

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**UNDER** The Education Act 1989**IN THE
MATTER**

of charges brought by the Complaints Assessment Committee of the New Zealand Teachers Council

BETWEEN**THE COMPLAINTS ASSESSMENT COMMITTEE**
Complainant**AND**XXXXXXXXXX
Respondent

DECISION OF NEW ZEALAND TEACHERS' DISCIPLINARY TRIBUNAL

Tribunal: Mr Kenneth Johnston (Chairman), Ms Lyn Brash, Dr Margaret Franken, Ms Lorraine Skiffington and Mr Steve Wood

Hearing: 12 December 2005

Decision: 15 February 2006

Counsel:

Jenny Gibson for the complainant
Nicole Carter for the respondent

By notice of charge dated 16 September 2005, the Complaints Assessment Committee of the New Zealand Teachers' Council charged XXXXXXXXXX with serious misconduct, particulars of the charge being that:

- "3.1 From about March 2003 to about 22 September 2004 you were employed as an English teacher at [a secondary school].*
- 3.2 As part of your employment you signed a laptop agreement.*
- 3.3 In that agreement, it was recorded that 'the school will have an expectation that you will abide by the school's Responsible Use Policy'.*
- 3.4 In the Responsible Use Policy it was stated:
[The Responsible Use Policy is then set out].*
- 3.5 On or about 24 July 2004 you set up a page on a website. That site was entitled XXXXXXXXXX Your page was under the name of XXXXXXXXXX.*
- 3.6 On that page you set out your biography and under the headings of 'Fetishes', described your fetishes as being 'water sports and incest'.*
- 3.7 On that site under the part headed 'Stories/Poems' you made what were called 'wet dog's submissions', which listed stories and/or poems published by you on XXXXXXXXXX. Those stories submissions were titled:
[series of titles and details set out]*
- 3.8 A review of the hard drive of your laptop was carried out. It showed that it contained material including the following:*
- 3.8.1 Calendar _ style images with models in various revealing poses.*
- 3.8.2 Jokes that were sexually themed.*
- 3.8.3 Naked images displaying male or female genitals and/or female breasts.*
- 3.8.4 Hard core pornography showing sexually explicit images of a heterosexual or homosexual nature.*
- 3.9 The titles of some of the material found on your laptop included:*
- 3.9.1 Prelolita incest.*
- 3.9.2 Incest stories and pics.*
- 3.9.3 Incest free.*
- 3.9.4 Freelolita incest.*
- 3.9.5 Incest chat columns.*
- 3.9.6 Incest preteen Lolita.*
- 3.10 Any one or more of the particulars referred to in paragraphs 1-2 above constitutes serious misconduct under Section 139AB of the Education Act 1989."*

XXXXXXXXXX admits the charge of serious misconduct. Accordingly, this matter proceeded to hearing on an undefended basis.

Prior to the hearing the parties, through counsel, Ms Gibson for the Complaints Assessment Committee and Ms Carter for XXXXXXXXXX, provided the Tribunal with an agreed statement of facts, from which the following emerges:

- (a) At all material times XXXXXXXXXX was an English teacher with full registration. During the 2003 and 2004 scholastic years he was employed by a provincial secondary school as an English teacher;
- (b) The school provided XXXXXXXXXX with a computer on terms set out in detail in the agreed statement of facts, but which contained the prohibition one might expect against the use of the computer for inappropriate purposes including creating or accessing pornographic material;
- (c) XXXXXXXXXX used the computer to create and access the material described in the agreement statement of facts, which XXXXXXXXXX accepts is pornographic;
- (d) When the school became aware of the use to which XXXXXXXXXX had put his computer, he resigned, whereupon the school reported the matter to the New Zealand Teachers' Council as required by the Act;
- (e) XXXXXXXXXX acknowledges that his actions constitute serious misconduct.

In her submissions for the Complaints Assessment Committee, Ms Gibson took us through the test for determining what constitutes serious misconduct, and submitted that XXXXXXXXXX actions met the threshold, involving as they did a calculated use of the school's equipment in breach of the terms of the arrangement between the parties and the school's policy. She then addressed the issue of penalty. In this context, she suggested that XXXXXXXXXX actions were at the serious end of the scale, involving the abuse by XXXXXXXXXX of his position.

For XXXXXXXXXX, Ms Carter reinforced his acknowledgement that his actions constituted serious misconduct. She went on to submit that his misconduct was in accessing pornography on the school computer, submitting that "[t]he other matters that form the particulars of the charges were unrelated to his work as a teacher and did not happen in school". We have some difficulty following this submission. The essential charge is that XXXXXXXXXX used his school laptop in breach of the terms upon which the school provided this to him. As we have already said, those terms included a prohibition against its use to create or access pornographic material. Once it is accepted that there has been a breach of that prohibition, it does not appear to us to matter whether that took place inside or outside the school, or inside or outside school hours. It is the inappropriate use of the school's property, and the details of the use to which it is put, which appear to us to be important. Ms Carter went on to emphasise that as soon as the school became aware of the situation XXXXXXXXXX not only admitted his responsibility but tendered his resignation, and went on to admit his wrongdoing both before the Complaints Assessment Committee and before this Tribunal. She noted also that he had, pursuant to s 127(1)(e)] of the

Act, voluntarily sought deregistration. Ms Carter also informed us that XXXXXXXXXX had left New Zealand in October 2004 and has not worked since then. She also mentioned that he is in the middle of an acrimonious divorce which she said resulted from the incidents which are the subject of this charge. She told us that some of the documentation relating to this charge has been circulated by XXXXXXXXXX ex-wife, although that does not appear to us to be a matter which we can have any regard to. Ms Carter went on to make a series of submissions as to the purposes of Part 10 of the Education Act 1989, which were directed at emphasising that our role is not that of a criminal court seeking to determine the most appropriate penalty, but rather a disciplinary body seeking to identify the outcome best designed to achieve the purposes of the Act. We accept that. Ms Carter summarised the mitigating factors which she asked us to take into account in the following terms:

"• XXXXXXXXXX accepted immediate responsibility for his wrongdoing and he resigned.

- He sought to be deregistered.*
- He has cooperated fully with the Teachers' Council processes.*
- XXXXXXXXXX actions did not involve students or other teaching colleagues.*
- There is no conflicting evidence in this case."*

In the Tribunal's view, this case involves the most flagrant breach by XXXXXXXXXX of his obligations to the school and, as Ms Gibson submitted, an abuse of a privileged position. We regard the matter as very serious. As we have already indicated, we do not regard it as relevant whether or not XXXXXXXXXX breached his obligations by creating or accessing inappropriate material on the school computer inside or outside the school, or inside or outside school hours. We do accept, as Ms Carter urged us to, that none of XXXXXXXXXX colleagues, and most importantly none of his students, were involved in the matter, and we have regard to that. We also have regard to the fact that XXXXXXXXXX is out of the country and that any imposition of a fine would be difficult to enforce.

In all of the circumstances, the Tribunal's decision is as follows:

- Pursuant to s.139AW(1)(b), the Tribunal formally censures XXXXXXXXXX for his serious misconduct;
- Pursuant to s.139AW(1)(g), the Tribunal orders XXXXXXXXXX deregistration;
- Pursuant to s.139AW(1)(i), the Tribunal orders XXXXXXXXXX to pay costs to the New Zealand Teachers' Council calculated on a 2B basis in accordance with the Second Schedule to the District Court Rules. Counsel will no doubt be able to resolve questions on that basis but if not the issue can be referred back to the Chairman for finalisation.

DATED at Wellington this 15th day of February 2006

Kenneth Johnston

Chairman