

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2021/46

KEI RARO I TE MANA O

Under

of the Education Act 1989 (**the Act**)

I TE TAKE O

In the Matter of

charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

KO

Between

COMPLAINTS ASSESSMENT COMMITTEE

Kaiwhiu | Prosecutor/Referrer

ME

And

JERRY RAY JORDAN

[Registration **250932**)

Kaiurupare | Respondent

TE WHAKATAUNGA Ā TE TARAIPUNARA

Decision of the Tribunal

Dated 27 March 2023

NOHOANGA:

28 November and 1 December 2022 on the papers via Teams

Hearing

TE TARAIPUNARA:

Ian Murray (Tiamana Tuarua)

The Tribunal

Kiri Turketo raua ko Lynn Evans (Ngā mema o te Taraipunara)

NGĀ ROIA ME NGĀ

KAI-AWHINA:

Representation

Elena Mok, Meredith Connell for the Complaints Assessment Committee
Fran Renton, Post Primary Teachers' Association for the Respondent

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee (CAC) has referred a charge to the New Zealand Teachers Disciplinary Tribunal (the Tribunal) alleging serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. In the Amended Notice of Charge dated 9 November 2021 the charges are set out as follows:
 1. The CAC charges that Jerry Ray Jordan, registered teacher, of Raetihi, while teaching at the School:
 - a. between around September 2013 and around December 2013, formed an inappropriate and/or sexual relationship with a Year 13 student at the School (Student A); and/or
 - b. between around December 2013 and around January 2014, had a sexual relationship with Student A while she was studying to obtain University Entrance; and/or
 - c. between around February 2014 and around April 2014, had a sexual relationship with Student A after she had left the School.
 2. The conduct alleged in paragraph 1, separately or cumulatively, amounts to serious misconduct pursuant to section 139AB of the Education Act 1989 and rule 9(1)(e) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004; or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 139AW of the Education Act 1989.
2. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (the Act) and Rules 9(1)(e) of New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (the Rules); or alternatively it is conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 404 of the Act. Given the historical nature of the misconduct, the Act applies rather than the more recent Education and Training Act

Ko te hātepe ture o tono nei – Procedural History

3. This hearing had a slightly unorthodox procedural history.
4. Following the filing of the charge, the case was initially set down for an in-person hearing on 12 and 13 April 2022.
5. The CAC sought an order under s 406 of the Act requiring the Mercure Abel Tasman Hotel (“the Hotel”) to provide booking records to support Student A’s account. The order was made but no records could be obtained due to the hotel no longer holding those records.
6. In the lead up to the hearing, the parties requested a prehearing conference be convened. This took place on 28 March 2022. At that conference, counsel for the respondent advised the Tribunal that the respondent does “not dispute the statements filed by the CAC”. While this was not a concession of the behaviour or of serious misconduct, it was nonetheless an indication that he was not going to challenge the evidence that the CAC were putting forward by way of statements. He was, however, wishing to seek name suppression.
7. Following the teleconference, the in-person hearing was vacated, and a formal proof hearing was directed. That hearing was delayed until the respondent provided evidence in support of the name suppression application.
8. Eventually a formal proof hearing was convened on 28 November and the written evidence filed by CAC was assessed by the Tribunal and conclusions were drawn from that evidence by the Tribunal. Due to late arrival of some material, we deferred consideration of the name suppression application until 1 December 2022.

Kōrero Taunaki - Evidence

9. Notwithstanding the approach by the respondent, the Tribunal was required to assess the evidence and draw conclusions about whether the charge has been proven.
10. We will first outline the evidence provided to us, summarise the submissions of the

parties. and finally outline the conclusions we drew from the evidence.

11. Student A was interviewed by a specialist Police interviewer in Wellington on 24 March 2017. She recounted a relationship with the respondent which was close and evolved into a sexual one. It began by relatively innocent touching on her knee area and hugging, but progressed to kissing, digital penetration and full sexual intercourse. They were spending long periods of time together after school and she also visited his home where sexual intercourse took place. The sexual relationship continued after Student A left school and was attending university in Wellington. Student A said they had sex twice at hotels booked for them by the respondent. She said that became upset after the second occasion and the respondent ended their relationship at that time. She agreed with that outcome.
12. Student A explained that she initially did not complain to police but finally did after she saw a social media post from the respondent that made her concerned that the respondent could do the same thing to another student.
13. We were provided with evidence from other teachers and staff at the College at the time, [REDACTED], [REDACTED], and [REDACTED]. This evidence established that Mr Jordan was seen at the College after school hours were over. Their evidence supports that there were opportunities for Mr Jordan and Student A to be alone together after school. This was inconsistent with the respondent's denial to the CAC that he stayed after school. It supported Student A's account of their clandestine meetings.
14. We had evidence from another student (we will call her student B). She was [REDACTED] and a friend of Student A. She witnessed interactions between the respondent and Student A. She described seeing the respondent touching Student A on her knee. She noticed that the respondent also touched other female students in the same way. Student B noticed that Student A spent a lot of time with the respondent at break times. Student B also gave evidence that when in a bathroom at a party, she asked, and Student A denied to her that she was having an improper relationship with the respondent. However, after they had left school Student A disclosed to her that she had had an inappropriate relationship with the respondent. Student B described them going out for lunch and Student A told her she had been seeing Jerry while she was at school. Student A told her when it started and how long it went on for.

15. Student A also disclosed the improper relationship to a university friend [REDACTED]. Student A was upset when she told him. [REDACTED] described the first disclosure in this way:

2.8 [REDACTED] was alone when I went over. I specifically remember that [REDACTED] used to wear a lot of eyeliner, and I know she had been crying because I saw the eyeliner was running down the side of her face.

2.9 I remember [REDACTED] was extremely reserved when telling me about it. I had to kind of ask her directly a few times, "are you trying to tell me you had a sexual relationship with a teacher?" She wasn't very forthcoming in her language about it. I had to quite explicitly ask the questions back to her and she would say, "yes".

2.10 She seemed like she wanted to defend him a bit, saying things like, "he didn't want to abuse me", and "it was consensual", and stuff like that. This was the stance that changed several years later.

2.11 She was clearly traumatised by it. The main thing I read off her from that conversation was that she felt very guilty, and she didn't want to screw up this guy's life.

16. There was a second disclosure later on which [REDACTED] described in this way:

3.5 [REDACTED] disclosed this to our group at one of our many gatherings. We were having drinks in the flat on Church Street. The group was splintering a bit at that time so there were only 6-7 of us there when she told us.

3.6 I remember her saying, 'since you're all here I'm going to be withdrawing from teaching college', and I specifically remember her pointing out that, [REDACTED] knows about this', and then told us why she was withdrawing, explaining it was because of her relationship with her teacher, Jerry Jordan.

3.7 The content was more around the fact that she would be leaving teaching college and less about details of the relationship. She had clearly prepared herself to share this information with us. I also remember she brought up that her mum had stopped talking to her because she ([REDACTED]) shouldn't have 'made such a problem' in causing trouble for the community. She made it clear it had really screwed over her mental health.

3.8 I remember that her explanation did not go into details. She just told us she'd been in an "inappropriate relationship". She seemed like she was at terms with it and was setting out her intentions. I believe after that she

intended to tell Police about it.

17. Finally, we had evidence from a school custodian [REDACTED] who came into the respondent's room after school hours and found him and Student A together. We will quote from his statement:

"There's only a little window in the door to Jerry's classroom. You can't see much from the outside and I couldn't see anyone in the room from the hallway. There's no other windows on the corridor side apart from the window in the door.

I had to unlock the door as it had been locked. I then walked into the room.

Normally there's nobody there but as I walked in, I saw two people in the room young [Student A], a student at the College was sitting at a desk and Jerry Jordan was standing beside her. They weren't doing anything. I said 'Oh, oh I'm sorry I didn't realise anyone was in here'. They did not say anything to me.

[Student A] was sitting to the left of the entrance. She was sitting in the student's desk and Jerry was beside her. He was very close, standing right beside her as if he was instructing her over a piece of work. I can't recall if there were any other materials on the desk.

They were facing away from the door and towards the window on the opposite side of the classroom so I was initially observing the back and the side of both of them.

They were very surprised to see me. It was their look that gave me the impression that they didn't expect to be interrupted.

I thought to myself 'Gee has something happened? Are they surprised I walked through?'

It was the look on their face that gave me this feeling. A flash went through me and I thought 'Shit is something happening there'".

Ngā Kōrero a te Kōmiti – CAC Submissions

18. The CAC analysed the evidence and argued why the Tribunal should accept the evidence established the particulars of the charge. We have largely agreed with those submissions so will not repeat them in any detail.

Ngā kōrero a te Kaiurupare – Respondent's submissions

19. The respondent has not provided submissions on the evidence, but he did participate in the CAC process and we will set out in full his response to the CAC

about the allegations:

This is the response to the allegations made against me by [Student A]. I start by saying that under no circumstances did any inappropriate behaviour occur between the student and I, either in the school or in any other place. She claims that things occurred in terms 3 and 4 of her year 13 year. This is not possible. In fact, the student avoided me and would not speak to me during the majority of the 2nd half of that year. This as I had discovered from an anonymous source that she was involved with buying drugs within the school from another student. Another student informed me that a possible drug deal was going to happen or may have already happened between the accuser and another student. I spoke to the other student immediately and told them that the Police and the Principle would be involved. I don't recall the exact conversation. I immediately informed the senior management team that this could be happening, and they needed to take the necessary action. I did not give names because that would have compromised the student who had told me. Prior to informing me they made me promise not to. The senior management team took it from there. I am not sure of the final outcome. The student who has accused me was furious because I had stepped in and stopped the transaction. She refused to speak to me other than what was absolutely required in class. Even then she was rude and abrupt.

The allegations that she makes during the school year would not have been possible. For a numerous reasons.

The student used a lot of descriptive and emotive language in her accusations. In doing this she gives details that are absolutely false to try and support her story, for example;

- 1. I had a dispensation to leave right after class. This so I could take my son home to ride his horses. Someone has to be home and assist and monitor him when he is riding, specially given that he is a showjumper. It is only this year, (he is now year 12 at Ruapehu College) that he is allowed to ride without someone else present. Even now he is only allowed to ride his experienced horses, when we are not home and he is not allowed to jump them. Therefore I was not present*

after school hours. I would complete making and work from home, to keep up to date.

2. She claims that while at my home she lay on a Disney blanket. We do not own and have never owned a Disney blanket. I am a fan of Disney World and have been a number of times, including taking the school basketball team there at the end of our trip to play basketball in the USA the year before, she alleges these events took place.

3. She claims I was driving a large black vehicle with tinted windows. She appears to be describing the vehicle we currently own. This is only about 2 years old and we definitely did not own the vehicle that when she alleges this took place. At that time I owned an electric blue Mazda, with no tinted window. At the time of year and day she is claiming it would have been day light saving and light as day outside.

4. She tries to claim that the grades I gave her were high. My grades, as with all teachers, are moderated by NZQA. I have never had poor moderation responses. If there had of been an issue this would have been dealt with by our NZQA person i the school. Again I feel this is just another example of her trying to support her false accusations.

5. She has accused me of touching her in the class with other students present. This is not possible. Our IT person is in the office next to my room and has windows just about the whole height and width of the wall. There are no curtains. She looks right into my room and my teaching area. There was no office in my room. If something of that nature was going on then someone would have seen and taken immediate action.

6. The classroom also has full glass doors leading out to the corridor and an exterior wall with windows all along it. These are in full view of the courtyard where students gather. There is also a classroom on the other side of the courtyard that has clear view into my classroom. If things happened in my classroom as she claims then someone would have seen and done something. Nothing happened in my classroom.

7. She says that she read comments made by another student on their Facebook page, that reminded her of the same way I talked to her. The

fact is I used to stay in touch with my students and they were welcome to ask me questions that might help them out in university or life.

8. She makes comments about my involvement in sport and specially the surf trip. I was very involved with playing different sport when I was younger, including soccer to a high level, baseball, softball in a semi-professional league in the USA, golf, skiing, water sports including lifesaving, etc. I am a qualified basketball coach, coaching up to elite level. The annual surf trip was part of activities week. I enjoyed surfing and had family in Gisborne, who I would catch up with on the surf trips, once they moved from Taranaki to Gisborne. One or both of our sons attended all of our surf trips to Gisborne. We had to have someone on the beach at all time because it was a safety requirement by our instructor. Bikinis were never an issue because all of the students had to wear wet suits, supplied by the surf instructor. The person on the beach had to keep constant lookout and count hands, while the person in the water made sure students stayed within the required are and kept them out of rips. This was an extremely difficult job, as whoever was required to be in the water was constantly in the break zone being pounded by waves. I can surf and would occasionally have a go. Given that I was a trained life guard it made sense for the school to send me.

9. I do not bite my nails and never have. My hands are available to be checked.

Every single place that the student is accusing me of doing something has public access. There was always people around, students, teachers, administrators, were constantly moving around the school. The school has cameras. These events did not happen.

This whole ordeal has been a long and draw out process. It as been very difficult for my family, specially my sons who both attend Ruapehu College. They are in year 9 and year 12, respectively. We live in a small community and they have had to deal with constant questions about when Dad will be back in the classroom and where he is. The school has assisted my wife and I to keep them safe and their welfare is my priority. There are no other schooling options for them. We do not have the ability to move as my wife runs the family business in town. The stress of this

situation has caused health problems, that we are still dealing with. It has also had a huge financial effect on our family. I am happily married to my wife of nearly 20 years and we have been together for a further 3 years. We have a daughter who is in year 7 at primary school. She will then move on to Ruapehu College.

Due to these allegations I have lost the passion and desire to teach. I am simply not prepared to ever step into the classroom again, given this situation. I have resigned from Ruapehu College and confirm that I wish to voluntarily hand in my teaching licence and will not apply to the Teachers Council again. I would like to move on without this situation causing any further hardship to my children, specifically my sons, the rest of my family and the school. If need be I will address every false allegation made against me. However, I would rather use my energy to move forward, support my children and support the school they attend. As angry and frustrated as I was and am about these false allegations, the damage is done, I just want to move forward and let everyone get on with their lives.

Kupu Whakatau – Decision

20. We are satisfied, on the balance of probabilities (taking into account the seriousness of the allegations)¹ on the basis of that evidence provided by the CAC that the particulars of the Notice of Charge were made out. We concluded that the respondent had been involved in an inappropriate and sexual relationship with Student A during latter part of 2013 and into 2014, and this relationship continued when she left school. We will set out our reasons for those conclusions.
21. We concluded that Student A's account was detailed, plausible and consistent with other evidence. The description of the sexual interactions was clear and highly descriptive, so we concluded it had all the hallmarks of a truthful account. She recounted a relationship with the respondent which was close and evolved into a sexual one. It began with relatively innocent touching on her knee and hugging, but progressed to kissing, digital penetration and full sexual intercourse.
22. We formed the view that her account was compelling and had a complete ring of

¹ *Z v The Dental Hygienists Tribunal* [2008] NZSC 55

- truth. We were satisfied that Student A was recounting real events between her and the respondent.
23. We were bolstered in that conclusion by other evidence which supported Student A's account (and conversely refuted the respondent's denials). We had evidence from teachers at the school that the respondent was present after school hours, notwithstanding the respondent's denial to the CAC that he ever stayed after school. This evidence established that there were opportunities for the two of them to spend time together after school.
 24. Student B's evidence also supported and corroborated Student A's account. It also undermined the respondent's contention that he did not have contact with Student A in the latter part of 2013. Student B saw the respondent touching Student A on her knee. She also noticed them spending a lot of time together. We also considered that Student A's disclosure to her also provided some support for the allegations.
 25. We also concluded that [REDACTED] evidence provided further support to Student A's allegations. These disclosures were compelling and believable.
 26. Finally, we had evidence from a school custodian [REDACTED] who came into the respondent's room after school hours and found him and Student A together. This again provided strong support for Student A's allegations and undermined the respondent's denials.
 27. Notwithstanding his denials to the CAC, in our view the respondent's failure to engage in the Tribunal process to rebut Student A's allegations mean that we can place little if any weight on those denials.
 28. On the balance of all this evidence, we are satisfied that the alleged inappropriate relationship took place. Our factual findings are as follows.
 29. Mr Jordan was a teacher at the College, teaching social studies and history. Student A was a student at Ruapehi College between 2009 and 2013. The two first met on a surfing trip in 2010 and Mr Jordan first taught Student A in 2011 when she was in Year 11. He occasionally hugged Student A but also did the same with other female students. He also touched female students' legs including Student A.
 30. Initially until 2012 they had a normal teacher-student relationship. This changed

that year when Student A was in Year 12. She was in Mr Jordan's history class that year. The improper relationship began when they were in a room off the library together, and Mr Jordan put his hand on her leg under the table, "very high up". Student A moved his hand away. On a different occasion, they were in the library and Mr Jordan put his arm around her and whispered to her "you're hot".

31. The following year, Student A was again in Mr Jordan's history class. After class Student A confronted him about how he was behaving towards her. Her evidence was as follows:

Um, I'm not sure how it started, but we were in the library one day and he was acting odd, but I can't remember what made me turn around and think that, but I stayed after class and was like "what's going on, 'cos you're acting weird" and he was like "oh, I've never felt this way about anyone before", um, which is a bit of an odd thing for a guy with a wife and kids to say, and I don't know, I guess I kind of opened the door there and it just never stopped.

32. There was a further incident soon after when they were alone after class and Mr, Jordan hugged and kissed her. From then on, an evolving sexual relationship developed between the two of them. This involved him kissing her between classes and putting his hand up her skirt to touch her legs during and after class. Later on, he touched her vagina under her skirt and through her underwear, and eventually he penetrated her vagina with his fingers. The relationship developed to the point that he was digitally penetrating her two to three times a week after class when they were alone. Student A described it in this way:

the time I told you was only touching outside of my underpants, but eventually we got to the point where he, you know, shifted them aside and there was actual penetration. Um, he is a nail biter, so he had like ragged ends, you know, it would like hurt, just, you know, and because he chewed his nails, they were always dirty and like, um, and I always, always asked him to fucking stop biting his nails, which eventually he did, ah, and, you know, when people stop biting their nails they don't seem to quite register for a little while that they do actually have to cut them and that, so then it was just like sharp and quite uncomfortable

33. Towards the end of Term 4 in 2013, he performed oral sex on Student A in his classroom after school. Student A would also touch Mr Jordan's crotch through his clothes and masturbated him.

34. While together, they heard other teachers and sometime students walking around after school. They were never “caught” acting improperly together, but they did have staff walk in while they were together. On another occasion she had to move off his lap because she heard someone coming. The school custodian [REDACTED] came in but did not observe anything improper, although he was left wondering if something had happened given the expressions on their faces at the time.
35. Student A went to Mr Jordan’s house during the summer holidays in 2013/2014 to get him to check a biology report. The pair had sex at his home. After the sex he drove her home and Student A was upset because of how he treated her. She said, “I was just upset ‘cos he was just being cold...He was just being cold, um, I just, you’d expect a little bit better than being sent home after the first time you’ve had sex with someone who claimed to love you”.
36. They had sex several more times at both Mr Jordan’s home and in his classroom over the summer holidays. They exchanged messages via text message, email, Snapchat and Facebook Messenger. On one occasion, Mr Jordan sent a nude photograph of himself to Student A via Snapchat. Mr Jordan also asked Student A to send him nude photographs of herself via Snapchat, which she did.
37. At the beginning of 2014, Student A briefly returned to College to study to gain University Entrance. The sexual relationship with Mr Jordan continued during this time. During exam leave, Mr Jordan took Student A to his house, where she performed oral sex on him.
38. Student A felt guilty about engaging in the relationship (mainly because he was married). She tried unsuccessfully to end the relationship several times as she felt uncomfortable, but Mr Jordan persuaded her to continue with their relationship. She did not tell anyone about the relationship at the time.
39. Student A attended Victoria University in Wellington in 2014 and Mr Jordan visited her while she was there. They visited hotels and had sex in hotel rooms. The second occasion when this happened, Student A became upset after they had sex, and Mr Jordan suggested ending the relationship, which Student A agreed with:

...the second time he ended up, because I burst into tears after sex and he was like “I think it’s time to cut the umbilical cord” and, you know, after that he would call or message me being like “oh, don’t make me regret this”, you

know, regret [breaking up] with me or whatever...

40. After he ended their relationship, he continued to message her, including commenting on her Facebook profile.
41. Student A told other people about the relationship during university. She told one of her friends, ██████████, in her first year of university in 2014. Student A disclosed having immense guilt about the relationship. She also told one of her school friends, Student B.
42. Student A did not report the relationship at the time it took place. However, in 2017, Student A saw Mr Jordan had commented on a student's Facebook page and saw parallels to his behaviour towards her at school. So, she went to complain to the police. She described her reasons for doing that as:

Um, the reason I reported it was because I felt there was a risk to other students. The thing that came up recently was just, I don't really want to tell you the student's name because I don't want you guys talking to her, um, but she had just posted on her Facebook page saying that she was going to uni and how excited she was and he'd just commented saying "I'm excited for you and if you need any support, just let me know, I'm always here for you", and I was kind of like, that sounds exactly like what he would've said to me.

43. The Police notified the Ministry of Education of the complaint, and the Ministry of Education in turn notified the College. On 28 March 2017, the College submitted a mandatory report to the Teaching Council.

Te Ture - The Law

44. The first decision we must make is whether the conduct is serious misconduct. 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.

45. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on Rules 9(1)(e)

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:*

(e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example, —

(i) engaging in an inappropriate relationship with the child or young person:

(ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:

Ngā Kōrero a te Kōmiti – CAC Submissions

46. The CAC argued that this was clearly serious misconduct. They noted that, as a teacher who engaged in an intimate and sexual relationship with one of his students, the respondent committed a gross breach of his professional boundaries. He was in a position of trust, care, authority and influence over Student A and there was an inherent power imbalance. It was his duty to safeguard her physical and emotional wellbeing, which is recognised in the Code of Ethics of Certified Teachers. The respondent fundamentally breached these obligations.
47. The CAC referred to *CAC v Teacher K²* as supporting the argument that this was serious misconduct.

² *CAC v Teacher KNZTDT 2018/7 21 August 2018 at [23]* where the Tribunal made a teacher's responsibility in respect to students clear.

48. Turning to the criteria in s 378, the CAC noted that the behaviour was clearly likely to adversely impact Student A's learning and wellbeing because she felt guilty about the relationship and was embarrassed, upset and distressed. It significantly impacted on her relationships after leaving school and had an immense and ongoing effect on her.
49. The CAC also argued that it clearly reflects adversely on the respondent's fitness to be a teacher because it shows a lack of regard for appropriate professional boundaries and a complete disregard for Student A's wellbeing. His behaviour was fundamentally incompatible with being a teacher.
50. The CAC also argued that this was clearly an inappropriate relationship with a student so breached r 9(1)(e) of the Reporting Rules.
51. As a result, they submit that the conduct was serious misconduct.

Ngā kōrero a te Kaiurupare – Respondent's submissions

52. As noted, the respondent did not make submissions on this aspect of the hearing.

Kōrerorero – Discussion

53. Notwithstanding the respondent's approach to the case, we must decide whether the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).
54. 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 9.³
55. Starting first with the effect of the behaviour on students. For the reasons set out by the CAC we, without hesitation, accept that this was clearly behaviour that was likely to impact on Student A. It is clear to us that the respondent's conduct has had a deep and lasting effect on Student A (as is inevitably the case with such inappropriate behaviour by a teacher). It affected her while she was at school and has continued to affect her after she has left school. In those circumstances, we have no hesitation in concluding that the respondent's conduct was likely to adversely affect the wellbeing or learning of Student A.
56. Again, for the reasons set out by the CAC, we accept that the behaviour adversely

³ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].

reflected on the respondent's fitness to be a teacher. His behaviour was the absolute antithesis of how a teacher should treat a student and we concluded that he cynically exploited a vulnerable student for his own sexual gratification. We have absolutely no hesitation in concluding that the respondent's behaviour is utterly unacceptable so clearly adversely affects his fitness to be a teacher.

57. Moving on to our analysis of Rule 9, we consider this was undoubtedly an inappropriate relationship for him to have with a student.
58. As a result, we are satisfied that the respondent's conduct amounts to serious misconduct.

Whiu – Penalty

59. In *CAC v McMillan*,⁴ 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.

60. 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):*

⁴ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, paragraph 23.

- (b) *censure the teacher:*
- (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.*

Ngā Kōrero a te Kōmiti – CAC Submissions

61. The CAC argue that cancellation is the only available penalty for such behaviour. This will serve the purposes of public protection, maintenance of proper professional standards through general and specific deterrence and the maintenance of public confidence in the profession.
62. The CAC referred to analogous cases where the Tribunal has found cancellation to be appropriate. The CAC has pointed out the seriousness of the conduct. The CAC noted that while the respondent has no disciplinary history, equally he has demonstrated no remorse or insight and has not meaningfully engaged in the disciplinary process. They also note that he is not currently teaching and has voluntarily made an undertaking not to teach.
63. The CAC referred to *Fuli-Makaua* where the Tribunal has noted that cancellation of registration is appropriate in two circumstances where deregistration is required for the seriousness of the conduct and/or when the teacher has not taken rehabilitative steps to mitigate the risk.
64. The CAC argue that this is the type of case where cancellation is required for both of these reasons.

Ngā kōrero a te Kaiurupare – Respondent's submissions.

65. Again, the respondent has not made submissions on this issue.

Kōrerorero – Discussion

66. We agree that cancellation is the only possible outcome in this case. This was such serious misconduct that it has to be met by cancellation of the teacher's registration. We are bolstered in that conclusion by the respondent's attitude demonstrated in the material he submitted to us. He has shown no insight or remorse.

67. In order to recognise the seriousness of the misconduct and to protect students we must cancel his registration

Utu Whakaea – Costs

68. The CAC sought a contribution of 50% of its costs under s 404(1)(h). The respondent makes no submissions on costs.

69. The CAC seek this level of costs because while an in-person hearing was not required, originally such a hearing was set down. The in-person hearing was only vacated approximately two weeks prior to the original hearing date. As a result, the formal proof hearing essentially required the same degree of preparation as an in-person hearing.

70. We agree that this is an appropriate case for ordering costs of 50%. Therefore, the Tribunal orders the respondent to pay 50% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i).

71. 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.

72. The Deputy Chair will then determine the total costs to be paid.

He Rāhui tuku panui – Non-publication

73. We make an order prohibiting publication of the name of the student involved, Student A, in accordance with the protections afforded to young persons under Rule 34 of the Teaching Council Rules 2016. We also suppress the names of the staff referred to in this decision, [REDACTED], [REDACTED], and [REDACTED], Student B (including that she was [REDACTED]), and [REDACTED]. At the CAC's suggestion, we also suppress:
- a. the evidence filed relating to Mr Jordan's health issues to be suppressed;
 - b. the detail of Mr Jordan's health issues;
 - c. [REDACTED].
74. Additionally, the respondent seeks an order for permanent non-publication of his name and identifying details, and that of the school involved. The school also independently makes an application for suppression of its name and the respondent's name.
75. The respondent's grounds for non-publication are:
- a. That publication would have an adverse impact on his health;
 - b. Identifying the school will identify him and his daughter;
 - c. The publication will significantly impact his daughter; and
 - d. Publication will affect his current employment.
76. The School argues for suppression on the basis of the privacy interests of the respondent's child who is a current student at the school and to protect Student A. We are satisfied that the suppression order directed at Student A is sufficient and we will address the impact on the respondent's daughter in relation to the respondent's own application.
77. The respondent has provided medical evidence in support of his application for name suppression by producing his medical records and commenting on them in his affidavit. He did not provide a report from a medical practitioner focused on the medical issues and the likely impact on him. It should go without saying that that is not the best way to provide medical evidence to the tribunal.

78. [REDACTED]

79. Mr Jordan also expresses concern about the effect on [REDACTED]

80. The respondent also states: *Another concern I have is that my employment agreement states that I can be fired for anything that is harmful or damaging to the reputation of the club. As I am no longer teaching I have limited opportunities for other employment locally and so this would be a terrible loss financially when I am still supporting my family.*

Ngā Kōrero a te Kōmiti – CAC Submissions

81. The CAC’s position is that there is insufficient evidence to justify suppression in this case. The CAC refer to the legal principles set out in a number of Tribunal decisions, noting that the importance of open justice must be recognized and that the more serious the misconduct the greater the need for publication becomes. The CAC accept that in some cases it may be appropriate to order suppression where there is a risk the publication may exacerbate an existing physical or mental health issue and cites cases where that has been found to be the case. The CAC noted the absence of detailed and focused medical evidence and referred to previous Tribunal cases, commenting on the importance of such material to provide an evidential foundation for name suppression.

82. Turning to the impact on family members, in particular to the respondent’s daughter, the CAC again refer to the relevant cases noting that impact on family

members, especially children, can be grounds for suppression of the respondent's name, but that there will always be some impact on the family of someone found to have committed serious misconduct and that an effect on children is not an automatic shroud over the principle of transparency and that embarrassment and discomfort is not uncommon in cases like this and is not sufficient to outweigh the public interest in publication. The CAC submit that that is the position in this case and there are not sufficient grounds for suppression of his name to protect his daughter.

83. Overall, the CAC note the strong public interest in publication in a case like this.

84. The CAC accept that it will be appropriate to suppress evidence relating to Mr Jordan's health issues and that those should not be spelt out in depth in the Tribunal decision, [REDACTED]
[REDACTED]

Ngā kōrero a te Kaiurupare – Respondent's submissions

85. The issue of name suppression was the only part of the hearing that the respondent participated in. He argued that his name and the name of the school should be suppressed including the school's location. He argued there was an appreciable risk of exacerbating his existing injury and causing emotional harm to him.

86. Naming the school would lead to identification of him and [REDACTED].

87. There was appreciable risk of significant harm to [REDACTED]
[REDACTED]
[REDACTED]

88. The respondent referred to the test for name suppression, noting that it was high but not exceptional and was lower than in the criminal jurisdiction.

89. The respondent refers to the medical evidence [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

90. He argues that living with the strain of the investigation causes him worry and

anxiety. He argues that there is risk of exacerbating his condition and causing emotional harm. Compounding this anxiety is the impact on [REDACTED]

91. For those reasons the respondent argues that suppression should be ordered.

Te Ture - The Law

92. In deciding if it is proper to make an order prohibiting publication, we must consider the relevant individual interests as well as the public interest.

93. As we noted in *CAC v Finch*,⁵ 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 give way to the personal circumstances on which suppression is sought.

94. There is no onus on the applicant and the question is simply whether the circumstances justify an exception to the fundamental principle.⁶ In essence we must strike a balance between the open justice considerations and the interests of the party who seeks suppression.⁷

Kōrerorero – Discussion

95. We are not satisfied that there are sufficient grounds for suppression of the respondent's name or the name of the school in this case.

96. We again note the absence of medical reports focused on the issues at the heart of name suppression arguments. We would obviously have been assisted by focused medical evidence rather than simply being provided with his medical records and being asked to draw our own conclusions from that.

97. In the end, while we note that he has had [REDACTED] in the past and that he suffers from [REDACTED], we are simply not able to draw any conclusions about the likely impact of publication on those conditions. That is because we have no medical evidence on that and drawing conclusions about

⁵ *CAC v Finch* NZTDT 2016/11

⁶ *ASB Bank Ltd v AB* [2010] 3 NZLR 427(HC) at [14].

⁷ *Hart v Standards Committee* (No 1) of the New Zealand Law Society [2012] NZSC4 at [3].

likely consequences would be speculative.

98. Given, we are simply left to speculate, we conclude that there is simply inadequate evidence to justify the conclusions that the respondent asks us to draw. For those reasons we conclude that the test for granting name suppression is not made out in respect to that ground.

99. Turning to the consequences for ██████████ we note that we were not given direct evidence of consequences ██████████ of publication. These events are now historical which again, in our conclusion, is relevant in working out the likely consequences ██████████

100. In *CAC v Teacher*, we considered family interests and said:⁸

It is almost inevitable that a degree of hardship will be caused to the innocent family members of a teacher found guilty of serious misconduct. Such “ordinary hardships are not sufficient to justify suppression. However more acute forms of professional and familial embarrassment can make suppression the proper outcome.

101. We also note the comments in *Gittens*

We appreciate that the respondent does not want his children to suffer harm. It troubles us that the effect of this submission is that a teacher who has children would almost always get name suppression, whereas a teacher who has none will have their name published. We do not want to see children being used as an automatic shroud over the principle of transparency. Rather, we would encourage teachers to think carefully about the possible effects of their actions on their families, in particular their children. In the present case, we think it unlikely that there will be any significant harm to the respondent’s children. Any embarrassment and discomfort is not sufficient to outweigh the public interest in publication.

⁸ *CAC v Teacher* 2016-27, 25 October 2016, at para [65].

102. We acknowledge that there will be consequences for [REDACTED] but these are not of a level that would justify suppression. These are unfortunately simply the inevitable consequences of a family member behaving in such an inappropriate fashion.
103. The respondent mentions consequences for his employment but those are simply natural and inevitable consequences of being found to have committed serious misconduct, especially at this level of seriousness, and is not a sufficient ground to justify name suppression.
104. 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. [REDACTED]



Ian Murray
Deputy Chair