

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2019-84

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **TEACHER Q**
Respondent

DECISION OF THE TRIBUNAL ON LIABILITY AND PUBLICATION

Tribunal: T J Mackenzie (Deputy-Chair)
S Walker (Member)
W Flavell (Member)

Counsel: E Mok for the CAC
D King for the respondent

Hearing: On the papers, 23 March 2021

Decision 6 May 2021

Summary of our findings

1. We do not find the charge proven.
2. Wide non publication orders are made as per paragraphs [65] – [68].
3. Costs submissions may be filed (refer paragraph [63] – [68]).

Introduction

4. Teacher Q is charged as follows:
 1. The CAC charges that Teacher Q, registered teacher, of (City):
 - a. In the last week of June 2015 and the first two weeks of July 2015, engaged in an intimate relationship of a sexual nature with a female former student, six months after she had left school; and/or
 - b. Engaged in behaviour which shows a lack of regard for maintenance of proper professional boundaries between himself and students. In particular:
 - i. On an unspecified date in 2016 or 2017, he was found alone in an office with a female student, with the door closed;
 - ii. On unspecified dates between 2015 and 2017, he liked a female student's photos on Facebook; and/or
 - iii. In late 2018, he engaged in Facebook messaging with a female Year 13 student who had been identified as "at risk" by the school; and/or
 - c. Between July 2017 and April 2018, following the end of a personal relationship with a staff member who reported to him, engaged in unprofessional conduct towards that staff member by:
 - i. undermining her in a professional context; and/or
 - ii. failing to notify or consult her before her position was advertised with increased hours.
 2. The conduct alleged in paragraph 1, when considered cumulatively, amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and rules 9(1)(e) and/or (o) of the Education Council Rules 2016 (as drafted prior to amendments on 18 May 2018), and/or 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 Education Act 1989.

Facts

5. The Agreed Summary of Facts provides as follows:

Introduction

1. Teacher Q is a registered teacher who holds a full practising certificate.
2. Teacher Q is not currently working in the teaching profession.
3. At all material times, Teacher Q was employed as Head of Arts at (the school) in the City. The school is a co-educational secondary school which teaches students in Years 9 to 13.

Relationship with former student

4. Between the last week of June 2015 and the last two weeks of July 2015, Teacher Q engaged in a personal relationship with one of his former students, (Student B).
5. Student B was a student at the school from 2 February 2010 until 10 December 2014. Teacher Q taught Student B academic music in 2013 when she was a Year 12 student.
6. Teacher Q became Facebook friends with Student B on 4 December 2014 in the last week of school.
7. Around the time that Student B graduated from the school, Teacher Q and Student B began exchanging Facebook messages, including at around 10.30pm at night. On one occasion, Teacher Q's flatmate, another teacher at the school, queried whether this was appropriate. In response, Teacher Q said that he was helping Student B to deal with a crisis or issue (or words to that effect).
8. Following Student B's graduation from the school, Student B and Teacher Q came into contact in May 2015 through a choir group which was not connected to the school. The two became friends, and engaged in a personal relationship for around three weeks.
9. According to Teacher Q, his relationship with Student B was sexual in nature, but the two did not have sexual intercourse.
10. The relationship ended after Student B moved to [REDACTED] in mid-2015. Teacher Q and Student B remained in touch after Student B moved overseas, and Teacher Q spoke on the phone to Student B on two occasions.
11. On one occasion in 2015, during a professional development session, Teacher Q told another teacher at the school that he had been on the phone to a student in [REDACTED] counselling her because she wanted to harm herself.

Lack of professional boundaries with students

12. In or around 2015, Teacher Q "liked" photos of a Year 11 female student at the school, Student A (Student A), on Facebook, using his personal Facebook page. At the time, Student A was a student at the school and was being taught by Teacher Q. Teacher Q was friends with Student A's parents, and the photos he "liked" on Facebook were of Student A and her mother together appearing in a [REDACTED] together, and a group photo of Student A's [REDACTED] showing a group of students, one of whom was Student A. In or around 2018, Teacher Q deleted many of his social media posts, so screenshots of this social media activity are not available.
13. On one occasion in or around 2016, when Student A was a Year 12 student, Teacher Q had a meeting with Student A alone in his school office with the door closed. The meeting was interrupted by another teacher, who had sought to discuss something with Teacher Q. At the time of the meeting, a piece of paper was taped over the top of the window pane on the office door, which obscured the view into the office from outside the door. There were, however, windows on the other side of the office. Photos of the office are attached at Tab 1. According to Teacher Q, Student A had visited his office in a distressed state and had asked to talk to him.
14. Teacher Q became Facebook friends with Student A in 2017 after she became an [REDACTED] and when she was in Year 13. Teacher Q said Facebook was how he kept in touch with the [REDACTED] as a group.
15. A few days before graduation in 2018, a Year 13 female student, Student C (Student C) engaged in a conversation via Facebook messenger with Teacher Q, which was social in nature. According to Teacher Q, Student C inquired about Teacher Q's wellbeing after he had suddenly left the school, and he thanked her for her concern.
16. Student C was in a [REDACTED] group tutored by Teacher Q in 2018. Student C referred to her conversation with Teacher Q in a separate text conversation with another student, Student A, which was as follows:

Student A: Student C: Student A: Student C:

You're talking to him [Teacher Q]?

Yeah I sent him [Teacher Q] a message day before grad Did he [Teacher Q] reply?

Yeah he [Teacher Q] did, we had a wee conversation
17. A screenshot of these messages is attached to this summary of facts at Tab 2.
18. Another teacher at the school subsequently raised concerns about Teacher Q messaging Student C with the Principal of the school, and identified her as a student at risk. The teacher identified that Student C was at risk because of her emotional nature.

Failure to maintain professional relationship with staff member

19. From 20 April 2015, Ms F was employed at the school on successive fixed term employment agreements as the [REDACTED].
20. Ms F reported to Teacher Q, who was [REDACTED]. Teacher Q was Ms F's Line Manager, and her contract stated that her workload was to come directly from Teacher Q, and he was required to either verbally allocate tasks or send Ms F work via email. Teacher Q was responsible for reviewing Ms F's job performance. When Ms F filled out self-reviews for the first two years of her employment at the school, she sent these to Teacher Q.
21. Teacher Q and Ms F socialised together outside of school, including as part of a group with other school staff. On one occasion in Term 4 of 2015, Teacher Q and Ms F kissed in a taxi during a night out. The pair subsequently engaged in a casual sexual relationship, which was "on and off" in nature.
22. In the second half of 2017, there was a breakdown in Teacher Q and Ms F's working and personal relationship, in part because Teacher Q had entered into a relationship with another staff member at the school. This resulted in communication issues between the pair, which Teacher Q reported to a Deputy Principal and the Principal. Teacher Q stopped talking to Ms F, and began allocating Ms F less work, to the point where she had to seek out work from other [REDACTED]. Ms F also stopped speaking with Teacher Q. Teacher Q did not inform the Principal or Deputy Principal about the personal relationship between himself and Ms F, or the breakdown in that relationship, when he reported these communication issues.
23. Around this time, Teacher Q made negative comments about Ms F to several other school staff members, including the Deputy Principal. This included comments about Ms F's drinking and her mental state. On one occasion, Teacher Q asked another teacher if she knew anyone who could fill Ms F's position. This occurred before Ms F's position was re-advertised (as detailed below). He told the teacher that Ms F was "crazy" or "mentally unstable", or words to that effect. On other occasions in Term 2 or Term 3 of 2017, Teacher Q raised concerns about Ms F's job performance with the Deputy Principal, and informed her that he was not happy with Ms F being in the role of [REDACTED] and that things needed to change.
24. In November 2017, Ms F's job position was reviewed and advertised online with increased hours. This occurred without Ms F first being notified or consulted about this by Teacher Q. The Principal had requested that Teacher Q and the Deputy Principal inform Ms F about the review of her position between them, but this did not occur before the position was advertised. Ms F was upset after finding out about the advertisement of her position from the school receptionist the following day.
25. The revised job description was developed with input from Teacher Q. The revised job description did not materially differ from Ms F's original job description, with the exception of the increase in hours.

26. Ms F applied for the advertised role, and was shortlisted. Teacher Q was meant to be on the interview panel. The recruitment process was ultimately paused before interviews were conducted due to concerns about the process that had been followed regarding the revision of the job description. Ms F was offered her position for the following year (i.e. for 2018) by the Principal.
27. In early 2018, Ms F underwent a formal appraisal process (the first during her time at the school). This was initiated in part due to the concerns expressed by Teacher Q about the communication issues he was having with Ms F. During the appraisal, Ms F told the Deputy Principal that the "low" point of her role had been the issues in her and Teacher Q's working relationship.
28. On 3 April 2018, Ms F provided her resignation letter to the school, and raised various concerns regarding Teacher Q's treatment of her, and detailing the fact of their personal relationship.
29. At no stage between mid-2017 and Ms F's resignation from the school did Teacher Q inform the Principal or the Deputy Principal at the school of his personal relationship with Ms F, or the fact that this had ended badly.

School investigation

30. In April 2018, staff at the school wrote a letter to the Principal and the Board of Trustees raising concerns about Teacher Q's conduct with respect to Ms F and students at the school.
31. The school conducted an investigation into the allegations concerning Teacher Q's conduct.
32. On 23 August 2018, Teacher Q was interviewed by the school. During the interview, Teacher Q acknowledged engaging in a short relationship with Student B after she had left the school, but said that nothing had happened when she was a student. He also acknowledged "liking" Student A's photos on Facebook, but denied any inappropriate conduct.
33. On 30 August 2018, the Principal of the school lodged a mandatory report with the Teaching Council regarding Teacher Q. Further reports were made to the Teaching Council on 10 September 2018 and in December 2018.
34. On 25 October 2018, Teacher Q was dismissed from the school following the conclusion of the school's investigation process.

Teacher's response

35. On 11 September 2018, a letter provided to the Teaching Council on behalf of Teacher Q acknowledged that Teacher Q could have exercised "better judgement" in regards to his relationship with Student B. The letter further stated that, while a brief relationship occurred after Student B had left the school, nothing inappropriate occurred between Teacher Q and Student B while she was a student at the school and Teacher Q did not teach Student B or otherwise have any extracurricular contact with her in 2014.
36. On 5 December 2018, in a letter to the Teaching Council, Teacher Q's representative stated the following regarding Student A being alone with

Teacher Q in the office: "Whilst being with a student one on one is not best practice, Student A was in a distressed state and had asked to talk to Teacher Q".

37. In an email to the Council investigator on 22 February 2019, Teacher Q denied having a relationship with Ms F but accepted that he and Ms F had kissed on one occasion on a night out. He stated that Ms F had completed her teacher training and registration and had commenced employment as a teacher at another school, while on sick leave from the school. In a further email dated 1 May 2019, Teacher Q's representative stated that, as a fixed term employee, Ms F "had no expectation of on-going employment and left her employment having secured and commenced employment" at another school.
38. On 8 March 2019, Teacher Q's representative stated the following regarding the allegation about Teacher Q's conduct towards Student C:

As the screenshot states Student C messaged [REDACTED]. They were and are not Facebook friends. She enquired into his wellbeing after he suddenly "left" the school. He thanked her for her concern. They have not had any contact other than that.

Issues 1 – Inappropriate Relationship

6. Given the conjunctive test for serious misconduct, we begin by examining the second aspect of the charge – whether the respondent's conduct was of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.
7. The applicable criteria for this first allegation is the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004. The CAC cites two of these rules as having been infringed.
8. First is rule 9(1)(e) which prohibits:

being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher:
9. The approach to the connection aspect of this rule ("as a result of") has been discussed in several previous cases by this Tribunal. In *CAC v [REDACTED]* the Tribunal held that a purposive approach to the rule should be taken. The Tribunal considered that being in contact "as a result of (teaching)" would be approached thus:

...simply requiring that there be some form of causal nexus between the teacher-student relationship and the subsequent contact for the rule to be met.¹

¹ *CAC v [REDACTED]* (at [43]).

10. Such a nexus was found in [REDACTED]. For context, it is helpful to consider the reasoning of the Tribunal when finding the required connection in that case:²

This is because we accept that there was a nexus between the respondent and Student S's professional relationship and the subsequent personal one. While it would be speculative to find that Student S joined the Kapa Haka group because Mr [REDACTED] was associated with it, we accept, based on the agreed summary of facts, that there was an association between the school and the Kapa Haka group, which brought them into contact. It is a logical inference that Mr [REDACTED]'s recent association with Student S, as her teacher, was a reason why the relationship developed.

(Our emphasis)

11. In *CAC v Teacher B*, the required nexus was easily found.³ This was on the basis of the intensity and duration of personal contact between the parties, and that the intimate relationship began virtually straight after the student left the school.
12. In *CAC v Teacher L*, L had been the student's teacher for the students last two years of high school, and had engaged in intimate messaging with her very shortly after she had graduated.⁴ The Tribunal found that the required nexus existed.⁵
13. In *CAC v Teacher C*, (a decision prior to [REDACTED]), the Tribunal concluded that the relationship had the requisite connection.⁶ The Tribunal in that case had the benefit of hearing evidence from both the respondent teacher and the student concerned. The student had described the teacher as a great mentor, and had asked his mother to arrange her as a support person (whilst he was in prison, which was very shortly after the teaching relationship).⁷
14. In the present case the respondent takes issue with whether the causal nexus has been established. The respondent says that any such finding would be to make an assumption that is not founded in the evidence.
15. The CAC says that an inference can be drawn that the recent association from the teaching relationship is why the relationship developed into an intimate one (which is then said to be an inappropriate relationship, as the next step in considering this rule).

² At [45].

³ *CAC v Teacher B* NZTDT 2018/10 (at [6]).

⁴ *CAC v Teacher L* NZTDT 2018/23.

⁵ At [14].

⁶ *CAC v Teacher C* NZTDT 2016/40.

⁷ At [162].

16. As this proceeding was advanced on an agreed factual basis, the Tribunal must of course consider those agreed facts as against the applicable principles.

17. In doing so, we particularly note paragraph [8] of the summary of facts:

Following Student B's graduation from the school, Student B and Teacher Q came into contact in May 2015 through a [REDACTED] group which was not connected to the school. The two became friends, and engaged in a personal relationship for around three weeks.

(Our emphasis)

18. The Tribunal has closely considered this issue and determined that, on the balance of probabilities, the required causal nexus has not been proven. We consider that there is not enough evidence for a reasonable inference to be drawn that the later contact had a causal nexus with the teaching relationship at all. It may have, or it may not have. We do not know and cannot guess. The reasons for this are as follows.

19. We have very little evidence of the nature of the actual teaching relationship. We know that the respondent taught the student [REDACTED] in her Year 12. But this was some 18 months prior to the intimate relationship. And we do not know the nature of that teaching and of their relationship during that first period – how close it was, how many other students were taught, how frequent the contact was, the level of private contact if any, and what communication would take place. We can take very little from the previous teaching that occurred.

20. There is then no evidence of any interaction at all during Year 13. We cannot assume there was a relationship or any contact during that year.

21. However, we do then have the Facebook messages around the time the student graduated. But, we do not know what was said, who instigated the messaging, or how many messages there even were. Despite these absences, we appear to be asked to infer that because an unknown number of messages occurred “at around 10:30 pm at night” that there is likely something more in them. There might be, or there might not be. Without more evidence we do not know and cannot guess. Both parties could be night owls for instance and simply discussing future [REDACTED] education. Or, the respondent might have been cultivating an intimate relationship. We do not know because we do not have any further evidence.

22. Notably, there is then no other evidence of any contact until the parties meet again in May 2015.

23. We then have paragraph [8] as set out above. The wording of paragraph [8], which we must follow, is that they then *came into contact through this group*, which “was not connected to the school”.
24. Immediately this reads that the two were not in prior contact, if they “came into contact”. Further, the group was not connected to the school.
25. The two “then became friends”. “Becoming” friends indicates can be read as an absence of pre-existing relationship. It detracts from a finding that the intimate relationship had a causal nexus with the teaching relationship.
26. Each case considering this issue will of course always be based on different facts. However when considering the cases cited above what stands out is that there is a reasonable evidential basis in those cases for concluding that the causal nexus exists. In those cases the Tribunal has had evidence that made it fairly obvious that the relationship came about, at least in part, as a result of the teaching relationship.
27. Here, it would be speculation to make that finding, and not a reasonable inference on facts. There are gaps in the evidence. On the evidential basis we have, the CAC cannot prove the required nexus.
28. The CAC advances rule 9(1)(o) as an alternative pathway to serious misconduct. This rule prohibits:

any act or omission that brings, or is likely to bring, discredit to the profession.
29. The Tribunal has previously declined to accept the validity of this approach.⁸ We take the same position. The majority of the rules clearly cater for specific situations. Rule 9(1)(o) then exists because not every possible situation can be catered for with even the deepest of drafting foresight. Rule 9(1)(o) does not exist however to create a lower statutory threshold for conduct that has already been given its own particular statutory threshold. To apply it in such a way creates two different tests for the same conduct. We do not consider that it is appropriate to read the rules so widely.

⁸ 2018/41, *Teacher B*.

Issue B – Lack of professional boundaries with students

Facebook photos

30. Paragraph 12 recites the respondent “liking” photos of a Year 11 female student at the school. The student was in the respondent’s class.
31. If the matter ceased there, there could be cause for concern. However there is more to it. The respondent was also friends with the students’ parents. And, the photos were not just of the student, but also of her mother, and they were at a [REDACTED]. Another was of a [REDACTED] that included the student. It will be recalled that the respondent was a [REDACTED] teacher.
32. The difficulty here is that we do not know whether the photos were on the students Facebook profile, or whether she even had one, or on her mother’s profile (if she had one), or indeed on somebody else’s. They could have for instance been on a publicly accessible [REDACTED] group’s page or the like. We do not know if the student even had a Facebook profile, such that she might be alerted to the responding “liking” a photo that she was “tagged” in (and we do not even know if the student was “tagged” in the photo because to be tagged would require a Facebook profile, which again we do not know about).
33. Similarly, we do not know if the respondent was “Facebook friends” with the mother (who he was personally friends with) and simply liked one of her photos, which had the student in it. All we know is that the respondent has liked photos and the student is present in them.
34. If it could be proven that the respondent was hunting through Facebook and liking photos of a Year 11 female student, then this may well give rise to a conduct issue (or at least inform a conduct issue, along with other behaviour). But on the evidence before us we cannot make such findings. The respondent could well have simply liked a photo of a friend of his, the student’s mother, that the student also happened to be in.
35. All of the same can be said for the photo of a [REDACTED] that the student was in.
36. We do not consider that this issue, on the limited factual basis we have, provides us with anything material to consider against conduct rules.

Meeting in office

37. The facts for this issue are set out at [13] – [14] of the summary of facts above.
38. The CAC says that this shows a lack of professional judgment and regard for maintaining appropriate boundaries with students, and had the potential to blur the lines of a teacher/student relationship. The CAC accepts that this issue alone is not sufficient enough to breach applicable Teaching Council reporting rules. As with the photo issue, it is put on a cumulative basis.
39. This issue again has difficulties with a lack of any further evidence. It is entirely speculative for this Tribunal to determine if there was or wasn't something inappropriate occurring, or that the meeting in and of itself was inappropriate. We are told that the meeting was visible through windows, although one was covered. We do not know who covered that or when. We do not know what the discussion was about, apart from the respondent's assertion that the student was in a distressed state. There is nothing to counter that. We do not know if this was common, either between these two parties, or generally with others in the school. We do not know for instance if the respondent had been asked not to do this, or teachers generally had been asked not to do this.
40. Without further evidence, we would not be in a position to make any comment on this meeting other than noting some teachers would avoid it, particularly male teachers with female students. We cannot elevate it higher than that without further evidence.

Facebook message from student

41. This is another plank of the minor matters advanced, but is particularly curious given the facts of it. A few days before graduation, a Year 13 student, who was in a [REDACTED] group tutored by the respondent, inquired about his wellbeing after he had suddenly left the school. He "thanked her for her concern".
42. We appear to be invited throughout these allegations to infer that the use of Facebook in and of itself carries some overtones. But we have no evidence to determine that one way or the other. We do not know if there was for instance an express school rule about this. We do not know if it was a common method of communication between students and teachers.

43. In any event the evidence on this issue is that a student enquired after the respondent's wellbeing by messaging him. This was not instigated by the respondent. He thanked her for her concern. Putting "Facebook" aside, if this conversation occurred in the same way, between the same two people, in person, we do not see how anything could be made of it. We do not think we can make any of the suggested findings that would place this matter in the realm of conduct rules.

Conduct in respect of a colleague

44. The facts are set out in the summary of facts from [19] – [29], as above.
45. The evidence is that the respondent "made negative comments about (name) to other staff members, including the Deputy Principal". This included comments about her "drinking and her mental state."
46. On another occasion, the respondent asked another teacher if she knew anyone that could fill the role. He said that the complainant was "crazy" or "mentally unstable", or words to that effect.
47. Taking these two issues first. The respondent was the head of the [REDACTED] department. The complainant was an employed administrator within it. They had had a brief relationship, which had ended, seemingly badly. Communication had broken down.
48. The CAC invites a finding that the actions set out in the summary of facts were unprofessional, and intended to undermine and get rid of the complainant. If that finding could be made, then the potential rule breaches may well have occurred.
49. The difficulty however is that what we can make of what occurred depends on whether they had any basis or not. And unfortunately on the limited evidence we have, we do not know that. It is possible for instance that the respondent as head of department may actually have had genuine concerns. He had duties to his employer and his students. If the complainant actually presented with mental health or alcohol issues (which we do not know), it may have been incumbent on the respondent to raise them.
50. That could be seen as charitable. But likewise concluding that the actions of the respondent were taken out of malice could be seen as harsh. Again the difficulty is that we don't know if there was a basis at all for these issues to be raised. We are essentially asked to assume that there was not. Without further evidence as to the basis of the respondent's actions we cannot guess.

51. Likewise we have very little context as to how the respondent made the statements that he made. We do not know for instance if he gleefully blurted them out to random staff members, or if he discreetly confided in some and sought their advice. The evidence we are presented with gives us no insight into this either way.
52. The same can be said for discussions with the Deputy Principal that the respondent was not happy with the complainant in the role. This may have come out of spite. Or it may have come out of managerial concern with an employee's performance. Again we do not know. We do not think that it is a safe and reasonable inference on the limited evidence we have that the behaviour was intended to undermine the respondent.
53. Moving through the facts. The fixed term position was "reviewed and advertised online with increased hours". The complainant was not notified or consulted about this. The Deputy Principal and the respondent had been asked to advise her about this occurring, but both had failed to.
54. Given this was fixed term employment, it is incorrect to describe the advertised position in the summary of facts as the "complainant's job position." A fixed term role has a finite life span. Any further fixed term role that the employer advertises will be a new employment relationship.
55. We again have an absence of further context to consider this aspect. We do not know the duration of each fixed term employment agreement, or how many had occurred during the complainant's tenure. We do not know who drafted the advertisement and who placed it. We do not know if this was the respondent, or whether he had anything to do with it. Overall, we do not know if there is a basis for the job advertisement to be seen as an act to upset the employee, or whether it was an innocuous act of advertising a fixed term role.
56. We are told that the respondent was asked to advise the complainant, and didn't. Nor however did the Deputy Principal. That discrete issue on its own we do not see as a breach of any applicable conduct requirements.
57. The CAC refers to the decision of *CAC v Teacher* and *CAC v Teacher B* as examples of unprofessional conduct towards a fellow teacher.⁹ These are helpful to consider.
58. In *CAC v Teacher*, the teacher had involved students in challenging a decision of the principal (to not enter the teacher in a restraint course), sent a report

⁹ *CAC v Teacher* NZTDT 2014-18; *CAC v Teacher B* NZTDT 2017/8.

to the board criticising the principal and board, and sent numerous derogatory and discourteous emails to the principal late at night, expecting a response. This was held to be misconduct.

59. In *Teacher B*, the teacher (who was also the school principal) made unwanted visits to a younger female teacher's house late at night after drinking. The teacher had told the principal not to. A number of text messages and late night phone call attempts were also made. In one of these texts the respondent advised the teacher that he and his wife were splitting up. The respondent and her child often had to pretend not to be home when the respondent arrived at their house late at night. The Tribunal found that this was serious misconduct.
60. Each case is of course different. But these cases go some way to highlighting the difficulty that the present case presents. Whilst the above cases demonstrate easily identifiable inappropriate conduct, the present case does not. We are asked to guess why these actions occurred and are not able to do so.

Conclusion and costs

61. The above findings are not a criticism of the CAC for bringing this case. We appreciate that there was a reluctance of at least some of the parties to be involved and that the summary of facts probably represents compromises made in the face of otherwise trying to put a difficult hearing together.
62. Nor should this decision be seen as a view that cumulative concerns cannot add up to misconduct or serious misconduct findings, in the right situation.
63. As for costs, our preliminary view is that costs should lie where they fall. Although the respondent has not been held liable on any of the allegations, we consider that the respondent may have brought this proceeding on his own head by showing poor judgment in his professional responsibilities.
64. If either party wishes to seek costs, submissions should be filed and served within ten working days of receipt of this decision. In the case of competing applications for costs, any respective responses can be filed and served within a further ten working days.

Publication orders

65. We agree with the CAC that the names of all witnesses mentioned in the summary of facts should be prohibited from publication.
66. The respondent seeks an order prohibiting his name from publication. We agree with the respondent that there is a risk that naming him will undermine the order made above. This decision, and particularly the summary of facts within it, contains numerous specific factual issues. Naming the respondent could lead to those unravelling and witnesses being identified. We do not think it can be said that the witnesses should be suppressed but the respondent shouldn't.
67. The school also seeks an order prohibiting publication of its name. We consider that identifying the school would risk identifying and undermining the above order, and accordingly will grant that order.
68. There are therefore orders under s 405 of the Act prohibiting from publication the names of all witnesses, any other person named in this decision, the respondent, the school involved, and the city that the school is found in (as an extra safeguard given the specific incidents in the facts).

Dated 6 May 2021



T J Mackenzie

Deputy Chair

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

1. This decision may be appealed by 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).