



**EDUCATION COUNCIL**

NEW ZEALAND | Matatū Aotearoa

### **Complaints Assessment Committee (CAC) v Teacher I**

*NZ Teachers Disciplinary Tribunal 2017/12*

Social media can be a useful tool for teachers to use to communicate with a class; however, it is expected a school would have clear guidelines “so that the teachers and students alike, understand what use is appropriate.” Teachers hold a position of trust and responsibility, and it is their duty to maintain professional boundaries, both inside and outside the classroom.

This case concerns a 23-year-old provisionally certificated teacher (“Teacher I”) who engaged in an inappropriate relationship with a 16-year-old student in his English class (“Student A”). He also breached professional boundaries with another 16-year-old student (“Student B”).

Teacher I’s inappropriate relationship with Student A began when he added her as a friend on Instagram. Initially, the communication was about school work. However, the conversations changed to being “friend based” and occurred over multiple digital media sites.

When questioned by the school principal about befriending Student A on Instagram, Teacher I lied about it. Teacher I was also spoken to by Student A’s mother, who raised concerns about his closeness to her daughter. Teacher I continued to engage in text and social media communication with Student A, using words such as “love” and “affection”, and the phrase, “I love you”. On one occasion, Teacher I visited Student A at her father’s home to deliver her a gift of food without her father’s knowledge.

Teacher I also accepted he had breached appropriate professional boundaries on one occasion, when he had transported Student A and Student B, to and from town late on a Saturday evening, without the permission of the students’ respective caregivers.

Teacher I acknowledged, and the Tribunal agreed, that he had exploited his position as a teacher. The Tribunal emphasised the detrimental effect that a teacher’s treatment of a student as a friend can have on a student, noting the resulting harm is, “*sometimes more [in an inappropriate relationship] than a sexual relationship.*” The Tribunal found the teacher’s conduct was likely to adversely affect the well-being or learning of Student A, reflected adversely on Teacher I’s fitness to practice and brought the teaching profession into disrepute. His actions amounted to serious misconduct.

The Tribunal also took the opportunity to address Teacher I’s use of social media to communicate with Student A. It considered that a teacher’s use of social media to communicate with students outside the usual teacher-student interaction, and in the absence of any professional reason to do so, suggests

*“an element of hope that he [or she] could pursue some form of relationship outside the professional one”.*

The Tribunal found that the teacher/student relationship had been violated in this case, and the appropriate penalty was to censure Teacher I and to cancel his registration. The Tribunal also ordered Teacher I to contribute to 40% of the CAC’s and the Tribunal’s costs.

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2017-12**

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

**AND**

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

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

**AND** **TEACHER I**  
**Respondent**

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**TRIBUNAL DECISION**

**18 January 2018**

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**HEARING:** Held on 12 September 2017 at Wellington

**TRIBUNAL:** Theo Baker (Chair)  
Sheila Grainger, Patrick Walsh (Members)

**REPRESENTATION:** Mr Seamus Woods/Ms Laura Hann for the CAC  
Ms King for the respondent

## Introduction

1. The Complaints Assessment Committee (**CAC**) has referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers arising from the respondent's involvement with a student. The CAC has charged that the respondent:
  - 1.1 *between February 2016 and 20 September 2016 did have an inappropriate relationship with a Year 11 female student (student A); and*
  - 1.2 *on Saturday 10 and Sunday 11 September 2016, did breach appropriate professional boundaries with student B by transporting student B to [city suppressed] and back to [location suppressed] without the permission of student B's caregiver.*
2. The parties conferred and filed an Agreed Statement of Facts, signed by Mr Woods on behalf of the CAC, and Ms King for the respondent. We also received submissions from the parties and some statements in support of applications for non-publication of name, as outlined below.

## Evidence

3. The Agreed Summary of Facts is reproduced in full, subject to the non-publication orders made at the end of this decision:
  1. ***[The respondent]*** *is a 23 year old provisionally registered teacher. He taught at [C] High School from February 2015 until his resignation on 26 September 2016. The respondent was placed on leave with full pay on 20 September 2016 up until his resignation took effect. He has signed an undertaking not to teach.*
  2. *Sometime after school commenced in February 2016, the respondent engaged in an inappropriate relationship with a Year 11 female student (Student A) (aged 16 years) who he met in his capacity as her English teacher.*
  3. *This followed a time when the respondent was with a group of students doing reading logs during lunchtime. He added Student A on Instagram. He did this in front of the students. Student A then messaged him via Instagram on what to do for the logs and other course work. Initially the respondent did not see the harm in this communication as it was about school work.*

4. *However, the conversations later changed to being friend-based and occurring over multiple types of social media including texting, Snapchat and Instagram. The relationship formed around social media communication at this time. The communication and conversations occurred on multiple occasions.*
5. *In July 2016, the Principal of [C] High School, [E], first became aware of rumours that the respondent had “liked” the Instagram account of a Year 11 female student the respondent was teaching. [E] met with the respondent on 25 July 2016. The respondent acknowledged he had had contact with Student A, saying it was part of his English class which was looking at forms of communication. He said he had forgotten to “unlike” Student A on his Instagram account. The respondent assured [E] that he had not had any communication via digital media with Student A or any other student. He maintained there was no substance to these reports. [E] counselled the respondent about being aware of maintaining professional boundaries with students. The respondent acknowledged making a mistake and said he would be mindful of this in future.*
6. *The respondent later accepted he had lied to [E] about the messaging with student A when he was questioned in July. He stated he was concerned he would lose his job if he disclosed all of the information.*
7. *After the July meeting with [E], communication with Student A did stop for a short period. That also followed an “informal meeting” between the respondent and Student A’s mother about his “relationship” with and closeness to Student A.*
8. *Student A again initiated further communication with the respondent and things escalated. The relationship continued with text and social media communication, again over multiple occasions. Screenshots of Student A’s phone of one such text message conversation on 18 September 2016, as well as records of phone calls on 17 and 18 September 2016, are attached.*
9. *During the relationship, words like “love” and “affection” were used. On at least one occasion, the respondent texted Student A “I love you”.*
10. *Some time after the July meetings, the respondent delivered a 2 litre tub of ice cream to Student A while she was staying at her father’s house. Neither of Student A’s parents were aware of this and the respondent knew that. He took it to Student A*

*because she was upset and he thought it would cheer her up. He understood she was upset because of fights she was having with her parents.*

11. *On Saturday 10 September 2016, Student A was staying overnight at Student B's house in [location suppressed]. Student B was also a 16-year-old female year 11 student at [C] High School. At Student A's request via text message, the respondent picked up Student A and Student B at approximately 11pm in [location suppressed] and drove them into [name of city suppressed], approximately 20 kilometres away. He dropped the two girls off in the city at about 11.30pm, then went and socialised with his own friends at his flat. Student A had told him that her and Student B would meet other people in the city.*
12. *Around 2am, he picked up Student A and Student B and returned them to [location suppressed].*
13. *This happened without the permission of the students' caregivers. The caregivers had not given permission for the students to go out that night. The respondent was aware of this. He picked them up from a part of [location suppressed] away from where they were staying.*
14. *The respondent says Student A told him they were intending on getting a ride from a friend of theirs who had been drinking and he thought he would be a safer option.*
15. *Student A's mother complained about the respondent's contact with her daughter to [E] on 19 September 2016.*
16. *On 20 September 2016, Student B's mother confirmed the 10 September 2016 incident to [E].*
17. *[E] met with the respondent on 20 September 2016. [E] put the students' mothers' claims to the respondent, who admitted all the allegations. [E] placed him on special leave immediately. The respondent resigned on 26 September 2016.*
18. *The respondent admitted having had an inappropriate relationship with Student A, in particular that he:*
  - i) *communicated with Student A via text messaging and social media communication including Snapchat and Instagram;*
  - ii) *expressed emotional feelings to Student A using words such as "love" and "affection" and the phrase "I love you";*

iii) delivered food to Student A while she was staying at her father's house, unbeknownst to her father; and

iv) transported Student A and Student B to [city suppressed] and back to [location suppressed] late on the night of 10 September 2016 without the permission of the students' respective caregivers.

19. He also accepted giving Student B a ride to [city suppressed] and back to [location suppressed] without her caregivers' consent and that this breached appropriate professional boundaries.

20. The respondent agrees that his actions as described in this agreed statement of facts amount to "serious misconduct".

21. The parties agree that the appropriate penalty in this case is cancellation of the respondent's registration.

4. In her submissions for the CAC, Ms Hann also provided a transcript of some texts between the two and she annexed what appear to be photocopies of the screen of a mobile phone showing text communication. For the respondent, Ms King made no comments about these, and so we take it that she accepts the transcript of the texts.

5. In the student's texts there is reference to her consumption of alcohol. The respondent's comments include:

*Haha omg [student A], sounds like an awesome night. Do you remember most of it?*

*Haha maybe, you've never seen me drink though ;) na I would be vomiting in a Macdonalds for sure!! That honestly sounds like a wicked set of drinks for a savage hangover, so much mixing*

*Poor [student A], you got no limits! This is the perfect white girl wasted scene haha. on it till ya vomit!*

6. The text exchange continues:

*Student A: hahahah I was actually so trashy haha we walked round [location suppressed] in our bras I'm pre sure mine came off tho..... whoops f\*\*k idk [I don't know] I'm lowkey loving this party/ hoe life.... Hahaha*

*Respondent: omg [student A] You are a crazy chick. Haha I bet those [location*

suppressed] people were loving you, giving them a free show ;) party hard while you can cause it don't last forever! Just don't get knocked up haha

Student A: f\*\*k that honestly I haven't had sex in soooooo long! Haha

Respondent: Sadly I know the feeling too! Hahaha.

### **Misconduct/Serious misconduct**

7. The respondent accepts that his conduct as outlined in the Statement of Facts amounts to serious misconduct. Ms Hann for the CAC has helpfully outlined the relevant law for cases such as this. She reminds us of the position outlined by the District Court in *Scully v Complaints Assessment Committee of the New Zealand Teachers Council*<sup>1</sup>:
  - There is no question it is serious misconduct for a teacher to have a sexual or intimate relationship with a student at the school where he or she is teaching;
  - In such cases, cancellation will often be the only appropriate outcome.
  
8. Ms Hann referred to other cases where this Tribunal has found serious misconduct as a result of inappropriate relationships that where sexual intercourse had apparently not occurred:
  - *CAC v X*<sup>2</sup> where a teacher developed a “romantic relationship” with a Year 12 student via text message and private meetings outside school. There was physical intimacy in the form of hugging and kissing;
  - *CAC v X*,<sup>3</sup> which involved a teacher kissing a student on the cheeks and trying to put his hands into the student’s underwear and rubbing through her clothes;
  - *CAC v B*,<sup>4</sup> where a teacher invited a student to his house, kissed her and engaged in frequent emails (the content of which included information about his emotional state, telling her she looked sexy and referring to ways in which they could keep their relationship secret).
  - *CAC v Brabant*,<sup>5</sup> which involved a Facebook message exchange, including personal information:

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<sup>1</sup> *Scully v Complaints Assessment Committee of the New Zealand Teachers Council* [2009] DCR 159 (DC) at [21]

<sup>2</sup> *CAC v X* NZTDT 2008-18

<sup>3</sup> *CAC v X* NZTDT 2008-18

<sup>4</sup> *CAC v B* NZTDT 2015-68, 2 May 2016

<sup>5</sup> *CAC v Brabant* NZTDT

- *CAC v Teacher*,<sup>6</sup> where a teacher turned to a student in time of crisis and developed a close friendship.

9. These are relevant decisions. We have also found serious misconduct in the following cases:

- *CAC v Huggard*,<sup>7</sup> where a teacher developed an emotional reliance on a student whom he had been asked to mentor, sending her lengthy and prolific personal texts
- *CAC v Luff*<sup>8</sup>, where a teacher had an inappropriate relationship with a student from another school. The relationship arose from his role coaching a regional area sports team.
- *CAC v Teacher*,<sup>9</sup> where a teacher formed close friendships with some students and also kissed one student.

10. Dealing first with statutory provisions, serious misconduct is defined in s 378 of the Education Act 1989 (the Act). It provides:

***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 Education Council's criteria for reporting serious misconduct.*

11. The Council's criteria for reporting serious misconduct are found in r 9 of the New Zealand Education Council Rules 2016. In the Notice of Charge, the CAC relies on rr 9(1)(e) and (o):

(e) *being involved in an inappropriate relationship with a student with whom the teacher is, or was when the relationship commenced, in contact with as a result of his or her position as a teacher:*

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<sup>6</sup> *CAC v Teacher* NZTDT 2016-64, 16 February 2017

<sup>7</sup> *CAC v Huggard* NZTDT 2016-14, November 2016

<sup>8</sup> *CAC v Luff* NZTDT- 2016-70, 25 July 2017

<sup>9</sup> *CAC v Teacher* NZTDT 2016-58, 16 May 2017

(o) *any act or omission that brings, or is likely to bring, discredit to the profession.*

12. We readily accept that the respondent's conduct:

- was likely to adversely affect the wellbeing or learning of Student A
- reflects adversely on the respondent's fitness to practise
- brings the teaching profession into disrepute
- constitutes an inappropriate relationship which commenced as a result of his position as a teacher, and
- is likely to bring discredit to the profession.

13. Ms Hann referred to the following relevant excerpt from *CAC v Teacher*.<sup>10</sup>

*We have said on a number of occasions that a teacher's professional obligations to his or her students do not end outside the classroom, and it is crucial that teachers respect and maintain the professional boundary placed between them and their charges.<sup>11</sup> The Education Council's Code of Ethics requires teachers to, "develop and maintain professional relationships with learners based upon the best interests of those learners."<sup>12</sup>*

14. We consider the following statement from *CAC v Huggard* also bears repeating:<sup>13</sup>

*As the adult and a teacher, the respondent had 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.*

15. These comments are pertinent to the present case. In our view the respondent behaved in an immature, self-serving way, and exploited his position as a teacher.

16. We are satisfied that the conduct amounts to serious misconduct.

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<sup>10</sup> Above note 6 at para 22

<sup>11</sup> Most recently, in *CAC v Teacher* NZTDT 2016/55.

<sup>12</sup> The Education Council Code of Ethics for Certified Teachers, which from July 2017 been replaced with the Code of Professional Responsibility and Standards for the Teaching Profession.

<sup>13</sup> Above note 7 at para 21.

### *Social media*

17. It is not clear to us why the respondent added the student to his Instagram contacts in the first place other than because he already had some other attraction to her. We are not told whether the rest of the class were in touch with him via Instagram. There does not appear to be any professional reason for the respondent to be communicating with this student or any other student via social media at all. As in so many other cases that come to the Tribunal, the respondent has used social media as a means to connect with a student outside the usual teacher-student encounters and this has led to an inappropriate relationship. We do not think that the relationship was an accidental consequence of an innocent social media connection. We are not saying the Instagram connection was necessary a predatory action, but if the respondent had fully examined his intentions, there must have been an element of hope that he could pursue some form of relationship outside the professional one. There was simply no other reason for them to be connected on Instagram.
18. We appreciate that in some environments social media sites may be a useful tool for a teacher to communicate with a class about projects, assignments and deadlines. We would expect a school to issue clear guidelines so that the teachers and students alike understand what use is appropriate. In this case, the respondent was in no doubt that he had misused social media, as evidenced by his lying to the principal about his behaviour.

### **Penalty**

19. The parties agree that the appropriate penalty in this case is cancellation. This is available under s 404(1)(g) of the Act.

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

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
  - (b) *censure the teacher:*
  - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*

- (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
- (e) *annotate the register or the list of authorised persons in a specified manner:*
- (f) *impose a fine on the teacher not exceeding \$3,000:*
- (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
- (h) *require any party to the hearing to pay costs to any other party:*
- (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
- (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*

20. When discharging the responsibilities owed to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.<sup>14</sup>
21. Ms Hann discussed the cases of *CAC v Allen*<sup>15</sup> and *Scully*,<sup>16</sup> noting that Allen was distinguished from Scully on the basis that in Allen, the relationship took place during the school year, lasted some months and the teacher was actively dishonest. She highlighted the similarities with the current case. The respondent has accepted that cancellation is appropriate here, and so we will not traverse the cases in detail. As Ms Hann points out, we have cancelled registration in other cases where there has been no sexual relationship. She cites *CAC v X*<sup>17</sup> and another anonymised case from the following year.<sup>18</sup>
22. In most circumstances the fact that a teacher and student had sexual intercourse is an aggravating factor of an inappropriate relationship, but teachers must understand that the wrongdoing starts before or without a physical relationship. It should be remembered that a teacher's treatment of a student as a friend can have a detrimental effect on a student, sometimes more than a sexual relationship. When a teacher thinks of a student as a son or daughter, friend, confidant, lover or object of desire, they need

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<sup>14</sup> *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

<sup>15</sup> *NZTDT 2015/24*, 23 September 2015

<sup>16</sup> Above note 1

<sup>17</sup> Above note 2

<sup>18</sup> *CAC v X NZTDT 2009-1*

to be aware that the boundaries of the teacher/student relationship are blurred. When the teacher's feelings are manifested whether by conversations of a personal nature, flirtatious behaviour, special treatment or intimate contact, then the teacher has exploited his or her position and the teacher/student relationship has been violated. The seriousness of this breach will depend on a range of circumstances including frequency, duration and intensity of the conduct, the impact on the student, the impact on other students, and the degree to which the teacher is dishonest about the conduct or seeks to collude the student in the deception. It is on this basis that this Tribunal has cancelled registration in a number of cases involving inappropriate relationships, whether or not they are sexual.

23. In the present case, the respondent accepts that cancellation is the appropriate penalty and we agree. In particular in our view the aggravating features of this misconduct are:
- the respondent's lack of honesty when the Principal approached him about rumours that the respondent had "liked" the Instagram account of a female student
  - his re-engagement in text and social media communication with Student A following this and after her mother had spoken to him about his closeness to her daughter.
24. The respondent has shown a lack of the maturity and self-discipline and is not a fit and proper person to hold the responsibility of membership of teaching profession. We impose the following penalty:
- a) Censure under s 404(1)(b)
  - b) Cancellation of registration under s 404(1)(g).

### **Costs**

25. The CAC seeks a 40% contribution to costs. This amounts to \$1,842.36. The respondent has filed nothing on the questions of costs.
26. We agree that 40% is a reasonable amount for costs. We therefore order the respondent to pay \$1,842.36 under section 404(1)(h) representing 40% of the CAC's actual and reasonable costs.
27. We also order the respondent to pay 40% of the Tribunal's costs. The Tribunal delegates to the Chairperson authority to determine the quantum of those costs and makes the

following directions:

- a) Within 10 working days of the date of this decision the Secretary is to provide the Chairperson and the parties a schedule of the Tribunal's costs.
- b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the Tribunal.
- c) The Chairperson will then determine the total costs to be paid under s 404(1)(i).

### **Non-publication orders**

28. The respondent has applied for suppression of his name, the students' names and the school's name on the following grounds:
  - Naming him or the school would lead to identification of the students
  - The potential adverse impact on each of the respondent's parents.
29. In support of his application, the respondent has filed:
  - a) an affidavit sworn by the respondent on 14 July 2017
  - b) a letter dated 23 June 2017 from his parents' general practitioner
  - c) a letter dated 28 July 2017 from his mother.
30. The respondent explains that his mother is a teacher in the same city, his aunt and uncle are also teachers, and they all share the same surname, which he terms as unusual. His mother suffers from anxiety and he is concerned that publication of his name will negatively impact her in the teaching community.
31. In her letter, the respondent's mother says that she and her husband have asked the respondent to apply for name suppression. She suffers from gastric reflux, requiring medication. This is exacerbated by stress and anxiety. Surgery is a possibility. She also has high blood pressure and has experienced episodes of atrial fibrillation, which can be triggered by stressful situations. In addition she has been consulting a gynaecologist and at the time of writing was scheduled for a surgical biopsy.
32. She explains that her husband has had employment issues and his GP had prescribed medication for sleeplessness and anxiety. He also scheduled to have hip surgery in early July and was consulting a urologist for prostate issues.
33. The letter from the parents' GP confirms that the respondent's mother suffers from

several medical conditions for which she requires regular medication, and these are aggravated by stress. She might require surgery for one of the conditions and was scheduled for a gynaecological procedure which she was finding stressful. He also confirms that the respondent's father has (previously) suffered from anxiety for which he was prescribed medication.

34. CAC sought suppression of the students' names, but opposed final suppression for the respondent on the basis that the circumstances do not justify a displacement of the presumption of open justice or demand suppression of the respondent's name. However, at the time of filing submissions, the CAC was still waiting an update from the school Principal, and wished to reserve its positions. Ms Hann also advised that the school had indicated that it may support suppression of the respondent's name on the basis of the students' interests. If the views of the school supported the respondent's submission that the students are likely to be identified as a result of publication of the respondent's and school's names, the CAC would not oppose such an order being made.
35. On 10 August 2017 the Principal of the school wrote requesting suppression of:
  - a) The respondent's name
  - b) The subjects taught
  - c) The place and region of employment.
36. The Principal explained that both students were still attending the school. Strict confidentiality was maintained to enable them to continue their studies without the impact of the incident, and they achieved NCEA Level 1 credits. The Principal said that it was felt that a huge amount of interest would be generated in the school and create stress for other students, who might be falsely accused of being involved in the incidents.
37. Of more concern was the risk of identification of the actual students who were involved, and the potential impact on their NCEA Level 2 achievement, and place at risk their health and wellbeing. The Principal advised that the parents of the two students strongly supported the school's application for name suppression as requested, and annexed emails from each of the mothers of the two students.
38. The Principal also noted that the respondent had not taught at any other school, the

implication being that if he is named, then the school would easily be identified and therefore the risk of identification of the students was increased.

*Legal principles*

39. Section 405(3) provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:

*(6) If the Disciplinary 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 to the public interest, it may make any 1 or more of the following orders:*

...

*(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*

40. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the respondent, his family, the two students involved, the wider school community, as well as the public interest. If we think it is proper, we may then make such an order. This is a discretionary decision, and so we are not obliged to make an order. However, we cannot make the order unless we have first reached a decision that it is proper. That is why discretionary decisions are sometimes referred to as a two-step process.<sup>19</sup>

41. Ms Hann helpfully and appropriately set out the principles of open justice and a thorough summary of relevant case law. We summarise the legal position as follows:

- a) There is a presumption in favour of openness, and therefore the starting point is that all names should be published.<sup>20</sup>
- b) There is no onus on the applicant and that the question is simply whether the circumstances justify an exception to the fundamental principle.<sup>21</sup>
- c) The correct approach is to strike a balance between the open justice considerations

<sup>19</sup> *CAC v Finch* NZTDT 2016/11

<sup>20</sup> Section 405 Education Act 1989

<sup>21</sup> *ASB Bank Ltd v AB* [2010] 3 NZLR 427(HC) at [14]

and the interests of the party who seeks suppression.<sup>22</sup>

- d) In exercising its discretion, the Tribunal may have regard to the interest of any person, then decide if it is “proper” to order non-publication of any aspect of the evidence.
  - e) “Proper” is not as high a threshold as “exceptional”<sup>23</sup>
42. We have decided that the interests of the two students involved in this matter outweigh the public interest, and we order non-publication of their names and identifying details. We reluctantly accept the Principal’s argument that identification of the respondent’s name and other details (apart from subjects taught) as outlined in his letter, are likely to lead to the identification of the students. It is for that reason that we have decided it is proper to suppress those details. With the suppression of the name of the respondent, school and location, we do not see that mention of the subject taught will lead to identification of the students.
43. We have therefore not needed to determine whether the respondent’s family’s interests outweigh the public interest in this instance. Although there are circumstances in which that is the case, we remind the profession that teachers who cannot conduct themselves in an appropriate manner should realise that the consequences of their serious misconduct are far-reaching. The respondent has put his own interests ahead of those of the students, the school community and those of his family. Stress and embarrassment to others was a foreseeable outcome of the choices he made.
44. The names of the students were not contained in any of the original documents submitted for the hearing, but the Principal of the school quite reasonably forwarded emails from the mothers of each of the students. Therefore, under s 405(6) we order non-publication of the following details:
- a) The names of the two students referred to in the summary of facts
  - b) The name of the respondent
  - c) The name and location of the school he taught at
  - d) The name of the Principal
  - e) Details which might lead to the identification of the matters outlined in paragraphs a) to d).

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<sup>22</sup> *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC4 at [3]

<sup>23</sup> *Canterbury Westland Standards Committee No.2 v Eichelbaum* [2014] NZLCDT 23

A handwritten signature in blue ink, appearing to read "Theo Baker". The signature is fluid and cursive, with a large initial "T" and "B".

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Theo Baker

Chair

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

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