

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2020/11**

**IN THE MATTER** of the Education Act 1989

**AND**

**IN THE MATTER** of a charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal under Part 32 of the Act

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

**AND**

**STEPHEN JAMES TEAGUE**

Respondent

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**DECISION OF THE TRIBUNAL**

**25 AUGUST 2020**

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**HEARING:** Held on 28 July 2020 on the papers

**TRIBUNAL:** Rachael Schmidt-McCleave (Deputy Chair)  
Aimee Hammond and Rose McInerney (members)

**REPRESENTATION:** D La Hood/DP M A Shaw, Luke Cunningham Clere for the Complaints Assessment Committee  
B A Fletcher, Gascoigne Wicks for the respondent

## **Hei timatanga kōrero – Introduction**

1. The Complaints Assessment Committee ("CAC") has charged the respondent with engaging in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
2. The CAC alleges that the respondent engaged in conduct which breached professional boundaries. This conduct included:
  - (a) Befriending a student [Student F] on Facebook,
  - (b) Wearing a ring given to him by Student F,
  - (c) Messaging Student F while she was a student,
  - (d) Sharing his CV with Student F for her to review, and
  - (e) In January 2019, after Student F had left school, began an intimate relationship with her.
3. The CAC alleges that this conduct amounts to serious misconduct pursuant to section 378 of the Education Act 1989 ("the Act") and Rules 9(1)(e) 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 404 of the Act.
4. The matter was heard on the papers.

## **Ko te hātepe ture o tono nei – Procedural History**

5. The parties filed an agreed summary of facts dated 22 April 2020.
6. A Pre-Hearing Conference ("PHC") was held on 12 May 2020 at which an interim suppression order was made until the hearing. The Tribunal advised the respondent that he needed to provide an application with supporting evidence to be granted permanent suppression. This application, with supporting material, was filed in late June 2020.
7. In accordance with the timetable set down at that PHC, the CAC filed submissions dated 9 June 2020, the respondent filed submissions dated 23 June 2020, and the parties filed an Agreed Bundle.

## Kōrero Taunaki - Evidence

### *Agreed Summary of Facts*

8. The ASoF is set out in full below:

#### ***Background***

1. *The respondent, **STEPHEN JAMES TEAGUE**, is a provisionally registered teacher. The respondent was previously employed on a fixed term contract at Marlborough Girls College (**the school**). The respondent is no longer employed at the school. He signed an undertaking not to teach on 4 September 2019.*

#### ***Inappropriate relationship with student***

*2018-2019*

2. *The respondent completed his initial teacher education at the University of Canterbury at the end of 2017 and gained provisional registration and certification with the Teaching Council of Aotearoa New Zealand in February 2018.*
3. *The respondent began working at the school at the beginning of 2018. He taught social studies and classics.*
4. *In 2018, Student F was a year 12 student at the school, aged 16. The respondent was aged 23.*
5. *Over the 2018 year, the respondent did not teach any of Student F's classes.*
6. *The respondent first met Student F through the school jazz band at the start of 2018. The respondent was one of the teachers involved in the jazz band.*
7. *The respondent got to know Student F and her mother P during their band practices for the Combined Colleges' production of Grease. At this time, the respondent became friends with Student F's family and was invited to the family home for weekly dinner parties and board game nights.*
8. *At the time of the Grease rehearsals, the respondent also became Facebook friends with Student F.*

9. *Over the course of 2018, the respondent and Student F would exchange internet memes, relating to musical classics, on Facebook Messenger. Student F also shared these messages with her mother.*
10. *On one occasion Student F emailed the respondent, outside of class, about her classic work because her teacher was not replying. Student F and the respondent also interacted during school productions.*
11. *In early term three of 2018, Student F gifted the respondent a ring, which the respondent subsequently wore. Student F said that she had initially bought the ring for herself, ordered the wrong size, so then gave the ring to the respondent.*
12. *For the school formal in 2018, Student F's mother made a classics-themed waistcoat for the respondent to wear. As part of his outfit, Student F also let the respondent borrow a stuffed owl.*
13. *Towards the end of 2018, the respondent shared his C.V. with Student F and she made comments on it.*
14. *On 28 September 2018, the respondent met with the principal of the school to discuss concerns brought to her about the respondent's relationship with Student F. During that meeting, the respondent and the principal went through the Code of Professional Responsibility, providing examples of behaviour that breached boundaries. The respondent said that there was something he needed to "sort out". The two met again the term three holidays where the respondent said he had "sorted it".*
15. *The respondent's last day of teaching at the school was 12 December 2018. His formal employment, at the school, ceased on 27 January 2019, with his last pay being was [sic] 28 January 2019. The respondent had been on a fixed-term contract and was not appointed to the roles which were advertised for 2019. The respondent did not return to teaching and instead worked at Burger King and then BP.*
16. *In January 2019, the respondent entered into a romantic relationship with Student F, which was supported by Student F's family.*
17. *In April 2019, the respondent accepted an offer to board in Student F's family home.*
18. *In 2019, Student F remained a student at the school and completed her final school year.*

**Teacher's Response**

19. *The respondent has said that during his visits to Student F's family home for dinner parties and board game nights he acted in a professional manner and was never alone with Student F.*
20. *The respondent has described his decision to share his C.V. with Student F as a "blunder". The respondent says he asked Student F to share his C.V. with her mother.*
21. *The respondent has said that no inappropriate relationship existed between himself and Student F and that their relationship only "progressed beyond what would be deemed acceptable by the profession" in January 2019.*
22. *The respondent has that [sic], in 2019, he and Student F agreed to keep their relationship out of public knowledge as much as possible, to preserve the integrity of the profession.*

### **Ngā Kōrero a te Kōmiti – CAC and Respondent Submissions**

9. The CAC submits that the respondent's conduct amounts to serious misconduct. They rely on section 378 of the Act, as well as the Rule 9(1)(e) and/or (k) of the Teaching Council Rules 2016. Alternatively, the CAC submits that the conduct otherwise entitles the Tribunal to exercise its powers under section 404 of the Act.
10. After setting out the applicable principles on serious misconduct, including by reference to aspects of the Teaching Council's Code of Professional Responsibility June 2017 (the Code), the CAC reviewed previous cases of the Tribunal dealing with inappropriate (non-sexual) relationships with current students and inappropriate relationships with former students, as well as further international material and other professional Codes of Conduct. These cases and material will all be discussed later in this decision.
11. The CAC then goes onto to submit that the respondent's conduct amounts to serious misconduct, both when considering his failure to maintain professional boundaries with Student F over the course of 2018, and his conduct of entering into an intimate relationship with Student F at the beginning of 2019.
12. The CAC emphasises that maintaining appropriate boundaries is of fundamental importance in the professional teacher-student relationship and that failure to maintain these boundaries almost inevitably brings discredit to the teaching profession. This is because breaches of a such a basic and well-known fundamental of a teacher's role would

undoubtedly cause members of the public to doubt whether, or to what extent, the profession was observing its obligations. The respondent's conduct while employed at the school, the CAC submits, involved a sustained and conscious blurring of the professional boundaries that characterises the teacher-learner relationship. The CAC's submissions concentrate on the following out of school interactions while the respondent was employed as a teacher at Student F's school:

- (a) The respondent became Facebook "friends" with her and communicated with her over the private Facebook Messenger application.
  - (b) Student F gave the respondent a gift of a ring which he subsequently wore.
  - (c) The respondent also shared his C.V. with Student F and she made comments on it.
13. The CAC submits that, when the above conduct is considered together, throughout 2018 the respondent failed to maintain appropriate teacher-learner boundaries.
14. The CAC also noted that the respondent's relationship with Student F became an intimate one after he had ceased to teach at Student F's school, but while he remained technically employed at the school and while Student F remained a student at the school, which the CAC submits is similar to the case of *CAC v Teacher NZTDT 2011/17*.
15. The CAC does acknowledge that the determination of whether a relationship is inappropriate will be a context-specific inquiry.<sup>1</sup> Here, however, the CAC submitted that the following considerations highlight that the relationship was inappropriate:
- (a) Awareness by the teacher of the appropriateness of the relationship.
  - (b) Age disparity (although the CAC acknowledged this is not as great as other cases).
  - (c) The period of time passed.
  - (d) The emotional/social maturity and/or vulnerability of the former student.
  - (e) Potential harm to Student F.

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<sup>1</sup> As confirmed in *CAC v Teacher C NZTDT 2016/40*, 28 June 2017 at [192].

- (f) Duration of the relationship.
16. In summary, the CAC submits that the power imbalance, and Student F's trust in the respondent as a teacher, would still have been present at the time their intimate relationship began and that, therefore, the Tribunal should conclude that the particulars of the charge are made out, that the conduct breached professional boundaries in accordance with rule 9(1)(e), and brings the teaching profession into disrepute (rule 9(1)(k)).
17. In response, in submissions filed on his behalf, the respondent accepts that his actions were unprofessional and must be denounced by the Tribunal. He also accepts that the authorities referred to by the CAC require a strong response by the Tribunal. The respondent provided statements in support of him from a professional colleague, from Student F, and from Student F's mother. While the latter two submissions refuted there is any abuse of power in the relationship between Student F and the respondent, and/or that the respondent's conduct constitutes misconduct, those points are inconsistent with the acceptances made by the respondent and summarised above. The Tribunal has therefore considered the statements of support filed when reaching its decision on penalty and name suppression, but not as to its finding on the charge itself.
18. The CAC submissions and the respondent's submissions on penalty and name suppression are addressed below.

### **Te Ture - The Law**

19. Section 378 of the Act defines serious misconduct:

***serious misconduct*** means conduct by a teacher –

- (a) that –
- (i) adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or
  - (ii) reflects adversely on the teacher's fitness to be a teacher; or
  - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

20. The test under section 378 is conjunctive<sup>2</sup>, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.
21. The CAC alleges that the respondent's conduct falls within the following sub-rules of Rules 9(1):
- (a) Rule 9(1)(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:
  - (b) Rule 9(1)(k): an act or omission that that brings, or is likely to bring, the teaching profession into disrepute.

### **Kupu Whakataua – Decision**

22. We are satisfied that the respondent's conduct meets the threshold for serious misconduct in terms of section 378 of the Act, and Rules 9(1)(e) and (k).
23. We agree with the CAC that the purpose of rule 9(1)(e) is to highlight the inherent power imbalance between teacher and student.<sup>3</sup> As stated in *CAC v Teacher*,<sup>4</sup> rule 9(1)(e) is prophylactic in nature, and is therefore concerned with the prevention of harm to a student that an inappropriate or intimate relationship with a teacher might cause.
24. In terms of rule 9(1)(k), the High Court in *Collie v Nursing Council of New Zealand*<sup>5</sup> confirmed that the test for bringing the profession into disrepute is an objective one. In making its determination, the Tribunal must ask itself whether reasonable members of the

<sup>2</sup> *Teacher Y and Education Council of Aotearoa New Zealand*, [2018], NZTDT 3141, 27 February 2018 at [64].

<sup>3</sup> Confirmed in *CAC v Teacher C* NZTDT 2016/40, 28 June 2017

<sup>4</sup> *CAC v Teacher* NZTDT 2016/64, 16 February 2017 at [28]

<sup>5</sup> *Collie v Nursing Council of New Zealand*, [2001] NZAR74 at [28] regularly applied by the Tribunal, for example see *CAC v Harrington* NZDT 2016/63, 6 April 2017



public fully informed of the facts of the case could reasonably conclude that the reputation and good standing of the profession has been lowered by the respondent's actions.

25. Turning now to look at whether the respondent's conduct is also of a character or severity that makes the Teaching Council's criteria for reporting serious misconduct, we note that we only need to find contravention of one of the specific rules covered in Rule 9(1) for this limb to be satisfied. The CAC has focussed on Rules 9(1)(e) and (k) in this regard and we are satisfied that the respondent's actions breach both those sub-Rules for the reasons discussed further below.
26. We are also satisfied that, also for the reasons discussed further below, the conduct here breaches the following provisions of the Code of Professional Responsibility guiding the ethics of teachers:<sup>6</sup>
- (a) Clause 1.3: Demonstrate a high standard of professional behaviour and integrity. In doing so, teachers are expected to behave in ways that promote a culture of trust, respect and confidence in them as a teacher and in the profession as a whole. Teachers must demonstrate a strong sense of personal responsibility and accountability. Teachers are also expected to take care to ensure that their actions outside of work do not interfere with their performance as a teacher, affect the trust and confidence others have in them or reflect badly on the integrity or standing of the teaching profession.
  - (b) Clause 2.1: Promote the wellbeing of learners by protecting them from harm. In doing so, teachers are expected to foster trust, respect and cooperation with learners.
  - (c) Clause 2.2: Engage in ethical and professional relationships with learners that respect professional boundaries. In doing so, teachers are required to recognise that they are in a unique position of trust, care, authority and influence over learners, and that the relationship is not equal; there is always an inherent power imbalance. Further, the Code provides that teachers have the duty of care to ensure that the physical and emotional wellbeing of learners is safeguarded, and therefore it is teachers who have the responsibility to ensure and maintain

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<sup>6</sup> *The Code of Professional Responsibility, Examples in Practice* (Education Council, Wellington, June 2017) at 7.

professional boundaries with their learners. Teachers must be careful to manage professional boundaries both within and beyond the learning environment and establish and maintain positive and professional relationships focussed on learners' learning and their wellbeing. They should also take steps to ensure that their learners understand the limits and boundaries of the teacher-learner relationship.

27. The Tribunal notes that the "Examples in Practice" guideline from the Code includes the following examples of behaviour which may be considered inconsistent with the standard of behaviour expected of teachers under the Code:
- (a) Fostering online connections with a learner outside the teaching context (for example, 'friending') or privately meeting with them outside the education setting without a valid context.
  - (b) Encouraging a learner to develop an inappropriate emotional dependency on them as their teacher.
  - (c) Adopting a role with a learner that is inappropriate and beyond the scope of their teaching position, such as treating the learner as a friend.
  - (d) Communicating with learners about very personal and/or sexual matters without a valid context.
  - (e) Engaging in a romantic relationship or having sexual or intimate contact with a learner or with a recent former learner.
28. There have been many past instances of the Tribunal finding serious misconduct in cases of teachers having both intimate, and otherwise inappropriate, relationships with students. In *CAC v Teacher*,<sup>7</sup> a female teacher developed a friendship with a Year 11 male student, which led to her communicating with, and socialising with, the student outside school hours. The Tribunal noted:

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<sup>7</sup> *CAC v Teacher* NZTDT 2016/55 at [29]. See also *CAC v Huggard* NZTDT 2016/33

We have said on a number of occasions that a teacher's professional obligations to his or her students do not end outside the classroom, and it is crucial that teachers maintain and respect the professional boundary placed between them and their charges. The respondent crossed well over this line.

29. In terms of intimate relationships with former students, the Tribunal has made findings of serious misconduct in many such cases. The decision which the Tribunal found most analogous to the present was *CAC v Teacher B*.<sup>8</sup> In that case, the teacher and student became Facebook "friends" and began "liking" each other's posts on that site. Teacher B also began to attend events outside of school in which the student was a participant. At the student's graduation dinner, Teacher B sat with her and the two began running together at the conclusion of the school year. Shortly after finishing his employment with the school, Teacher B entered into a romantic relationship with the student.
30. The Tribunal in that case found that the relationship was inappropriate, taking into account that the relationship began weeks after the conclusion of the teacher-student relationship, that there was a 25 year age gap between the two, the lack of maturity of the student involved and the fact that Teacher B had previously disregarded two warnings about maintaining professional boundaries with students.
31. Further, the Tribunal has considered the timeframes for when relationships between teachers and former students may be appropriate in the case of *CAC v Teacher C*, supra. The Tribunal in that case noted that there is not, and cannot be, a blanket prohibition on intimate relationships between teachers and former students, and that whether the relationship is inappropriate will be a context-specific inquiry:<sup>9</sup>

[we emphasise] that whether a relationship is inappropriate is a context-specific enquiry and not amenable to prescriptive regulation. It is essential that practitioners exercise personal judgement and ask themselves whether their behaviour towards, or interactions with, a student or former student may risk blurring the teacher-student boundary.

32. The Tribunal has also carefully considered the international material put forward by the CAC, as well as relevant principles from the Codes of Conduct of other professions.

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<sup>8</sup> *CAC v Teacher B* NZTDT 2018-10, 8 July 2019.

<sup>9</sup> *CAC v Teacher C* at [192]

33. Bearing in mind all that material, it is the Tribunal's view that the respondent has engaged in conduct which breached professional boundaries, and cumulatively amounts to serious misconduct, when he:
- (a) In 2018:
    - (i) Befriended Student F on Facebook.
    - (ii) Wore a ring given to him by Student F.
    - (iii) Messaged Student F while she was still a student.
    - (iv) Shared his CV with Student F for her to review.
  - (b) In January 2019, after Student F had left school but while the respondent was technically still employed by the school, began an intimate relationship with her.
34. The Tribunal recognises that the age gap between the respondent and Student F was not as great as in some of the other cases that have come before it. It also acknowledges that Student F and the respondent remain a couple, and that the respondent was never directly Student F's teacher, although he did step in to assist her with her classical studies work at one point. The Tribunal also notes statements put to it in support of the respondent suggesting that Student F was mature for her age, intelligent, and that the community in which she and the respondent lived, and in which he taught, was a relatively small and closeknit one, where he shared common interests with Student F and with her family.
35. Nonetheless, the Tribunal remains of the view that there is an imbalance in the relationship between Student F and the respondent, and that the actions he took as outlined above, crossed the boundary as to what is appropriate. The Tribunal sees it as significant that the respondent was warned by the Principal of the school about concerns brought to her attention about his relationship with Student F, and that he underwent training at the school about professional boundaries. Despite those concerns being raised with him, and despite the respondent then expressly drawing back from Student F in a Facebook message (telling her, *inter alia*, "[we] are going to have to watch our interactions in school, meaning no contact apart from when necessary cordial"), the respondent then went on to enter into an intimate relationship with Student F a month or so after she had left school and while he was technically still employed by the school. He did this, despite

acknowledging in the earlier email to Student F that he had “*made several errors in judgment recently*”. There was very little break in the time between Student F leaving the school, and the intimate relationship commencing.

36. Further, it is to those alluded to “errors in judgment” that the Tribunal turns to when considering the conduct of the respondent while Student F was still a student. There are suggestions of grooming evident, in the Tribunal’s view, in the respondent befriending Student F on Facebook, accepting a ring from her, communicating with her by Facebook Messenger, and sharing his C.V. with her. Laying the groundwork for a relationship in this way then culminated in that relationship beginning a very short time after Student F left school.
37. The Tribunal has no reason to doubt the statements of Student F, her mother and of the Principal that Student F is mature for her age. However, as noted by the Court of Appeal in *Churchward v R*,<sup>10</sup> and applied by the Tribunal in *CAC v Teacher C*, supra, research shows that there are age-related neurological differences between young people and adults which mean that young persons may be more vulnerable to negative influences and outside pressures, and may be more impulsive than adults. At the time the inappropriate interactions began, Student F was just 16, and turned 17 at the time the intimate relationship commenced. Those neurological differences between young people and adults are precisely the reason that these types of ethical boundaries between student and teacher exist, as is the inability of a young person to objectively assess their risk of harm in a situation of imbalance of power.
38. Finally, the Tribunal considers that, bearing in mind the above points, reasonable members of the public fully informed of the facts of the case would reasonably conclude that the reputation and good standing of the profession has been lowered by the respondent's actions.

### **Whiu - Penalty**

39. Having determined that this case is one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

#### **404 Powers of Disciplinary Tribunal**

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<sup>10</sup> *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 at [77].

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
  - (b) *censure the teacher:*
  - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
  - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
  - (e) *annotate the register or the list of authorised persons in a specified manner:*
  - (f) *impose a fine on the teacher not exceeding \$3,000:*
  - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
  - (h) *require any party to the hearing to pay costs to any other party:*
  - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
  - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

40. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.<sup>11</sup> We refer to the decisions of the superior

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<sup>11</sup> CAC v McMillan, NZTDT 2016/52.

Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.<sup>12</sup>

41. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers<sup>13</sup>:
- (a) Protecting the public;
  - (b) Setting the standards for the profession;
  - (c) Punishment;
  - (d) Rehabilitation;
  - (e) Consistency;
  - (f) The range of sentencing options;
  - (g) Least restrictive;
  - (h) Fair, reasonable and proportionate.
42. We do not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
43. The CAC, after reviewing what it submitted are analogous cases, submitted that a teacher's actions in pursuing a sexual or intimate relationship with a current or recent former student amounts to a severe breach of, and lack of appreciation for, the professional boundaries between them and their students. The CAC says such behaviour has the potential to not only lower the standing of the teaching profession within the community, but also to eradicate the trust that families and whānau place in teachers to act in the best interests of their young persons and promote their wellbeing, and that this behaviour also affects the way in which students view teachers, influencing the learning environment as a whole.

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<sup>12</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

<sup>13</sup> Above n 16 at [40] – [62]

44. The CAC submits that this type of conduct is not the conduct of a person who is fit to teach and therefore the appropriate penalty is cancellation of the respondent's registration. The CAC also seeks a condition under section 404(1)(j) of the Act that the Teaching Council impose a condition which will come into force if and when the respondent is issued a practising certificate in the future and will remain in effect for five years, that he provide a copy of this decision to future education employers.
45. The respondent, supported by Student F, her mother, and a colleague, submits that an appropriate remedy would be suspension rather than deregistration taking into account that:
- (a) The respondent took active steps to leave the teaching profession before commencing a relationship with Student F. It is said that, while his actions were insufficient to meet his professional obligations, they demonstrate a proper motivation of trying to comply with his professional obligations (and demonstrated by his refusal of a subsequent offer of employment as a teacher).
  - (b) The respondent's actions, while unprofessional, were not criminal or otherwise unlawful.
46. The Tribunal is mindful that the respondent's actions, while demonstrative of lapsed judgement, were not those of an ongoing predator. He does remain in a relationship with Student F, and he has stated he does not intend to return to the teaching profession and has not accepted any further offers to teach.
47. Considering the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:
- (a) A censure under section 404(1)(b) of the Act;
  - (b) Suspension of the respondent's practising certificate for a period of 12 months from the date of this decision under section 404(1)(d) of the Act;
  - (c) Under section 404(1)(c) of the Act the following conditions are to be placed on the respondent's practising certificate:



- (i) If the respondent returns to teaching, the respondent must enrol in a professional development course on maintaining boundaries, and a completion certificate sent to the Manager of Professional Responsibility of the Teaching Council;
  - (ii) The respondent must tell his current and prospective future employer of the decision for a period of three years from the date of the full decision and provide them with a copy of the full decision with evidence to the Teaching Council of this disclosure.
- (d) Pursuant to section 404(1)(e) of the Act, annotation of all the above for a period of three years following the date of the full decision.

#### **Utu Whakaea – Costs**

48. The CAC submits that a 50% contribution to the CAC's overall costs is appropriate and will file a memorandum in due course.
49. The Tribunal sees no reason to depart from the usual principles and therefore orders 40% costs in favour of the CAC.
50. The CAC is to file and serve a copy of its cost schedule. Under section 404(1)(h) the respondent is ordered to pay 40% of the costs shown in the CAC schedule unless the respondent files and serves submissions as to costs within 10 days of the date the CAC has sent the cost schedule. If these submissions are received the Tribunal delegates to the Deputy Chair the task of fixing the amount of the CAC's costs.
51. The respondent is also ordered to pay 40% of the Tribunal's costs. This matter was dealt with on the papers and the schedule submitted by the Tribunal shows \$1,145.00 of total costs. The respondent is to pay \$458.00 pursuant to section 404(1)(i). Any objection should be filed within 10 days of receipt of the decision and referred to the Deputy Chair.

#### **He Rāhui tuku panui – Non-publication**

52. The respondent seeks permanent name suppression for himself, on the basis, in summary, that:

- (a) The relationship between Student F and the respondent is continuing and if name suppression is extended to Student F, without extending the same to the respondent, it is unlikely to be effective given their close ongoing association. There will be negative impact on Student F and her family if their identity is not suppressed.
  - (b) The respondent does not intend to teach again but wishes to pursue a different career path of nursing. Name suppression would allow him to avoid unnecessary complications in the application process for his nursing career.
53. The CAC opposes name suppression. It says the publication of disciplinary proceedings will often have some impact or potential impact on respondents and their families, and this alone is unlikely to be sufficient to displace the public interest in publication. The respondent has not provided any evidence or pointed to any particular vulnerability regarding Student F to demonstrate that failing to suppress the respondent's own name will impact in any concrete way on Student F and her family. Equally, there is no evidence to show the respondent's nursing degree would be affected by publication. The CAC submits this is a serious breach and there is public interest in favour of allowing publication of the respondent's name.
54. The CAC further submits that the appropriate approach in this case is not to suppress the respondent's name but rather to suppress Student F's name.
55. The application of the principle of open justice to proceedings before the Tribunal is contained in section 405(3) of the Act. The primary purpose behind open justice in a disciplinary context is the maintenance of public confidence in the profession concerned through the transparent administration of the law.<sup>14</sup>
56. The Tribunal's powers to prohibit publication is found in section 405(6) of the Act. It can only make one of the non-publication orders in (a) to (c) of section 405(6) if it is of the opinion that it is "proper" to do so having regard to the interests of any person, including but not limited to, the privacy of the complainant and to the public interest.

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<sup>14</sup> *CAC v Teacher* NZTDT 2016/27 at [66] [citing *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

57. The Tribunal has adopted a two-step approach to applications for non-publication orders. First, it considers whether it is proper to make a non-publication order having regard to the various interests identified in section 405(6); and, secondly, it decides whether to exercise its discretion to make the orders sought.<sup>15</sup> Bare assertions will not suffice for displacing the principle of open justice and nor will the “ordinary” hardships or expected consequences of a proceeding involving allegations of serious professional misconduct.<sup>16</sup>
58. The Tribunal does not consider there to be a basis to displace the presumption of open justice by suppressing the respondent’s identity. There is no evidence before the Tribunal of negative impact on the respondent, or people connected to him, beyond that which ordinarily exists in proceedings of this kind. The respondent has not brought evidence to demonstrate that publication of his name will affect his proposed nursing career path and, indeed, disclosure of an adverse disciplinary decision of another professional body may well be a factor the respondent is required to disclose to a future professional body in any case.
59. The Tribunal does consider, however, that a balance between ensuring public protection and open justice, while still protecting Student F as much as possible, can be struck by suppressing the name of Student F and all members of her family. While this will not prevent identification of her, and of the respondent, from those who are aware of their relationship, it will limit the extent by which her identity is generally known, including in the general media.
60. The Tribunal therefore declines the respondent’s application for permanent name suppression but orders suppression of the identity of Student F and all members of her family.

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<sup>15</sup> Ibid at [61].

<sup>16</sup> *Y v Attorney-General* [2016] NZCA 474 citing *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 approved by the Supreme Court declining leave to appeal in *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4.

*R. E. Schmidt-McCleave*

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Rachael Schmidt-McCleave  
Deputy Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by the teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).