

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER THE Education Act 1989

IN THE MATTER a charge referred by the Complaints Assessment Committee

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND [REDACTED]
[NAME PERMANENTLY SUPPRESSED –
TEACHER X], Teacher (Registration Number
[REDACTED])
Respondent

DECISION OF THE TRIBUNAL

Hearing: 23 February 2021

Tribunal: Jo Hughson (Deputy Chairperson),
Rose McInerney, Nikki Parsons
(Members)

Counsel: Ms R Kent for the Complaints Assessment
Committee
Ms F Renton, NZPPTA Te Wehengarua
for the Respondent
Mr R Harrison for the School [in respect of
application for non-publication order]

Decision: 29 March 2021

Introduction

- [1] The Respondent fully registered as a teacher in December 2013¹. At the time of the relevant conduct, she worked as a teacher at a secondary school in the lower North Island (the School). She has not held a practising certificate since December 2019. Currently she works as a healthcare worker.²
- [2] The Complaints Assessment Committee of the Teaching Council of Aotearoa New Zealand I Matatū Aotearoa (the CAC) charged that in 2019 the Respondent formed an inappropriate relationship with a Year 13 student [Student F] from the high school (the School) she taught at and/or kissed Student F on multiple occasions.
- [3] This conduct was alleged to amount to serious misconduct pursuant to section 378 of the Education Act 1989. Alternatively, it was alleged the conduct amounted to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989 (the Act).
- [4] The hearing proceeded on the papers based on an Agreed Summary of Facts³.
- [5] The Respondent admitted the alleged conduct and accepted that her behaviour constitutes serious misconduct. Despite the Respondent's admissions it was for the Tribunal to reach its own view as to whether the conduct, if established, amounts to serious misconduct; and if so, what, if any, penalty should be imposed.
- [6] Submissions were received from Counsel for the CAC and from the Respondent's representative, addressing the issues of both liability and penalty. The Tribunal considered these submissions carefully when it assessed the evidence and made findings. The Respondent also made an application for the permanent suppression of her name and any details which may identify her, details of her [REDACTED] [REDACTED] and the name of her husband and his work colleague. For reasons given below, the Tribunal concluded that it was proper to exercise its discretion to permanently prohibit from publication those names and identifying details, and the

¹ Agreed Summary of Facts signed on 7 January 2021 [ASF] at [1].

² Respondent's Affidavit sworn on 7 December 2021 in support of application for non-publication orders.

³ Above, fn.1.



[7] An order was sought by the School for the non-publication of the name of the School. The Tribunal granted the application and made a permanent order prohibiting publication of the name of the School. The Tribunal accepted that there is a real risk that Student F could be identified (and in turn, with potentially harmful consequences, his siblings who still attend the School) were the School to be named in connection with the Charge. Those factors were considered to outweigh the relevant competing public interest factors in favour of open justice.

Legal Principles - Liability

[8] The onus of proof of the charge rested on the CAC.

[9] As to the standard of proof, the appropriate standard was proof to the reasonable satisfaction of the Tribunal on the balance of probabilities. This is a static standard. However, as the seriousness of an allegation rises, so does the cogency of the evidence required to satisfy the standard⁴.

[10] “Serious misconduct” is defined in section 378(1) of the Act as follows:

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.

⁴ *A v A Professional Conduct Committee of the Medical Council of New Zealand* [2018] NZHC 1623 at paras [11] – [16] and as confirmed in *Z v Dental Council Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) endorsing the comments of Dixon J in *Brigginshaw v Brigginshaw* (1938) 60 CLR 336.

- [11] This test for serious misconduct is conjunctive⁵. As such, as well as being conduct that has one or more of the adverse professional effects or consequences described in subsection (1)(a)(i)-(iii) the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct. Those criteria are set out in Part 3, Rule 9 of the Teaching Council Rules 2016 (in this case, as drafted after amendments on 18 May 2018).
- [12] Whether or not there has been serious misconduct and the severity of any such misconduct is assessed by objective standards.
- [13] The CAC submitted that the Respondent's conduct adversely affects or is likely to adversely affect the wellbeing and learning of 1 or more students, reflects adversely on her fitness to be a teacher and may bring the teaching profession into disrepute; and therefore, that the conduct engaged all three limbs of the definition in section 378(1)(a) of the Act. It was submitted further that the conduct engaged section 378(1)(b) being a serious breach of the Code of Professional Responsibility as demonstrated by the examples given in Rule 9 (1)(e) and (k) of the Teaching Council Rules 2016 (the Rules). As such, the CAC submitted that the test for serious misconduct was met.
- [14] When determining whether established conduct is likely to have had an adverse effect on a student for the purposes of section 378(1)(a)(i), the Tribunal is not required to be satisfied that there has been adverse impact on a student. Further, the CAC is not required to prove that a student has suffered abuse or neglect at the hands of the teacher⁶ or that the teacher intended to actively exploit the student⁷.
- [15] It is well established, by previous decisions of the Tribunal, that when considering whether particular conduct would bring the teaching profession into disrepute (for the purposes of section 378(1)(a)(iii); and Rule 9(1)(k)) the question to be asked is whether reasonable members of the public, informed and with the knowledge of all the factual circumstances, could reasonably conclude that the reputation and good-

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

⁶ *CAC v Teacher C* NZTDT 2016-40, 16 February 2017 at [200]

⁷ *CAC v Teacher R* (above).

standing of the teaching profession was lowered by the behaviour of the teacher concerned.⁸

[16] It is also well established that a teacher's actions in his or her personal life may reflect adversely on the teacher's fitness to be a teacher and bring the profession into disrepute⁹. The principal question is not whether the incident occurred in a teacher's private or professional capacity, but rather, whether the teacher's actions, wherever and whenever they took place, reflect adversely on his or her fitness to be a teacher and/or bring the teaching profession (as a whole) into disrepute.

[17] Previous Tribunal decisions demonstrate that the term "fitness to practise" in section 378(1)(a)(ii) extends beyond competence issues and includes conduct that, when considered objectively, will have a negative impact on the trust and confidence which the public is entitled to have in the teacher and the teaching profession as a whole, including conduct which falls below the standards legitimately expected of a member of the profession, whether of a teaching character or not.¹⁰

[18] As to the requirement that the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, relevantly, Rule 9(1)(e) relates to where a teacher has breached 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 a child or young person and (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person). As above, Rule 9(k) encompasses an act or omission that brings or is likely to bring the teaching profession into disrepute.

[19] Subjective matters personal to the practitioner are not to be considered in any significant way when objectively assessing whether there has been serious misconduct¹¹. Personal factors are given full consideration at the penalty stage if a

8 Being the standard stated by the High Court (Gendall J) in *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28] in relation to the test of "likely to bring discredit to the [nursing] profession", adopted by the Tribunal in previous decisions including *CAC v Webster NZTDT 2016-57*, 6 April 2017 at [46] and *CAC v Harrington NZTDT 2016/63*, 6 April 2017 at [17].

⁹ For example, see NZTDT 2009/05 11 May 2009.

¹⁰ This is the approach taken to "fitness to practise" for the purposes of the Health Practitioners Competence Assurance Act 2003. It is serious misconduct which should never have occurred at all. It diminishes the reputation of the profession."

¹¹ See *Martin v Director of Proceedings* [2010] NZAR 333 and *C v Professional Conduct Committee of the Nursing Council of New Zealand* [2017] NZHC 1178, at [126]-[130].

charge is found to have been established. In this case the Respondent disclosed that she had a number of personal and professional stressors that contributed to the relationship she had with Student F developing to the point that it was inappropriate. She deposed that she has taken “full responsibility for [her] poor choices that were part of this”.¹² When the School raised concerns with her, she sought the support of a counsellor and doctor in terms of her own mental health and the Respondent deposed in an affidavit in these proceedings that “in discussion with them and on reflection, she was depressed at the time of her conduct”. The Respondent disclosed that she had been assessed by a psychologist in relation to her mental health and possible publication of her name and she is continuing to have regular counselling. Those are factors that the Tribunal considered were relevant to penalty, not to its objective assessment of whether there had been serious misconduct.

Relevant standards

- [20] The Teaching Council’s Code of Professional Responsibility (the Code) sets out the standards for ethical and professional behaviour that are expected of every registered teacher. The Tribunal may seek guidance from the Code as to the standards against which the conduct it is reviewing should be assessed.
- [21] Clause 1.2 of the Code requires teachers to act in the best interests of learners by promoting their wellbeing and protecting them from harm.
- [22] The Code makes it clear that 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. Clause 1.3 of the Code relates to:
- “maintaining public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity”.
- [23] By acting with integrity and professionalism, teachers and the teaching profession maintain the trust and confidence learners, families and whānau, and the wider community place in teachers to guide their children and young people on their learning journey and to keep them safe¹³.
- [24] Conduct that damages this trust and confidence breaches the expectation set out in Clause 1.3. That may include conduct outside of work that interferes with their

¹² Respondent’s Affidavit, above fn.2 at [4].

¹³ Clause 1.3 Code of Professional Responsibility.

performance as a teacher, that affects the trust and confidence that others have in them as a teacher, or that reflects badly on the integrity or standing of the teaching profession.

[25] Clause 2.2 states that teachers will engage in ethical and professional relationships with learners that respect professional boundaries. The Guidance provided in the Code about this clause specifically refers to the following behaviour which may breach the Code: encouraging learners to develop an inappropriate emotional dependency on the teacher; adopting a role with a learner that is inappropriate and beyond the scope of the teacher's teaching position, such as treating the learner as a friend, communicating with learners about very personal matters and/or sexual matters without a valid context; and engaging in a romantic relationship or having sexual or intimate contact with a learner or with a recent former learner.

[26] However, quite apart from any express provision in the Code the Tribunal can and should apply its own judgement to the facts of the matter before it, as may be established, and whether these meet the criteria under the Act for serious misconduct.

Facts

[27] The Tribunal was satisfied the following facts are established on the evidence that was before it¹⁴:

- (a) The Respondent was employed at the School from mid-2016 until her resignation in late 2019.
- (b) During 2018, Student F, who was then in Year 12, started to come and see the Respondent in her role as [REDACTED] for help and guidance around his future career option.
- (c) Student F and the respondent began to catch up regularly on a professional basis. At some point in 2018 the Respondent and Student F then started to develop a friendship. It was during this time the Respondent also developed a friendship with Student F's other (Parent S).
- (d) In early March 2019, Parent S messaged the Respondent via Facebook Messenger about some concerns she had with Student F's then girlfriend.

¹⁴ ASF at [2]-[19]

Student F was unhappy and upset at recent events concerning his girlfriend and her mental health issues. The Respondent found Student F waiting in her office when she returned to the School the next day. The Respondent informed the School about what had happened and tried to get Student F engaged in pastoral care support. Student F did not engage with these support networks but instead spent a lot of time in the Respondent's office.

(e) From then on, Student F and the respondent's relationship developed in the following ways:

27.e.1 Student F began to spend free periods in the Respondent's office doing work.

27.e.2 Student F and his friends would spend interval and lunch in the Respondent's office.

27.e.3 Student F and his friends would go in her car into town with the Respondent to get lunch.

27.e.4 Outside of school, Student F and the respondent would keep in contact via Snapchat and Facebook Messenger.

27.e.5 Student F and the Respondent began checking in on each other every day at School to see how each other was.

27.e.6 Student F and the Respondent began sharing personal thoughts and feelings with each other.

(f) One day late in Term 3 in 2019 the Respondent and Student F had a conversation where they discussed that they had feelings for each other, beyond what was appropriate for a student and a teacher.

(g) On the Sunday evening before the last week of Term 3 in 2019 (on or around 27 September 2019) the Respondent kissed Student F on the mouth in her driveway when he dropped her off after hockey training. At that time, the Respondent was 31 years' old, and Student F was in Year

13. The Respondent has said the kiss was due to her wanting to show appreciation for Student F.

- (h) Two days later, on the Wednesday afternoon, the Respondent and Student F arranged to meet on a local beach and kissed again.
- (i) The following night (Thursday) the Respondent picked Student F up from his parents' house in her car and they drove to a rural road and kissed again.
- (j) The next day on Friday during interval the Respondent and Student F kissed in the School gym.
- (k) Later that Friday the Respondent told Student F that she did not want to carry the relationship on.
- (l) On 5 November 2019, the Principal of the School wrote to the Respondent explaining that he had become aware of the perceived closeness of her relationship with Student F from a number of staff, students and parents of the school.
- (m) On 11 November 2019, the Principal visited the Respondent at her home and the Respondent told the Principal she had kissed Student F on 5 occasions within the space of a week.
- (n) The School continued to investigate however the Respondent resigned [in late] November 2019 before the investigation could be completed.
- (o) On 18 November 2019, the Teaching Council received a Mandatory Report from the Principal of the School alleging that the Respondent and Student F had developed a close relationship, that they had been seen outside of school hours together and had kissed on 5 occasions.
- (p) Ten days' later the Respondent signed a voluntary undertaking not to teach.
- (q) The CAC investigated the allegation, and the Respondent admitted the conduct and cooperated with the investigation.

Findings on the Charge

[28] The Tribunal considered the agreed evidence and the submissions for the CAC, carefully.

[29] The Tribunal was satisfied the agreed evidence established that in 2019 the Respondent formed an inappropriate relationship with a Year 13 student from the School (Student F) and that she kissed him on multiple occasions.

[30] The Tribunal was satisfied that the conduct it had reviewed was sufficiently serious to warrant an adverse finding that it was serious misconduct, thereby entitling the Tribunal to exercise its powers pursuant to section 404 of the Act.

Section 378(1)(a)(i)

[31] As to the first limb of the conjunctive test for serious misconduct in section 378(1), the Tribunal accepted the submissions for the CAC and was satisfied this limb of the test was met, for the following reasons.

[32] The Respondent's breach of professional boundaries occurred over a reasonably significant period. It commenced with her first becoming friends with Student F in 2018. In September 2019 it was the Respondent who initiated an intimate relationship by kissing Student F on the mouth after she had dropped him off at his home. During the following week she arranged to meet her student after school hours, and they kissed both inside and outside the School grounds. The Respondent was 31 and the student was in Year 13 (approximately 17 or 18 years old) and as such they were not contemporaries.

[33] As was recognised in *CAC v Teacher R*¹⁵ a relationship need not be sexual for it to be improper and cross professional boundaries.¹⁶ While the Respondent and Student F's relationship did not develop into a full sexual relationship which involved sexual intercourse, the Respondent engaged in intimate contact with a learner.

[34] The evidence was that Student F spent his free periods in the Respondent's office as well as the intervals and lunchtimes. On the evidence considered objectively, it appeared to the Tribunal that the student may have developed an emotional dependency on the Respondent choosing to be with her, rather than engaging in other pastoral care. There was no evidence the Respondent discouraged this. In any event, the Tribunal was satisfied that the Respondent was responsible for the

¹⁵ NZTDT 2019-31 (Recalled and Revised Decision), 2 June 2020 at [46]

¹⁶ As discussed in *CAC v Teacher B*, NZTDT, 2016-64 with reference to the Northern Territory (Aus) Teacher Registration Guidelines.

inappropriate relationship developing as it did.¹⁷ The Tribunal noted that the Respondent accepts that her conduct contributed to the relationship developing to the point that it was inappropriate.¹⁸

[35] The Tribunal considered that given the implicit power imbalance in a teacher-student relationship, and the breach of trust that is involved where there is a breach of the professional boundary, this will likely adversely impact on the student involved. As the Tribunal observed in *Teacher K*¹⁹ maintaining appropriate professional boundaries is a fundamental skill, obligation, and professional discipline for all teachers:

Teachers who lack the ability to [maintain appropriate professional boundaries] step onto a “slippery slope” of tangled relationships with students which ultimately are highly likely to be damaging to students, will be confusing, will set poor role models and may result in even more serious misconduct. Mutual emotional dependency can arise and in the worst cases sexual relationships can develop. Teachers are guides, not friends in the usual sense.

[36] Further, a teacher’s professional obligations do not end outside the learning environment.²⁰

[37] In this case, there was some evidence before the Tribunal that the Respondent’s actions have adversely impacted on Student F. The Principal of the School deposed in affidavit he swore in support of the School’s application for name suppression²¹ that Student F found it difficult to stay in the place where the conduct occurred and now lives and works in the South Island. There was evidence that the Respondent’s conduct also adversely affected Student F’s family, with the Principal deposing that Student F’s mother was concerned about her son’s mental health (and about her other children who still attend the School).

¹⁷As was the situation in *CAC v Huggard* NZTDT 2016-33.

¹⁸ Respondent’s affidavit, fn 2.

¹⁹ NZTDT 2018/7, 21 August 2018 at [23].

²⁰ *CAC v Teacher E* (above) at [11].

²¹ Affidavit of [the Principal of the School] sworn on 27 November 2020 in support of Application for Name Suppression on behalf of [the School]

Section 378(1)(a)(ii)

[38] The Tribunal was satisfied that the Respondent's conduct in engaging in an inappropriate relationship with Student F reflects adversely on her fitness to be a teacher. As the Tribunal observed in *CAC v Matua*²², if there was an inappropriate relationship that contravenes Rule 9(1)(e) then it would almost inevitably follow that the teacher's behaviour reflected adversely on his or her fitness to practise (and risked bringing the profession into disrepute). The Tribunal had no difficulty finding there was an inappropriate relationship here.

Section 378(1)(a)(iii)

[39] Members of the public are entitled to expect that teachers will not engage in inappropriate relationships with students that transgress professional boundaries. As was said in *CAC v Huggard*²³ “

even if the student has wanted to continue contact at this level, it would have been unacceptable for the teacher to do so. As the adult and a teacher, the respondent has a responsibility to maintain professional boundaries. The two were not contemporaries. They could not be friends. He was in a position of power and responsibility, where he should role model appropriate behaviour. His actions should attract esteem, not discomfort, or fear. Students and parents should be able to trust that when a student seeks mentorship, counsel or comfort from a teacher, the teacher will respond in a way that has the student's wellbeing as paramount.

[40] Student F's parent, who had expressed concern about her son to the Respondent, could reasonably have expected the Respondent to act with professionalism to assist Student F with his issues, in the Tribunal's view. As part of that professionalism, Parent S was entitled to trust the Respondent to maintain the professional boundary with her son. The Tribunal was satisfied that because the Respondent did not, the teaching profession has been brought into disrepute.

[41] The Tribunal considered that reasonable members of the public, informed and with the knowledge of all the factual circumstances could reasonably conclude that the reputation and good standing of the teaching profession (as a whole) was lowered by the Respondent's behaviour. Put another way, the Tribunal considered that

²² NZTDT 2018-41, 17 June 2019 at [23]

²³ Above fn. 12

reasonable members of the public would lose trust and confidence in the whole profession, were they to be informed of all the relevant factual circumstances. The conduct should never have occurred, and the Tribunal was satisfied it diminished the reputation of the profession.

[42] In summary, the Tribunal was satisfied that the Respondent's conduct has or has had all three of the adverse professional effects or consequences described in section 378(1)(a).

Section 378(1)(b)

[43] The Tribunal was also satisfied the test in section 378(1)(b) is met as the conduct it has reviewed was a serious breach of the Code of Professional Responsibility as demonstrated by the examples described in Rule 9(1)(e) and (k) of the Teaching Council Rules 2016 (and therefore was of a character and severity that met the reporting criteria specified in Rule 9).

[44] The conduct was a significant falling short of the high standards of ethical and professional behaviour expected of members of the teaching profession.

[45] It was for those reasons the Tribunal was satisfied the conduct was serious misconduct and that the Charge was established.

Penalty

[46] Having made an adverse finding of serious misconduct the Tribunal was entitled to exercise its powers pursuant to section 404 of the Act. The Tribunal could do one or more of the things set out in section 404(1).

[47] It is well established that the primary purposes of disciplinary penalties under the Act is to maintain professional standards (through general and/or specific deterrence) and the public's confidence in the teaching profession, and to protect the public through the provision of a safe learning environment for students²⁴.

[48] The Tribunal accepted as the appropriate sentencing principles those contained in *Roberts v Professional Conduct Committee*²⁵ where Collins J identified the following eight factors as relevant whenever an appropriate penalty is being determined in

²⁴ As discussed in *CAC v McMillan* NZTDT 2016/52.

²⁵ [2012] NZHC 3354 at [44]-[51].

professional disciplinary proceedings. In particular, the Tribunal should consider what penalty:

- (a) Most appropriately protects the public and deters others.
- (b) Facilitates the Tribunal's important role in setting professional standards.
- (c) Punishes the practitioner (although this is not a primary purpose²⁶).
- (d) Allows for the rehabilitation of the practitioner.
- (e) Promotes consistency with penalties in similar cases.
- (f) Reflects the seriousness of the misconduct.
- (g) Is the least restrictive penalty in the circumstances; and
- (h) Looked at overall, is the penalty which is "fair, reasonable and proportionate in all the circumstances".

[49] The CAC submitted that the appropriate starting point in terms of penalty must be one of cancellation.²⁷ However it was submitted that in view of the Respondent's "remorse and insight into her conduct" a penalty short of cancellation would be appropriate and could meet the purposes of public protection and safeguarding the standards and status of the teaching profession. It was submitted for the Respondent that she would like the opportunity to keep her registration and accepts that if she were able to then conditions would be required for her to return to teaching. Her representative made submissions in relation to conditions that were suggested by the CAC (to ensure they were more practical).

[50] The Tribunal was referred to five previous Tribunal cases which were submitted to be comparable or of potential assistance²⁸. The cases involved inappropriate relationships between teachers and students aged 16 years' old and/or Year 12 or 13 students, and where the conduct did not involve full sexual intimacy but did involve some degree of intimacy (including kissing and inappropriate personal contact including messaging and contact outside of school hours). Those cases

²⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 (SC) at [128].

²⁷ Education Act 1989, section 404(1)(g).

²⁸ *CAC v Teacher* NZTDT 2016/58, 16 May 2017, *CAC v Teacher R* NZTDT 2019/31 (Recalled and Revised Decision), 2 June 2020, *CAC v Teacher* NZTDT 2015/68, 2 May 2016, and *CAC v Teacher* NZTDT 2008/18, 23 December 2008.

show that the penalties imposed in broadly similar cases are predominantly cancellation, censure, and annotation of the register.

[51] In *CAC v Teacher*²⁹ the teacher had formed an inappropriate relationship with a Year 12/13 student (Student A). The teacher became emotionally dependent on Student A, engaging in intense communications with Student A. Student A found the situation increasingly difficult to cope with. Student A's parents became involved and asked the teacher to cease communication, however the teacher continued to send the student text messages of an intense and personal nature³⁰. The teacher accepted that she engaged in communications to gain Student A's support and that she should have instead sought professional assistance. The Tribunal accepted that the teacher suffered depression and anxiety during the time she became dependent on Student A. The Tribunal considered that cancellation and censure was the appropriate penalty but noted that the teacher's personal mental health issues at the time of the conduct meant that the Education Council (as the Teaching Council was then) might accommodate her return to the teaching profession in the future.

[52] The Tribunal was assisted by those cases. However, it recognised that ultimately each case must be determined on its own facts, as no two cases are the same.

Aggravating and mitigating factors

[53] It was submitted for the CAC that the following factors indicate that the Respondent's conduct falls at the higher end of the spectrum in terms of seriousness. The Respondent acknowledged and did not dispute that these were the aggravating factors:

- (a) The nature of the relationship was plainly inappropriate, and on five occasions, intimate in nature. The Respondent and Student F arranged to meet in various locations in and around the place where they lived, to kiss.
- (b) The Respondent engaged with Student F outside of school grounds during school hours by going with him and his friends to get lunch from town.
- (c) The kissing was initiated by the Respondent and occurred not only off school grounds, but also on one occasion, in the School gymnasium. Other

²⁹ NZTDT 2016-46, 18 August 2016.

learners could have seen them and this, therefore, put other students at risk.

- (d) The Respondent's motivation for the conduct was to have her own emotional needs met. Her conduct would have placed an emotional burden on Student F and was likely to make Student F feel responsible for her wellbeing.
- (e) The Respondent admitted she communicated with Student F outside of School, by Snapchat and Facebook.
- (f) The Respondent, as a [REDACTED] and teacher to Student F, was in communication with Student F's parents. She was privy to difficulties that Student F was having and was contacted by Student F's mother to assist in supporting and mentoring him. The Respondent was in a position of high trust and she abused that trust.
- (g) Because of the emotional and physical intimacy that developed, emotional harm may have been caused to Student F, notwithstanding there was an absence of full sexual intimacy. Parent S is clearly concerned about her son's wellbeing and he has moved to live in the South Island.

[54] The Tribunal accepted that those are aggravating features and the submission for the CAC that the conduct it has reviewed in this case was conduct at the higher end of the spectrum in terms of seriousness.

[55] The Tribunal also accepted the CAC's submission that the following mitigating factors were at play:

- (a) The Respondent had engaged in both the CAC process³¹ and the Tribunal's disciplinary process including by agreeing the facts and admitting the conduct (and that it was serious misconduct) at an early stage.
- (b) The Respondent has no prior professional disciplinary history; and
- (c) The Respondent took steps to finish the relationship when it became physically intimate, and she sought treatment from a counsellor and a

³¹ Respondent's Affidavit, above fn. 2 at [2]

doctor for her depression.³² As above, the Respondent has disclosed that she is continuing to have regular counselling (and she has been the subject of a psychological assessment).

[56] It was submitted for the Respondent that the following mitigating factors should be taken account of:

- (a) The Respondent was experiencing significant isolation due to circumstances in her personal and school life and experiencing depression at the time of the relationship.
- (b) The Respondent ended the affair of her own accord after it became intimate, showing a level of insight that is not present in similar cases.³³
- (c) The Respondent was honest and cooperative with the School and the CAC investigations, including telling them the full extent of the relationship, resigning from her position at the school and signing a voluntary undertaking not to teach.³⁴
- (d) The Respondent sought counselling and medical assistance to assist her with her depression and to work through what had happened. She has reengaged with this support on referral of the case to the Tribunal.³⁵
- (e) The Respondent has the support of her father and husband who are aware of the full details of what occurred and who appeared at the CAC hearing in person to speak about how the Respondent has taken steps to learn and grow following her resignation from the School.³⁶
- (f) The Respondent has no disciplinary history or prior cases of concerns in relation to boundaries with children.
- (g) The Respondent has consistently shown remorse and insight into what occurred, including acknowledging the seriousness of her conduct. After

³² Respondent's Affidavit, above fn. 2 at [7].

³³ ASF at [13].

³⁴ ASF at [15]-[19].

³⁵ Respondent's Affidavit, above fn, 2 at [5] and [7].

³⁶ Respondent's Affidavit, above fn. 2 at [19]-[22] with reference to the CAC decision.

meeting with the Respondent, the CAC noted that they felt her responses to their questions were genuine and showed that she had been “taking accountability for her actions”.³⁷

[57] The Respondent submitted considering those mitigating factors and with the right conditions in place, it could be possible for the Respondent to safely return to teaching. In that regard it was submitted that there should be an order that prior to being issued with a practising certificate several conditions must be met including that the Respondent be required to complete a course approved by the Teaching Council that would contribute to her professional practice as a teacher; and that the Respondent be required to provide a report from a registered clinical psychologist stating she is fit to teach. Further that from the date of this decision the Respondent must for a role requiring teacher registration, provide any prospective employer with a copy of the Tribunal’s decision (for a period of two years); and if so employed, have a mentor appointed by the employer who provides quarterly reports during her first year of employment attesting to the Respondent’s ability to maintain professional boundaries with students (to be provided to the Manager, Professional Responsibility at the Teaching Council). The Respondent accepted that a censure and annotation of the register for two years would also be appropriate.

Findings on Penalty

[58] The Tribunal has considered the relevant sentencing principles including the aggravating and mitigating factors and comparative cases. The Tribunal is satisfied that it is appropriate to impose a formal penalty. For the reasons given below, the Tribunal considers that the least restrictive penalty which meets the seriousness of the case and discharges its obligation to the public and the teaching profession is a censure to express the Tribunal’s disapproval of the conduct which occurred in this case (section 404(1)(b)), together with cancellation of registration (section 404(1)(g)).

[59] The Tribunal accepted that cancellation of registration should not be ordered if an alternative penalty can achieve the objectives sought. Further, that rehabilitation of the teacher is a factor requiring careful consideration. Ultimately, the Tribunal must balance the nature and gravity of the offending and their bearing on the teacher’s fitness to practise against the need for removal and its consequences to the

³⁷ Respondent’s Affidavit, above fn. 2 at [21].

individual. As was said by the Privy Council in *Dad v General Dental Council* ³⁸at [1543]:

Such consequences [cancellation] can properly be regarded as inevitable where the nature or gravity of the offence indicates that a dentist is unfit to practise, that rehabilitation is unlikely and that he must be suspended or have his name erased from the register. In cases of that kind greater weight must be given to the public interest and to the need to maintain public confidence in the profession than to the consequences of the imposition of the penalty to the individual.

[60] The Tribunal carefully considered whether there were any alternatives to cancellation of registration which would achieve the objectives of protecting the public and maintaining the standards of the teaching profession. The Tribunal concluded that there were no alternatives to cancellation of registration.

[61] First, this is a case where the nature and gravity of the offending is such that significant weight must be given to the public interest and the need to maintain public confidence in the teaching profession. Under no circumstances can conduct of the nature the Respondent has engaged in be tolerated in the teaching profession. The public requires protection from the Respondent and a strong message must be sent to other teachers that engaging in an inappropriate relationship with a student will not be countenanced. The conduct was a significant departure from accepted and acceptable professional standards and eroded the mana of the teaching profession. The Tribunal had little difficulty concluding that it was conduct that is deserving of the most serious disciplinary sanction.

[62] Secondly, the Tribunal noted the Respondent's deposition that she is still struggling with feelings of hopelessness around her life if her name were published and that while she considers she has enough insight into "the situation that occurred to be able to say with confidence that it would not happen again" she does feel that she "still has some healing to work through before [she] would want to return to the classroom".³⁹ The Tribunal considered that the evidence, including the Psychological Assessment Report submitted by the Respondent, indicates that the Respondent

³⁸ Referred to in *Patel v Dentists Disciplinary Tribunal* (High Court, Auckland, AP77/02, 8 October 2002, Randerson J) at [31]

³⁹ Respondent's Affidavit, above fn.2 at [8] and [9].

does have some insight into her conduct and that rehabilitation is likely if she continues her path to good health and wellness.

[63] The Tribunal did not consider it had jurisdiction to make the order sought by the CAC and Respondent that she must meet certain conditions before being issued with a practising certificate. As a creature of statute, the Tribunal does not have inherent jurisdiction. The only orders the Tribunal may make under section 404(1) are those specified in that section of the Act.

[64] Section 404(1)(c) gives the Tribunal the power to impose conditions on the teacher's practising certificate or authority (defined in section 378 as "limited authority to teach") for a specified period. The evidence was that the Respondent does not hold a current practising certificate. There is no practising certificate or authority to which conditions can be attached.

[65] The order closest to that sought by the Respondent is an order under section 404(1)(j) directing the Teaching Council to impose conditions on any subsequent practising certificate to be issued to the teacher. For the purposes of maintaining professional standards and public protection the Tribunal was not satisfied that in this case an order under section 404(1)(j) (combined with a censure) would be an appropriate penalty response in terms of adequately protecting the public or sending the message that behaviour of the nature the Respondent engaged in is not behaviour that will be tolerated in the teaching profession.

[66] Further, the Respondent's representative was clear in her submissions that it could be some time until the Respondent is able to gain a practising certificate. In those circumstances the issue of what if any conditions would be appropriate on any practising certificate that is issued, the Tribunal considered, is one best addressed by the Council at the time the application is made. The conditions suggested by the CAC and/or the Respondent may well be appropriate at that time but that will be a matter for the Teaching Council.

[67] The Tribunal considered that the Respondent remains a risk and it was not reassured that there would never be a repeat of the behaviour given that the Respondent requires further rehabilitation. The Tribunal was satisfied that if, and when, the Respondent applies for registration again the Teaching Council will be best placed to assess her application and any necessary conditions under which she ought to be required to practise at that time, if any.

[68] As stated, in addition to an order cancelling the Respondent's registration the Tribunal also makes an order censuring her as a permanent record of the Tribunal's significant disapproval of the conduct it has reviewed, and the seriousness of that conduct.

[69] Given that the Tribunal has ordered the cancellation of the Respondent's registration the Tribunal declined to order annotation of the register pursuant to section 404(1)(e).

[70] As above, should the Respondent intend to seek a return to the teaching profession then she will be able to make an application for registration to the Teaching Council. Any such application would have to take account of the censure and cancellation orders which the Tribunal has ordered in these proceedings, and the factual circumstances of her offending as outlined in this decision. Further, there would be a need to take account of matters the Respondent may advance to the Council, as the registration authority, that there is no possibility she will reoffend, that the public is adequately protected from her and that she will maintain the standards of the teaching profession.

Costs

[71] It is usual for an award of costs to be made against a teacher once a charge is established. When considering the appropriate quantum of costs, the Tribunal must take account of the need for the teacher who has come before the Tribunal to make a proper contribution towards the costs that have been incurred. As has been said in previous decisions of the Tribunal, the teaching profession as a whole should not be expected to fund all the costs of the disciplinary regime under the Act.

[72] The CAC did not seek an order in respect of its own costs under section 404(1)(h) as external counsel had not been instructed.

[73] As to its own costs the Tribunal orders the Respondent to make a 50% contribution to the Teaching Council towards those costs, being the sum of \$458.00. That order is made under section 404(1)(i).

Publication of Name

- [74] The respondent made an application for permanent non-publication orders in these proceedings under section 405(6)(c) of the Act⁴⁰.
- [75] The permanent non-publication orders sought by the Respondent were in respect of the following:
- (a) Student F's name and identifying details:
 - (b) The Respondent's name, including her maiden name, and the details of her [REDACTED]:
 - (c) The Respondent's husband's name and his occupation:
 - (d) The name of the husband's supervisor at work and his occupation:
 - (e) The name of the School.
- [76] As above, an application was also made by the School, to suppress the name of the School.
- [77] The CAC submitted that a permanent non-publication order should be made in respect of Student F and any of his identifying details on the basis that he was in Year 13 at the time and to protect his privacy, in accordance with section 405(6) and Rule 34(4) of the Rules. The CAC took a neutral position in respect of all the other orders sought.

Discussion

- [78] The default position is for the names of teachers who are subject to Tribunal proceedings to be published. The Tribunal's jurisdiction to make non-publication orders is found in section 405 of the Act. An order can only be made if the Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.
- [79] The Respondent's applications were made on the grounds that:

⁴⁰ Hearing Bundle, page 37.

- (a) There is an appreciable risk of significant mental, emotional, and physical harm to the Respondent if her name and details of her psychological assessment were published.
- (b) Publication of her name will identify her husband and there is a real risk this will significantly compromise his ability to work safely [REDACTED].
- (c) Publication of the names of the Respondent's husband and his supervisor and their occupations will compromise the husband's work.
- (d) There is an appreciable risk that publication of the name of the School could lead to the identification of the Respondent given her association with, and departure from, the School.
- (e) There are only [REDACTED] secondary schools in the area where the offending occurred and so there is a real risk that publication of the location of the School would lead to the identification of the Respondent, or the family of Student F and be harmful to them.
- (f) As set out in the affidavits of the Respondent, her husband, and his work colleague.

[80] In respect of the School's application the grounds were that there is a real risk that Student F could be identified (and in turn, with potentially harmful consequences, his siblings who still attend the School) were the School to be named in connection with the Charge. The Respondent supported the School's application.

[81] In her affidavit the Respondent deposed as follows (summarised):

- (a) She appeared before the CAC and disclosed her actions and insight into what occurred which the CAC recorded in its decision (the CAC's decision to lay a Charge was annexed to the affidavit).
- (b) She has accepted the Charge, that she committed serious misconduct and accepts that she may lose her registration.
- (c) She has a number of personal and professional stressors that contributed to the relationship with the student developing to the point that it was inappropriate. She takes full responsibility for her "poor choices that were part of this".

- (d) When the School raised concerns with her, she sought support from a counsellor and doctor in terms of her own mental health. In discussion with them and on reflection she was depressed and had been for some time.
- (e) The reason she had taken on the amount of work she did while at school was to keep her mind off what was causing her such low thoughts outside of work.
- (f) When the Charge was laid, she had a recurrence of depressive thoughts and anxiety. She reengaged with a counsellor and was assessed by a psychologist in relation to her mental health and possible publication of her name. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (g) She is still having regular counselling and is still struggling with feelings of hopelessness around her life if her name was published. She is particularly worried about the impact on her husband and his work; he has already been through so much since she told him about what happened with the student.
- (h) If given the opportunity she would like to return to teaching sometime in the future. She feels like she has enough insight into the situation that occurred to be able to say with confidence that it would not happen again. She does feel she still has some healing to work through before she would want to return to the classroom.
- (i) She is prepared to provide the Teaching Council with proof of fitness to teach if she is able to apply for a practising certificate in the future.
- (j) She is very grateful for the compassion shown by her husband, family and friends, the School and the student's family.

[82] The Respondent's husband deposed (summarised):⁴¹

⁴¹ Affidavit sworn on 7 December 2020.

- (a) Details of his work which involves building relationships with people and gaining trust. He needs his colleagues to trust him, and he cannot afford to make a poor decision in his work.
- (b) When his wife disclosed to him where the relationship had got to with the student “the impact was like a kick in the teeth, was shocking, it’s hard to describe the shock of it”.
- (c) He went on sick leave for approximately one month. He required support from his boss when he returned to work.
- (d) He is well known in the place where he lives.
- (e) He had received personal attacks from people about the matter and what they think had happened with his wife and the student, in the course of his work.
- (f) If names are published in connection with these proceedings this would likely impact on his ability to make good decisions in his work.
- (g) He is worried about the effect of publication on his own mental health and impact the way he works. He and the Respondent may be forced to leave the place they live in, which is where all their family are, and that would be devastating.

[83] The Respondent’s husband’s work colleague deposed (summarised)⁴²:

- (a) He is the Respondent’s husband’s direct supervisor.
- (b) The Respondent’s disclosure to her husband took an obvious toll on him.
- (c) When the Respondent left her employment at the School there was rumour and gossip spread around and comments “thrown around” in the husband’s direction. The “heckling” has settled down but arises from time to time when the husband is working. He had to assist the husband and use various tactics to draw attention away from him.
- (d) The husband is well known in the area they live and work. Were his name published in connection with these proceedings this would inhibit his ability to do his job.

⁴² Affidavit dated 7 December 2020.

[84] The Respondent's representative referred to *CAC v Teacher K*⁴³ where the Tribunal noted that it may be proper to order suppression where there is a real risk that publication will either exacerbate an existing condition, or adversely affect a practitioner's rehabilitation and recovery from an illness or disorder.

Legal principles

[85] As the parties accepted, the default position is for the names of teachers who are subject to Tribunal proceedings to be published. A non-publication order can only be made under section 405(6) if the Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and the public interest.

[86] The principle of open justice is reflected in section 405(3) of the Act which requires the proceedings to be held in public unless the Tribunal orders otherwise. The primary purpose behind the open justice principle in a disciplinary context is the maintenance of public confidence in the profession concerned through the transparent administration of the law.⁴⁴

[87] The starting point in any consideration of name suppression is this fundamental principle of open justice, as reflected in section 405(3). Various High Court and Court of Appeal decisions have confirmed this approach. The Court of Appeal in *Y v Attorney-General*⁴⁵ observed:

Given the almost limitless variety of civil cases and the fact that every case is different, the balancing exercise must necessarily be case dependent. Sometimes the legitimate public interest in knowing the names of those involved in the case (either as party or as witnesses or both) or knowing the details of the case, will be high. *Hart v Standards Committee (No. 1) of the New Zealand Law Society* was such a case. As this Court observed:

“the public interest in open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make

⁴³ NZTDT 2018/88 at [27].

⁴⁴ *CAC v Teacher* NZTDT 2016/27, 25 October 2016, at [66].

⁴⁵ [2016] NZCA 474, (2016) PRNZ 452 at [32].

informed choices about who is to represent them. That principle is well-established in the disciplinary context....”

Consequently, a professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure.

[88] However, as the High Court observed in *Director of Proceedings v Johns*⁴⁶ every decision will necessarily be case and fact dependent and will require the weighting of the public interest with the particular interests of any person in the context of the facts of the case under consideration. As previous decisions of the Tribunal demonstrate there may well be cases where there are private factors that outweigh the public interest considerations at stake, and which displace the presumption in favour of disclosure of name and identifying details. This may include cases where it can be demonstrated that publication would not serve the objectives of the Tribunal, including protection of the public (for example, where publication would stand in the way of the teacher’s rehabilitation and therefore be counterproductive)⁴⁷ and the maintenance of professional standards.

[89] Counsel for the CAC referred to there being a two-step approach to be taken by the Tribunal when determining the issue of name suppression. This approach has been adopted by the Tribunal in previous cases⁴⁸. The two-step approach has been stated to involve a first step threshold question, which requires deliberative judgement on the part of the Tribunal, whether, having regard to the various interests identified in section 405, it is “proper” to make non-publication orders. If it is then at the second step the Tribunal may exercise its discretion and make the order sought.

[90] In *Dr N v A Professional Conduct Committee of the Medical Council*⁴⁹ the High Court considered the issue of the proper approach to appeals against the Health Practitioners Disciplinary Tribunal’s decisions on name suppression. That Tribunal’s power to make an order suppressing the name of a practitioner who is before it is found in section 95(2) of the Health Practitioners Competence Assurance Act 2003. Section 95 contains a similar provision to section 405 except that the Health Practitioners Disciplinary Tribunal must be satisfied it is “desirable” to make an order

⁴⁶ [2017] NZHC 2843, at [169] – [171].

⁴⁷ See the discussion of Moore J in *Director of Proceedings v Johns* above at [173]-[178].

⁴⁸ Above, NZTDT 2016/27, at [67],

⁴⁹ [2013] NZHC 3405.

rather than be of the opinion that it is “proper”, as this Tribunal is required to be. Mallon J stated at [45]:

In my view the two-step approach is not the correct one. I agree with the submission for the PCC that the requirement of desirability is inevitably subsumed into the overall discretion of the Tribunal (that is, whether the Tribunal “may” make the order is determined by whether it is “desirable” to do so). It is difficult to envisage any case where the Tribunal would consider that the threshold of desirability is met and yet then go on to decline to make an order. That is because anything relevant to the discretion will have already been considered as part of the private and public interest considerations that are relevant to whether suppression is desirable.⁵⁰...

[91] For the same reasons, the Tribunal considered that the requirement in section 405(3) that it must be of the opinion that it is “proper” to make a non-publication order, is subsumed into the overall discretion of the Tribunal (that is whether the Tribunal “may make the order” is determined by whether it is “proper” to do so). Like the High Court in *Dr N* the Tribunal cannot imagine any case where the Tribunal would consider that the threshold of “proper” is met and yet then go on to decline to make an order.

[92] In summary, there are relevant factors (the public and private interests at stake) that must be considered. Those factors are balanced by the Tribunal to form a view about whether non-publication is “proper”. If the Tribunal, having balanced the competing interests, forms the view that non-publication is “proper” then it follows that it may make an order.

[93] In *Director of Proceedings v Johns*⁵¹ the High Court (Moore J) accepted Counsel for the practitioner’s submission that the threshold of desirability under section 95(2) of the Health Practitioners Competence Assurance Act 2003 is considerably lower than

⁵⁰ As Mallon J went on to state in footnote 20. of her decision, “In *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZHC 933, [2013] NZAR 1055 at [32], at [38] Wylie J noted that, while there might be some overlap, “the threshold question [of desirability] focuses more on matters of general principle, for example, the public interest and the interest of others, including complainants, and the discretionary element to the decision will focus more on matters personal to the applicant arising out of the charge, and the Tribunal’s findings in relation to it”. But the factors personal to the applicant will be considered as part of the Tribunal’s regard to “the interests of any person”. That was how the Tribunal (in my view, correctly) took those factors into account in relation to *Dr N*.

⁵¹ Above, with reference to the comments of Chisholm J in *ABC v Complaints Assessment Committee* [2012] NZHC 1901, [2012] NZAR 856 at [44]. It is noted that in the *Johns* case the High Court did not refer in its decision to *Dr N* case referred to above.

the ‘exceptional’ test commonly used in the Courts. Adopting the same reasons as those adopted by other Judges of the High Court Moore J at [166] stated he was:

satisfied that the test under s 95 invokes a considerably lower threshold than the usual civil test. It does not require exceptionality nor even something out of the ordinary. And while it is a concept not readily amendable to precise definition it does require evaluating the competing considerations of the interests of any person and the public interest. Attempts to refine the definition further are fraught because the analysis will always be case dependent.

[94] The Tribunal, as presently constituted, adopted the same approach to the threshold of “proper” for the purposes of section 405(3)⁵². Exceptionality is not required⁵³ and nor even something out of the ordinary. However, there must be sound reasons for finding that the presumption favouring publication is displaced.⁵⁴ What must be struck is a balance between considerations of open justice and the interests of the person in respect of whom non-publication orders are sought.⁵⁵

Respondent’s applications

[95] Non-publication of Student F’s name is sought on the basis that he was 17 or 18 years’ old at the time of the conduct. As above, the CAC supported the application. The Tribunal agreed it is proper that Student F’s name be permanently prohibited from publication having regard to his wellbeing and privacy interests.

[96] In respect of the Respondent’s interests, the Tribunal was satisfied on the evidence before it that there is or may be, an appreciable risk to the Respondent’s mental health and physical wellbeing, and potentially her life, were she to be named in connection with these proceedings. Publication of her name and identifying details would likely have an adverse impact on her rehabilitation and therefore would be counterproductive in terms of protecting the public. On that basis the Tribunal considered it was proper for there to be a permanent order in respect of the Respondent’s name and identifying details. The Tribunal considered that it would also be proper to permanently suppress the name of the Respondent’s husband and

⁵² In previous decisions this Tribunal has commented that the thresholds of “proper” and “desirable” are not considered to be dissimilar.

⁵³ As was recognised in *CAC v Finch* NZTDT 2016-11.

⁵⁴ *Y v Attorney-General* above fn. 29 at [29].

⁵⁵ *Y v Attorney-General* above fn. 29 at [31].

his work colleague. Were their names and identifying details not permanently suppressed there is a risk that the Tribunal's order in respect of the Respondent would be undermined.

[97] In reaching the point of being satisfied that it is proper to make those orders, the Tribunal balanced the private interests of the Respondent, her husband and his work colleague against the relevant public interest considerations (openness and transparency of disciplinary proceedings, accountability of the disciplinary process, the public interest in knowing the identity of the teacher charged with a disciplinary offence, the importance of freedom of speech and the right enshrined in section 14 of the New Zealand Bill of Rights Act 1990 and unfairly impugning other teachers). The Tribunal considered that the private interests of those individuals outweighed the public interest in naming the Respondent in connection with these proceedings.

[98] It was for those reasons, the Tribunal concluded it was proper to make permanent orders suppressing the names and any identifying details of the Respondent, her husband, and his work colleague.

School's application

[99] The Principal of the School deposed:⁵⁶

- (a) The Respondent was employed at the School in 2016 and she took on a [REDACTED] position in 2018 until resigning her employment in late 2019.
- (b) The breaches of professional boundaries by the Respondent in respect of Student F have had a detrimental impact on the student's physical and emotional wellbeing. The student left the school at the end of 2019 and now resides in the South Island.
- (c) He has liaised with Student F's mother who is concerned for his mental health and wellbeing. She has reported being concerned about the effects of publicity on her son should he be identified in any way through media or social media.
- (d) Student F has siblings at the School who remain embarrassed and confused about what happened with their brother and the Respondent.

⁵⁶ Affidavit dated 24 November 2020.

The matters are not known about in the School or at the community at this time. The situation is “fragile” for Student F and his siblings.

- (e) He is concerned that the risk of publicity and identification may cause additional stress for Student F and his siblings and could adversely impact on the siblings and their physical and emotional wellbeing.
- (f) If the School and district is identified it will not be difficult for members of the community to identify Student F as having been involved, and that is even if the Respondent’s name is suppressed.
- (g) Given the nature of the conduct, there is a real risk of attracting media and social media attention and unwanted and unhealthy publicity, which could adversely affect Student F’s siblings.
- (h) Student F’s mother is supportive of the School’s application for name suppression and anything that may identify her son and impact on his siblings.
- (i) He believes non-publication of the School’s name is necessary to prevent the identification of Student F and his siblings and will assist his mother and the School being better able to manage the wellbeing of these young people.

[100] The Tribunal considered that evidence and accepted the submissions that were made for the School, based as they were, on that evidence.

[101] The Tribunal weighed the competing private interests of Student F, his siblings, the School against the relevant public interest factors. The Tribunal concluded that it was proper for the name and any identifying details of the School, including its location, to be the subject of a permanent non-publication order under section 405(6)(c).

Conclusion

[102] The Charge that the Respondent’s conduct amounted to serious misconduct is established.

[103] The Tribunal’s formal orders under the Education Act 1989⁵⁷ are:

⁵⁷ Clauses 2 and 3, Schedule 1, Education and Training Act 2020 noted

- (a) The Respondent is censured for her misconduct pursuant to section 404(1)(b).
- (b) The Respondent's registration is cancelled pursuant to section 404(1)(g).
- (c) The Respondent is to pay \$458.00 to the Teaching Council towards the costs of the Tribunal hearing, under section 404(1)(i).
- (d) There is an order under section 405(6)(c) permanently suppressing from publication the name of the Respondent and any of her identifying details. This order is to extend to the details of the Respondent's Psychological Assessment and the report of that Assessment. That the Respondent was suffering from depression at the time of her offending may be published.
- (e) There is an order under section 405(6)(c) permanently suppressing from publication the names of the Respondent's husband and his work colleague and any details that are likely to identify them.
- (f) There is an order under section 405(6)(c) permanently suppressing from publication the name of Student F and any details that are likely to identify him.
- (g) There is an order under section 405(6)(c) permanently suppressing from publication the name of the School, and its location.

Dated at Wellington this 29th day of
March 2021



Jo Hughson

Deputy Chairperson

NOTICE

- 1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.
- 2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
- 3 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).