

**BEFORE THE NEW ZEALAND
TEACHERS DISCIPLINARY TRIBUNAL**

NZTDT 2022/24

**COMPLAINTS ASSESSMENT
COMMITTEE**

V

**[REDACTED]
Respondent**

Hearing: 14 February 2023 (on the papers)
Appearances: R Belcher for the CAC
[REDACTED] in person
Date of Decision: 15 February 2023 (re-issued 17 February 2023)
Tribunal: T J Mackenzie, N Coe, R McInerney

DECISION OF THE TRIBUNAL ON CHARGE

Introduction

[1] The Complaints Assessment Committee (CAC) has charged the respondent Mr [REDACTED] with serious misconduct. Broadly the allegation is that a learner in his class had advised the school that they were transitioning from female to male, and wished to be called a male name instead of their original female name.

[2] Mr [REDACTED], due to his Christian beliefs, did not accept the concept of gender transitioning. He refused to refer to the learner by their preferred name and pronouns.

[3] On a complaint being made by the learner, Mr [REDACTED] then resigned. A mandatory report to the Teaching Council occurred, and this charge has arisen as a result.

[4] Mr [REDACTED] denies that serious misconduct has occurred.

[5] In this decision we will consider the facts, the applicable law, and make a decision on whether the charge is proven or not.

The charge

[6] The charge provides as follows:

1. The CAC charges that [REDACTED], registered teacher, of [REDACTED], between February 2021 and 14 May 2021:

a. Failed to respect the identity of a learner by refusing to call a learner by their preferred name and pronouns

2. The conduct alleged in paragraph 1 amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and Rule 9(1)(b) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

The facts

[7] Initially the parties were not able to reach an agreed summary of facts and the matter was heading to a multi-day hearing with several witnesses. However on enquiry by the Tribunal it appeared that the events themselves were agreed, the issue was that Mr [REDACTED] wanted to argue the rights and wrongs of what was in the facts (for example, it is not a "fact" that someone can transition genders, based on Mr [REDACTED] view).

[8] A conference was held previously and some progress made. A Minute issued asking Mr [REDACTED] to review the CAC brief's and advise whether he agreed or

disagreed with the facts – noting his views and arguments were separate and could come in submissions.¹

[9] Subsequently Mr [REDACTED] indicated to the Tribunal that he agreed with the statements, factually – subject to the disagreements and beliefs he wanted to advance. This came in an email to the Tribunal Administrator as follows:

From: [REDACTED]
Sent: Saturday, 21 January 2023 6:15 pm
To: DT <dt@teachingcouncil.nz>
Cc: Richard Belcher [REDACTED]
Subject: [REDACTED]

Hi Shannon,

Here is my response for the Deputy Chair Mr T J Mackenzie:

Thank you for your description and explanation of how the case proceeds. As stated earlier, I deny the charge of serious misconduct and am aware that I will be able to put forward reasons – submissions at a later date.

I have looked through the bundle of evidence documents (dated 14 December 2022) and am happy to accept the facts presented therein with the understanding that I do not agree with any acknowledgement of the student (*name removed*) being a male or agree with her being called by a boy's name or referred to by male pronouns, or that it is possible for her to transition from female to male. Additionally references to my 'religion' should be taken as my Christian belief.

To be clear, I accept the statement by the student (*name removed*) (paragraph 4): 'Mr [REDACTED] refused to call me by my preferred name and pronouns.'

Yours sincerely,
[REDACTED]

[10] As advised in the Tribunal's previous Minute, Mr [REDACTED] would have the ability to advance his arguments in written submissions, which he has now done.

The facts

[11] We take the facts from the briefs of evidence and Mr [REDACTED] acceptance of them, above. We accept the CAC's summary of the facts from counsel's submissions as being accurate, and adopt it here, save for removal of the names for non-publication reasons:

The respondent, [REDACTED] is a registered teacher who, between 2019 and 2021, taught mathematics at a high school (the **School**).

¹ Tribunal Minute of 20 January 2023.

In 2021, Mr ██████ taught a student in his Year 10 mathematics class. During that time, the student was transitioning genders from female to male. The student's preferred (male) name was recorded on Kamar, the School's online portal. Mr ██████ refused to call the student by his preferred name and pronouns. Instead, he continued to call the student by his previous (female) name and pronouns. In or around February 2021, Mr ██████ had a meeting with the student during a morning tea break and stated that transitioning was against his religion. The student came up with a compromise and suggested Mr ██████ call him by his preferred name but could use the pronouns she/her. Mr ██████ refused to agree to this and said that "he didn't want [the student] to go down the path of sin" or words to that effect. Mr ██████ met with (the principal) of the School twice in March 2021 and confirmed his refusal to use the student's preferred name and pronouns. He told (the principal) that he would not follow his instruction to call the student by his preferred name and pronouns because of his religious beliefs.

Relevant law to be applied to the charge

[12] Section 10(1)(a) of the Education and Training Act 2020 (the Act) defines "serious misconduct" as conduct by a teacher that either:

- i) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; and/or
- ii) Reflects adversely on the teacher's fitness to be a teacher; and/or
- iii) May bring the teaching profession into disrepute.

[13] Regarding the first limb of this test. In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.² The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven. Direct evidence from the child as to affects is not mandatory and indeed is rare. Nor does the ambit of s 10 call for direct evidence. The use of the term "likely" permits the Tribunal to draw reasonable inferences as to affects or likely affects, based on the proven evidence in a case and its own knowledge.

[14] The second limb has been described by the Tribunal as follows:³

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[15] The third limb of the test is assisted by reference to the High Court decision

² *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

³ *CAC v Crump* NZTDT 2019-12, 9 April 2020.

in *Collie v Nursing Council of New Zealand*.⁴ The Court held that a disrepute test is an objective standard for deciding whether certain behaviour brings discredit to a profession. The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner.

[16] The Court of Appeal has affirmed that the test for serious misconduct in s 378 of the Education Act 1989 (the equivalent of s 10 of the Act) is conjunctive with the Teaching Council Rules 2016 mandatory reporting criteria (the Rules).⁵ The Rules describe the types of behaviour that are of a prima facie character and severity to constitute serious misconduct.

[17] Therefore for serious misconduct to be made out, as well as meeting one or more of the three limbs set out above, the conduct concerned must at the same time meet one or more of the Teaching Council's criteria for reporting serious misconduct. These rules make the following behaviour mandatory to report:

9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching 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:

- (a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:
- (b) emotional abuse that causes harm or is likely to cause harm to a child or young person:
- (c) neglecting a child or young person:
- (d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:
- (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:
- (f) viewing, accessing, creating, sharing, or possessing pornographic material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:
- (g) acting dishonestly in relation to the teacher's professional role, or committing theft or fraud:
- (h) being impaired by alcohol, a drug, or another substance while

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

responsible for the care or welfare of a learner or a group of learners:
(i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:
(j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[18] Here, the CAC relies on (b) and (k).

[19] Finally, the burden rests on the CAC to prove the charge. While the standard to which it must be proved is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.⁶

Submissions

[20] The CAC says that the charge is made out on all limbs. Other decisions are referred to, however given the unusual facts in this matter we will consider it in isolation as against the legal tests and by applying the views of the Tribunal as a specialist Tribunal comprising two experienced teachers.

[21] We have received Mr [REDACTED] view of the charge. Mr [REDACTED] maintains that serious misconduct has not occurred, as he is entitled to do.

[22] Mr [REDACTED] submissions set out his beliefs and reasons for dealing with the issue in the way he did. They begin with objection based on Christianity, move to verbatim scripture, and then continue on to link the conduct with “the devil”, homosexuality and even abortion.

[23] The submissions of Mr [REDACTED] cause significant concern to this Tribunal, something we will return to later. We will include them here in full:

I have been accused of serious misconduct and deny this charge.
On the contrary, I believe I would be guilty of serious misconduct and child abuse if I was to call the girl [REDACTED] in my year-10 class by a boy's name as I was compelled to do.

Feelings of discomfort or unhappiness by a student do not mean that what is happening to them is not in their best interests or that they will not in the future be happy about someone's action in their lives. For example:

My son, do not reject the discipline of the LORD
Or loathe His rebuke,
For whom the LORD loves He disciplines,
Just as a father disciplines the son in whom he delights.
(Proverbs 3:11-12, NASB New American Standard Bible)

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

The reason that we even have schools and training classes is because of the belief that certain people have knowledge, experience, maturity etc. that students can learn from.

Legality of student's name

Talking with [REDACTED], she told me about her struggle and coming to a decision to move in a direction of being a boy. It is my understanding therefore that it was [REDACTED] personal decision to try and move towards changing her gender. The legal age to change your own name is 18 (Government website confirming that you can change your name only when you are 18 or older: <https://www.govt.nz/browse/passports-citizenship-and-identity/changing-your-name/change-yourown-name/>), so she could not legally change her name at the time of the stated events happening at the beginning of 2021 when as a young student in year 10 she was only 14 years old. [REDACTED] as given in the bundle of evidence documents dated 14 December 2022). I should not be compelled to call a student by a name that was never presented to me as a legal change, only a change made in the school roll and instruction by the school principal. You cannot compel a teacher to call a student by a name that is not their legal name.

Potential abuse of teachers (and others) if a student can choose who or what they identify as

In this case, the student [REDACTED] was deciding to try and be identified as a boy even though she even admitted that she was born a girl, and therefore wanted to be called by a boy's name and male pronouns. If this is okay in society, then could not this faulty logic be given as reason for students to identify themselves as anything that is not their actual identity? Apart from gender, this may be race, age, position in society, even identifying as an animal! and requesting appropriate pronouns, for example

- a) A European student decides they want to be identified as African or Maori (maybe even for financial, political or other perceived benefit)
- b) A young student decides they want to be identified as elderly
- c) A student wants to be identified as a cat, a dog or a dinosaur
- d) A student identifies as earthly royalty or a judge and wants to be referred to using the pronoun 'Your Honour' Although these examples may seem absurd, they are the same logic as calling a girl a boy, or a boy a girl and may lead to abuse of teachers (and others). Is it appropriate for a teacher to call a student by the pronoun 'Your Honour' or to expect teachers to refer to students as different animals?

Compelling me to call a girl student by a boy's name is asking me to go against my core Christian belief, the belief that is also foundational for New Zealand

Firstly, I want to highlight New Zealand's national anthem which begins with:

God of nations

At thy feet

In the bonds of love we meet

This 'God of nations' is our Father in Heaven, who is the best and perfect father. God knows what is best for His children. (note the 'Lord's prayer' in the Word of God – the Bible, that begins with 'Our Father whom art in Heaven' (see Matthew 6:9))

Additionally: note that Queen Elizabeth II's title included 'Defender of the Faith'

(From the website <https://gg.govt.nz/office-governor-general/death-her-majesty-queen/queen-newzealand/queens-relationship-realm-new> :

As the former Head of State of New Zealand, Queen Elizabeth II's formal New Zealand title was:

"Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith.")

I believe that God created man male and female (with no other option):

So God created man in His own image, in the image of God He created him; male and female He created them. (Genesis 1: 27, NASB New American Standard Bible)

A person created and born as a male or female should live as they were born and I believe that any deviation from this is a cause for confusion and harm in their lives. Someone with a desire to move away from their original sex may require help and deliverance. The individual concerned can seek help but to pursue trying to become the opposite sex is going against who they were created to be. Children and young people may be especially vulnerable to outside influences suggesting that their sex is their own choice and may lead to many unnecessary struggles in their future lives. Schools should in no way suggest gender is a choice or in any way encourage or condone pursuing gender changes.

Recent comments by a professional who has been a school counsellor that support not encouraging students to try and change their gender.

The following comments were requested by this professional to be published:

I am a qualified and registered child and adolescent psychotherapist and for the past few years I have been looking into gender dysphoria as it has risen in prominence as an issue affecting young people. As a professional in this space I can tell you that I and many other practitioners have real concerns with the growing number of children being encouraged to believe they have been born in the wrong body and need to medically change their bodies to align with their inner thoughts and feelings in order to resolve psychological distress.

I note Professor Charlotte Paul for example, from Otago University's Department of Preventive and Social Medicine, voiced these concerns in a [recent article for the NZ Listener](#).

Not only is there a lack of robust, long-term outcome studies for children who have medically transitioned, research suggests adolescent gender dysphoria resolves naturally into adulthood in the majority of cases without medical intervention. There are also growing numbers of people detransitioning. It's also important to note that a significant number of individuals with gender dysphoria also have other diagnoses such as autism, eating disorders, and histories of trauma.

The approach which I and many other practitioners take, therefore, is a comprehensive assessment including curiosity and exploration of feelings, perceptions and self-representations in order to treat often complex and interconnected underlying issues.

Put in plainer language I believe, generally speaking, the best approach to adolescent gender dysphoria is gently assisting children to understand their inner world and feel more at home in their bodies.

I respect and empathise with those who believe differently, but I stand by my professional opinion and approach as I believe it to be best practice and in the best interests of children.

I don't agree with accusations I am 'phobic' towards anyone, and I would stress that what we need at this time is not name calling but constructive, nuanced and robust dialogue with a view to better help vulnerable children experiencing difficult questions and distress around identity.

Teachers have a responsibility of care and part of this is affirming the birth-sex of every child, the gender they were created as, which is an inseparable part of their identity.

What next?

Taking it a step further, what happens if a girl adolescent decides to try and become a boy. Do they decide to get hormonal treatment, remove their breasts, – and even then they have a womb – do they then remove their womb. Do they decide to have irreversible operations and treatments on their body, sterilising themselves and not be able to have children. If they realise they made a mistake and want to reverse what has been done to their body – bar a miracle can they? Surely, it is obvious that we are meant to be the gender we are born as.

Homosexuality

Homosexuality is sin which is an obvious next step from people trying to be or identifying as the opposite sex as their birth-sex. People involved with this behaviour are loved by God and precious but their behaviour is outside God's created and ordained purposes. Again, God knows best and this behaviour will have negative consequences.

So God created man in His own image, in the image of God He created him; male and female He created them. God blessed them; and God said to them, "Be fruitful and multiply, and fill the earth, and subdue it; and rule over the fish of the sea and over the birds of the sky and over every living thing that moves on the earth." (Genesis 1:27-28, NASB)

How do people multiply, but through the union of man and woman and the resulting conception of children. *Some* Pharisees came to Jesus, testing Him and asking, "Is it lawful *for a man* to divorce his wife for any reason *at all*?" And He answered and said, "Have you not read that He who created *them* from the beginning MADE THEM MALE AND FEMALE, and said, 'FOR THIS REASON A MAN SHALL LEAVE HIS FATHER AND HIS MOTHER AND BE JOINED TO HIS WIFE, AND THE TWO SHALL BECOME ONE FLESH'? So they are no longer two, but one flesh. Therefore, what God has joined together, no person is to separate." (Matthew 19: 3-6 NASB) There is no room here for a man to become united with a man or woman with a woman and if you look at the anatomy of people God's design is plainly obvious where man enters the woman and the wonderful amazing person from conception grows in

the womb of the woman (note: any abortion from conception is killing this beautiful person created in the image of God and dearly loved by God. Very sadly, and shamefully New Zealand has been engaging in many abortions, with recent statistics showing about 13 000 people are intentionally killed this way each year in New Zealand!

Not only is the person in the womb killed but the mother (and probably the father) is very negatively affected. There are many testimonies of people who have had abortions, including on this Youtube channel and have received healing through Jesus:

<https://www.youtube.com/channel/UCFPkVCqNp0iPzrmQd0Nhw5w>

What happens after a man leaves his father and mother (note it does not say 'leaves his father and father' or 'leaves his mother and mother')? He is 'joined to his wife' (not to another man). Children come from the joining of man and woman as God designed it.

You shall not sleep with a male as one sleeps with a female; it is an abomination. (Leviticus 18:22, NASB)

For this reason God gave them over to degrading passions; for their women exchanged natural relations for that which is contrary to nature, and likewise the men, too, abandoned natural relations with women and burned in their desire toward one another, males with males committing shameful acts and receiving in their own persons the due penalty of their error. (Romans 1: 26-27, NASB)

If people put God to the test, and rebel against him will there be no consequences? God has provided grace through repentance and accepting Jesus Christ - God's son who came to the world in the flesh and died for us and rose again - as Lord and saviour, but this is grace to become a new man and be saved, leading to a new life where you do not walk in willing sin. How can you willingly walk in something that you have repented of? God loves people and knows what is best. For God so loved the world, that He gave His only Son, so that everyone who believes in Him will not perish, but have eternal life. (John 3:16, NASB)

Here, I would also like to point out that we can see that God instituted the family with a mother and father as shown in the scripture above: 'a man shall leave his father and his mother ...' (see Matthew 19: 3-6 NASB). This reveals the family structure with the mother, father and the son. The son leaves his mother and father and is 'joined to his wife' showing the beginning of a new family. The Word of God gives instruction on how a family should operate in a healthy way. For example:

Children, obey your parents in the Lord, for this is right. HONOR YOUR FATHER AND MOTHER (which is the first commandment with a promise), SO THAT IT MAY BE WELL WITH YOU, AND THAT YOU MAY LIVE LONG ON THE EARTH.

Fathers, do not provoke your children to anger, but bring them up in the discipline and

instruction of the Lord. (Ephesians 6:1-4, NASB)

God has instituted the family with the father, mother, and the children resulting from the union of the father and mother. These families become foundational building blocks of society, and we ought not to stray from these principles given by God if we desire to see future generations healthy and living together in love.

The devil is a LIAR and a MURDERER and following his deceit will lead to being stolen from, killed and destroyed. Jesus said to them, "If God were your Father, you would love Me, for I came forth from God and am here; for I have not even come on My own, but He sent Me. Why do you not

understand what I am saying? *It is* because you cannot listen to My word. You are of *your* father the devil, and you want to do the desires of your father. He was a murderer from the beginning, and does not stand in the truth because there is no truth in him. Whenever he tells a lie, he speaks from his own *nature*, because he is a liar and the father of lies. But because I say the truth, you do not believe Me. (John 8: 42-45, NASB).

So Jesus said to them again, "Truly, truly I say to you, I am the door of the sheep. All those who came before Me are thieves and robbers, but the sheep did not listen to them. I am the door; if anyone enters through Me, he will be saved, and will go in and out and find pasture. The thief comes only to steal and kill and destroy; I came so that they would have life, and have *it* abundantly (John 10: 7-10, NASB).

A person trying to become or identify as the opposite sex as their birth-sex moves away from who God created them to be; leads away from God's purposes and the institution of the family comprising of father, mother and children; and presents an obvious next step of moving towards the sin of homosexuality.

Maintenance of respectful relationship with [REDACTED]

I walked with integrity over my time at the school and maintained a respectful relationship with [REDACTED]. We talked well together and before I left [REDACTED] and her friends came and talked with me in the playground where [REDACTED] indicated that she did not want to be on bad terms with me.

No grounds for penalty

As I believe there are no grounds for the charge of serious misconduct including because of these points given above (In fact, if I did call [REDACTED] by a boy's name I would not be acting in her best interest or the best interest of society and would therefore be guilty of misconduct), there should be no penalty asked of me.

Decision

[24] As a specialist Tribunal we have no hesitation in coming to the view that the conduct that has occurred is serious misconduct.

[25] We find that all limbs of the test are met. On the first limb (affect on the student), as the student states: "it hurt my feelings though and I was uncomfortable with him". That is probably generous.

[26] The conduct did adversely affect the student, and was certainly likely to at the very least. Whilst transitioning (or having transitioned) genders, the student was obviously going through a very sensitive phase – particularly whilst attending secondary school, which can come with difficulties for students at the best of times. For a trusted adult teacher to not only ignore the student's wishes (and the instruction of the school), but also to isolate them and advise them it was wrong, risked quite significant harm in our view. On the evidence it appears that the student had handled Mr [REDACTED] conduct very bravely. That was very fortunate. However it should never have been for the student to try and negotiate a compromise with Mr

[27] Mr ██████ was not qualified to offer some form of “gender dysphoria” advice to the student, particularly based on Mr ██████ personal Christian views. Mr ██████ should have referred to the student by their preferred name and left it at that.

[28] Whilst the role of a teacher (particularly at a secondary school) will from time to time require the application of some paternalism in the lives of their students, this conduct was completely inappropriate and out of line. It risked belittling the student and minimising the huge personal event occurring in his life. It transgressed well outside of the boundaries of a teacher’s role.

[29] Mr ██████ argument that this (the preferred name) was somehow unlawful due to a lack of legal name change is disingenuous at best. There is no legal requirement or obstacle in calling a student their preferred name. Mr ██████ argument is no different to insisting on using the longer form of a name until the name was changed legally (for instance calling Matthew by Matthew despite preferring “Matt”, until Matthew legally changed their name to “Matt”).

[30] The balance of the arguments put forward by Mr ██████ are deeply anchored in his ingrained belief in Christianity. The arguments referencing the risk of homosexuality and abortion may well be welcome and normal within the context of Mr ██████ private life and views. However they are disgraceful when used in the present context.

[31] We also note what purports to be the presentation of an expert opinion from an un-named psychotherapist. Aside from being unnamed and unsworn (and unable to be tested), it provides no assistance to the Tribunal. The provision of this information fails to understand that Mr ██████ role did not require him to enter into psychotherapy. And it fails to understand that the Tribunal is not holding an inquiry into any psychological issues around gender transference. In advancing this alleged expert view as a justification for what occurred Mr ██████ only repeats the problem that his conduct caused.

[32] The balance of Mr ██████ arguments are borne from unrealistic hysteria and we need not go into them further.

[33] It follows that we consider the conduct of Mr ██████ reflects adversely on his fitness as a teacher. We also consider that it may bring the profession into disrepute.

[34] We also find that the Reporting Criteria at (b) and (k) (above) are met, for obvious reasons set out above.

[35] That being the case, the charge of Serious Misconduct has been found proven.

[36] We note that even without the submissions of Mr [REDACTED], we would have found the charge proven on the pure conduct alone.

Penalty

[37] The CAC called for a rehabilitative penalty of censure, training, mentoring and notification to future employers. This was of course before seeing the submissions from Mr [REDACTED].

[38] The submissions of Mr [REDACTED] are difficult to reconcile with any rehabilitative outcome at present. Currently we have serious concerns about Mr [REDACTED] fitness to be a teacher at all. Cancellation of registration is now being considered by the Tribunal.

[39] Given Mr [REDACTED] is self-represented, and that submissions on cancellation have not been made, we now invite the parties to address us on penalty in written submissions. Once received, we may then direct that an electronic hearing occur with Mr [REDACTED] present (and the CAC), so that we can hear further from the parties and discuss possible penalties.

[40] The CAC should file and serve any further penalty submissions with 10 working days of receipt of this decision. Mr [REDACTED] should file and serve any penalty submissions in response within a further 10 working days. Both parties will ideally limit their submissions to five pages, plus any attachments/cases. The Tribunal will then consider further directions.

[41] Mr [REDACTED] may wish to consider obtaining legal advice and/or representation.

Non-Publication

[42] There are currently interim orders for non-publication in place as follows:

- I. All names used by the learner whether legal or not are subject to this order.
- II. The name of the school is not to be published.
- III. The town that the school is in is not to be published.
- IV. The name of the respondent is not to be published.

[43] These orders are continued for now however we can indicate that they will be made permanent at the conclusion of this matter.



T J Mackenzie

Deputy Chair

Addendum: This decision has been re-issued on 17 February 2023 with the addition of the charge at the beginning of the decision, which had been omitted from an earlier version of 15 February 2023.

**BEFORE THE NEW ZEALAND
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NZTDT 2022/24

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Respondent**

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DECISION OF THE TRIBUNAL ON OUTCOME

Introduction

[1] In our liability decision of 17 February 2023 (which should be read in conjunction with the present decision) we found the charge of Serious Misconduct had been proven.

[2] We noted our concern at the response of Mr ██████ to the charge. We indicated that cancellation of registration was being considered. We called for further submissions from the parties, and suggested that Mr ██████ may wish to obtain legal advice.

[3] Subsequently the CAC has filed submissions. The CAC submit that an order for cancellation is appropriate due to both the conduct and Mr ██████ lack of insight and rehabilitative prospects, resulting in a risk of further incidents.

[4] Mr ██████ has responded that he has no further submissions to make.

[5] This is our decision on outcome.

Legal principles to apply

[6] In *CAC v McMillan* this Tribunal summarised the role of disciplinary proceedings in this profession as:¹

... 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.

[7] The primary motivation is to ensure that three overlapping purposes are met. These are:²

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[8] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.³

¹ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

² *McMillan*.

³ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

[9] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[10] In *CAC v Fuli-Makaua* this Tribunal has noted that cancellation may be required in two overlapping situations:⁴

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

Discussion

[11] In our liability decision we expressed our view of Mr ██████ conduct as follows:

[38] The conduct did adversely affect the student, and was certainly likely to at the very least. Whilst transitioning (or having transitioned) genders, the student was obviously going through a very sensitive phase – particularly whilst attending secondary school, which can come with difficulties for students at the best of times. For a trusted adult teacher to not only ignore the student's wishes (and the instruction of the school), but also to isolate them and advise them it was wrong, risked quite significant harm in our view. On the evidence it appears that the student had handled Mr ██████ conduct very bravely. That was very fortunate. However it should never have been for the student to try and negotiate a compromise with Mr ██████

[39] Mr ██████ was not qualified to offer some form of "gender dysphoria" advice to the student, particularly based on Mr ██████ personal Christian views. Mr ██████ should have referred to the student by their preferred name and left it at that.

[40] Whilst the role of a teacher (particularly at a secondary school) will from time to time require the application of some paternalism in the lives of their students, this conduct was completely inappropriate and out of line. It risked belittling the student and minimising the huge personal event occurring in his life. It transgressed well outside of the boundaries of a teacher's role.

[12] In our view there are no mitigating features of this conduct. It is explained by Mr ██████ beliefs but it is not excused by them.

[13] Mr ██████ view of his conduct, as set out in full in our liability decision, has been to positively insist that his approach was correct. Mr ██████ has not advanced any further position to us since that.

⁴ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

[14] The Tribunal is left with the firm view that Mr ██████ is not fit to be a teacher. The conduct on its own calls this into serious question. Determining it however is that Mr ██████ maintains his position that it was appropriate to treat the learner in this way. And he not only maintains it, but he has done so in an extreme, offensive and hysterical way. The candid and unyielding statements made by Mr ██████ provide the best evidence of his future risk.

[15] It is important to note that we are not moving to “punish” Mr ██████ for his response and position. He is entitled to his views and religious beliefs. What we must do is consider whether he has insight and rehabilitative prospects that we could address.

[16] The only answer to that is no. In our view there is a real and appreciable risk that such conduct, or similar conduct, will be repeated by Mr ██████ if he was to be in that position again. Indeed given Mr ██████ statements to us we would say that it is quite likely to occur again in similar circumstances.

[17] For these reasons then we consider that no option short of cancellation is appropriate.

[18] We now order cancellation under section 500(1)(g) Education Act 2020.

Non-Publication

[19] There are currently interim orders for non-publication in place as follows:

- I. All names used by the learner whether legal or not are subject to this order.
- II. The name of the school is not to be published.
- III. The town that the school is in is not to be published.
- IV. The name of the respondent is not to be published.

[20] We consider it proper to make these orders permanent. Any identification of Mr ██████, due to the novel circumstances of this case, would have a risk of identifying the learner involved.

[21] We therefore make permanent orders of I-IV above under section 405(6)(c) of the Act.

Costs

[22] This was an unusual matter and nearly proceeded to a lengthy hearing. The CAC costs of \$18,896.38 may be slightly higher than normal, however the CAC seek only 30%. We consider that this is an appropriate amount to seek. A costs order for \$5668.91 is made.

[23] Tribunal costs are \$1455. We direct payment of 40% of those costs which is \$582.



T J Mackenzie

Deputy Chair