

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/70

UNDER
WĀHANGA

the Education and Training Act
2020


IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND
ME


Respondent | Kaiurupare

Hearing

26 July 2024 (on the papers)

Representation

E Mok for the CAC
W Pyke for the Respondent

Tribunal

T J Mackenzie, K Turketo, N Coe

DECISION OF THE TRIBUNAL ON CHARGE, PENALTY AND PUBLICATION

24 September 2024

Introduction

[1] ██████████ is charged by the CAC with Serious Misconduct. The charge is as follows:

Particulars of the Charge

1. The CAC charges that ██████████ registered teacher, of ██████████ engaged in unprofessional and/or inappropriate behaviour toward Year 11 student, Student A, in 2018, including when he:
 - a. Exchanged several text messages with Student A between July 2018 and September 2018, which included telling her he loved her, sending love hearts emojis and referring to him as “dad”; and/or
 - b. Made inappropriate physical contact with Student A, including hugging her and kissing the top of her head; and/or
 - c. Met with Student A alone outside of school hours and off school grounds; and/or
 - d. Gave Student A gifts; and/or
 - e. Falsified school records by marking Student A as being in attendance for classes she was absent from; and/or
 - f. Encouraged Student A to engage in secretive behaviour in respect of their relationship.
2. The conduct alleged in paragraph 1, and its subparagraphs, separately or cumulatively, amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and any or all of rule 9(1)(e) and/or (g) 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.

[2] ██████████ does not accept liability for the charge, as is his right. We will therefore determine whether the charge is proven and if so what orders should follow.

Facts

[3] The parties have reached agreed facts as follows:

AGREED SUMMARY OF FACTS

1. The respondent, ██████████, is a fully registered teacher. He does not currently hold a practising certificate, his previous practising certificate having expired in December 2020. He was first registered as a teacher in December 2008.
2. At all material times, ██████████ was employed as a teacher in the ██████████ department at ██████████, a co-educational secondary

- school for students in Years 9 to 13 located in [REDACTED]. In 2018, [REDACTED] was also Assistant Dean for Year 11 students at [REDACTED].
3. On 13 January 2019, [REDACTED] resigned from [REDACTED], with this taking effect on 16 January 2019.

4. He is not currently working in the teaching profession.

Inappropriate conduct towards a student

5. In 2018, **Student A** was a Year 11 student at [REDACTED], aged between 15 and 16. She turned 16 years old in December 2018 ([REDACTED]).
6. [REDACTED] first met Student A when she was in Year 9 at [REDACTED]. During her time at [REDACTED] Student A was not formally recorded by [REDACTED] as being in any of [REDACTED] classes, but he was Assistant Dean for her year level from 2016 through to 2018 (inclusive). She also attended his [REDACTED] class in Year 11. Further, on various occasions in 2018, Student A attended lunchtime tutorials which [REDACTED] ran with several other students.
7. Student A was in the same year group as one of [REDACTED]' children, who told [REDACTED] that Student A was having some personal issues. From this point on, [REDACTED] started "shadowing" Student A to check in on her welfare.
8. From 2018 onwards, [REDACTED] and Student A regularly came into contact, with [REDACTED] encouraging Student A to come and see him at school if she wanted to talk or if she was having a rough day. Student A started confiding in [REDACTED] about her personal issues and home life from the start of 2018 onwards. Student A would come to see [REDACTED] when she was upset. The pair developed a close relationship, whereby [REDACTED] would support, encourage, and counsel Student A and help her talk through her issues. Student A told [REDACTED] about worrying about going home, about drinking and taking drugs, and about her self-harm. Student A viewed [REDACTED] as a father-figure, and he also characterised the relationship with Student A in this way, referring to her as his fifth child or [REDACTED]). Occasionally, the pair would meet alone at school, for example, in the library or the guidance room.
9. Student A was particularly vulnerable, having previously attempted suicide and engaged in self-harm. In Year 10, Student A was admitted to Starship Hospital following a suicide attempt, and briefly attended a different school. Student A had been experiencing issues in her home life, particularly with her step-father, regarding which she subsequently made disclosures to Oranga Tamariki and the Police (as addressed further below). She was receiving ongoing counselling from an external counsellor, a psychologist. [REDACTED] was aware of Student A's personal issues and regularly spoke with her counsellor.

Messages exchanged with Student A

10. At one stage, Student A obtained [REDACTED]' phone number through [REDACTED] ([REDACTED]). The pair had previously emailed each other.
11. Between May 2018 and September 2018, [REDACTED] exchanged multiple text messages with Student A. The pair exchanged over 1,000 messages during this period, including outside of school hours, on weekends or in the school holidays, and late at night or in the early hours of the morning. The pair also called each other often during this period, although sometimes Student A would refuse when [REDACTED] asked her to call him. Many of the messages exchanged had no valid educational context and related to Student A's personal issues. A copy of the text messages exchanged during this period is attached at **Tab 1** and forms part of this summary of facts. Some of the key messages are referred to throughout this summary of facts.
12. [REDACTED] sent multiple text messages to Student A telling her that he loved and cared for her, referring to himself as her dad, and sending her love heart emojis

or “x” (a symbol for a kiss). He also messaged her saying that he would miss her, that he was thinking about her, or offering to hug her. For example, one time he messaged her, “I love ya. hold on to that.” Another time, he texted her: “it’s nice to feel wanted. I’m sending you a ghost hug. you can’t feel it but it’s there.” One time, ██████ texted Student A asking her to come back before the end of the period because he needed a hug. On another occasion, he texted her saying “you are not just a kid at school. you have a place in my heart. and will do forever”.

13. ██████ often messaged Student A encouraging her to talk to and confide in him. For example, on one occasion after Student A disclosed that her mother was giving her the silent treatment, ██████ asked Student A, “did you also want a text every minute to make up for mum not talking...like I said a gazillion times. if you want a chat..... because I always want to chat”. This was followed by a winking smiling face emoji. Another time, he messaged her: “I feel like you are hurting today...you know you can call me anytime...[loveheart emoji] that’s a big hug”.

14. On other occasions, ██████ would send messages complimenting Student A. Student A would also compliment ██████. For example, on one occasion, the following messages were exchanged:

Student A: i should listen to you... but I don’t haha and yeah your not a very scary person, just like a teddy bear

██████: thank you for that. that made me smile

Student A: hahah it’s true tho

██████: I think the world needs more teddy bears. very happy to be one.

Student A: the world definitely needs more of you

██████: ok tears now

Student A: omg seeeee giant teddy bear

██████: joy is what you are.

15. Another time, the following messages were exchanged:

Student A: I don’t think i would be alive rn without you like genuinely

██████: I’m glad u are. il love you so much. the world needs u. x

16. On other occasions, ██████ sent Student A the following text messages:

a. “[W]hen you are on form you brighten the whole room and everyone around you. you are the highlight of everyday for me”.

b. “I’m still buzzing after your news this morning. I’m so proud of you...I think remember how awesome you are. remember you are enough. remember that no person has the right to make you feel bad...I think you need to just believe me for a while about this. then you will realize that I’m pretty much right about everything”.

c. “I wish you could see yourself through my eyes. Then you would understand how perfect you are. just as you are. Can you just flick me a text once you are with Paris? it will help me sleep.”

17. Sometimes ██████ would send Student A links to songs online – for example, sending her a link to a song titled “make you feel my love” when she was upset, or to distract her when her mother and step-father were arguing at home.

18. On Father's Day, Student A wished ██████ a happy Father's Day, thanking him for respecting and caring for her like "one of your own", being a shoulder to cry on, and "ALWAYS being there for me even when i push you away...".
19. ██████ also repeatedly offered to help Student A in her dealings with other teachers in his messages to her, sometimes making disparaging remarks about them. For example, when referring to the Year 11 Dean, ██████ messaged that he would "like to punch her in the throat".
20. On 10 September 2018, the day after Student A had made disclosures to her mother about her step-father (addressed further below), ██████ messaged Student A offering to let her sit in his car alone, without him, to get some space. Student A denied this offer.
21. On another occasion on 16 September 2018, Student A messaged ██████ saying she had been drinking and that she was walking home by herself in the early hours of the morning (shortly after 2am). ██████ repeatedly messaged Student A offering to pick her up to drive her home and expressing concerns about her wellbeing. He messaged her "you are one of my kids. what i would do for any of u. I'd find you".

Inappropriate physical contact with Student A

22. Several times in 2018, ██████ hugged Student A. While most of these occasions happened at school, one time (shortly after Student A had made disclosures about her step-father) ██████ visited Student A at her workplace and hugged her outside. ██████ went to Student A's work despite Student A having messaged him saying he did not have to come to her work. At least once, ██████ kissed Student A on the top of her head while he was hugging her.
23. Student A later reported that she did not feel uncomfortable with this contact.
24. ██████ frequently offered to hug Student A in the messages he sent her or referred to hugs in his messages. For example, on one occasion he texted Student A: "without getting too gushy and hopefully without upsetting you. I just want you to know that you made me very special when you asked for a hug today. Personally, I live for hugs and authentic connection and it was a special moment for me".
25. Another time, he texted Student A "u have to come tomorrow coz u owe me a big hug".
26. Although ██████ told Student A's counsellor and other teachers about him text messaging with Student A, he did not disclose having hugged Student A or that he had gone to her work at the time.

Meeting with Student A outside of school hours / off school grounds

27. As referred to above, on one occasion, ██████ went to Student A's workplace in his car and gave her a hug outside of her work. This happened in the evening, outside of school hours and off school grounds.
28. Another time in the evening, Student A told ██████ that she had been at a party. ██████ saw Student A, along with her friends, at a bus stop, while he was driving home. He spoke to Student A, offered her a lift home, and asked if she wanted him to ring her parents for her. Student A told ██████ to leave her alone.
29. In the Term 3/4 school holidays (September 2018), ██████ messaged Student A inviting her over to his house so she could watch a movie at his house with his kids and bake cakes like a "father-daughter" day. Student A made up an excuse and said she could not go because she was working.

Giving Student A gifts

30. ██████ from time to time gave Student A gifts of food, such as lunch, sweets, and bagels.
31. In his role as as a co-ordinator of the positive behaviour for learning programme, ██████ implemented a positive rewards system to all students which included such gifts.
32. ██████ also, on one occasion, gave Student A a beanie with a turtle crocheted on it that his sister had made. "Turtle" was one of ██████' nicknames for Student A (and he regularly sent her turtle emojis). ██████ said that he gave the hat to Student A to stop her from banging her head against the wall (one of the ways she self-harmed) and to symbolise that everything would be okay.
33. ██████ sent Student A messages asking if he could give her a present for her birthday in December 2018. ██████ made Student A a picture with an artist she liked (████████) made out of her favourite lollies, skittles. There was a card taped to the back of the picture under a Thunderbird sign with messages inside, one of which referred to how far Student A had come. ██████ told Student A that the messages were hidden so no one else would discover them.
34. Student A reported feeling confused about the present, as no other students were given gifts.
35. ██████ did not tell anyone about giving Student A gifts at the time.

Falsifying school records

36. On various occasions, ██████ would alter electronic attendance records for Student A to show that she was present in class, when in fact she had been absent. This regularly happened for Student A's Science classes. ██████ told the Police that Student A experienced anxiety and he had discussed with ██████ how to get her to attend class again. On occasion she would attend for a short period then sit in on ██████ classroom doing her work there, but would not attend the classes themselves. Student A engaged sometimes with ██████' teaching and she got credits for this.
37. Student A would sometimes ask ██████ to cover for her in terms of her attendance, which he agreed to do. On one occasion, ██████ messaged Student A saying he had changed her attendance and to tell anyone who asked that she was feeling sick and had tried to go to sick bay but had ended up in the toilets.

Encouraging secretive behaviour

38. ██████ encouraged Student A to engage in secretive behaviour regarding their relationship.
39. For example, he told her not to tell anyone about the gifts he had given her.
40. When Student A told ██████ that the Police knew about their text messages with each other, Student A began contacting ██████ via Facebook Messenger and they stopped text messaging. ██████ responded to a few of these Facebook Messenger messages he received, but then stopped communicating with Student A.

Concerns expressed by others

41. In early 2018, the Year 11 Dean, ██████, expressed concerns about ██████ spending large amounts of time with Student A to the Assistant Principal, ██████.
42. The Principal, ██████, subsequently had a conversation with ██████ regarding his relationship with Student A.
43. During the conversation with ██████, which took place in Term 2 of 2018, ██████ told ██████ that he had Student A's personal phone number.

During this conversation, ██████████ emphasised the need for ██████████ to take care in his interactions and communications with Student A.

44. ██████████ continued to raise concerns about ██████████'s closeness with Student A throughout 2018, including with the Acting Deputy Principal, Assistant Principal, and Principal.
45. Student A told her counsellor about her contact with ██████████. The counsellor informed the Police about this contact.

Police involvement and school process

46. In September 2018, Student A made disclosures to her mother about abuse she was suffering from her step-father, which led to involvement from Police and Oranga Tamariki. Student A told ██████████ about what she had disclosed. She messaged him saying that she could not have made the disclosures without his support.
47. The Police obtained copies of messages between ██████████ and Student A in the course of their investigation regarding Student A's disclosures about her step-father. The Police brought these messages to ██████████ attention in December 2018.
48. On 13 December 2018, ██████████, the Principal of ██████████, submitted a mandatory report to the Teaching Council | Matatū Aotearoa about ██████████' conduct towards Student A.
49. The following day, ██████████ initiated a formal disciplinary process, and ██████████ was invited to a disciplinary meeting.
50. On 18 December 2018, ██████████ met with ██████████ and others to address the concerns, together with a PPTA representative. During the meeting, ██████████ acknowledged that he had crossed boundaries. ██████████ said that he had been burnt out as a result of his workload that year, and asked for leniency, as this was his "first offence" and because he had had the best of intentions. ██████████ said Student A's messages had been "very intense" and she had ██████████. He said she would not speak to anyone else, but that he was speaking to her counsellor. ██████████ acknowledged that his actions meant that he had breached the school's trust in him, and that he had breached the Code of Professional Responsibility. He noted that he himself had been studying counselling and that, while his relationship with the student was not a counselling relationship, he had been doing lots of study around certain types of therapies and realised the necessity of supervision.
51. The matter was referred to the ██████████ Board of Trustees as a disciplinary matter to address in the new year (as the school year had ended).
52. ██████████ ultimately resigned on 16 January 2019 before ██████████ disciplinary process concluded.
53. When spoken to by the Police in January 2019 about the text messages with Student A, ██████████ said that he had only been trying to help Student A and act in her best interests. He said he had gone into "protective dad mode" when she disclosed personal issues to him, acknowledging that he had breached boundaries as Student A's teacher. He also acknowledged that he did not communicate with anyone else in the same way. He said that he had felt like her sole support person for the better part of a year, and that he loved her and had treated her as he would his own kids. He said he should have done something about it (in reference to his contact with Student A), but said that he had disclosed some things to Student A's counsellor. He also said, "I felt like she needed to know that someone loved her in the world". He acknowledged having sent Student A messages and having covered for her absences at school. He also acknowledged having hugged her several times, and having kissed her on the head (as he would with his own children). He emphasised that the relationship was not indecent. The Police did not lay any charges against ██████████.

54. After receiving the mandatory report from [REDACTED], the Teaching Council's Triage Committee referred the matters referred to in the mandatory report to a Complaints Assessment Committee (**Committee**) to investigate. [REDACTED] was subject to a voluntary undertaking not to teach for part of the Committee's process.

Teacher's comments

55. In written responses provided on [REDACTED]' behalf to the Committee, [REDACTED]' lawyer accepted that [REDACTED]' actions may have crossed a boundary when he had met with Student A outside of school, and said that [REDACTED] had been concerned about the student's welfare. [REDACTED]' lawyer referred to the explanation that [REDACTED] had provided to the Police (summarised above at paragraph 51), and said that there was nothing to add to that.

The legal principles / Ngā mātāpono ture

[4] Section 378 of the Act defines "serious misconduct" as follows:

serious misconduct means conduct by a teacher—

(a) that—

- (i) adversely affects, or is likely to adversely affect, the well-being 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

[5] Regarding the first aspect of this test (adverse effect). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.¹ The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[6] The second limb (fitness) has been described by the Tribunal as follows:²

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

[7] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.³ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could

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

² *CAC v Crump* NZTDT 2019-12, 9 April 2020.

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[8] Section 378 also contains reference to reporting criteria, via section 378(b). The Court of Appeal has affirmed that this reporting criteria limb of section 378 creates a conjunctive test for serious misconduct.⁴ That is, one of the limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

[9] The Teaching Council Rules 2016 describe the types of behaviour that are of a prima facie character and severity to constitute serious misconduct. These rules read as follows:

9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:

(b) emotional abuse that causes harm or is likely to cause harm to a child or young person:

(c) neglecting a child or young person:

(d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:

(e) *breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example,—*

(i) engaging in an inappropriate relationship with the child or young person:

(ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:

(f) viewing, accessing, creating, sharing, or possessing pornographic material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:

(g) *acting dishonestly in relation to the teacher's professional role, or committing theft or fraud:*

(h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:

(i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:

⁴ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

(j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:
(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[10] Here, the CAC relies on (e), (g) and (k), which we have italicised above.

[11] The obligation rests on the CAC to prove the charge. While the standard to which it must be proven is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.⁵

Discussion

Adverse effect

[12] We have considered the submissions of the parties. The CAC says that the conduct was likely to adversely affect the student due to her vulnerability and emotional state at the time. The respondent says that there is no evidence of harm and if anything the student supports him. The respondent refers to their being no intimate or sexual relationship.

[13] We do not accept that the absence of an intimate or sexual relationship is relevant. Each case must be viewed on its own. Whilst some cases will be more extreme than others in a basic sense, we generally do not apply a linear scale to conduct.

[14] However, in our view it is difficult to determine whether the student was likely to have been adversely affected without more evidence. Whilst we can draw these inferences, in the context of this particular set of facts and without having seen and heard from her, we are left uncertain on this point.

Fitness

[15] This is also contested. Much the same points are made again by the parties.

[16] In our view the conduct does infringe on the respondent's fitness to be a teacher. That comes from the nature and extent of it, and in part his senior role. Boundaries were clearly crossed, despite the respondent considering he had good intentions.

[17] We also at this point take into account the falsifying of the school records, which supports the fitness finding. School funding is often based in part off attendance records. We consider this aspect alone would bring a serious question over the respondent's fitness.

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

Disrepute

[18] For the same reasons we consider that the conduct when taken in combination may bring the teaching profession into disrepute. It is not the type of behaviour that is expected of teachers.

Is it serious misconduct - code breaches?

[19] We consider that the conduct is close to but not over the line of a serious breach of the reporting rules relied on here.

[20] The charge of serious misconduct has therefore not been proven. We do however find proven the included charge of misconduct.

Penalty

Legal Principles

[21] We will first set out the general legal principles which apply.

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

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

[23] The Tribunal in *McMillan* noted that there are three primary purposes when imposing penalty. These are:

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

[24] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.⁷

[25] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven

⁶ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

⁷ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

case presents to us. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[26] In *CAC v Fuli-Makaua* this Tribunal noted that cancellation may be required in two overlapping situations:⁸

a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and

b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

[27] Each case presents a different set of facts. And, a different teacher. Some cases might see conduct at such a serious level that the enquiry ceases at that point, with cancellation being the only appropriate outcome. In others, the conduct can be finely balanced so that the end result may depend on the Tribunal's assessment of the teacher's insight and future prospects. Given the assessment required, a like for like approach with other cases can often yield only general patterns.

Discussion

[28] The CAC point to a number of facts which they argue supports an order for cancellation:

- (i) The respondent's position as Assistant Dean which can involve a pastoral element
- (ii) The vulnerability of the student
- (iii) The frequency of contact – 1000 or more messages in three months, plus phone calls and meetings at school and outside of it
- (iv) The personal nature of the discussions that occurred
- (v) The encouragement of secrecy
- (vi) That the conduct continued despite the respondent being advised to be careful

[29] The CAC also submit that the respondent has not shown significant insight into his conduct and the potential harm it could have caused.

[30] For the respondent, it is argued that the conduct is not at a level requiring cancellation and that he has shown insight in that he has accepted his

⁸ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

conduct and left the profession, and attended counselling.

[31] We have difficulty in accepting that the respondent fully accepts that his behaviour was inappropriate. Whilst agreed facts were reached, the respondent denies that those facts are serious misconduct or even misconduct. Whilst the respondent is entitled to do so, with the charge of misconduct now proven it can be more difficult for the Tribunal to accept pleadings of insight and responsibility. That is all the more so when the respondent's view of this conduct is that only sexual or intimate conduct would cross the line, and that he should just be seen as an overzealous fatherly figure.

[32] We have not heard directly from the respondent via an affidavit or in person. Rather we are simply told that he has attended some counselling. We have nothing from the counsellor either. A professional who wishes to convey to a disciplinary tribunal that they have insight and responsibility would usually front up with more direct and cogent evidence.

[33] We have considered the respondent's mitigating features including his lack of any previous issues, that he reached agreement on the facts, and that he displayed some responsibility in his initial dealings with the matter.

[34] Overall we consider that a penalty of censure and conditions is appropriate. The penalty will be:

- Censure
- Annotation of the Register for three years
- That any subsequent practising certificate issued in the next five years has a condition that for the remaining balance of the five years from this decision that the respondent provide this decision to any teaching employer and provide proof of doing so to the Teaching Council.

Publication

[35] We make a final order of non-publication of the name of student A and any other details that may risk identifying her

[36] We consider that there is a real risk that publication of the respondent's name and other associated details could lead to identification of Student A. We therefore make a final order also prohibiting publication of:

- The name of the respondent.
- The name of the school where he was employed during this conduct, and the department he worked in.

- The city that the school is in – media can refer to the location as being in the North Island.

Costs

[37] The parties are encouraged to agree costs. The Tribunal can indicate now that the fact of a lesser charge being proven is unlikely to be seen as a factor to move the general costs presumptions (short of any calderbank type issues being relevant).

[38] If agreement cannot be reached the CAC may file a submission limited to four pages or less in support of costs within 10 working days, and the respondent can then reply likewise.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa