BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2021/52

WĀHANGA *Under*	the Education Act 1989
MŌ TE TAKE *In the matter of*	of a charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
MŌ TE TAKE *In the matter of*	an application to stay the charge
I WAENGA I A *Between*	**ALVIN ROLFE** **Kaitono** *Applicant*
ME *And*	**COMPLAINTS ASSESSMENT COMMITTEE** **Kaiurupare** *Respondent*

DECISION OF TRIBUNAL ON APPLICATION TO STAY CHARGE

17 MAY 2022

HEARING:	24 March 2022 (via audio-visual link)
TRIBUNAL:	Theo Baker (Chair) Lyn Evans, Rose McInerny (Members)
REPRESENTATION:	Mr A Hope for the applicant teacher Ms K Feltham and Ms Oliver for the CAC respondent

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Introduction

1. Mr Alvin Rolfe faces a charge of serious misconduct laid by a Complaints Assessment Committee (**CAC**), appointed by the Teaching Council of Aotearoa New Zealand (**the Council**) under the Education Act 1989 (**the Act**).

2. Mr Rolfe has applied to stay the charge. In this decision, he is referred to as the applicant, and the CAC the respondent.

3. The arguments were heard by audio-visual link on 24 March 2022, and the parties were asked to provide some more information on:

   (a) which version of the Act was in force in 1996, in particular what the provisions were regarding discipline and/or cancellation of registration;

   (b) the meaning of the code 6604 which was placed on the respondent's file.

4. This was duly provided but because of other commitments of all panel members the Tribunal was unable to reconvene to deliberate until 6 May 2022. In the meantime, the applicant filed further affidavits from himself and Peter Huntley who was a support person during an investigation conducted in 1996.

Charge

5. The charge, dated 3 November 2021 alleges that the applicant:

   (a) *Between 31 December 1993 and 23 May 1996, breached professional boundaries with Ms A while she was a student at Morrinsville College, including engaging in inappropriate communications with Ms A;*

   (b) *Between 31 December 1994 and 23 May 1996, engaged in a sexual relationship with Ms A while she was a student at Morrinsville College and subsequent to her leaving Morrinsville College;*

   (c) *Between 31 December 1993 and 31 December 1996, invited* [redacted] *(Ms B) to the Sheraton Hotel in Auckland with him while she was a student at Morrinsville College;*

   (d) *Between 31 December 1993 and 31 December 1996, attempted to kiss Ms B while she was a student at Morrinsville College;*

(e) *Between 31 December 1993 and 31 December 1996, engaged in inappropriate communications with Ms B while she was a student at Morrinsville College;*

(f) *Between 31 December 1994 and 31 December 1996, engaged in inappropriate communications with* [redacted] *(Ms C) while she was a student at Morrinsville College; and/or*

(g) *During Morrinsville College's internal investigation into Ms A's complaint in 1996 and 1997, attempted to influence the course of the College's investigation into his conduct, including threatening to disclose evidence of a relationship between John Hanson and* [redacted]*, a former student at Morrinsville College.*

6. The matters that are the subject of the charge had, with the exception of the allegation in particular (f), been brought to the attention of the Teacher Registration Board (**Registration Board**) in 1997. The legislation providing for the registration of teachers has undergone many changes since 1997 and the Education Act 1989 has now been replaced by the Education and Training Act 2020. The Registration Board no longer exists and the body responsible for registration is now the Teaching Council. This charge arises from a complaint filed by Tammy Valler (Ms A) with the Teaching Council on or about 23 July 2020. A further exploration of the relevant provisions of the Education Act 1989 is contained below in the discussion of the double jeopardy argument.

Application

7. On 1 February 2022, in accordance with directions made at an earlier pre-hearing conference, the applicant applied to stay the charge. The application is made on the basis that it would be an abuse of process to proceed with a hearing of the charge Although the applicant originally cited four grounds for the application to stay, at the hearing Mr Hope confirmed that two arguments were relied on:

(a) Delay

(b) Double jeopardy.

Summary of the complaint

8. It is not necessary for the Tribunal to set out in any detail of the alleged facts in this decision. The application was made before the filing of evidence was due, and the Tribunal has not considered any witness briefs that will be presented by the parties at the hearing of the charge, but the applicant has filed some evidence and a number of historic records in support of his application to stay.

9. The applicant denies the charge. The applicant helpfully provided a detailed chronology, which is set out as **Appendix A** to this decision.

10. The key events and allegations are:

1995	Tammy Valler, **the complainant**, was in the 7th form a Morrinsville College (**the College**). She alleges that applicant allowed her to use a small room opposite his classroom as a study room during her free periods, and that he would come in and rub her shoulders and that he also sent her notes during that year. Both the applicant and the complainant went on a school trip to Vanuatu and she alleges that the two had consensual sexual intercourse on this trip.
1996	The complainant was at University. During a visit home, she had dinner with the applicant and his wife, following which, she says that again she and the applicant and sex.
31 May 1996	The complainant made a complaint to Morrinsville College (**the College**) alleging the applicant had engaged in a sexual relationship with her.
3 June 1996	Applicant replied to the Principal, denying the allegation.
	The College began an independent investigation into the allegations, headed by Dame Augusta Wallace. At the conclusion of the investigation, a hearing was scheduled. The hearing was delayed indefinitely [redacted].

5 August 1996	[redacted] wrote alleging some inappropriate conduct by Mr Rolfe when she was a student at the College between 1986 and 1989.
15 August 1996	[redacted] wrote alleging among other things that while she had been a student at the College, Mr Rolfe had asked her about her sex life, and said, "You know I am serious about going up to the Sheraton in Auckland for the night".
28 November 1996	The applicant tendered his resignation.
13 January 1997	After the applicant had resigned from his role with the College, the complaint was referred to the Registration Board, the body that preceded the Teachers Council, which is now the Teaching Council.[1] The College forwarded a considerable amount of correspondence.
15 May 1997	The TRB wrote to the applicant saying it "has decided at its May meeting that it cannot make a determination on the cancellation of your registration from the information it has. So, it will not be taking any further action at this time."
25 August 2003	The Principal of Hagley Community College in Christchurch, where the applicant had been appointed as a teacher, wrote to the Teachers Council, querying Mr Rolfe's good character, as result of advice he had received from the School Trustees Association.
25 September 2003	The Teachers Council wrote back advising that the applicant held a current practising certificate and was fully registered.
9 October 2003	Hagley Community College wrote to the Teachers Council advising that it had "*had no cause to be concerned about the professional behaviour and performance of Mr Rolfe*".

[1] Between 1 July 2015 and 29 September 2018 this body was known as the Education Council. See Education Amendment Act 2015 and Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018

19 Aug 2004	Teachers Council wrote to the applicant saying, "*The Teachers Council will not be investigating the issues on your file in the future. The code against your record on the Teachers Council's database has been changed to reflect this. The material held on your file will not affect future applications for renewal of your practising certificate"*.
23 July 2020	Teaching Council accepts a complaint from Tammy Valler in respect of the same matters referred to the Registration Board on 13 January 1997.
3 November 2021	Following investigation by the Complaints Assessment Committee, the Teaching Council lays a charge with the Tribunal.

11. Mr Rolfe is now 71 years old. He has not retired, and intends to continue working in the education sector. He is not currently teaching, having provided an undertaking not to teach.

Jurisdiction

12. The Disciplinary Tribunal is a creature of statute. That means that the Tribunal's powers are set out by an Act and subsidiary legislation. It also means that it does not have "inherent jurisdiction", but the parties accepted the Tribunal's jurisdiction to consider an application to stay a charge.

13. Although rule 25 of the Teaching Council Rules 2016 provides that the Chair alone may make procedural or administrative decisions that are preliminary or incidental to a hearing, the nature of the examples included in the rule are aimed at the efficient disposal of proceedings. They include "without limitation":

> (a) an order for discovery or inspection of documents:
>
> (b) an order for the filing of briefs of evidence:
>
> (c) a timetabling order:
>
> (d) an order relating to the way in which a witness may give evidence:

(e) an order by consent of the parties.

14. Unlike section 252 of the Lawyers and Conveyancers Act 2006 which allows the disciplinary tribunal under that statute to "determine its own procedure", and the words of clause 5(1) of the First Schedule of the Health Practitioners Competence Assurance Act 2003 which are "regulate its procedure", the wording of rule 24 of the Teaching Council Rules 2016 appears to be slightly narrower. It may "regulate its own procedure in relation to hearings".

15. The Tribunal's overriding obligation is to comply with the principles of natural justice in every case. This duty is both a common law and statutory obligation.[2] The Tribunal's duty to adhere to the principles of natural justice are codified in section 398(7) of the Act, as well as section 27(1) New Zealand Bill of Rights Act 1990 (**NZBORA**), which includes tribunals. The Tribunal construes this power as being broad enough to strikeout or stay any charge which the Tribunal believes offends the principles of natural justice or which constitutes an abuse of the Tribunal's process. Accordingly, the Tribunal has assumed jurisdiction.

Delay

16. For the applicant, Mr Hope noted that the delay between the initial complaint in 1996 and the renewed investigation in 2020 was 24 years and the delay between the 19 August 2004 letter and the renewal of the investigation was 16 years. Mr Hope argues that the delay was unreasonable, was not caused by the applicant and is prejudicial to him.

17. Included in the delay argument was the submission that section 25(a) and (b)of the New Zealand Bill of Rights Act 1990(fair trial and no undue delay) apply by analogy.

18. Both parties provided submissions on the law. Below is a summary which incorporates the salient points of their submissions and the Tribunal's

[2] See section 398(7) of the Act

understanding of the legal position. The applicant's arguments in the present case are considered within this framework.

New Zealand Bill of Rights Act 1990

19. Sections 24 and 25 of the NZBORA provide for the fundamental rights of anyone charged with an offence in New Zealand including the right to be tried without undue delay found in section 25(b). Mr Hope referred to the following decisions as authority for the application of sections 24 and 25 to these proceedings: *Staite v Psychologists Board*, High Court, Wellington, CP15/96, 31 July 1997, Ellis J and *Pickering v Attorney-General*, Court of Appeal, CA98/00, 28 February 2001.

20. Ms Feltham submitted that neither case is directly applicable. *Staite* was decided under a specific legislative framework that expressly required a notice to be served "forthwith"[3] and *Pickering* concerned a writ of arrest, a unique form of civil proceeding distinguishable from disciplinary proceedings. In *Chow v Canterbury District Law Society*[4] the High Court found that sections 24 and 25 of the NZBORA did not apply because of the specific language. The Court of Appeal dismissed Mr Chow's appeal and concluded it was unnecessary to decide this point, but in an obiter[5] discussion expressed doubt that sections 24 and 25 applied by analogy to disciplinary proceedings because "*These rights, and minimum standards, are extended to those who are 'charged with an offence' which words do not sit comfortably with the bringing of disciplinary charges of the present kind*".

21. The Tribunal agrees that a disciplinary charge is not an "offence" and that sections 24 and 25 of the NZBORA do not apply to this case. This is significant because, as Winkelman J recorded in *Du v District Court at Auckland*,[6]

[3] Section 31(4) Psychologists Act 1981
[4] CIV-2004-409-2191 HC Christchurch, 21 April 2005
[5] *Obiter dicta* are remarks in a judgement that do not form a necessary part of the court's decision
[6] High Court, CIV 2005-404-355, 23 November 2005

> The rationale of s 25(b) therefore goes beyond the traditional or narrow sense of prejudice, namely prejudice to the right to a fair trial.

22. Therefore, a delay in bringing proceedings in a disciplinary tribunal does not amount to a breach of the applicant's rights under section 24 and 25 of the NZBORA. However, that is not the end to the question of abuse of process because of delay. The Tribunal may still consider whether proceeding with hearing the charge would amount to an abuse of process because the delay prejudices the applicant's right to a fair trial.

Delay – legal principles

23. The legal principles applicable to an application to strikeout/stay of proceedings in criminal courts on the grounds of delay are well established:[7]

    (a) The onus will normally be on the accused to show on the balance of probabilities that, owing to the delay, he will suffer prejudice to the extent a fair trial is now impossible.
    (b) How the accused discharges that onus will depend on all the particular circumstances of the case.
    (c) Where the period of delay is long it can be legitimate for the Court to infer prejudice without proof of specific prejudice.
    (d) Ultimately the pertinent issue is whether despite the delay an accused can in the particular circumstances of the case still receive a fair trial.[8]
    (e) There may arise two types of unfairness to the accused:
        i. Specific prejudice such as through the death or unavailability of a witness; or
        ii. General prejudice through long delay such that it would be unfair to put the accused on trial at all. This additional to a tolerable delay.

[7] See W v R *(T2/98)* (1998) 16 CRNZ 33 (HC). *R v The Queen* [1996] 2 NZLR 111 (HC).
[8] Confirmed in CT (SC88/13) v R [2014] NZSC 155 at [30].

24. In *L v Dentists Disciplinary Tribunal* [9]Lang J, compared the principles to be applied in criminal proceedings and disciplinary proceedings and observed:

> [72] As the authorities demonstrate, the principles to be applied in applications for stay in the context of both criminal and disciplinary proceedings may in many cases be very similar. They are not, however, identical.
>
> [73] Charges that are laid under the general criminal law are brought in the interests of society as a whole. All citizens have an interest in ensuring that allegations of criminal offending are properly investigated and, where the allegations are substantiated, the offenders are punished. Slightly different principles apply to complaints that are made to a professional disciplinary tribunal. The general public does not necessarily have any interest in ensuring that such allegations are the subject of disciplinary proceedings. That interest is held only by the sector of the public that deals with, or has an interest in, the profession in question. That sector will, of course, include members of the profession.
>
> [74] The policy underlying disciplinary proceedings was explained by Gendall J in *Ford* in the following terms (at 61) [*Ford v Medical Practitioners Disciplinary Tribunal* High Court Wellington CP268/01 18 February 2002 Gendall J]:
>
> > The disciplinary provisions of the Medical Practitioners Act 1995 are designed to protect the public and maintain proper professional standards and ensure that medical practitioners are accountable to their patients and the public. Members of the public (and members of the medical profession are also members of the public) are entitled to expect that doctors who are charged with offences have those charges heard after proper inquiry before what is, in the context of this case, an expert tribunal assisted by a legal assessor.

[9] CIV-2006-485-807.

> [75] The distinction between the approach to be taken in deciding an application for a stay of criminal charges and an application for a stay of disciplinary proceedings was explained in *Walton v Gardiner* (1993) 112 ALR 289, the decision to which the Tribunal itself referred (at para 14). In that case the Court said:
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> > The question whether disciplinary proceedings in the tribunal should be stayed by the Supreme Court on abuse of process grounds should be determined by reference to a weighing process similar to the kind appropriate in the case of criminal proceedings but adapted to take account of the differences between the two kinds of proceedings. **In particular, in deciding whether a permanent stay of a disciplinary proceeding in the tribunal should be ordered, consideration will necessarily be given to the protective character of such proceedings and to the importance of protecting the public from incompetence and professional misconduct on the part of medical practitioners.** [Emphasis added by the Court]

25. And in *Chow v Canterbury District Law Society*,[10] the Court of Appeal emphasised the importance of the protective nature of disciplinary proceedings, citing *Auckland District Law Society v Leary* HC AK M1471/84, 12 November 1985, per Hardie Boys J:18

> > (This) is a special jurisdiction having the principal protective purpose I have already discussed. That purpose requires that there should be a full investigation of allegations of misconduct, and that the Court should be slow to adopt a course which may inhibit such an investigation. The interests of justice extend far beyond the interests of the practitioner.

26. Accordingly, we have considered the applicant's grounds for stay by weighing the factors relevant to criminal proceedings, while bearing in mind the importance of protecting the public from serious misconduct on the part of teachers.

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[10] Above, note 4

Applicant's submissions

27. The applicant's argument was that the reasons for the delay cannot be laid at the feet of the applicant. He produced evidence that he was ill during the latter part of 1996 and was unable to attend a (College) disciplinary hearing. The CAC did not challenge this. A third medical certificate only took the Respondent to mid December 1996. His employment with the College ended at the end of January 1997. Mr Hope submitted that the College could have continued with the process during late December and January, but chose not to.

28. The investigation file contained a statement from the complainant Tammy Valler (and the other three persons who had made statements, [redacted], [redacted] and John Hanson). The file also contained written statements from the applicant and his then wife, Valerie Rolfe. Mr Hope suggested that the investigation file was incomplete because there is no report from Dame Augusta Wallace. He submitted there was arguably sufficient evidence to enable the Board of Trustees to make a decision if it chose to do so.

29. Instead, the Board of Trustees elected to forward the investigation file, which did not contain a decision, to the Registration Board for it to make a decision. The Board of Trustees specifically asked the Registration Board to make a decision whether the Respondent should be deregistered.

30. The Registration Board (and the New Zealand Teachers Council) chose not to deregister the applicant and advised him of this twice (1997and 2004).

31. Mr Hope submitted that there was prejudice to the applicant in several ways:

    (a) Sixteen years was too long a time from when the New Zealand Teachers Council advised the applicant.

    (b) Twenty-four years had passed since the original complaint was made. This will have affected the memories of all persons involved and in particular the applicant's memory as that is now being affected by old age. He is 71 years old.

(c) Information recorded,and files held by the College, the New Zealand Teachers Council, Norris Ward McKinnon (previously Norris Ward, the applicant's lawyers) and others have been destroyed.

(d) Person who may have been valuable as witnesses have died or are otherwise unavailable.

i. Dame Augusta Wallace, the investigator has died.

ii. The New Zealand School Trustees Association advocate who assisted the school with its investigation has died.

iii. The applicant's doctor, Vince Murphy, has died.

iv. Dick Gwatkin, the former principal of the College who commenced the investigation, is now in an old people's home and is apparently suffering from dementia.

v. The applicant's former lawyer, Paul Geoghegan, is now a Family Court judge and is unavailable.

vi. Others have moved away and will be difficult to locate.

32. On 20 April 2022 the applicant filed a further statement from Peter Huntley, who attended meetings with the applicant in 1997 during the College's investigation and can give evidence of what he saw and heard. Mr Hope submitted that it shows that there was a thorough investigation by Morrinsville College. It can be inferred that the results of that investigation were passed on to the Teacher Registration Board. It can also be inferred that the Teacher Registration Board had sufficient information to make a decision either to deregister the Respondent or to determine as it did, that there was insufficient evidence to do so.

CAC's submissions

33. For the CAC, Ms Feltham submitted that the delay between the alleged conduct and the charge has not caused any prejudice to Mr Rolfe's ability to defend the charge, as the witnesses remain available and the College's investigation file has been preserved, with significant contemporaneous correspondence from both Mr Rolfe and the students. In any case any prejudice to Mr Rolfe would be outweighed by the significant public interest in prosecuting the charge, which involves serious allegations of grooming of students. Mr Rolfe remains registered and was working as a relief teacher prior to his voluntary undertaking not to teach on 9 November 2021.

34. Ms Feltham submitted that decisions on stay applications in the criminal context must be applied with care, because the purpose of the disciplinary regime is different from the criminal jurisdiction. The Supreme Court has confirmed that the purpose of disciplinary charges is the protection of the public.[11] Here, there is significant public interest in prosecution of the disciplinary charge.

35. Where the period of delay is long, the Court may (not must) infer prejudice without proof of specific prejudice.[12] Such an inference need not be drawn and there may be cases where even a lengthy delay causes no real likelihood of prejudice.[13] Ms Feltham said that Courts have permitted criminal prosecutions where the delay has been lengthy (in some cases, in the region of 50 years).[14]

36. Ms Feltham submitted that while the while the Tribunal has the jurisdiction to stay the charge against Mr Rolfe on the basis of delay causing unfair prejudice, the evidence here is that the applicant's defence of a disciplinary charge has not been prejudiced. Any prejudice would also need to be weighed against the need to protect the public through prosecution of the disciplinary proceeding.

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[11] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1, [2008] NZSC 55 at [128].
[12] *R v Accused* (CA260/92) [1993] 2 NZLR 286 (CA); *B v Christchurch District Court* 26/6/98, Young J, HC Christchurch CP49/98.
[13] See: *R v W* [1995] 1 NZLR 548, also reported as *R v Accused* (CA215/94) (1994) 12 CRNZ 500 (CA).
[14] See, for example: *J v Police* [1996] 1 NZLR 195 (HC).

37. On the question of general prejudice, Ms Feltham submitted that no evidence has been provided by Mr Rolfe that he, or other witnesses, have experienced loss of memory other than that naturally arising from the passage of time. In these circumstances, any prejudice that arises must be general and common to any disciplinary charge concerning alleged historical misconduct.

38. The CAC referred to *L v Dentists Disciplinary Tribunal,*[15] where Lang J commented that although substantial delay between the alleged conduct and a disciplinary charge will inevitably present difficulties for witnesses' memories, the Tribunal was correct when it found that granting a stay on the basis of such general prejudice was rare.

39. Ms Feltham referred to Lang J's observation that the appellant had a clear recollection of the alleged conduct, albeit at significant variance with the complainant's recollection of events.[16] He identified that the nature of the alleged conduct meant the determination of the disciplinary charge was dependent on the Tribunal's assessment of the credibility of the appellant and the alleged complainant.[17] Furthermore, the passage of time had not altered the fundamental issue of the disciplinary proceedings, namely whether the evidence of the appellant or the complainant should be preferred by the Tribunal.

40. The CAC submitted that the evidence provided by Mr Rolfe to date does not suggest that witnesses' memories have been impacted by the passage of time. For example, the affidavit filed by Mrs Valerie Rolfe, his ex-wife, is detailed and specific. Mr Rolfe also has available to him detailed letters he wrote in response to the allegations, that were kept by the Registration Board.

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[15] Cited above at note 9
[16] At [35]
[17] At [33]

41. As to specific prejudice, argued by the applicant to have come about because of the destruction of some documents and the fact that some witnesses have deceased, Ms Feltham submitted that:

(a) None of the witnesses identified by Mr Rolfe as deceased were witnesses to the alleged misconduct.

(b) This is not a case where documentary evidence is central, and in any event most of the written evidence has survived (most of which is either previous consistent statement evidence or letters from Mr Rolfe and his family). This includes:

i. Tammy Valler's 1996 complaint (just over 12 pages);

ii. Tammy Valler's letter to the school principal after a meeting with the school advisor;

iii. A statement from [redacted] dated 15 August 1996.

iv. A statement from John Hanson dated 4 August 1996;

v. Letters from Mr Rolfe to the College dated 3 June 1996, 6 June 1996, 4 November 1996, two dated 28 November 1996 (one to the principal and one to the Board), which clearly deny the allegations. One letter is eight pages long and refutes the allegations in detail.

vi. A letter dated 3 June 1996 from Mr Rolfe's then wife responding to the allegations in detail.

vii. A letter from Dame Augusta Wallace to the College principal setting out her conclusion from interviewing a number of persons that there is "sufficient evidence to require further investigation of the complaint and my recommendation to the Board is that these steps should be taken.

42. The CAC dispute that Dame Augusta Wallace's investigation file is incomplete, and notes that the only document that appears to be missing is a letter that the applicant alleges Ms Valler wrote to him about 18 months after the complaint in which he says she apologised.

43. As for unavailable witnesses listed by the applicant, Ms Feltham submits that none of them was present at the alleged conduct. No explanation has been given how their evidence would be relevant. The evidence of investigators from a previous investigation would not usually be relevant where the witnesses spoken to by those investigators are available.

44. Ms Feltham submitted that it was not clear how the applicant's lawyer and doctor at the time would be able to give helpful evidence. There is already ample previous consistent statement evidence. Even if it could be established that his statements to his lawyer and doctor at the time were consistent (and privilege was waived) that would not lend significant weight to his credibility.

45. The College principal, Dick Gwatkin, could only give evidence of what the complainants and Mr Rolfe had told him, and their letters to Mr Gwatkin remain available.

46. It was submitted that given that all three complainants will give evidence at the Tribunal hearing, Mr Rolfe will have the opportunity to cross-examine the complainants on historic statements made to witnesses who are no longer available. Any prejudice from the unavailability of those other witnesses (like the principal Mr Gwatkin) is likely minimal. In the circumstances, no unfair prejudice arises from the destruction of documentation and the unavailability of witnesses. Proceeding with a disciplinary charge in these circumstances would therefore not constitute an abuse of process.

47. Finally, in response to Mr Huntley's statement, Ms Feltham submitted that the extent of the meetings described by Mr Huntley is denied and even if a 3-hour investigative meeting occurred in 1996 as Mr Huntley asserts, the CAC submits

that there is no evidence that minutes from the 1996 investigative meeting were ever provided to the Registration Board.

Decision on delay

48. The parties' submissions are largely directed at the complaint made by Tammy Valler.

49. The Tribunal is not persuaded that the delay in this case would amount to an abuse of process if the hearing of the charge proceeds. The Tribunal accepts the CAC submissions outlined above.

50. The Tribunal considers that the College acted appropriately. It attempted to conduct a hearing with Mr Rolfe, but he was not available. He resigned at the end of November. Although that resignation would not have been effective until the end of January, it is understandable that the College, having waited over four months for him to be available for a hearing, decided not to reach a determination. They prudently referred it to the Registration Board with all available information. In fact, the current regime requires schools to refer teachers to the Teaching Council if a disciplinary process is incomplete at the time of resignation.[18]

51. As Ms Feltham notes, there is no reference to an investigation report or conclusion within the documents referred to the Registration Board. That is consistent with the applicant's unavailability to attend a hearing.

52. It is relevant to our decision that the applicant was made aware of all of the allegations close to the time of the alleged events. In a letter dated 13 January 1997 referring the complaints to the Teacher Registration Board, the College referred to two further complaints being made by former pupils following the investigation in to Ms Valler's complaint. Included in the list of documents

[18] Sections 392 and 394 Education Act 1989; sections 498 and 491 Education and Training Act 2020

provided to the Registration Board were a statement dated 5 August 1996 from [redacted] and a statement dated 15 August 1996 from [redacted]

53. The applicant provided more than one response at the time. The original 12½-page complaint, his responses and his former wife's response are available. In fact, they have kept copies of correspondence from that time and Mrs Rolfe has produced a letter dated 14 May 1996 that that she wrote to a friend, about Ms Valler's visit in May and a letter that Mr Rolfe received in June 1996 from [redacted]. Although Mr Rolfe has said he feels he has problems with his memory, there is no evidence that he lacks capacity to instruct counsel and undergo a hearing.

54. This is not a case of a teacher being told for the first time, that someone has alleged that 24 years ago he made some inappropriate comments in a classroom or something of that nature. Ms Valler's is a significant allegation, first made in 1996, and being raised again in 2003. Mr Rolfe took the opportunity to respond in 1996 and evidence of that written reply still exists.

55. The Tribunal agrees with the CAC that there is significant contemporaneous documentation. The lack of an investigation report or file from Dame Augusta Wallace, if it existed, is not fatal to the prosecution or defence of this charge. The handwritten letter dated 24 June 1996 that survives records that she has undertaken some interviews and that, "There is sufficient evidence to require further investigation into the complaint and my recommendation to the Board is that further steps should be taken." Mr Rolfe's evidence is that she told him that she did not think that sexual intercourse had taken place. Even Dame Augusta were available to provide her opinion on the facts, that evidence would not likely be admissible. It is for the Tribunal to reach its own decision on the basis of the testimony of the witnesses at a hearing.

56. According to a letter dated 15 July 1996 from Mr Rolfe's lawyer, Paul Geoghegan to the Principal, Mr Rolfe had been notified by letter dated 5 July 1996 that a

"formal hearing" would take place on 31 July or 1 August. It seems unlikely that any further investigation was undertaken between 24 June and 5 July, and therefore any other investigation report of any substance was created. In any event, the Tribunal is not bound by, nor usual privy to, any factual findings or conclusions reached in the course of an investigation conducted by an employer or the CAC. The Tribunal's role is to listen to the evidence adduced at the hearing of the charge and make its own findings.

57. Nor is the absence of Dame Augusta, Mr Gwatkin, or any other investigator highly prejudicial to Mr Rolfe's defence. Mr Rolfe does not deny that he made any of the earlier written statements, and so evidence from the recipient of his response is not necessary. The school conducted some form of investigation and wanted to conduct a disciplinary hearing on or about 31 July 1996, but this could not be completed because of Mr Rolfe's ill-health. When Mr Rolfe resigned, appropriately referred the matter to the Registration Board.

58. As noted by the CAC, the key witnesses of fact are all available. In fact, between the hearing of this application on 24 March 2022 and the panel's further deliberation on 5 May 2022, the applicant filed further evidence of to support his defence of the historical claims. This tends to support the CAC's position that the delay does not prejudice his defence such that a fair hearing is prejudiced.

59. Finally, these are serious allegations. The protective purpose of disciplinary proceedings is highly relevant to our consideration. A historic complaint of something less serious might not have warranted prosecution after such time, but sexual connection with a student is one of the most serious allegations a teacher can face.

60. The application to stay the disciplinary charge on the grounds of delay is declined.

Double jeopardy

61. The applicant's second ground for stay is double jeopardy. Mr Hope's submission was that the renewal of the investigation after a letter dated 19 August 2004 to the applicant amounted to double jeopardy and an abuse of process.

Applicant's submissions

62. Mr Hope submitted that the Registration Board and the New Zealand Teachers Council made decisions after taking legal advice to take no further action on the complaint against the applicant. These were decisions made on the facts, and the applicant was entitled to rely upon them, which he did. The Registration Board and the New Zealand Teachers Council could, as they advised the applicant in writing returned to the issue whenever the Respondent applied to renew his practising certificate. They did not.

63. The Registration Board and the Teachers Council did not fail to make a decision. They made a decision based on the information that they had in that decision was to take no further action.

64. Section 26 of the NZBORA says:

> **26 Retroactive penalties and double jeopardy**
> (1) No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.
> (2) No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

The relevant correspondence

65. Before reviewing the CAC submissions, the relevant correspondence and information from the Registration Board and the Teachers Council is set out. Minutes from Registration Board meetings were also provided. These have been redacted, apart from any mention of Mr Rolfe. The minutes of a meeting held on 12 February 1997 record:

> *6.3 Considerations for De-registration*

6.3.1 Alvin David Rolfe

Case to lie on the table pending discussion with the Minister through the Ministry.

66. Exactly the same minute occurs at 6.3.6 on 12 March 1997 and then on 9 April 1997:

6.3.4 AD Rolfe

No further information received.

Case to lie on the table pending further information from the Board's solicitors.

67. On 30 April 1997 Mr Rolfe's solicitors wrote to the Registration Board trying to ascertain the intentions of the Board, noting that any inappropriate or improper conduct is strenuously denied and noting that if the Board wished to take any further action to advise the solicitors urgently so that appropriate submissions could be made.

68. On 15 May 1997 the Registration Board wrote to Mr Rolfe saying:

Dear Mr Rolfe

I am writing further to my letter of 15 January 1997 in which I notified you of information that had been passed to the Teacher Registration Board under the requirements of Section 138B [of] the Education Act (1989).[19] *Subsequently the Board also received a letter from Morrinsville College invoking Section 129 of the Act to request that the Teacher Registration Board consider your de-registration.*

The Board has considered the information carefully and take advice from its solicitors. It has deciding at its May meeting that it cannot make a determination

[19] Because of the extensive amendments to the Education Act 1989 over 30 years from enactment to repeal, it is difficult to find a copy of the text of section 138B, but the title was "Notification by Certain Employers". It was repealed on 1 September 2004 by the Education Standards Act 2001.

on the cancellation of your registration from the information it has. So it will not be taking any further action at this time.

As stated in my earlier letter this information will remain on file - together with any correction or opinion you may wish to have added – and may be reconsidered at the time a practising certificate is being renewed if further information has been provided to the Teacher Registration Board under Section 138B of the Act.

69. During August, September and October 2003 there was correspondence between Hagley Community College, the Registration Board and Mr Rolfe regarding his registration status. In particular, on 9 October 2003, Mr Rolfe wrote to the Registration Board, advising that he had been informed, for the first time that day that he had an 'alert' on his file with the Teachers Council, and he asked for it to be removed.

70. One-line internal email dated 6 August 2004 says:

Hi

Gaeline's[20] *advice is that he becomes a 6604. I have changed him on the database*.

[name of staff member]

71. On 19 August 2004 the Teachers Council wrote to Mr Rolfe saying:

Following enquiries regarding your Teachers Council file, your file has been reviewed.

The Teachers Council will not be investigating the issues on you file in the future. The code against your record on the Teachers Council's database has been changed to reflect this. The material held on your file will not affect future applications for renewal of your practising certificate.

[20] It is accepted that "Gaeline" refers to the lawyer who advised the Registration Board and then the Council

CAC submissions

72. The CAC submitted:

(a) Section 26(2) does not apply to disciplinary proceedings.[21]

(b) To the extent that the rule against double jeopardy applies in disciplinary proceedings, it has no application here because Mr Rolfe has never been charged, nor was he acquitted. The CAC did not exist when the Teachers Registration Board received the file in 1996 the current disciplinary provisions were not part of the legislation. It was not possible for the Board to charge Mr Rolfe for serious misconduct; no question of him being acquitted ever arose.

(c) In 2004 the then Teachers Council wrote to Mr Rolfe representing that it would not investigate the matters further. Again, that was not an acquittal. And in any event, there is well-established authority that it is not an abuse of process for prosecuting authorities to file charges after a representation that it will not prosecute, unless the defendant has suffered a detriment.[22] Mr Rolfe has been unable to point to any detriment incurred in reliance on the 2004 representation.

73. Ms Feltham acknowledged that prosecution of a disciplinary charge where that disciplinary body had previously concluded that the charge was not proved may, in some circumstances, require a stay, but because Mr Rolfe has never before been charged for serious misconduct, the rule against double jeopardy is not engaged and a stay would not be appropriate. He has not previously been in jeopardy, i.e. in peril of a finding of serious misconduct.

[21] *Harder v Director of Land Transport Safety* (1998) 5 HRNZ 343 at [36]
[22] *Fox v Attorney-General* [2002] 3 NZLR 62.

74. It was submitted that even if the rule against double jeopardy applies to disciplinary proceedings, Mr Rolfe would need to establish that he had been required to defend an identical charge in an earlier disciplinary proceeding:

> It is well settled that the rule against double jeopardy requires for its application an earlier proceeding in which the individual was exposed to the risk of a valid conviction for the same offence as that alleged against him in the later proceedings.[23]

75. Ms Feltham said that in criminal law, the rule against double jeopardy is now enshrined in section 47 of the Criminal Procedure Act 2011. But the plea of "autrefois acquit" at common law required that the acquittal must have been on the merits:

> The withdrawal of a summons before the hearing, the dismissal of a charge before trial because the prosecution wish to proceed on a different charge, or a discharge for any reason prior to trial will not support the plea.[24]

76. This is not a case where Mr Rolfe has been acquitted without consideration of the merits: Mr Rolfe has never been charged. The plea of "autrefois acquit" has no application.

77. The summary of the CAC submissions is that at the time that the August 2004 representation was made, the New Zealand Teachers Council was not under a statutory obligation to refer a complaint to the CAC, but was well aware that those provisions were imminent, and had already promulgated the rules to establish the CAC and to set out how the CAC would receive referrals. The Tribunal's consideration of the charge cannot constitute double jeopardy, because Mr Rolfe has never been acquitted of a charge of serious misconduct. In

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[23] *In re a Medical Practitioner* [1959] NZLR 784 at 800, relied on in *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 at [122]: the rule against double jeopardy "is confined to barring further proceedings in a court of competent jurisdiction".

[24] Handley Spencer Bower and Handley: Res Judicata (5th ed) LexisNexis, 2019, at 210, citations omitted. See R v Taylor [2009] 1 NZLR 654.

fact, such a charge was beyond the power of the Teachers Registration Board and the Teachers Council at the relevant times.

The statutory regime for discipline of teachers

78. The following summary is derived from a review of the legislation and orders provided by the parties. It is not a comprehensive review of the law governing teacher registration over the past 30 years. It is an attempt to clarify the relevant entities and powers under the Education Act 1989 at the key points in the history of this complaint. The Tribunal has considered the following:

- Education Act 1989 as first enacted (**original Act**)
- Education Standards Act 2001, which amended some relevant provisions of the Education Act 1989 (**ESA**)
- Education Standards Act 2004 Commencement Order, which stipulated the commencement date of the amended provisions

79. Part X of the original Act deals with Teacher Registration. The Teacher Registration Board (**Registration Board**) was established under section 131(1) and it was tasked with registration and deregistration of teachers, issuing practising certificates. There was no Disciplinary Tribunal or Complaints Assessment Committee, or equivalent bodies, as provided under the current regime. As far as can be ascertained, this original process was in place when Morrinsville College referred Tammy Valler's complaint in January 1997.

80. Deregistration of teachers was enabled by section 129 of the original Act which said:

> **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 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.
>
> …

81. Section 126 provided for a right of appeal to the High Court for any person dissatisfied with a decision or part of decision ("whether a decision to act or a decision to refuse to act") of the Registration Board, including one made under section 129.

82. The Education Amendment Act 1996 introduced the "limited authority to teach", made some alterations to criteria that the Registration Board should take into account, and altered the right of appeal under section 126 to the District Court rather than High Court.

83. Then comes the Education Standards Act 2001 (**ESA**) which introduced the complaints and disciplinary regime on which the current one is based. The ESA made large scale amendments to the original Act. Under a new part 10A, the Teachers Council was established,[25] along with two disciplinary bodies, the Complaints Assessment Committee (**CAC**) and the Disciplinary Tribunal. The CAC's role included the investigation of complaints and convictions referred to

[25] The Registration Board was absorbed into the Teachers Council by section 71 ESA. The Teachers Council was created by section 139AC, which came into force on 1 February 2002.

it.[26] If "satisfied on reasonable grounds" that a teacher had engaged in serious misconduct, the CAC was required to refer the matter to the Disciplinary Tribunal,[27] who was given the power under a new section 139AW to "require deregistration following a hearing of a charge of serious misconduct or hearing into the conduct of a teacher."

84. Under section 29 of the ESA, section 129 of the Education Act 1989 was accordingly replaced. The power to deregister a teacher on the basis of misconduct rested with the Tribunal,[28] rather than the Teachers Council, who retained the mandate to deregister in cases where the teacher no longer satisfied the requirements for registration or limited authority to teach or the registration or authorisation was effected by mistake or fraud, or was required to deregister on the basis of lack of competence.[29]

85. Not all of the provisions took effect immediately. It was not until 1 September 2004 that the new sections 129 and 139AK to 139AZC came into force. These sections related to employer's mandatory reporting to Council of certain issues, the investigation of competence and conduct, and the functions and powers of the two disciplinary bodies.

Decision

86. The Tribunal acknowledges that a disciplinary charge is not an "offence" and therefore there may be no breach of the applicant's rights under section 26 of the NZBORA.

87. It is also accepted that the applicant has not been "acquitted" in the usual sense of the word. The evidence has not been tested and should the charge proceed, it might not accurately be described as "re-litigation," and therefore this is not

[26] Section 139AJ(1)(b)
[27] Section 139AT(4)
[28] Section 129(1)(d)
[29] Section 129(1)(a) to (c)

strictly speaking a case of double jeopardy. As Ms Feltham says, he has not been exposed to the "jeopardy" of a finding of serious misconduct.

88. The difficulty with that position is that any complainant or school, dissatisfied with the outcome of a referral made before 1 September 2004 may now make a fresh complaint to the Teaching Council about the same matters that were before the Registration Board or the Council at that time. It is not relevant whether there existed the CAC or the Disciplinary Tribunal. The Registration Board had the power to deregister teachers who were not of good character, not fit to be a teacher, not a satisfactory teacher or not familiar enough with current curricula. Mr Rolfe has clearly been exposed to the "jeopardy" of deregistration under section 129 of the original Act.

89. Section 77 of the ESA set out rules for transitioning from one system to a new disciplinary regime:

> **77 Transitional provision relating to inquiries**
>
> (1) Until the disciplinary bodies of the Teachers Council are established, the Teachers Council may continue or commence, and may complete,-
>
> (a) any inquiries into notifications received under sections 138A or 138B of the principal Act, whether the notification is received by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date; and
>
> (b) any inquiry in connection with the possible deregistration of a teacher under section 129 of the principal Act or the possible cancellation of an authorisation under section 130G of the principal Act, whether the inquiry is commenced by the Teacher Registration Board before the commencement date, or by the Teachers Council after the commencement date.
>
> (2) Before the disciplinary bodies are established, when doing any of the things described in subsection (1), the Teachers Council must (as far as

> reasonably practicable) follow the procedures, and apply the standards, that were used by the Teacher Registration Board for those purposes.
>
> (3) After the disciplinary bodies of the Teachers Council are established, those bodies must deal with any matter arising under any of sections 139AK to 139AP, section 139AR, or section 139AZC of the principal Act in accordance with the relevant rules.
>
> (4) However, in relation to an inquiry referred to in subsection (1) that is incomplete on the date when the disciplinary bodies are established,-
>
> > (a) the Teachers Council must continue and complete the inquiry in the manner described in subsection (2); or
> >
> > (b) with the agreement in writing (which is not revocable) of the teacher or authorised person concerned, the matter may be continued and completed by the disciplinary bodies in accordance with the relevant rules, as if the matter arose under the relevant equivalent provision specified in subsection (3).

90. In other words, under section 77(1)(b) and (2) any matter commenced under the old regime was to be completed in that system. Any “inquiry” in connection with the possible deregistration of a teacher under section 129 that was incomplete at the time the disciplinary bodies were established had to be completed following the procedures and applying the standards that were used by the Registration Board for those purposes, unless under section 77(4) the teacher agreed in writing to continue with the matter under the new disciplinary bodies.

91. In our view, the transitional provisions contained in section 77 recognise the principle on which section 26(1) of the NZBORA is based.

> No one shall be liable to conviction of any offence on account of any act or omission which did not constitute an offence by such person under the law of New Zealand at the time it occurred.

92. This complaint about Mr Rolfe's alleged conduct with Tammy Valler and [redacted] was commenced and completed under an old regime. Although the parties say that the matter of [redacted] complaint was not in that category it is difficult to see why that falls into a different category. The complaints cannot be re-opened and prosecuted under new law.

93. The Council's letter of 9 August 2004 is not the equivalent of the Police "cold case" that might be re-opened should further evidence come to light. Although a clearer communication would have been to advise that the Council had decided not to deregister the applicant under section 129, the Council said, "*The Teachers Council will not be investigating the issues on your file in the future".* It was the Teachers Council who could investigate and the Teachers Council who could exercise its powers to protect the public by striking Mr Rolfe's name from the register. Whereas the 1997 letter from the Registration Board said:

this information will remain on file - together with any correction or opinion you may wish to have added – and may be reconsidered at the time a practising certificate is being renewed if further information has been provided to the Teacher Registration Board under Section 138B of the Act

the 2004 letter carried no such proviso, and

94. And for that reason, it is not analogous to a criminal charge being withdrawn without prejudice to laying a charge in the future. The Council's 2004 letter is unequivocal. The Council had the power to deregister Mr Rolfe and it chose not to. Further, it chose to tell him that there would be no further investigation and that his *"record on the Teachers Council's database has been changed to reflect this".*

95. As directed by the Tribunal, the CAC filed evidence of what the code "6604" referred to in the email of 6 August 2004 that "*[the lawyer's] advice is that he becomes a 6604.*" In an affidavit from a senior investigator at the Council, it was explained that the code 6604 is an internal code displayed only in internal case

management. There is no documentation dating from the time of the internal codes' creation which explains the purpose or meaning of the internal codes and there is no staff member at the Teaching Council who was working with the internal codes in 2004 and who can explain the purpose or meaning of the internal codes at the time. It currently means "case is closed". It can apply in a number of different situations, including after a CAC determination or a Disciplinary Tribunal Finding. It has recently placed on a teacher's file where a complaint was withdrawn. The Triage Committee elected to take no further action but advised the initiator that the complaint could be re-opened if further information was provided.

96. In the present case, no such representation was made to the teacher, nor as far as the evidence provided goes, to the College or the students. To the contrary, Mr Rolfe was told that there would be no investigation in the future. Therefore, irrespective of the meaning of 6604, the matter had been disposed of. In that sense it may be considered double jeopardy and therefore it is an abuse of process to proceed with the prosecution of a charge of serious misconduct.

97. Ms Feltham said that in order for there to be the equivalent of an acquittal, there would need to have been a hearing. That may or may not be the case. In observing the rules of natural justice, the Registration Board would need to provide an opportunity to be heard, but that does not necessarily mean a "hearing". A decision could be made on the papers.

98. It was not simply that the Registration Board and the Teachers Council took no action. They actively issued practising certificates to the applicant between 1997 and now, the latest being 2019.

Retroactive application of the law

99. More importantly, even if this is not strictly speaking a case of "double jeopardy", the Tribunal considers that nevertheless it would be an abuse of the powers given by parliament to proceed with the charge. We do not consider there is

jurisdiction for the Tribunal to hear a charge of serious misconduct in this matter, and therefore for the Tribunal to determine this charge would be the exercise of a power "in a way which falls outside the scope of authority conferred by Parliament"[30].

100. It is an abuse of process to retrospectively apply the disciplinary processes in place in 2021 to a complaint brought to the Registration Board's attention in 1997. The changes to the original Act that took effect on 1 September 2004 were not retrospective, and in section 77 of the ESA Parliament specifically addressed the procedure to follow during the transition. That is, that any inquiry commenced under that regime was to be completed under that one, unless both parties agreed to have it considered under the amendments made to the Act.

101. The Tribunal is mindful of its role in public protection, but the applicant has been issued with practising certificates enabling him to teach since the Registration Board received Tammy Valler's 12½-page complaint in 1997, as well as [redacted] and [redacted] complaints. The protective nature of disciplinary proceedings does not extend to a retrospective application of the current law to a matter that was before the Registration Board under a different regime.

Conclusion

102. In conclusion, particulars (a), (b), (c), (d), (e) and (g) of the charge of serious misconduct are stayed on the basis that it would be an abuse of process to proceed because of the principle of double jeopardy and the retrospective application of the law. The parties advised that particular (f) was in a different category, but it is not clear from the documents why that was the case.

[30] As described by the majority ruling in Z v Dentists Disciplinary Tribunal at [119]

103. The hearing of the charge set to start on 20 June 2022 is vacated. The CAC is to file a memorandum by **17 June 2022** setting out how it wishes to proceed with particular (f).

104. Any interim suppression orders in place will continue. Any applications for permanent name suppression by either party should be filed by **17 June 2022**.

105. Any replies by the other party should be filed by **15 July 2022**, with a final right of reply by each party by **29 July 2022**.

106. A further pre-hearing conference may be convened at the request of either party.

107. In the meantime, the names of all parties are suppressed. This decision is not to be published beyond the parties and the Teaching Council until all applications for name suppression have been dealt with.

Theo Baker
Chair

Appendix A Chronology

31 May 1996	Tammy Valler makes complaint against Mr Rolfe at Morrinsville College.
4 June 1996	Mr Rolfe replies in writing. His wife, Mrs Valerie Rolfe provides 3 written statements in support.
13 June 1996	Principal of Morrinsville College advises the Board of Trustees of the complaints and decision is made for an independent investigator to be appointed.
13 June 1996 – 13 February 1997	Board of Trustees considers the complaint at a number of meetings
24 July 1996	Independent investigator, retired District Court Judge Dame Augusta Wallace reports to the Board of Trustees on her preliminary investigation.
15 July 1996	Mr Rolfe instructs Paul Geoghegan of Norris Ward, barristers and solicitors, to act for him.
18 July 1996	Board of Trustees appoints a subcommittee to investigate.
4 August 1996	Statement by John Hansen to the Board of Trustees.
5 August 1996	Statement by [redacted] to the Board of Trustees.
12 August 1996	Mr Rolfe goes on sick leave with medical certificate.
15 August 1996	Statement by [redacted] to the Board of Trustees.
19 August 1996	Investigation meeting scheduled for 30-31 August 1996 postponed.
21 August 1996	Board of Trustees reappoints a new subcommittee to investigate after receiving its own advice at its original appointment of the subcommittee was invalid because it contained two non-Board members.

19 September 1996	Mr Rolfe's sick leave continued with a new medical certificate advising he is suffering from moderately severe depression.
14 July 1996	Mr Rolfe submits a further medical certificate and advises that he is on medication.
11 October 1996	Board of Trustees seeks independent specialist medical examination of Mr Rolfe.
22 October 1996	Mr Rolfe referred to clinical and consulting psychologist Geoffrey Ruthe for an appointment on 29 October 1996. Mr Rolfe was not consulted about the date.
29 October 1996	Mr Rolfe's solicitor advises the Board of Trustees that Mr Rolfe was not available for the appointment with Geoffrey Ruthe.
14 November 1996	Principal, Dick Gwatkin, reports to the Board of Trustees that Mr Rolfe is on sick leave and has medical certificates to support it.
28 November 1996	Mr Rolfe advises the Board of Trustees he has resigned to take up a teaching position at Hamilton Boys High School in January 1997.
12 December 1996	Board of Trustees resolves to send investigation file to the Teacher Registration Board with an explanatory covering letter for its information and whatever action it deems appropriate.
17 December 1996	Board of Trustees accepts Mr Rolfe's resignation.
13 January 1997	Board of Trustees forwards the investigation file to the Teacher Registration Board.
15 January 1997	Teacher Registration Board writes to Board of Trustees of Morrinsville College asking it to confirm that it wanted the Teacher Registration Board "to consider Mr Rolfe's de-registration".
24 January 1997	New Principal of Morrinsville College, John Inger, writes to Teachers Registration Board asking it to

	"decide whether Mr Rolfe should continue to be registered as a teacher, or what other action the Teachers Registration Board might take".
12 February 1997	Teachers Registration Board considers whether or not to de-register Mr Rolfe at meetings on 12 February, 12 March, 9 April and in May 1997.
15 May 1997	Teachers Registration Board writes to Mr Rolfe advising that"
	"The Board has considered the information carefully and taken advice from its solicitors. It has decided at its May meeting that it cannot make a determination on the cancellation of your registration from the information it has. So, it will not be taking any further action at this time. As stated in my earlier letter, this information will remain on file – together with any correction or opinion you may wish to have added – and may be considered at the time a practising certificate is being renewed if further information has been provided to the Teachers Registration Board under section 138B of the Act."
1997-1998	Tammy Valler wrote to Mr Rolfe and apologised for making the complaint against him.
7 October 1999	Teachers Registration Board and its solicitors, Rainey Collins Wright & Co., discuss Mr Rolfe's case.
28 April 2003	Mr Rolfe appointed as a teacher at Hagley Community College in Christchurch. The Principal wrote to the New Zealand Teachers council querying Mr Rolfe's good character as a result of advice he had received from the School Trustees Association.
25 September 2003	The New Zealand Teachers Council wrote to Hagley Community College to advise that Mr Rolfe held a current practising certificate and was fully registered.

9 October 2003	Hagley Community College wrote to the New Zealand Teachers Council advising that, “The College has had no cause to be concerned about the professional behaviour and performance of Mr Rolfe.”
19 August 2004	New Zealand Teachers Council wrote to Mr Rolfe and advised, “The Teachers Council will not be investigating the issues on your file in the future. The code against your record on the Teachers Council’s database has been changed to reflect this. The material held on your file will not affect future applications for renewal of your practising certificate.”
23 July 2020	New Zealand Teaching Council accepts a complaint from Tammy Valler in respect of the same matters referred to the Teachers Registration Board on 13 July 1997.
1 September 2021	[redacted]
2 September 2021	Complaints Assessment Committee meets on 2 September 2021 to consider the complaint.
3 November 2021	Complaints Assessment Committee issues its decision and refers the complaint to the Tribunal by way of a Notice of Referral dated 3 November 2021.