

**BEFORE THE NEW ZEALAND  
TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2022/35**

**COMPLAINTS ASSESSMENT  
COMMITTEE**

**V**

**JULIA BROWN  
Respondent**

Hearing: On the papers

Appearances: R W Belcher & J L Garden for the CAC  
G Densy for the respondent

Date of Decision: 10 March 2023 (re-issued 17 March 2023)

Tribunal: T J Mackenzie, K Turketo, G Ashworth

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**DECISION OF THE TRIBUNAL ON CHARGE, PENALTIES, PUBLICATION  
AND COSTS**

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## Introduction

[1] The CAC has referred Ms Brown to the Tribunal pursuant to s 497(4) of the Education and Training Act 2020 (the 2020 Act). The allegation is that Ms Brown has engaged in conduct entitling the Tribunal to cancel her registration pursuant to s 129 of the Education Act 1989 (the 1989 Act).

[2] More particularly, the CAC alleges that:

(a) Between December [REDACTED] and approximately April [REDACTED], she engaged in an inappropriate sexual relationship with Student One, a former student who had recently completed Form 7 at Dilworth School.

(b) Between approximately January [REDACTED] and approximately December [REDACTED], she engaged in an inappropriate sexual relationship with Student Two, a Form 6 student at Dilworth School when he was aged between [REDACTED].<sup>1</sup>

[3] In a recent decision this Tribunal concluded that it retained jurisdiction to deal with the matter, despite the relevant provisions at the time of the alleged conduct requiring the Teachers Registration Board (TRB) to determine the matter. The TRB no longer exists.<sup>2</sup>

[4] Those provisions are from section 129 of the Education Act 1989 (No 80, as enacted) now repealed. Section 129 (as it then was) provided:

### **129 Deregistration**

(1) Subject to subsection (3) of this section, the Registration Board may cancel a teacher's registration if satisfied that it was effected by mistake or obtained by fraud.

(2) Subject to subsection (3) of this section, the Registration Board may, on the application of the principal or chief executive (or, in the case of an application made in respect of a principal, on the application of the School Board) of a school or educational institution at which a teacher is or has been employed, consider whether or not the teacher's registration should be cancelled; and if satisfied that the teacher-

(a) Is not (or is no longer) of good character; or

(b) Is not (or is no longer) fit to be a teacher; or

(c) Is not a satisfactory teacher; or

(d) Is not (or is no longer) familiar enough with current curricula and procedures in the general education system,- the Registration Board

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<sup>1</sup> Amendment now made as sought by the CAC from the earlier version which stated [REDACTED]. No prejudice is occasioned in this minor change and Ms Brown was notified of it via the CAC submissions.

<sup>2</sup> Decision of 14 February 2023.

may cancel the registration.

(3) The Registration Board shall not cancel a teacher's registration without first-

(a) Taking all reasonable steps to ensure that the teacher is given notice of the reasons for the proposed cancellation; and

(b) Giving the teacher a reasonable opportunity to make submission and be heard, personally or by counsel or other agent, in respect of the proposed cancellation.

(4) The fact that a teacher's registration has been cancelled does not prevent the teacher from again being registered.

(5) Where the Registration Board cancels a teacher's registration under paragraph (c) or paragraph (d) of subsection (2) of this section, it may treat the teacher as an applicant under section 121 of this Act who has not within the past 5 years held a current practising certificate; and may, if it thinks fit, register the teacher under section 124 (1) of this Act accordingly.

(6) Subsection (5) of this section does not limit the generality of subsection (4) of this section.

[5] As held in our earlier decision, the Tribunal applies the test that the (now defunct) TRB would have applied.

[6] We are satisfied that the procedural and natural justice provisions of section 129 have been complied with, in that Ms Brown has had notice of the allegations and a chance to be heard on them.

[7] Ms Brown has indicated that she does not wish to participate in the hearing.<sup>3</sup> The hearing has been conducted on the papers on the basis of sworn affidavit evidence.

### **Factual findings**

[8] We have considered all of the evidence, including the contributions from Ms Brown, despite these not being sworn evidence. Rather than traverse each witnesses evidence, we will set out a summary of what we have found proven.

[9] The CAC has summarised the evidence in their submissions. We accept that as an accurate summary of the evidence and is what we have found to have occurred. We will repeat that summary below, with some minor further additions.

### *Background*

[10] Ms Brown was first registered as a teacher in 1991. She began working as a [REDACTED] Teacher at Dilworth School in 1995, where she was a warm, friendly teacher

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<sup>3</sup> Minute of 25 January 2023.

popular with students.

[11] This referral concerns two sexual relationships the CAC alleges Ms Brown had with students at Dilworth School between [REDACTED]. Ms Brown was born in 1957 and was aged between [REDACTED] at the time. The relationships came to light in 2020 as part of Operation Beverly, the Police investigation into historical sexual offending at Dilworth.

#### *First relationship*

[12] The first student was [REDACTED]. (Student one) attended Dilworth from [REDACTED] until completing form seven in [REDACTED]. He was taught [REDACTED] by Ms Brown [REDACTED], though nothing improper occurred at that time.

[13] The relationship arose in the weeks after Student One graduated form seven [REDACTED], when he and Ms Brown attended a [REDACTED] trip for Dilworth students. The trip involved Ms Brown and two other teachers accompanying Student One and [REDACTED] other students on a [REDACTED] journey across [REDACTED]. The tour was designed to complement the students' studies at school.

[14] Over the course of the [REDACTED] trip, Student One grew close to Ms Brown, possibly in the context of him feeling homesick. They began to sit next to each other on trains and buses. One evening while the tour group was in [REDACTED], Ms Brown and Student One sat on the roof of a hotel and had a conversation in which Ms Brown confided in Student One about deeply personal matters. On another occasion, while the group was in [REDACTED], Ms Brown stroked Student One's hair.

[15] The relationship escalated when a part of the group (including Ms Brown and Student One) extended the tour to include a visit to [REDACTED]. In [REDACTED], Student One gave Ms Brown a back massage in her hotel room. In [REDACTED], the two drank wine, kissed and walked through town holding hands. Two other students, [REDACTED] and [REDACTED], grew suspicious as to what was taking place and witnessed the two cuddling on a bench.

[16] Finally, in [REDACTED] — [REDACTED] — Student One and Ms Brown commenced a sexual relationship. Student One visited Ms Brown in her hotel room early in the morning and late at night. The two would lie naked on her bed together and performing oral sex on each other. Mr [REDACTED] and Mr [REDACTED], suspicious of Student One's prolonged absences, peered through the lock on Ms Brown's bedroom door and saw the two cuddling on a bed.

[17] The group flew back to New Zealand a few days later. Ms Brown and Student One held hands for part of the airplane ride home.

[18] Aside from a few brief meetings in the following year the relationship did not recommence. However, it had a lasting and very significant impact on Student One, who was racked by shame and anxiety about what had occurred.

[19] In September 2012 Student One met with Ms Brown. [REDACTED] sent [REDACTED] an email the next day. He stated:

[REDACTED]

*Second relationship*

[20] The second student Ms Brown had a sexual relationship with was [REDACTED] (Student Two). Student Two was slightly younger than Student One and was taught [REDACTED] by Ms Brown in [REDACTED].

[21] [REDACTED] The CAC's evidence in this matter is [REDACTED] in the form of hearsay statements tendered by [REDACTED], Student Two's partner [REDACTED], and [REDACTED], a good friend of Student Two from his time at Dilworth. Student Two confided in both about the relationship after he left [REDACTED]

[22] The relationship most likely began when Student Two visited Ms Brown's house under the pretext of fixing Ms Brown's video player. From there, the relationship developed over a period of months, and included:

- (a) Student Two visiting Ms Brown's house the night before his 17th birthday, having sexual intercourse several times and playing a sexual game [REDACTED]
- (b) Ms Brown writing love letters to Student Two and giving him a pair of her underwear.
- (c) Ms Brown sitting right next to Student Two in class and the two touching each other sexually underneath the desks.

[23] Student Two decided matters had become out of hand and ended the relationship before form seven. The relationship had a major impact upon him after

leaving Dilworth [REDACTED]

*Our consideration of the facts*

[24] Turning now to our decision on the facts. The evidence before us is sworn and unchallenged. We have not automatically accepted it, but have considered all of it including Ms Brown's contributions.

[25] For the first relationship, we have not only the evidence of Student One, but there are two witnesses (noted above) who corroborate some of the physical conduct well beyond that which Ms Brown accepts.

[26] In the second relationship, the statements attributed to Student Two are hearsay given they come from others [REDACTED]. However, that is somewhat academic given Ms Brown has elected not to participate or challenge the evidence anyway. We accept the hearsay evidence for admission as we are entitled to under our admissibility rules.

[27] We know of no reason that any of the witnesses would be being dishonest. None have anything to gain.

[28] Although dealing with events of some years ago, we do not detect any reliability issues in the evidence, it being clear and quite certain and coming from several adult witnesses (and who were either adults or near to adulthood at the time of the events they recount).

[29] We also note the email of Student One which was both many years after the event and many years ago. It would be remarkable if he had made that email up to his [REDACTED] at the time.

[REDACTED] We have also considered the extent of the evidence and its similarities. It would be an extremely unfortunate coincidence that both of the relationships had been made up at the same time, particularly given [REDACTED]  
[REDACTED]

[31] The relevance to us of Ms Brown's statements is that she accepts a lot of the narrative, although denying the more pointed relationship and sexual allegations. Ms Brown's statements are illuminating and provide context. To us they provide the beginnings of a logical explanation for the allegations that then follow, demonstrating that they are not random events, which may have been more difficult to believe. For instance she has stated, in part:

- Yes, during the trip, [REDACTED] and I did gradually develop a closeness.
- When we were in [REDACTED] I told [REDACTED] that he should spend more time with others.

- I remember staying in with [REDACTED] one evening in [REDACTED] when he was unwell - I thought someone should stay with him.
- Yes, various people gave each other shoulder rubs after a long day with the backpacks.
- I refute being alone with [REDACTED] in a wine bar in [REDACTED]. We may have gone out for a walk and sat on a bench, but I deny kissing him and making comments about songs we heard.
- [REDACTED] phoned me once shortly after getting back to NZ, then again when he arrived up to start at [REDACTED]
- I drove down [REDACTED] and took him to [REDACTED] beach, where I told him that he needed to be with people his own age, that he'd meet like-minded people on his course and that while we had got close on the trip, this would no longer be appropriate.
- [REDACTED] says I fetched him from the [REDACTED] for an event at school and dropped him back. I think I remember his parents bringing him to the event and my offering to drop him back [REDACTED] on my way home. I deny making the comment he suggests.

[32] This demonstrates to us, to begin with, increasing personal contact and erosion of professional boundaries.

[33] We do not accept Ms Brown's denials of the alleged conduct (putting aside that she has chosen not to formally engage). We consider that the denials that persist are best explained as something that Ms Brown simply must and will maintain.

[34] Having reached the factual conclusions above, we will now turn to whether the legal tests have been met.

### **Applicable legal test**

[35] The test from the 1989 Act in force at the time of the conduct requires us to consider whether Ms Brown is of good character or fit to be a teacher. This is in substance much the same test as would be applied under the current conduct provisions (section 10 Education and Training Act 2020).

[36] One issue that arises is that the conduct with Student One occurred *after* his schooling was finished. On this issue there is no particular line in the sand. We draw guidance from decisions that have considered the same issue, albeit under the guise of traditional serious misconduct charges, which required consideration of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004. Rule 9(1)(e) prohibits:

being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher

[37] We consider that this Rule formulates the appropriate way to consider the issue – was the relationship “a result of his or her position as a teacher”. This is not decisive on the referral but is something we take into account in considering whether the conduct has triggered fitness and character issues.

[38] In *CAC v [REDACTED]* the Tribunal held that a purposive approach to the rule should be taken. The Tribunal considered that being in contact “as a result of (teaching)” would be approached thus:

...simply requiring that there be some form of causal nexus between the teacher-student relationship and the subsequent contact for the rule to be met.<sup>4</sup>

[39] We need not go on. It is abundantly clear that the relationship was very closely connected to the teaching relationship, with the trip occurring at the end of the academic year.

[40] Given the conduct found, it is near axiomatic that we must answer both of the considerations of fitness and character in the negative. The same result would have occurred if we were applying the contemporary serious misconduct tests from s 10 of the 2020 Act.

[41] We conclude without hesitation that Ms Brown is not of good character nor fit to be a teacher.

[42] The 1989 test then posits a discretion with us – we “may” cancel Ms Brown’s registration.

[43] Several cases have gone before where sexual relationship conduct has been considered.<sup>5</sup> The outcome is near always cancellation.

[44] On the facts of this case we consider that no outcome short of cancellation is appropriate for this level of conduct and we so order.

### **Non-Publication orders**

[45] The Tribunal has previously made, and now reaffirms, a permanent non publication order of the names of all witnesses.<sup>6</sup>

[46] We also make a further order that the subjects taught to each of the two relationship students, and the countries visited on the overseas tour with one, cannot be published. They can be referred to as language or cultural classes, and the tour destinations simply as “overseas”. This we consider proper to avoid the risk of

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<sup>4</sup> *CAC v [REDACTED]* NZTDT 2018/41 (at [43]).

<sup>5</sup> *CAC v Teacher* NZTDT 2018/41; *Scully v Complaints Assessment Committee* [2010] DCR 159; *CAC v Teacher I* NZTDT 2017-12; *CAC v Teacher X* NZTDT 2020/43; *CAC v X* NZTDT 2016/12; *CAC v Teacher C* NZTDT 2018/10; *CAC v Cooney* NZTDT 2021/55.

<sup>6</sup> [REDACTED]



undermining the non-publication order for their respective names.

[47] Ms Brown seeks permanent non-publication of her name. The information advanced by Ms Brown is a limited set of medical notes, now aged, which appear to refer to distress, anxiety and referral to counselling. There is also mention of an unwell mother, and concern for future employment and financial issues.

[48] It has been said many times before by this Tribunal that such affects (personal distress and anxiety) are often seen. In *Mathie* the Tribunal stated:<sup>7</sup>

The Tribunal has sympathy for the concerns of the respondent and his family. However, these issues are common for practitioners facing disciplinary proceedings. Indeed it would be uncommon to find a practitioner, on the eve of a potential serious misconduct finding, to be nonchalant about publication. If these concerns were enough to reach the non-publication threshold, the vast majority of professional disciplinary proceedings would be subject to these orders. Most practitioners and their close ones are stressed and anxious during a disciplinary case. To accept that level of concern as the test for non-publication would undermine the principles of open justice.

[49] Likewise concerns for the future are part and parcel of conduct findings being made. They do not overcome the public interest in open justice.

[50] We also understand that any reporting of Mr Brown's name may cause distress to her mother, however courts have often been reluctant to allow this to overcome the presumption. Professionals should think of such issues before committing serious misconduct.

[51] We have no doubt that Ms Brown has been quite affected by these allegations. However the threshold for permanent non publication is much higher, particularly after adverse findings have been made.

[52] Overall we do not consider that the grounds for non-publication are made out. Accordingly we do not make a non-publication order regarding Ms Brown.

[53] For the avoidance of doubt, there is also no non-publication order in place regarding Dilworth School.

### **Costs**

[54] The CAC has been required to advance a full set of evidence and submissions. We consider that a costs order of 50% is appropriate. The CAC has deducted the time spent dealing with the jurisdiction issue, which we consider is appropriate.

[55] The CAC costs were \$11,160.14. We consider this a reasonable, indeed

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<sup>7</sup> NZTDT 2020-15.

economic claim for this matter. 50% is \$5580.07 which we now order is payable by Ms Brown.

[56] Tribunal costs are \$1455. 50% is \$727.50, which we order be paid by Ms Brown.

A handwritten signature in blue ink, appearing to read "Mackenzie", is enclosed in a thin black rectangular border.

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**T J Mackenzie**

**Deputy Chair**