article headed ... in the ... edition of ... magazine, the magazine from publishing statements as quotations from [the Respondent] that were relevant to her practice as a teacher, such as “I am submissive in the bedroom because during the day I have to be in control in the classroom”.*

*(iii) failed to consider the effect of any publicity about her nude posing on the students, colleagues and community of her former school.*

*4. The conduct alleged in paragraph 3 (i) – (iii) either separately or cumulatively amounts to serious misconduct or misconduct pursuant to section 139AB of the Education Act 1989 and Rule 9(1)(o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.”*

The Chair convened a pre-hearing telephone conference on 18 October 2010. For the Complainant, Mr Lewis participated in that conference. The Respondent took no part.

At the conclusion of the conference, the Chair set the matter down for hearing and made directions for the filing of proofs of evidence and submissions by both parties.

## Some Preliminary Matters

### *Quorum*

In accordance with the relevant legislative requirements, the Secretary informed the parties of the proposed makeup of the panel. A matter of days before the hearing, one member of the panel, Ms Cassidy, suffered a family bereavement, as a result of which she was required to attend a funeral on the day of the hearing. At the commencement of the hearing, the Chair explained the position to the parties, indicating that, with their consent, the Tribunal proposed to proceed with the hearing in reliance on Rule 24(4) of the New Zealand Teachers Council (Conduct) Rules 2004 which provides that:

*“The temporary absence from a hearing of any member who is conducting the hearing does not affect the validity of the hearing, but all members must be present during the deliberations.”*

The Chair explained that, if the parties consented, the Tribunal would proceed with the hearing in Ms Cassidy's absence, but refrain from deliberating until she was available, and make special arrangements to meet to deliberate and decide on the matter once Ms Cassidy had had an opportunity to read the transcript of the hearing.

Both Mr Lewis, on behalf of the Complainant, and the Respondent expressly agreed to the hearing proceeding on that basis.

Accordingly, the hearing proceeded on 16 December 2010, in order to take evidence and submissions. A verbatim transcript of the proceeding was distributed to all Tribunal members. The full panel subsequently met (twice) in Wellington to deliberate.

### *Publicity*

In terms of procedure, disciplinary proceedings pursuant to Part 10A of the Act are governed by the New Zealand Teachers Council (Conduct) Rules 2004.

Rule 32 deals with the publication of Tribunal decisions. Essentially, it proscribes the publication of decisions except by the New Zealand Teachers Council, and provides that if the Council is to publish decisions then they must be anonymised. Rule 33 provides that anyone may apply to the Tribunal for an order that a decision be published in full, but imposes a series of requirements on the way in which such an application is to be dealt with, including requirements as to who must be given an opportunity to be heard.

We mention these matters because this is a case which has already attracted a great deal of publicity, both prior to and since the hearing on 16 December 2010. For example, it has come to the Tribunal's attention that details of what transpired at the hearing itself were the subject of a piece in the ... on... January 2011.

In one sense, for the New Zealand Teachers Council to publish this decision in an anonymised form is something of an exercise in futility. Anyone who is sufficiently interested, and who has access to the internet, will be able to identify the parties and the details of the case.

That said, neither the parties nor anyone else has made an application under Rule 33, and the rules to which we have referred require the New Zealand Teachers Council to anonymise this decision in the absence of such an application and an appropriate ruling by the Tribunal.

## **Evidence**

For the Complainant, Mr Lewis relied on the evidence of three witnesses, Neil Kevin Mallon who is one of the New Zealand Teachers Council's Case Co-ordinators, Aaron James Montgomery who is employed by the Council as a Systems Administrator, and the Chair of the Board of the school which employed the Respondent for a time (and to whom we will refer as "Ms F"). The evidence of Messrs Mallon and Montgomery was in affidavit form, and they were not called to give evidence. No objection was taken to this. That is understandable because their evidence was formal in its nature.

The Respondent gave evidence. Prior to the hearing, she had also filed and served an affidavit made by her fiancé ("Mr C") and Mr C too gave evidence, although it would not be unfair to say that much of his evidence was more in the nature of impassioned submission.

Although there were differences between the witnesses, those differences related for the most part to matters which are irrelevant, having regard to the terms of the charges, and the conclusions to be drawn from the factual background.

Materially, the factual background which emerges from the evidence – and which is not really contentious – is as follows:

- At all material times, the Respondent was a qualified teacher with full registration and a practising certificate.
- No witness suggested that the Respondent is anything other than a competent teacher.
- Between 21 July 2008, (the commencement of the third school term that year) and 3 July 2009, (the conclusion of the second school term that year), the Respondent was employed at a primary school in the upper North Island teaching young primary school-aged children. On the evidence, there was a difference between the parties relating to the circumstances in which the contract of employment between the school and the Respondent came to an end, with Ms F referring to the Respondent having "resigned" and the Respondent saying that she was employed for a fixed term so that the contract simply expired. But that is not a material issue in the case, and not one which the Tribunal needs to resolve.
- The Respondent first came to the attention of the New Zealand Teachers Council when, on 25 October 2009, some five months after she had left the school, an article appeared in the Sunday News under the headline ... This article named the school and the Respondent and referred to some photographs of the Respondent which, by this stage, had appeared on the Australian ... magazine website. There was some evidence about the circumstances in which these photographs came to be on the site, but that does not seem to the Tribunal to have any significance for the resolution of the case. In any event, this publicity led to the New Zealand Teachers Council's investigation of the matter.
- On 27 October 2009, the New Zealand Teachers Council's Director, Dr Peter Lind, lodged a complaint about the Respondent's behaviour. Both in the material filed prior to the hearing, and at the hearing itself, the Respondent expressed misgivings about the Council's Director having made the complaint. In the Tribunal's view these concerns are misconceived. Whilst the Tribunal is unaware of any previous case in which the original

complaint has been made by the Director, or anybody else connected with the Council, s139AR (2) of the Act is perfectly clear. It provides that anyone can lodge a complaint against a teacher. It is ironic that while much of the Respondent's argument in this case relates to her freedom to do what she wishes within the law, she complains bitterly about Dr Lind's exercise of his statutory right to make a complaint. It is worth noting that the complaint itself was made in the most objective terms.

– One theme of the Respondent's case with which the Tribunal tends to agree, is that the complaint, and the subsequent commencement of an investigation by the New Zealand Teachers Council, significantly increased the publicity surrounding this matter, and may well have led to ... becoming interested in featuring the Respondent.

– By letter dated 28 October 2009, the New Zealand Teachers Council's Manager: Teacher Practice, wrote to the Respondent advising her of the complaint and the fact that the Council proposed to refer it to a Complaints Assessment Committee for investigation. The only aspect of it on which the Tribunal feels it necessary to comment is that the Council advised the Respondent that a "... member of the public..." had made a complaint. Whilst technically correct, that description of the complaint was somewhat misleading. As already stated, the complaint had been made by the Council's Director, and it might have been as well to say so.

– By letter dated 4 November 2009, the Complaints Assessment Committee's Case Co-ordinator, Jackson Martin, wrote again to the Respondent. This letter too opened with the statement that a "...member of the public ..." had made a complaint. It informed the Respondent of the nature of the investigative process and that the matter would be given preliminary consideration at a meeting on 4 December 2009, in order to determine whether it would be taken any further. It went on to inform the Respondent of the members of the Complaints Assessment Committee, her right to object to any of those members and asked for the Respondent to provide a response to the complaint.

– By email dated 25 November 2009, on the Complaints Assessment Committee's behalf, Mr Martin again wrote to the Respondent enquiring as to whether she wished to comment prior to the 4 December 2009 meeting.

– By email dated 25 November 2009, the Respondent responded saying:

*"No, I do not intend to respond other than (sic) to say:*

*1. I have done nothing illegal, immoral or otherwise wrong.*

*2. I am not a practicing (sic) teacher at this time.*

*3. Even if I was teaching I do not believe that you or the NZTC has any right to impose Victorian moral opinions on my life outside the classroom."*

– All of this, and in particular the decision of the New Zealand Teachers Council to refer the matter to a Complaints Assessment Committee for investigation, attracted media attention, and the evidence before us included various articles in newspapers and the like.

– By email dated 15 December 2009, a "New Zealand Truth" reporter, ... informed Dr Lind that the ... was to carry a feature concerning the Respondent. The email read: *"This is ... from the Truth Weekender. I didn't want to send this from my work email but here is an image of the cover of ... with [the Respondent] on the cover I believe it is for the ... issue."* The email attached a copy of the cover of the forthcoming publication featuring the Respondent.

– Dr Lind's reaction – quite rightly in our view – was to refer this to the Complaints Assessment Committee investigating the matter.

– The ... indeed featured the Respondent. Very broadly speaking, there are three aspects of this. There was an editorial piece in which the magazine focused on the fact that the Respondent was a New Zealand teacher and that her featuring in the magazine was the subject of an investigation by the New Zealand Teachers Council.

It sought to portray this as a contest between outmoded values on the one hand and personal freedom on the other. There was a narrative feature concerning the Respondent which emphasised much the same points. Neither of these pieces could be described as high water marks of journalism. Finally, there was a series of photographs of the Respondent. One area of controversy between the parties during the course of the hearing was the extent to which the Respondent was in any sense responsible for the emphasis placed in all of this on

her being a teacher. In relation to this, the Complainant pointed both to the references in the editorial and the narrative to the fact that the Respondent was a teacher and to aspects of the photographs. The Respondent's position, as it emerged, both on the papers and at the hearing, was that ... was responsible for making the link and that she herself had no control over their editorial or narrative pieces and should not be held accountable for them. Frankly, the Tribunal regards that contention as an attempt to stretch its credibility beyond endurance. By the time of the ... shoot, the Respondent was well aware that the fact that she was a teacher was an integral part of the magazine's interest in her, and, by agreeing to pose for the magazine, must be taken to have consented to and been complicit in the presentation of her as a teacher.

No doubt the magazine's staff determined the way in which she was described, but it is in the Tribunal's view nothing short of disingenuous for the Respondent to say that she cannot be held responsible for this description. Quite apart from anything else, the photographs include one of the Respondent draped over an old fashioned school desk. In the Tribunal's view, the Respondent must assume responsibility for her being presented as a teacher and the emphasis placed on the New Zealand Teachers Council's investigation.

As to the photographs themselves, they depict the Respondent in various states of undress including totally naked. During the course of the hearing, both the Respondent and Mr C attempted to draw fine distinctions between various categories of what they themselves described as pornography. For example they said that whilst ... pictures are generally "explicit", the portrayal of the Respondent was not. As the Tribunal understood it, the contention was that, unlike male genitalia, female genitalia are internal so that because the photographs did not portray the Respondent's internal genitalia, they were not explicit. The Respondent herself put it bluntly by saying that ... wanted her to "spread her legs" but that she was not prepared to do that. Whatever the merits of that argument, it is entirely beside the point. The Tribunal is not sitting as some sort of classification authority. Its role is to determine whether the Respondent's actions amount to serious misconduct under the Act.

— By letter dated 4 March 2010, the Complaints Assessment Committee again wrote to the Respondent informing her that it had reached the preliminary view that her actions – including appearing in the ... - had brought "...the teaching profession into disrepute, which would fall in the definition of serious misconduct under the Education Act 1989." It sought the Respondent's response, and offered her the opportunity to meet with the Complaints Assessment Committee or provide a written reply, indicating that if she took neither option, it would proceed to deal with the matter without any input from her.

— The same day as the Complaints Assessment Committee wrote to the Respondent seeking her input, Ms F and the school's Principal, who we will refer to as "Ms D", wrote to the New Zealand Teachers Council complaining about the Respondent's conduct. Once again, it was perfectly open to Ms F and Ms D to make a complaint. This complaint was nothing if not broad ranging, and aspects of it were and are well outside the terms of the charges with which the Tribunal must deal. Relevantly, the complaint related in part to the Respondent having featured in the .... A feature of the complaint which will be the subject of further discussion in this decision is the emphasis that it places on the school having a predominantly Pacific Island roll, and the assertion that nudity is less acceptable in Pacific Island communities than in others. A quote from the letter of complaint will suffice to demonstrate this aspect:

*"Our local Pasifika teachers and Pasifika community have found it most difficult to deal with as in our culture explicit sexual revelation is totally inappropriate and we are having to deal with the questions in our local community about why we would want to work/be on the Board/have children enrolled at a school where a teacher whose personal code of behaviour did not correlate with the school's values or the code of ethics expected of all teachers. Below you will read the impact [the Respondent's] behaviour has had on our school."*

— There followed a number of statements said to have been made by parents and teachers connected with the school. Whilst it was perfectly appropriate for this letter of complaint to be produced to establish the fact of the complaint, the Tribunal does not regard the evidence of what parents and teachers associated with the school may or may not have said to the Chair or the principal as being reliable evidence of anything more than what was said. The letter covered other ground as well, but it is not necessary to go into any further detail. A fair summary would be to say that the Chair and the principal regarded the Respondent's appearing in ... as offensive and that, because she had formerly taught at the school, that it had had a negative impact on the school.

— The Respondent replied to both the Complaints Assessment Committee's letter and the complaint by the Chair and principal of the school by letter dated 10 March 2010. Much of this reply is taking issue with points which are not germane to the charges which we must determine and is therefore irrelevant. The Respondent denied any responsibility for the editorial or narrative material contained in the ... magazine on the grounds already referred to. She denied herself linking the fact that she was a teacher to sexual activities saying "*I simply modelled for some photographs in my role as a model, not as a teacher.*" She made the point that at the time she posed for these pictures, she had not been teaching for some time. Over and above that, the Respondent developed some

arguments which were said to be based on the New Zealand Bill of Rights Act 1990, and other material. We will come back to these.

– The Complaints Assessment Committee met again on 18 April 2010. At that meeting, it resolved to invite the Respondent to meet with it. A letter dated 19 April 2010, from the Complaints Assessment Committee to the Respondent followed, inviting the Respondent to contact the Council and arrange a meeting time.

– The Complaints Assessment Committee received no response to this letter.

– The Complaints Assessment Committee met again on 2 July 2010. It concluded that the Respondent's actions reached the threshold for reporting serious misconduct under the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004. It concluded that the Respondent's actions were such that it was open to it to refer the matter to this Tribunal. But, having considered this, it decided first to explore the possibility of resolving the matter by agreement. Its proposal was that the matter be resolved by a formal censure which would remain on the New Zealand Teachers Council's files but not be reflected on the register, and it enquired whether the Respondent would regard that as an acceptable outcome. It attached a draft letter of censure. A similar letter was written to the school's Chair and principal enquiring as to whether they regarded that as an acceptable outcome.

– The Respondent did not reply. Her evidence was that she was not prepared to agree to such an outcome. Nor was the school. Its Chair, Ms F, wrote to the Complaints Assessment Committee on 6 August 2010, recording that in the view of the Board the matter should be referred to this Tribunal. The letter also contained a series of further allegations which are irrelevant to the charges before us.

– By email dated 13 August 2010, the New Zealand Teachers Council received a further complaint – or, rather, expression of disapproval – about the Respondent's behaviour from a member of the public.

– By letter dated 21 September 2010, the Complaints Assessment Committee wrote again to the Respondent informing her that having regard to the fact that she had not responded to its earlier letter and the school's response, it had determined that the appropriate course was to refer the matter to the Tribunal pursuant to s139AT (4).

– The Notice of Charge followed.

– In his evidence, Mr Montgomery informed the Tribunal that in the course of preparation for the hearing, the Complaints Assessments Committee's Case Co-ordinator had instructed him to, and he had downloaded from the internet certain material and recorded this on a CD-rom which he produced as an exhibit. This material was said to consist of interviews given by the Respondent to a "Close Up" television programme screened on TV1 on ..., to a "60 Minutes" television programme screened on TV3 on ..., to ... around the date of the feature and some additional footage taken at the same time. During the course of the hearing, Mr Lewis sought leave to play the interview. The Respondent objected to this on the grounds that ... owned the intellectual property in the interview.

Having heard argument from both parties, the Tribunal permitted the Complainant to play that interview. In the Tribunal's view, the objection to this evidence was misconceived. If indeed ... had intellectual property rights in the interview, then it was for that entity to raise any objection. In any event, any such rights had been waived by placing the interview on the internet. As the Tribunal understood it, the purpose of this evidence was to rebut any suggestion – however fanciful it might have been – that the Respondent did not appreciate that she would be portrayed as a teacher in the magazine. The interview made it plain beyond any shadow of doubt that the Respondent well understood that she would be so portrayed.

– The Complainant did not seek leave to and did not play any of the other material on the CD-rom.

– Nothing more needs to be said about the evidence of Messrs Mallon and Montgomery.

So far as Ms F's evidence is concerned, much of it was not directed at the factual bases for the charges. She began by saying that she was the Chair of the Board of the school at which the Respondent had formerly taught, a position which she appears to have held at all material times. She explained something of the school's background, in particular that it is a decile 1A school with an ethnic composition dominated by Pacific Island groups and – remarkably - no European pupils at all. She went on to explain that in Pacific Island culture teachers are held in very high regard and that public nudity is taboo. She said that *"...women displaying too much flesh are also frowned upon. While a man could get away with just shorts when swimming, for a Samoan woman*

*she must wear shorts and a tee-shirt and perhaps even a lava-lava. Women would never reveal their underwear to another man other than their husband.*" And she continued:

*"In the Samoan community explicit sexual revelation is totally inappropriate. Parents do not have discussions with their children about sex education. As far as I am aware, pornography is not able to be purchased publicly. I don't recall seeing magazines like ... available for purchase in Samoa."*

Ms F also said that her description of Samoan culture "...may hold true for other Pasifika communities." The Tribunal does not regard that as being evidence which would entitle it to draw any inferences about other Pacific Island cultures.

- Ms F continued by making reference to the Respondent's actions. Her criticisms went well beyond the feature in the .... To that extent, her evidence was not germane to the issues with which the Tribunal has to deal, and we do not propose to outline it.
- One aspect of Ms F's evidence was plainly wrong. At paragraph 12, she said:

*"I had been advised that during the building work on the school grounds for a new library in 2008, the builders had a picture of [the Respondent] from ... on the wall of the toilet, while [she] was working in the school. This was found by another teacher at the school."*

This is a good illustration of the inherent unreliability of hearsay evidence. This evidence must be wrong because it is describing events in 2008, well before ... published any pictures of the Respondent. It is not necessary to take the point any further.

- Ms F also spoke of the publicity which this matter had attracted, commencing with the article in the Sunday News in October 2009, causing the Board and other members of the school community embarrassment as a result of questions being asked by teachers and parents about the appropriateness of having a teacher whose "*personal code of behaviour*" allowed her to behave in this way teaching in the school. She said that the school's reputation had been damaged as a result. An obvious point to make at this juncture is that the school did not employ the Respondent at the time of the actions which are relied upon in the charges laid against her.
- Then Ms F turned to the ... article itself in relation to which she had this to say:

*"I have seen the pictures of [the Respondent] in '...' magazine. I felt sickened that someone in a position of responsibility and respect in our community could let pictures of her wearing no underwear appear in a magazine able to be purchased by the public. I am not so naive as to think the magazine could never be seen by a student at the school. We had several students return to school wanting to 'perve' at [the Respondent] and one former student said 'my dad and uncle were going to come in for a perve.'"*

*The parents of the students she taught and of other students at the school had been outraged that we had allowed someone like [the Respondent] teach their children. The children she taught could, at some point in future, find pictures of her, and I worry about the impact on them. It would reduce the standing of and respect of [the Respondent] for the students she had taught, as well as the standing of other teachers in the school and across the country. I don't believe she showed any recognition of how her actions could affect her school community given its ethnic composition."*

- As already stated, the Respondent gave evidence. Prior to the hearing, she had filed a detailed statement. Her *viva voce* evidence was not extensive. To the extent that it focussed on aspects of the evidence called by the Complainant which was not directed to the charges, it is unnecessary to outline her evidence. Furthermore, much of what she said in "*evidence*" was more in the nature of submission and we will come to that in due course.
- Over and above those matters, the Respondent confirmed aspects of the essential background which the Tribunal has already outlined.
- Mr C's evidence, like the Respondent's, tended to focus on aspects of the Complainant's evidence not directed at the charges laid. Above and beyond that, it was more in the nature of a submission and to that extent we will deal with it below.

## **Submissions**

Having outlined the relevant evidence in some detail, we can now deal with the contentions advanced on both sides.

### *The Complainant's Submissions*

For the Complainant, Mr Lewis's essential submission was that the Respondent's actions constituted serious misconduct pursuant to s139AV of the Education Act 1989, and Rule 9(1)(o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 which proscribes:

*"Any act or omission that brings, or is likely to bring, discredit to the profession."*

Mr Lewis's submission was that the Respondent's actions fell within those provisions because:

*"15.1 Her behaviour reflects adversely on her fitness to be a teacher. The evidence from [the school] is that members of the public have been disconcerted to know that one of the school's teachers posed nude in a magazine. There have been on-going repercussions for the school, with questions being raised about the school's morality.*

*15.2 Former students returned to the school to have a look at [the Respondent] when news of the nude photographs had been published. It takes little imagination to understand that material of this nature would remain available into the future and has the potential to adversely affect students who had previously been taught by [the Respondent].*

*15.3 Her conduct failed to take account of the cultural context in which she has (sic) been teaching, where public nudity is taboo...*

*15.4 [The Respondent] has shown poor judgment in expressing a view that she would not pose again, and then, despite being under investigation, presenting herself for further pictures to be published knowing that those would be linked to the investigation into her conduct and to her profession. While her actions of themselves may be legal, and the publication itself is not illegal, it is restricted in the hands of persons under the age of 18.*

*15.5 The behaviour is of a character and severity that discredits the teaching profession, reducing its standing in the eyes of the community."*

From that point, Mr Lewis moved on to address the issue of penalty. In doing so, he referred to a number of cases previously decided by this Tribunal. His submission was that *"...the Tribunal could be guided by cases where teachers have accessed pornography."* And, he referred to NZTDT2006/3, NZTDT2006/7, NZTDT2008/2 and NZTDT2007/6, submitting that it would be *"...incongruous for the Tribunal to treat significantly differently those cases where teachers access pornography compared to a situation where a teacher had posed to assist with the creation of pornography."* We observe that, generally, in those cases, the teacher was found to have accessed unlawful pornographic material.

Mr Lewis contended that there were aggravating features of this case, those being that the Respondent *"...posed in clothing and, with glasses, sitting at a school desk, to link the photographs to the teaching profession."* And, *"...the cultural impact of her actions in the school community."*

Finally, on the Complainant's behalf, Mr Lewis sought costs.

### *The Respondent's Submissions*

As the Tribunal has already observed, the Respondent filed and served a document prior to the hearing entitled *"Submissions of Respondent"* and an affidavit made by her fiancé, Mr C. Both contained a mixture of evidence and submissions. To the extent that they contained evidence, we have already dealt with them. Insofar as they contained submissions which focussed on the charges and the relevant evidence called by the Complainant in support of them, the Respondent's contentions boil down to the following propositions:

- ... is a perfectly lawful publication.
- The Respondent's actions in posing for the magazine were not unlawful.
- ... is published in New Zealand on the basis that it may only be sold to persons 18 years and over, so that it should not be sold to, and should not come into the hands of, anyone under that age.

– Both the Respondent and Mr C mounted strong attacks on the evidence of Ms F as to the school’s make-up and as to Samoan culture. The thrust of these attacks was that any judgment about the Respondent’s behaviour should be a judgment based on New Zealand, rather than any other, cultural outlook. The best example of this is contained in paragraph A6 of the Respondent’s submissions where she was replying directly to Ms F’s evidence and said:

*“I fail to see the relevance of [Ms F’s] remarks in paragraph 6. I am not Samoan, I do not live in Samoa, [the school] is in New Zealand NOT Samoa and is under New Zealand law, not Samoan. Furthermore, while I am very respectful of all and any foreign cultures where I consider it appropriate I am not bound by Samoan law or traditions.*

*We are NOT in Samoa. As stated above we are in New Zealand and all residents of this country, regardless of ethnicity, should be mindful first of the laws and customs of THIS country before their “home” country since they have chosen to live and work here; not there. Similarly, should I choose to work in Samoa I would be very mindful of Samoan law and customs and would put these foremost in my mind in all my dealings.”*

– The Respondent sought to advance her case by reference to the New Zealand Bill of Rights Act 1990, submitting that her rights under that legislation should not “...be abrogated simply because of my chosen profession.” In relation to this she warned the Tribunal to “...give VERY CAREFUL considerations to [certain sections of the Act].” In this context, she referred to s13, which refers to freedom of thought, conscience and religion, s14, which refers to freedom of expression, and s19, which deals with freedom from discrimination on the grounds set out in the Human Rights Act 1993, including discrimination on the basis of sex.

– The Respondent referred specifically to s22 of the Human Rights Act which deals with employers or prospective employers discriminating on the basis of any of the proscribed types of discrimination.

– The Respondent concluded her submissions in the following terms:

*“I submit that your actions in seeking to remove my teaching qualifications and therefore my right to be employed as a teacher simply because I posed nude is in breach of s22 Employment of the Human Rights Act 1993.”*

## **Issues**

The charge which the Complainant brings against the Respondent in this case is that being, at all material times, a duly registered teacher with a practising certificate issued pursuant to the Act, she has acted in a way which constitutes serious misconduct as that term is defined in s139AB.

This Tribunal has on a number of previous decisions considered the definition of serious misconduct.

The Act defines serious misconduct in s139AB as:

*“... conduct by a teacher -*

*(a) that -*

*(i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or*

*(ii) reflects adversely on the teacher’s fitness to be a teacher; and*

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

As we said in NZTDT 2006/10:

*“The criteria set out in (a)(i) seem to marry neatly with the purposes of Part 10A as set out in s139AA. It is perhaps curious that (a)(i) and (a)(ii) are linked by the word “or”. One would have thought conduct by a teacher which adversely affects or is likely to adversely affect the wellbeing or learning of one or more students would almost inevitably reflect adversely on the teacher’s fitness to be a teacher. However the word “or” was no doubt intended to mean “and/or”, so that (i) and (ii) are not being juxtaposed but may overlap.*

*Even more curious is the use of the word “and” at the conclusion of (a)(ii), because this means that it is not enough that a teacher’s conduct adversely affects or is likely to adversely affect the wellbeing or learning of one or more students, or reflect adversely on his or her fitness to be a teacher; it must also be of a character or*

severity that meets the Council's criteria for reporting serious misconduct. Thus, in an extreme situation, however much a teacher's conduct might fit within (a)(i) and/or (ii), it is not serious misconduct as defined by the Act unless it also meets the Council's criteria for reporting ...

*Having regard to the aspects of the legislation which we have highlighted, it would seem that a teacher is guilty of serious misconduct whenever his or her behaviour adversely affects or is likely to adversely affect the wellbeing or learning of a student or students, and/or otherwise reflects adversely on that teacher's fitness to be a teacher. The emphasis in that enquiry is on the teacher's character and fitness to teach. Part of the enquiry may be whether the behaviour under consideration is criminal, but that is by no means an end of the enquiry. A much wider examination of a teacher's character and fitness to teach is called for. The wider enquiry involves asking whether the behaviour under consideration will contribute to or detract from the safety or well being of students, and the quality of the teaching or learning environment. Finally, it is necessary to establish not only that the teacher's behaviour is of a type that might properly be categorised as serious misconduct, but also that, in terms of its character and severity, it meets the criteria for reporting, which means in effect that it must fall within one or more of the categories referred to in Rule 9."*

The type of situation which we postulated in NZTDT 2006/10 in fact arose in NZTDT 2007/6, where the teacher's behaviour clearly met both of the alternative tests contained in s139AB(a), but did not fall within any of the categories of Rule 9, with the result that the Tribunal was obliged to conclude that as a matter of law the behaviour could not amount to serious misconduct. The lacuna identified in that case has since been addressed by the amendment of Rule 9 and the inclusion of Rule 9(1)(o), on which the Complainant relies in this case. Rule 9(1)(o), it will be recalled, relates to behaviour which brings discredit to the teaching profession.

The particular actions to which the Complainant points in bringing the charge of serious misconduct, and which are reflected in the Notice of Charge, are limited to the following:

- First, that the Respondent permitted photographs of herself “... *in various poses of nudity* ...” to appear in the ... publication;
- Second, that she permitted that publication in various ways to identify her as a teacher; and
- Third, that she failed to consider the effect that that publication would have on the primary school at which she had formerly taught and her former colleagues and students.

Thus the essential issues for determination are:

1. Whether the Respondent's actions (as particularised) have adversely affected or were likely to adversely affect the well-being or learning of one or more students;
2. Whether the Respondent's actions reflect adversely on her fitness to be a teacher;
3. If either of the above questions are answered in the affirmative, whether the Respondent's actions were of a character or severity that met the Teachers Council's criteria for reporting serious misconduct; that is, whether they fell within Rule 9(1)(o), because they brought or were likely to bring discredit to the teaching profession.
4. If the Tribunal concludes that the Respondent's actions amounted to serious misconduct, what, if any, penalty should be imposed.
5. Costs.

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## **DECISION OF MAJORITY OF TRIBUNAL**

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In reaching our decision the majority of the Tribunal focused on three essential issues:

- Whether the Respondent's actions have adversely affected or were likely to adversely affect the well-being or learning of one or more students;

– Whether the Respondent's actions reflect adversely on her fitness to be a teacher;

– If either of the above questions are answered in the affirmative, whether the Respondent's actions were of a character or severity that met the Teachers Council's criteria for reporting serious misconduct, that is, whether they fell within Rule 9(1)(o), because they brought or were likely to bring discredit to the teaching profession.

With regard to the first issue of whether the Respondent's actions had adversely or were likely to have adversely affected the well-being or learning of one or more students, the Tribunal took careful note of evidence presented from the school by Ms F, Chairperson of the Board of Trustees. Ms F noted that the school was a decile 1A school with an ethnic composition dominated by Pacific Island students. In that culture teachers are held in very high regard and public nudity is taboo. *"In the Samoan community explicit sexual revelation is totally inappropriate."*

The Tribunal noted the Respondent's impassioned evidence that, *"we are not in Samoa... we are in New Zealand and all residents of this country, regardless of ethnicity, should be mindful first of the laws and customs of THIS country."* It observed however, that the predominant culture of ... was clearly Pacific Island.

The majority of the Tribunal concluded that in order to provide a healthy and effective learning culture, the predominant moral code of the students, their family and their communities should be the prevailing standard. To provide anything less than that would, in the majority of the Tribunal's assessment, provide an educational environment that was likely to adversely affect the learning of one or more students.

Put simply, a learning environment is inextricably linked to its community. To be effective there must be synergy between the school, its students, parents, and the wider community it serves. If the community served by a school has a negative reaction to an activity engaged in by a member of the teaching staff of that school, it will inevitably adversely affect the learning of the students.

Accessibility of the material was also a factor considered by the Tribunal when assessing whether the published pornography was likely to adversely affect the learning of students. The Respondent went to some lengths to explain that the ... was a restricted publication (R18), and should not be available to children. The Tribunal also considered evidence presented by Ms F, who stated that, *"I am not so naive as to think the magazine could never be seen by students at the school. We had several students return to the school to "perve" at the Respondent... The children she taught could at some point in the future find pictures of her, and I worry about the impact on them."* The Tribunal reviewed evidence of the wide publication of ... and the publicity available on the internet, including various Twitter responses and the commentary in the New Zealand press. The majority of the Tribunal concluded that given this wide exposure and the accessibility of the material, it was entirely conceivable that students could have access to the pornographic material at home or through the internet. Relying on parental supervision and compliance with censorship standards was unlikely to be sufficient to protect children from exposure to the images of the Respondent.

The majority of the Tribunal also gave consideration to the nature of school curriculum, and the Respondent's role as a female teacher and role model, in particular, to female students. It was noted by Tribunal members who have a background in teaching, that the health syllabus in both the primary and secondary sector encourages students to value people in totality, and in particular to avoid seeing men and woman as one dimensional sex objects. Although it is acknowledged by the majority of the Tribunal that pornography is not illegal in the adult community, the Respondent's participation in pornography sends a clear message that men and women are sex objects, which is clearly inconsistent with the values taught in schools. To put it more directly, the Respondent's choice to participate in pornography, would, in the majority of the Tribunal's view, undermine the efficacy of any statements or lessons to students on the dangers of the sexualisation of women.

The majority of the Tribunal also considered the impact of the extensive media coverage on the learning environment for students. In this regard the Tribunal reviewed judicial commentary in the case of *Woo and Putnam County Board of Education 504 SE 2d 644 (WVa 1998)*. In this case a teacher admitted smoking marijuana at home in the evenings on a regular basis. The case attracted huge media coverage. The Court found that, "his notoriety" was sufficient to impair his ability in the classroom and therefore the refusal of the school board to reinstate him was legitimate. The majority of the Tribunal reflected on the small and tight knit nature of the New Zealand educational community, and concluded that it is highly probable that the Respondent's notoriety would follow her, causing controversy with school communities, which would impair her ability in the classroom, ultimately reflecting adversely on the learning of her students and on her fitness to be a teacher.

For all the above reasons the majority of the Tribunal concludes that the Respondent's involvement in pornographic activity has adversely affected the well-being and learning of one or more students.

Having dealt with the statutory test from the perspective of student's well-being and learning, the Tribunal then went on to consider whether the Respondent's actions reflect adversely on her fitness to be a teacher.

The majority of the Tribunal acknowledge all the very positive qualities of the Respondent presented in submissions. Particular note was made of her dedication, courage and compassion for the students. Very serious reflection and comprehensive consideration was given to the Respondent's submission's on her right to freedom of expression, and freedom from discrimination on grounds set out under the Human Rights Act 1993, including discrimination on the basis of sex. It is noted however, that discrimination on the ground of sex under the Human Rights Act 1993, refers to gender and not sexual activity such as pornography. The Respondent also referred specially to section 22 of the Human Rights Act, which deals with employment discrimination on the grounds proscribed in the Act.

The majority of the Tribunal also considered relevant commentary by Professor Paul Rishworth, where American Courts have noted that a teacher's rights to freedom of speech are subordinate to the legitimate pedagogical concerns of a school. Indeed within the New Zealand jurisdiction, provisions of specific legislation such as the Education Act 1989, empower the New Zealand Teachers Council and the New Zealand Teachers' Disciplinary Tribunal to preserve, uphold and protect the teaching profession. This specific legislation takes precedence over more general legislation such as the New Zealand Bill of Rights Act 1990, as it is subordinate legislation.

In reaching its decision, the majority of the Tribunal was also guided by its decision in a very similar case, NZTDT2007/06, which involved a teacher posting pornographic images of himself on websites. In that case, the Tribunal was, *"quite satisfied that when he published photographs of those activities on the internet so that, potentially, they could be accessed by anyone including past, present and future students, he overstepped the mark, and his behaviour became misconduct because of its potential to adversely affect the well-being or learning of students and reflect adversely on his fitness to be a teacher."*

The majority of the Tribunal also considered similar international case law. In *Abbotsford School District 34 Board of Trustees vs Shewan & Shewan (1986) 70 BCLR 40 (BC Court of Appeal)* the Judge noted that the key ingredient of misconduct is whether the misconduct affects the teacher in his or her educational capacity. The Court went on to state that a teacher is an important member of the community who leads by example. He or she must uphold this not only to an employer, but also to the community at large and the teaching profession.

It was also noted with concern by the majority of the Tribunal, that after the first public showing of pornographic material the Respondent had said that she would not pose again, and then, despite being under investigation, presented herself again for a pornographic photo shoot that she knew would be published. The repeated nature of the offending activity left the majority of the Tribunal with a concern that the Respondent may indeed continue with such activity in the future and that those actions would reflect adversely on her fitness to be a teacher. In the majority view of the Tribunal, students are highly sensitized to assessing what teachers say with what they actually do. In these circumstances the Respondent would be unable to gain the credibility and respect of students, both essential qualities that go to the heart of being an effective teacher.

Finally, in reaching its decision on the Respondent's fitness to be a teacher the majority of the Tribunal noted the Respondent's warning that the Tribunal should not impose outdated Victorian standards of morality. With respect, the test is not one of applying a particular standard of morality; it is grounded on very practical considerations centred on whether the conduct in question adversely impacts on the Respondent's ability or fitness to be a teacher. Focussing on these practical factors, for example the ability to credibly deliver the curriculum, and the response of the relevant community served by the school, the majority of the Tribunal concluded that by engaging in pornographic modelling in a very public manner, the Respondent has demonstrated conduct that reflects adversely on her fitness to be a teacher.

Having dealt with this case from the perspective of the students and the Respondent's fitness to be a teacher, the majority of the Tribunal considered the impact of the Respondent's actions on the profession as a whole; that is, whether they fell within Rule 9(1)(o), and brought or were likely to bring discredit to the profession. It was again noted by the Tribunal that this rule was first introduced following a similar case NZDT2007/06, which also involved the publication of pornographic images by a teacher.

When considering the impact on the profession, the majority of the Tribunal gave particular consideration to the connection made between the Respondent's actions and references to the teaching profession. Based on the photographic evidence and the editorial narrative, the connection between the Respondent and the teaching profession is inescapable. In several headlines the Respondent is referred to as a teacher. For example, the ... cover led with the headline, ... *NZ teacher*" and ... *teacher* ... The inside story was headlined, ... " with a narrative opening with, *"New Zealand teacher....."* which immediately links the Respondent to the teaching profession. The caption following explicit shots also links the Respondent to teaching where she says, *"I'm submissive in the bedroom because during the day I have to be in control in the classroom."*

Direct reference is also made to the New Zealand Teachers Council, the New Zealand agency that protects and preserves the standards of the teaching profession. Indeed it would seem that the Respondent's connection to the teaching profession was a key angle of the publicity surrounding the pornographic shoot.

The connection with the teaching profession was made even more explicit with the Respondent obviously draped over a school desk, leaving no doubt that there was a premeditated connection between the Respondent as a pornographic model, and her role as part of the teaching profession. Clearly the Respondent's participation in a pornographic photographic feature has become a focal point of repeated publicity. It has become high profile, heightening the potential damage to the teaching profession. It was also noted that the majority of the teaching profession are women, who may find the Respondent's activity and close connection to the teaching profession particularly distasteful.

Finally, in the context of the impact on the wider profession the majority of the Tribunal reflected again on the Respondent's warning not to impose Victorian standards on today's modern society which had different values. The majority of the Tribunal considered this issue very carefully and debated it at length. Without a doubt, it was agreed that teachers are expected to set and inculcate the values and standards of the communities they serve. It is true that these values and standards change and evolve over time. The majority of the Tribunal was also guided by the evidence presented by the school, and the reactions of the community served by the school. It was also noted that Rule 9(1)(o), was a broad test that covered actions that brought or were likely to bring discredit to the profession. This signalled a clear intention by Parliament to capture a wide range of activity with the aim of preserving and protecting the integrity of the profession. Accordingly, the majority of the Tribunal concluded after extensive deliberations, that the Respondent on this occasion had over stepped the mark and engaged in serious misconduct that was likely to bring the profession into disrepute.

On the above bases our conclusion is that the Complainant has made out its allegation that the Respondent has behaved in a way which constitutes serious misconduct.

As to penalty, we are conscious of our obligation to have regard to the considerations identified in *Patel v Dentists' Disciplinary Tribunal* (unreported), High Court, Auckland Laing J, 13 August 2007; the protection of the public, the maintenance of professional standards and the appropriate punishment. We record also that we have considered all available options as set out in s139AW(1). In the end, our view is the Respondent's conduct is sufficiently serious to justify censure and deregistration and that is the order that the Tribunal will make.

Turning to costs, no arguments were advanced to persuade the Tribunal from adopting its usual course of ordering the unsuccessful party to contribute half of the actual and reasonable costs of the successful party and half of the Tribunal's own costs. The Complainant and the Secretary are obligated to prepare schedules of costs and provide these to the Respondent for her comment and the Chairman can then deal with the costs issue. The Tribunal's order will be that the Respondent pay half of the Claimant's actual and reasonable costs and half of the Tribunal's costs.

## **Order**

The majority of the Tribunal having reached the conclusions they have, the Tribunal's formal order is as follows:

1 Pursuant to s139AW(1)(b) of the Education Act 1989, the Tribunal formally censures the Respondent for her serious misconduct;

2 Pursuant to s139AW(1)(g), the Tribunal orders the Respondent's deregistration;

3 Pursuant to s139AW(1)(h) and (i), the Tribunal orders the Respondent to pay:

(a) half of the Complainant's actual and reasonable costs associated with this disciplinary proceeding; and

(b) half of the Tribunal's costs;

in both cases, quantum to be determined by the Chairman after the provision of schedules and after the Respondent has had an opportunity to address these.

## **DISSENTING DECISION OF THE CHAIRMAN**

**AND JUDITH CATTON**

We find ourselves unable to agree with the majority's decision in this matter, and it is appropriate that we should outline – albeit relatively briefly – why we would have reached a different conclusion.

Before doing so we wish to record that this decision has occupied more time and attention than is demanded by most. The Tribunal sat in Auckland to hear the matter in late 2010. Following that hearing, a verbatim transcript was distributed to all members. The Tribunal has convened in Wellington on two separate occasions to deliberate. All of this, and the fact that the Tribunal is divided, simply reflects the difficult nature of the case. For our parts, we respect the views which the majority of the Tribunal have reached. The simple fact of the matter is that on the key issues we would have reached different conclusions.

In the end, the issues come down to the following:

- The first limb of the test is whether the Respondent's actions:
- adversely affected or were likely to adversely affect the well-being or learning of one or more students, or
- reflect adversely on her fitness to be a teacher.
- If one reaches an affirmative conclusion on at least one of those components of the first limb, then the second limb is whether the Respondent's actions were of a character or severity that meets the New Zealand Teachers Council's criteria for reporting serious misconduct, and in particular whether, as the Complainant charges, they fall within Rule 9(1)(o) of the New Zealand Teachers' Council (Conduct) Rules 2004, because they brought or were likely to bring discredit to the teaching profession.

It is important, in our view, to focus quite closely on the terms of the statutory tests in considering these issues. With great respect, it appears to us that the approach adopted by the majority tends rather to conflate the three different tests involved.

*Whether the Respondent's actions adversely affected or were likely to adversely affect the well-being or learning of one or more students:*

This first component of the first limb is affects-based and therefore objective in its character.

No evidence was called upon which the Tribunal could rely in concluding that the Respondent's actions had in fact adversely affected the well-being or learning of a student. This is unsurprising, given that at the relevant time the Respondent was not teaching. The evidence that the Chair, Board or principal of the school at which the Respondent had taught at an earlier time were scandalised, and the reported observations of some teachers and parents does not, in our view, come even remotely close to establishing that any student was materially adversely affected in terms of his or her well-being or learning.

So this question really comes down whether the Respondent's actions were likely to have an adverse impact on the well-being or learning of students. The words of the section (s139AB) require the Tribunal to conclude that the Respondent's actions were likely to have such an adverse impact. It is not a matter of whether they could conceivably; or potentially; or possibly; have such an adverse impact. It must be likely that such an adverse impact would ensue.

We find ourselves unable to reach an affirmative conclusion in relation to that.

We can see that having modelled for these photographs the Respondent might face a greater challenge than others in conveying some of the messages that teachers are required to convey to young people in the classroom. But, even accepting that, we are simply unable to conclude on the evidence as presented to the Tribunal that this Respondent's actions were likely to have an adverse affect on the well-being or learning of students.

*Whether the Respondent's actions reflect adversely on her fitness to be a teacher:*

This second component of the first limb of the test focuses on the teacher rather than on the actual or likely impact of the teacher's actions, and to that extent is more subjective. It requires a judgment to be made about the extent to which the teacher's actions reflect on his or her fitness as a teacher.

In approaching this second component, we remind ourselves that this decision is not being made in 1911 but in 2011. In 1911 precisely the same debate as is raised by this case may have occurred had a teacher allowed himself or herself to be featured in a magazine, identified as a teacher and photographed dressing in a swimming

costume which was not quite as full as fashion then dictated was proper. We make that observation only to focus attention on the fact that this second component of the first limb of the test involves the Tribunal making a judgment about the propriety of the Respondent's actions and relating that to her fitness to be a teacher.

Against that background, it is also relevant to observe that the Tribunal is making this decision at a time when all of us – including primary school age children – are subjected to various levels of sexual material. Whether one refers to such material as “pornography” is not important. The point is that, whether we like it or not, it is a reality of our times that primary school age children are likely to encounter such material daily including on prime time television.

Whilst we accept that the public, parents and students are all entitled to expect a higher standard of behaviour from teachers, that does not mean that teachers must be expected to adhere to standards which mean they are divorced from the age in which they live.

In our view, it is simply too harsh a judgment to conclude that this teacher's actions, which, after all, were quite lawful and took place at a time when she was not employed as a teacher, reflect adversely on her fitness to be a teacher.

*Whether the Respondent's actions have or are likely to bring discredit to the teaching profession:*

Having reached those conclusions in relation to the first limb of the test, we do not need to go any further. But, for the sake of completeness, it is appropriate to record that had we reached a different conclusion in relation to either component of that limb, we would not have concluded that the Respondent's actions have brought or were likely to bring discredit to the teaching profession.

At one level, this second limb of the test – drawn from Rule 9(1)(o) of the New Zealand Teachers Council (Conduct) Rules 2004 – raises broadly similar questions to those raised by the first.

But it involves a different test, that is to say whether the actions of the Respondent, viewed objectively, brought or were likely to bring discredit to the teaching profession itself.

One of the issues that it raises is how that is to be tested. Is it a question of whether the teacher's actions have brought or were likely to bring discredit to the teaching professional in the minds of those associated with a school at which the teacher formerly taught; or was teaching at the time; or might teach in the future – as the evidence led by the Complainant seemed to suggest? We do not think so. We think that this test is directed at the views of New Zealand society. The very notion of discredit seems to us to require that a broad approach of that sort be taken.

So, in our view, the issue is whether a teacher's actions are so disreputable and reflect to such an extent on the teaching profession as a whole, that the average right thinking member of New Zealand society would regard them as having brought discredit to it.

That is a high test. We can certainly see circumstances in which it might be met. An example may be a principal charged with and found guilty of professional misconduct involving the fraudulent manipulation of information so as to ensure that his or her school achieves a higher percentage of pass marks in external examinations. That, it seems to us, may be a situation in which the actions of an individual may raise a question in the public mind about others in a similar position, thus calling into question the system itself and bringing discredit to the teaching profession as a whole. But that is a world away from this case which involves one teacher posing for some rather tedious photographs at a time when she was not employed as a teacher.

In our view, whilst the Respondent's actions may make her appear sad, and no doubt bring discredit to her, we simply cannot accept – as the majority must by definition accept – that right thinking members of New Zealand society would regard her actions as having even the remotest implications for the teaching profession as a whole. Putting it bluntly, we think the teaching profession is bigger than that, and that its reputation will not be adversely affected in any degree by the rather ridiculous behaviour of one young teacher.

For those reasons, we would have reached different conclusions on both the first and second limbs of the test, and concluded that the Complainant had not made out its allegation of serious misconduct as it is particularised in the Notice of Charge.

We mention that in the course of debate the Tribunal reviewed a number of overseas authorities which had a superficial similarity to this case. They are gathered together helpfully in a New Zealand Law Society seminar

booklet dated October 2001. The presenters were Paul Rishworth, Patrick Walsh (a member of the Tribunal) and John Hannan. An example of the authorities referred to is *Abbotsford School District 34 Board of School Trustees v Shewan* (1986) 70 BCLR 40 (British Columbia Court of Appeal). We have reviewed *Abbotsford* and the other authorities referred to in the booklet, and other cases which we have turned up in the course of our research.

In our view, they are not helpful for the disposal of this case. This is because they arise in different contexts. They are employment cases in which a school had suspended or terminated the employment of a teacher because of behaviour comparable to that of the respondent here. Accordingly, the issue in these cases was different. In *Abbotsford* for example the issue boiled down to whether in the particular circumstances of the case the two teachers involved (husband and wife), by reason of their behaviour, had placed themselves in a position where they could no longer effectively perform their duties. Here, the issue arises in a disciplinary and less refined context, and we do not believe that a focus on the reasoning of Courts in these cases is especially helpful.

.....

Kenneth Johnston

Chairman

#### **NOTICE**

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 139AU (2) or 139AW of the Education Act 1989 may appeal to a District Court.
2. An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
3. Subsections (3) – (7) of section 126 apply to every appeal as if it were an appeal under subsection (1) of section 126.

## **Currently Subject to Appeal**