

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/27

UNDER
WĀHANGA
IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

the Education and Training Act 2020
of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Prosecutor/Referrer | Kaiwhiu

AND
ME

TAURAPA
Respondent | Kaiurupare

Hearing | Te Rongonga

4 April 2023 (on the papers)

Representation | Hei Māngai

E Mok and J Ah Koy for the CAC
R Boulton for the Respondent

DECISION OF THE TRIBUNAL

TE MENETI O TE RŪNANGA RONGONGA TŌMUA I WHAKATŪRIA
22 May 2023

Background | Tāhuhu kōrero

[1] The Complaints Assessment Committee (CAC) has brought a charge of Serious Misconduct against Taurapa¹ under section 401 of the Education Act 1989 (the Act).²

[2] The charge as originally filed reads:

1. The CAC charges that Taurapa, registered teacher, of Christchurch, between 2018 and 8 April 2019:
 - a. Had an inappropriate relationship with a 17-year-old student (Student X)
 - b. Engaged in inappropriate communications with a 16-year-old Ms Y
2. The conduct alleged in paragraph 1 amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and Rule 9(1)(e) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.

[3] Later in this decision we will discuss some amendments that are required to the charge.

[4] Taurapa has not accepted the charge, as is his right. The Tribunal is required to determine whether the charge is proven, and if so, any orders that follow.

[5] The parties have provided evidence to the Tribunal initially by way of an agreed summary of facts document. At that stage Taurapa was intending on engaging in this process to defend the charge (on the agreed summary of facts).

[6] However, in the lead up to that hearing occurring, further evidence emerged. This was in the form of two new statements taken by a Teaching Council investigator. The first was from Student X (the student in charge particular (a)). The second was from a friend that was at school with Student X at the relevant time. We will call this school friend “Witness A” in this decision due to a non-publication order which we will make over her name.

[7] The CAC wished to put these further statements before the Tribunal as part of its case in support of the charge. Taurapa agreed that the Tribunal should receive the further statements, in addition to the summary of facts. An affidavit was then sworn by each witness, annexing their statements (and some other evidence which we will refer to). These affidavits

¹Taurapa was previously known as Connor Taurapa Matthews, including at the time of the alleged conduct in question. Taurapa has provided evidence to the Tribunal to confirm his legal change of name to Taurapa. The name change occurred in March 2022.

² Although the operative provisions are repealed, they continue to have effect for the purposes of this prosecution: s 34 Legislation Act 2019.

were then filed with the Tribunal.

[8] Taurapa has then elected not to challenge the further evidence. He has also elected not to engage in this hearing or make any substantive submissions regarding the charge. Taurapa has however, as will be seen, remained engaged to the extent of making submissions seeking non-publication of his name.

[9] Taurapa has stated via his counsel Ms Boulton that this decision (not to engage in defending the charge) was taken under advice due to what are perceived to be other potential legal implications in other jurisdictions. In the circumstances of this case that can only mean concerns as to potential criminal liability, which issue is touched on again in the non-publication aspect of this decision.

[10] Taurapa also stated via counsel that he was aware that an adverse outcome was likely in this Tribunal. He expressly sought to have his registration cancelled.

[11] All of that is a matter for Taurapa. We simply note that we don't draw anything from his absence. Nor from the reasons for his absence. Our role is to consider whether the charge here is proven on the applicable test and the evidence before us, and to determine any orders that might follow.

[12] Our hearing was conducted on the papers by the Tribunal. This essentially means that the Tribunal meets to consider the evidence and reach decisions. Despite the papers hearing occurring, we may still convene an in person hearing and call for any witness that we wish to hear from or ask questions of. In the event we have not needed to do so.

[13] In this decision we will first set out the applicable legal principles that apply to this charge. We will then need to consider the evidence before us and reach conclusions as to what we accept.

[14] Once the facts have been determined, we will then consider whether the charge is made out on those facts.

[15] If it is, we will then consider what penalty orders are appropriate.

[16] Finally we will consider any non-publication orders and costs orders.

The legal principles / Ngā mātāpono ture

[17] 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

[18] 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.³ The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[19] The second limb (fitness) has been described by the Tribunal as follows:⁴

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.

[20] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.⁵ 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 reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[21] 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.⁶ 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.

[22] The Teaching Council Rules 2016 describe the types of behaviour that are of a prima

³ *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

⁴ *CAC v Crump* NZTDT 2019-12, 9 April 2020.

⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁶ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

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:

(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.

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

[24] 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.⁷

[25] Finally we note that the absence of engagement from Taurapa does not result in automatic acceptance of the evidence against him. We must still decide whether we accept the evidence, in whole or in part, and consider whether the charge is then proven.

⁷ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

The evidence / Te taunaki

The agreed evidence (the summary of facts)

[26] First we will set out the agreed summary of facts, which was reached by the parties before the further evidence/statements came about. We will not include the various attachments referred to in it, which are adequately described in the summary. The summary is below:

Background

1. The respondent, Taurapa (formerly known as Connor Taurapa Matthews), was an ākonga at Te Kura Kaupapa Māori O Te Whānau Tahī (**TWT**) until wharekura (high school). He then attended Christchurch Boys' High School. He received a Bachelor of Arts from Canterbury University in 2014, a Bachelor of Musical Arts from Christchurch Polytechnic in 2016 and a Graduate Diploma of Secondary Teaching in 2017.
2. Taurapa is a registered teacher. Taurapa holds a full professional practising certificate, valid until 23 December 2023. From 11 December 2017 to 2020, Taurapa held a provisional practising certificate. The matters referred to below occurred during the period Taurapa held a provisional practising certificate.
3. Taurapa was employed at Rangi Ruru Girls School (**Rangi Ruru**) from 2018 to April 2019 as a Te Reo Māori teacher. During this time, Taurapa was also a House Tutor and resided at 'Jacob's House' boarding house at Christ's College (**College**), a boys' school in Christchurch. Rangi Ruru and the College have a close working relationship and often hold joint school events, extra-curricular activities and social events.
4. During 2018 and 2019, ██████████ (██████████) and ██████████ (██████████) were employed at the College. ██████████ was a ██████████ at the College and ██████████ was a ██████████ teacher. ██████████ and ██████████ ██████████ Both ██████████ and ██████████ were involved with ██████████ at the College.
5. During his employment at Rangi Ruru, Taurapa became involved in various Performing Arts groups at Rangi Ruru. This was a cross-school activity that often involved students from the College. Through his involvement in the Performing Arts groups, Taurapa became friends with ██████████ and ██████████.
6. On 8 April 2019, Taurapa resigned from Rangi Ruru during Rangi Ruru's investigation into his conduct.
7. As of the date of this summary of facts (November 2022), Taurapa is no longer employed as a Kaiako at TWT. He has taken up a role in the media industry.

Inappropriate relationship with Student X

8. Between 2018 and April 2019, Taurapa engaged in an inappropriate relationship with a female student.
9. At the relevant time, the female student in question, **Student X**, was aged 17 years old. The pair met while Taurapa was working as a teacher at Rangi Ruru, and when Student X was in Year 13 at Rangi Ruru. Student X was involved with the Technical Club (in Performing Arts) at Rangi Ruru, which held cross-school events/meetings with the College.

Events in 2018

10. In 2018, Taurapa and Student X would regularly communicate with and message each other about Student X's mental health issues and personal difficulties. Taurapa would often drop Student X and other students to their homes after rehearsals.
11. On 19 July 2018, Taurapa rang ██████████ and told him that Student X had told Taurapa that she was feeling very depressed and that she was going to kill herself. ██████████ responded to Taurapa saying that he was unable to deal with the situation and suggested that Taurapa let someone at Rangī Ruru or the Police know. Taurapa told ██████████ that he was not prepared to contact the school counsellor at Rangī Ruru, as he was hesitant that doing so would worsen the situation. ██████████ advised Taurapa that he would contact Student X's older sister (who he knew personally from her time as a student attending the Technical Club). At 10.25pm that same evening, ██████████ messaged Student X's sister to ask her to check on Student X, which she did.
12. In or around July 2018, Taurapa also told ██████████ about the incident on 19 July 2018. He stated that he had been messaging Student X, who was not in a good mental state, and that he had seen her late at night after they had been messaging. ██████████ suggested that Taurapa speak to the counsellor at Rangī Ruru about this, because Taurapa was not the appropriate person to be dealing with Student X. Taurapa told ██████████ that it was fine as he had "dealt with it" and that it was "all good". ██████████ reminded Taurapa to look after himself and protect himself.

Events in 2019

13. Taurapa and Student X continued to have inappropriate contact with each other in 2019, including meeting each other in circumstances where there was no valid educational purpose for the meeting. In January 2019 during the school holidays, ██████████, ██████████ and Taurapa were building a shed in the yard area of the College. ██████████ went to get some tools and noticed that Student X and her friend were standing under the Old Boys' Theatre (OBT) crossing. Student X asked whether Taurapa was around.
14. ██████████ led Student X and her friend to the area where ██████████, ██████████ and Taurapa had been working on their project. ██████████ told the two girls that they needed to go. Student X and her friend left. ██████████ told Taurapa that it was inappropriate to be socialising with any students from any school in that way.
15. On 16 January 2019, a Buskers' Festival was being held at the College. At approximately 8.37pm, Student X and a couple of other girls were outside School House (a boarding house at the College). Student X tried to get into an R18 show at the Buskers' Festival. ██████████ messaged Taurapa to advise him that Student X was out by School House. Taurapa told ██████████ via Facebook Messenger that he would use his two lanyards to get Student X and her friend into the show, and that he and ██████████ would then use ██████████ lanyard to get into the show.
16. On 11 March 2019, Taurapa organised a movie night at the OBT at the College for his class from Rangī Ruru to attend. This was a valid educational activity for Taurapa's class from Rangī Ruru only. When seeking permission for the showing, Taurapa advised ██████████ and ██████████ ██████████ that around eight students would be attending. ██████████ helped Taurapa with the set up and then left.
17. When ██████████ returned to the OBT, there were approximately four girls sitting up the front of the theatre. Taurapa and Student X were sitting several rows behind the other students by themselves. The movie screening finished at approximately 9.15pm.
18. At approximately 9.20pm, and following the screening, Student X left out of the College gates. Taurapa met ██████████ and ██████████ walking around the quad of the College.

19. At approximately 9.24pm, Taurapa left the College in his vehicle. Taurapa went to briefly visit his friend, ██████████, in Merivale, messaging him at 9.14pm, "I'll be 2 mins...In and out".
20. At around 9.36pm that evening, on his way back to the College after visiting ██████████, Taurapa called Student X on her mobile. The call lasted approximately five minutes, dropping out when he entered the College car park.
21. At approximately 9.42pm, Taurapa called Student X again, with the phone call lasting approximately 24 minutes. Student X was upset and Taurapa agreed to meet her outside her house to discuss her struggles in person. Taurapa called Student X one more time upon arrival at her home at 10.06pm, with the call lasting one second.
22. Given the behaviour that ██████████ had witnessed earlier that night, ██████████ decided to check whether Taurapa was at Student X's house. At approximately 10.50pm that same evening, ██████████ drove to Student X's house and identified Taurapa's vehicle parked outside. ██████████ drove past the vehicle two or three times at normal speed (30 km per hour). He took two photos of the rear of the vehicle as he approached it, each time from behind. As this was happening, Taurapa was sitting in the car with Student X outside her house in the dark discussing her personal difficulties with her.
23. Taurapa returned to the College at approximately 12.15am the following morning (12 March).
24. On 12 March 2019, ██████████ and ██████████ sent an email to ██████████, ██████████ ██████████ at the College, outlining their concerns about Taurapa and his relationship with Student X.

Inappropriate communications with Ms Y

25. Taurapa also engaged in inappropriate messaging with a girl, Ms Y.
26. Ms Y's date of birth is ██████████ 2001. Taurapa began messaging Ms Y when she was 16. This continued when Ms Y turned 17.
27. Between February 2018 to 2019, Ms Y was employed part-time in the ██████████ at the College. Ms Y was attending high school at ██████████ at the time.
28. Ms Y met Taurapa around late September to early October 2018. The pair came into contact because Taurapa was residing at the College, and would have meals in the dining hall.

Events in 2018

29. One evening in 2018, Ms Y was working in ██████████ Taurapa talked to Ms Y, and asked for her Snapchat details. When Taurapa enquired as to what Ms Y did, Ms Y advised that she was studying and in her second year. Taurapa was aware of Ms Y's age and the fact she was still attending high school.
30. The pair began to exchange messages via text and Snapchat. This started when Ms Y was 16.
31. Ms Y told her parents that she had started messaging Taurapa. Initially, Ms Y's parents had no issue with this, but later became concerned given the age gap between Ms Y and Taurapa (who was in his early 20s) and because Ms Y had no previous relationship experience. After her parents expressed their concern, Ms Y stopped messaging Taurapa. However, Taurapa kept messaging Ms Y, Ms Y began responding, and the pair continued to message each other.
32. In October 2018, Ms Y and some of her friends went out for dinner at a restaurant where Taurapa was working. Taurapa had mentioned to Ms Y that his family owned the restaurant, but Ms Y did not know that he worked there. When Ms Y went up to pay for her meal, Taurapa advised her that he had already paid for it.

33. On 6 November 2018, Taurapa met up with Ms Y and a friend to drop off a pair Karen Walker Mini Bow earrings (valued at \$70) that he had purchased for Ms Y's 17th birthday. The pair hugged after the gift was given.
34. On 18 November 2018, Ms Y received a Snapchat from Taurapa which included the caption "you can just go out with me after next year then lol [laughing face emoji]". A copy of the screenshot of the Snapchat is attached as **Tab 1**.
35. From November 2018 to January 2019, Taurapa and Ms Y continued to message each other on Snapchat. Taurapa invited Ms Y to attend social activities with him, such as punting on the Avon.
36. Around this time, Taurapa started messaging Ms Y about boyfriends and girlfriends. Ms Y would respond to Taurapa in a friendly manner but would stop messaging him when she felt uncomfortable.
37. Multiple times throughout 2018, Taurapa told Ms Y that it would not be okay for them to "go out" now, but that they could "go out" once Ms Y had left high school and was in university.
38. During the 2018/2019 summer holidays, Taurapa would ask Ms Y for pictures of her in a bikini. He would often be topless in bed when they would Snapchat each other.

Events in 2019

39. On 20 January 2019, a wedding was held at the College. Ms Y worked in [REDACTED] and assisted with the wedding. After her shift had finished, Ms Y went out with some friends. That evening, Taurapa and Ms Y exchanged Snapchat messages. Ms Y has provided some of the messages from Taurapa. These are set out below.
40. Taurapa sent Snapchats to Ms Y with the caption, "yeah, I love seeing you" and "best part about eating in the dining hall is seeing you". A copy of the screenshots of these Snapchats are attached at **Tabs 2 and 3** respectively.
41. That same evening, Taurapa also sent Ms Y Snapchats which depicted Bitmojis (cartoon images used on Snapchat) showing a likeness of Taurapa and Ms Y. Specifically:
 - a. One Snapchat showed a picture of a male lying down on a bed in the background and depicts the male Bitmoji in a tuxedo, and the female Bitmoji in a white dress with the caption "sweet dreams". A photograph of this Snapchat is attached at **Tab 4**.
 - b. Another Snapchat showed a picture of a male lying down with the male Bitmoji dressed in a tuxedo down on one knee holding a jewellery box with a ring inside it. A photograph of this Snapchat is attached at **Tab 5**.
 - c. Another Snapchat showed a picture of a male in the background lying down, with the male Bitmoji dressed in a tuxedo and the female Bitmoji dressed in a white dress, with the caption "Marry me [ring emoji]". A photograph of this Snapchat is attached at **Tab 6**.
42. Ms Y felt uncomfortable with Taurapa's messages and did not respond.
43. During the period that Taurapa and Ms Y were messaging each other, Taurapa would continuously request that Ms Y "add" him to her private accounts on other social media platforms. Ms Y declined all of these requests. Taurapa would also ask Ms Y to go on dates, such as punting (a kind of boat) on the Avon River but Ms Y declined his requests. After Ms Y's shifts or after functions being held at the College, Taurapa would ask Ms Y to meet him in his room at Jacob's House. Ms Y would decline. Taurapa would also offer to give Ms Y a tour of the area, which Ms Y also declined.

44. In February 2019, Ms Y's boss, ██████████ (██████████), the ██████████ for ██████████, received a complaint from Ms Y's parents regarding Taurapa messaging Ms Y. They expressed concern about the age difference between the two and Ms Y's inexperience with relationships. ██████████ spoke to Taurapa about the complaint and concerns raised.
45. Following this, Taurapa messaged Ms Y asking that she delete all of her messages that she had saved from their conversations. Ms Y obliged but did not delete all of the screenshots of the Snapchats she had saved. Taurapa advised that he would not be contacting Ms Y again.

School investigation and mandatory report

46. On 12 March 2019, ██████████ and ██████████ sent an email of concern regarding Ms Taurapa's conduct with Student X to ██████████, ██████████ at the College. ██████████ passed this on to Rangi Ruru.
47. On 14 March 2019, ██████████ and ██████████ sent an email to ██████████ ██████████ at Rangi Ruru, providing further information about concerns regarding Taurapa's inappropriate behaviour with Student X. The email included photos of Taurapa's vehicle parked outside Student X's house, CCTV images of Student X leaving the College campus on 11 March 2019 and a further CCTV image of Taurapa leaving the College campus a short time later.
48. On 19 March 2019, ██████████ met with Taurapa. Also present was ██████████ at Rangi Ruru, ██████████. During the meeting, Taurapa denied ever meeting Student X outside of the school, but said that he had dropped Student X off following a rehearsal for a show as he did not want her to walk home in the dark. He could not recall how many times this had happened but that sometimes there were others in the car, and other times it was just him and Student X.
49. During the meeting, ██████████ also asked Taurapa whether he felt that Student X was infatuated by him. Taurapa responded, "yes, I think she could be". ██████████ expressed concern for Student X's mental health, to which Taurapa agreed that she has some issues.
50. Following that meeting, Taurapa was invited to a disciplinary meeting on 26 March 2019.
51. On 8 April 2019, Taurapa resigned from Rangi Ruru, effective immediately, stating that this was due to his relationship with Rangi Ruru having become "untenable".
52. On 11 April 2019, ██████████ sent a mandatory report to the Teaching Council regarding Taurapa's conduct with Student X. The report was mistakenly sent to an invalid email address, and was not received by the Council until 13 September 2019, six months later, when ██████████ realised her mistake and forwarded her mandatory report to a valid email address.
53. After not hearing back from ██████████ regarding their concerns about Taurapa's conduct, ██████████ and ██████████ raised their concerns with the Police, including referring to Taurapa's behaviour with Ms Y.
54. On 11 September 2019, the Police notified the Ministry of Education about Taurapa's conduct with respect to Student X and Ms Y. The Ministry of Education subsequently referred the matter to the Teaching Council (and a copy of ██████████ mandatory report was obtained).

Taurapa's response

55. On 17 October 2019, Taurapa provided an initial response to the mandatory report. Taurapa denied the allegations in respect of Student X, and said he had done nothing wrong. He accepted that he had met Student X outside of school hours but said that all meetings were school-related, with the exception of one occasion where he had received a distressed phone call from Student X.

56. On 18 June 2020, Tom Eathorne⁸ provided Taurapa with further information he had gathered during his investigation, including statements from various staff (including ██████████ and ██████████) and from Ms Y, and screenshots of messaging exchanged with Ms Y.
57. On 30 July 2020, Taurapa provided a further response to the mandatory report through his lawyer. Taurapa stated that, on reflection, he accepted that he had engaged in serious misconduct and had breached his professional obligations (in terms of the need to maintain appropriate professional boundaries with learners) “by attempting to help [Student X] with her hauora and mental health”. He stated that he would be engaging with a professional clinical psychologist to better understand his behaviour and ensure that it did not happen again in the future. He also stated that he would be engaging in ongoing mentoring and supervision at his current place of employment.
58. Taurapa authorised his clinical psychologist to release information about his sessions with her to the Teaching Council. At the CAC meeting, Taurapa explained the disconnect between his upbringing in te ao Māori and his understanding of the obligations of Te Aho Matua in respect to the hauora of tamariki, and the professional boundaries of the teaching profession. Taurapa explained that, in his capacity as an inexperienced provisional teacher, he had failed to comprehend the extent of the cultural differences and that he had since received additional professional training to improve his understanding of a more Pākehā focused approach before gaining his full professional practising certificate.
59. Taurapa did not comment substantively on his conduct with respect to Ms Y in his written response in reliance on legal advice at the time.
60. At the CAC meeting, Taurapa did not deny having messaged Ms Y. He stated that their relationship was a friendship (with physical contact having been limited to a hug) and that he had not contacted her further after her parents had raised concerns. He said that he had initially not known how old she was, but that he had stopped communicating with her when he found out her age.

The first affidavit – Student X

[27] As noted earlier, the agreed summary of facts was reached between the parties before the further evidence became available. The first affidavit we have is from Helena Dray. Ms Dray is the person referred to in charge particular (a) (and in the agreed evidence above), as “Student X”. She was likely referred to in that anonymised way in the charge (and summary of facts) out of caution that her name would be subject to a non-publication order, as is often the case for students involved in these types of cases.

[28] Ms Dray however has sought to *not* have her name made subject to such an order. After careful consideration, we have not made any non-publication orders regarding her name. That issue is addressed in more detail later in this decision. This decision will from here refer to Ms Dray by name, instead of as “Student X”.

[29] We will now summarise most of her new statement in much the same order as she has set it out. As will be seen in our summary, the new evidence discusses the same period of time as the summary of facts, but discusses many more instances of alleged inappropriate

⁸ Mr Eathorne is an Investigator for the Teaching Council.

conduct between Taurapa and Ms Dray.

[30] Ms Dray describes how events begin in 2018. Ms Dray was in Year 12 at Rangī Ruru and aged 15 to begin with, before turning 16 on 7 April of that year.

[31] Ms Dray was part of a “Snapchat” message group.⁹ There were four in the group, including Taurapa. The other three were similarly female students attending Rangī Ruru with Ms Dray. The messaging initially related to the group’s Te Reo studies, and came to include discussion about theatre activities.

[32] The content of the discussions in that group were fairly normal and innocuous to begin with. Over time however they moved into more informal conversations.

[33] Taurapa then began to message Ms Dray privately using Snapchat. The discussions became increasingly personalised, particularly outside of school hours.

[34] Ms Dray turned 16 on 7 April 2018. On that day, Taurapa gifted her a writing journal, with a note wishing her a happy birthday. Ms Dray provided photographs of these gifts.

[35] The journal contained a small card adorned with a printed poem, titled “Words of Love”. The poem read:

Although in body
we may seem far apart
we can be together
every moment
in the heart.

[36] Accompanying the journal was another card, containing a poem “Art”:

In placid hours well-pleased we dream
Of many a brave unbodied scheme.
But form to lend, pulsed life create,
What unlike things must meet and mate:
A flame to melt—a wind to freeze;
Sad patience—joyous energies;
Humility—yet pride and scorn;
Instinct and study; love and hate;
Audacity—reverence. These must mate,
And fuse with Jacob’s mystic heart,
To wrestle with the angel—Art.

[37] Around this time, Ms Dray says that Taurapa had moved the conversation to more

⁹ Snapchat is a smartphone application which amongst other functions provides a generic messaging system.

sexualised topics. She says that he would for instance ask Ms Dray about masturbation.

[38] Ms Dray says that she informed a school friend about these developments at this point (this is a reference to Witness A, the second affidavit we have been provided with).

[39] Ms Dray produced screenshots with her affidavit of a range of messages which she says were with or from Taurapa, occurring during this period. Many show quite personal discussions. One of most significance however is recorded below. It is dated 20 April, which must have been 20 April of 2018 given by the same date in 2019 this type of contact had finished, Taurapa was not engaging with Ms Dray, and Taurapa had resigned from Rangī Ruru after being confronted in March of 2019 (as set out in the summary of facts).

[40] The message of 20 April (2018) from Taurapa to Ms Dray stated:

Yep I can totally go with that. I want things to be special for you, and I never expected us to have sex or anything like that. Like I said at the start, I don't want you to rush into anything, it needs to be the right time and feel special. I respect whatever you want, and happy to not ask for nudes. If you don't wanna send them, that's okay too. If you want to, that's cool too but there's no pressure. I know you know I love you for more than just your body. And I'm sorry that you felt like I was using you, I don't mean to do that. There's so much more about you that makes me happy. You just do whatever, and I'll go along with it as long as you're happy

[41] During this time, Taurapa and Ms Dray also began to “follow” each other on the social media platform Instagram.

[42] The behaviour then progressed to physical time alone with Ms Dray. The first time this occurred was in Taurapa’s classroom at Rangī Ruru one evening. They watched a musical together on a projector. Ms Dray describes that Taurapa had made an area on the floor in the classroom of pillows and blankets for them to sit in. Ms Dray states that during this occasion “he kissed me and felt me up too”, including she says on her breasts. She says this was shortly after her 16th birthday, in or around April 2018.

[43] In or around May 2018 Ms Dray, Taurapa, and other students were involved in a musical production with students from Christ’s College. Rehearsals often took place in the evenings and weekends. The location alternated between the two schools.

[44] Taurapa lived in a boarding house at Christ’s College, as noted in the summary of facts. On several occasions whilst there for the musical production Ms Dray was sent to Taurapa’s room to collect items for him.

[45] Ms Dray says that during the rehearsals for the musical production, Taurapa would

meet with her in the dressing rooms at Christ's College, where kissing and groping would occur. This occurred several times. Taurapa had told Ms Dray that a particular room that they used did not have any security cameras. Taurapa had made it clear to her that their relationship was to be kept secret and that nobody could find out.

[46] Taurapa would also offer to drop Ms Dray home on most evenings after rehearsal. He would hold her hand in the car, tell her to duck down if driving around town, and would kiss her before she left the car.

[47] Ms Dray says that Taurapa would also tell her about other relationships he was pursuing and dates that he had been on. He told her about approaches he made to a young lady working [REDACTED] at Christ's College, who had told him she was in Year 12 (at another high school). This we consider is likely a reference to "Ms Y" i.e. particular (b) of the charge.

[48] Ms Dray explained in her evidence that the extent of interest shown in her by Taurapa, combined with his discussions about other relationships and attempts at them, left Ms Dray feeling conflicted, used and emotionally drained.

[49] Taurapa would tell Ms Dray about his experience of losing his sexual virginity. He was aware that Ms Dray had not had sexual intercourse before. They discussed that, although Ms Dray also states that Taurapa appeared to have a line in their relationship that he wouldn't cross (with regards to sexual intercourse). She notes for instance that he would not come to her house when invited.

[50] On one occasion however the two had discussed whether "something further" should happen sexually between them. They spoke about Ms Dray giving Taurapa oral sex. Not long after that discussion, Taurapa was driving Ms Dray home in the evening after a school activity. He said that they "were going to do something". Ms Dray recounts that she "didn't want to give him oral sex anymore". Taurapa drove them to a secluded area. Oral sex was then carried out by Ms Dray. Taurapa also engaged in digital penetration of Ms Dray. He then dropped her home.

[51] Ms Dray also recounts that nude photographs were exchanged via messaging, after she had turned 16. Ms Dray says that some of her images however were of her when she was 15. She says Taurapa was aware of this because she had told him.

[52] Taurapa would also send Ms Dray videos and photos of his penis, including of him masturbating. Ms Dray says that he sent these on "multiple occasions, too many to count".

She says this was occurring frequently by about the middle of 2018.

[53] Ms Dray also recounts Taurapa asking her to engage in “sexting” (i.e. sexual text messages). Taurapa would send long messages of what he wished to do (sexually) to Ms Dray. This included Taurapa wanting to have sexual intercourse and oral sex with Ms Dray.

[54] This led to Taurapa encouraging Ms Dray to masturbate for him live on camera, which she initially and reluctantly agreed to. This act was then carried out for Taurapa, briefly, before Ms Dray declined to do it any further.

[55] On other occasions Taurapa would take Ms Dray (and sometimes a friend) out late in the evening to collect Lime scooters, which he would collect and charge.

[56] More generally, Ms Dray recounts that messaging occurred near daily for close to a year. Messages before and after school would be much more personal than anything sent during school time. Ms Dray says that throughout all of their involvement, Taurapa would often tell her to make sure she deleted her messages with him from her phone and for her to “not leave a trace”.

[57] Over the summer holidays (at the end of 2018 and start of 2019) Ms Dray would see Taurapa most days, by walking near or in the school grounds where he was residing.

[58] Ms Dray states that “things fizzled out” in early 2019 (Year 13). At the end of the first term, and shortly before Taurapa’s resignation, Ms Dray says that Taurapa had stopped contacting her or replying to any messages. She tried to make contact to ask why and he advised her that “my lawyer has told me not to contact you anymore...”.

[59] Ms Dray has also provided evidence in her affidavit of how this behaviour has affected her. She states that it has taken her until recently, through counselling, to come to appreciate that she was a victim of this behaviour, by a person in a position of authority over her. She has had mental and physical health effects. She now has difficulties interacting with male authority figures. She has had difficulty continuing her Te Reo studies, due to the connection she draws with Taurapa and her previous Te Reo studies at school with him as her teacher.

The second affidavit – Witness A

[60] As mentioned, we have also been provided with an affidavit from a school friend of Ms Dray’s. We have referred to her as Witness A. That evidence relates to several parts of Ms Dray’s evidence.

[61] Witness A recalls gifts being given by Taurapa to Ms Dray on her 16th birthday. She describes them as “quite expensive notebooks with a handwritten note”. That is consistent with the photograph of the gifts which Ms Dray provided in her affidavit.

[62] Witness A also recalls that, shortly after Ms Dray’s 16th birthday, Ms Dray told her that Taurapa had been asking her about masturbation.

[63] Witness A says that on another occasion Ms Dray told her that she had performed oral sex on Taurapa.

[64] On one occasion Witness A was staying at Ms Dray’s house. Witness A recalls that Ms Dray was engaged in inappropriate sounding messaging with Taurapa, and was reading them out to Witness A.

[65] Ms Dray also told Witness A that nude and semi-nude images had been exchanged, and that Taurapa had asked for them from her (Ms Dray) in school uniform.

[66] Witness A observes that the relationship was taking a toll on Ms Dray’s emotional and mental health. Witness A recalls Ms Dray becoming suicidal in or around August 2018 and attempting suicide. She recalls that Ms Dray would say one day that she thought she was being “groomed” by Taurapa and the next day would say that she thought she was “in love with him.” On one occasion, when it appeared things had ended, Ms Dray said to her that she was “still in love with (him)” and that she hoped they could “rekindle things” once she had finished high school.

[67] At around this point, Ms Dray had told Taurapa that Witness A knew of their relationship. Witness A then approached Taurapa directly to share her concerns about Ms Dray. Witness A told Taurapa about the attempted suicide. She recounts that Taurapa told her that the relationship had ended and nothing was happening anymore. She says that he made sure that she wouldn’t tell anyone about the relationship. She recalls on one other occasion Taurapa asking her if she was planning on telling anyone about him and Ms Dray. She said no, out of concern for Ms Dray.

Charge amendments

[68] Having set out the agreed and alleged facts it is convenient to now consider any charge amendments, pursuant to rule 26 Teaching Council Rules 2016.

[69] The CAC seeks to amend particular (b) to note that Ms Y was aged 16 and 17 during the relevant period (rather than just 16 as in the current drafting of the charge).

[70] Such a change would better conform with the evidence, and causes no prejudice. Indeed the agreed facts already demonstrate that the messaging to Ms Y began when she was 16. We will also slightly amend the date range as well as the conduct with Ms Y appears to be from around October 2018 to February 2019.

[71] A similar age and date change could occur for particular (a) as well (Ms Dray). Currently this alleges that Ms Dray was 17 during the inappropriate relationship. That charge was drafted before the further evidence of Ms Dray was received. That evidence provides more precision around her age, it now being clearer that she was aged 16 during the alleged inappropriate relationship through 2018 and that it had seemingly ended by the time Ms Dray turned 17. An amendment to record her age as 16 would better conform with the evidence (as would an amendment of the dates). We will amend the charge particulars accordingly.

[72] We again do not see any prejudice to Taurapa in making these further amendments, particularly given he is not challenging Ms Dray's evidence (nor Witness A's).

[73] In any event, little turns on these amendments as ages and dates are not elements of the charge. Nor would it matter for liability (or penalty) purposes whether the student was 16 or 17, given the extent of the alleged conduct.

[74] We therefore make these amendments and some inconsequential format and style changes to match.

[75] The amended charge now reads:

- 1 The CAC charges that Taurapa, registered teacher, of Christchurch:
 - a. From April 2018, to March 2019, engaged in an inappropriate relationship with a 16 year old female student (Helena Dray).
 - b. From October 2018, to February 2019, engaged in inappropriate communications with a female student aged 16 and 17 (Ms Y).
- 2 The conduct alleged in paragraph 1 amounts to serious misconduct pursuant to section 378 of the Education Act 1989 and Rule 9(1)(e) and/or (k) of the Teaching Council Rules 2016 or alternatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Education Act 1989.

Assessment of the evidence / Aromatawai o te taunaki

[76] We have as a foundation the agreed summary of facts (save for re-considering the ages and date ranges in it, which have evolved via the affidavit evidence and amended charge).

[77] The summary of facts in isolation indicated an escalating pattern of inappropriate attention being paid to Ms Dray (and Ms Y), and with a number of similarities between the two.

[78] The summary of facts however was absent the more specific and serious details of what allegedly occurred with Ms Dray. It may have left many readers suspicious that there might be more to the story.

[79] Although the affidavit evidence is unchallenged, we still must decide if we accept it. We first consider the reliability of the affidavit evidence. The evidence has been taken in a sworn format, and produces statements taken by a professional investigator working for the Teaching Council. The evidence is from competent adults. It recounts events during which time they were aged from 15 to 17 (mostly 16 it appears). There is no evidence of anything which might otherwise reduce reliability, for instance second language/translation difficulties, intoxication, being of a very young age, intellectual impairments, a lengthy passage of time, identification issues, medication issues, or head injuries. We have no reliability concerns.

[80] As to credibility. The statements were taken separately i.e. the two did not sit in a room together and listen to each other. We have also considered why this evidence was not initially provided. Ms Dray explains her initial reluctance to provide this information, and the journey she has been through, and remains on, to gain some control of the situation. Her explanations are reasonable. She also explains that, earlier on, she had some concerns for the effect on Taurapa including any media attention.

[81] We do not detect any exaggeration or embellishment in Ms Dray's evidence. Ms Dray has been reasonable and measured in her affidavit, where there could easily have been opportunity to get carried away. For instance the relationship is generally put as a consensual one (putting aside the large power imbalance from the teacher-student relationship, and the age of Ms Dray at the time). The point is that Ms Dray could have cast the facts against Taurapa as significantly more sinister if she had chosen to.

[82] We take a similar view of Ms Y's affidavit. For example, she notes that she believed that Taurapa had Ms Dray's best interests at heart and really cared for her (referring to the time of the mental health/suicide discussions).

[83] The alternative position is that both Ms Dray and Witness A have decided, years after the event, to engage in a sophisticated set of collusion and perjury to "boost" the case against Taurapa at the last minute. We can see no reasonable or credible reason why that would occur. We have no credibility concerns over either witness's evidence.

[84] Another matter that we take into account is the similarity in conduct between the accepted conduct regarding Ms Y and the further alleged conduct regarding Ms Dray. Whilst the attempted relationship with Ms Y did not progress as far as with Ms Dray, this we consider was due to intervention of others. Taurapa was not without trying. In any event we are not focusing on differences, of which many can always be raised, but on similarities.

[85] The admitted behaviour in the summary of facts for Ms Y shows to us a particular and unusual state of mind on the part of Taurapa - a tendency as a teacher to be attracted to a teenage girl attending high school, who he meets through school environments, purchases romantic birthday gifts for, and pursues via personal and intimate phone messaging and picture sharing, all in an attempt to engage in a romantic relationship. He also insists on secrecy.

[86] All of those features (and more) are then present in the further evidence from Ms Dray. And, the alleged conduct with Ms Dray is occurring at about the same time as with Ms Y.

[87] We consider that these similarities are not unfortunate or unlucky coincidences. Rather, they lend support to Ms Dray's full account being correct. Her account is another manifestation of the unusual tendencies already shown by Taurapa with Ms Y.

[88] The final evidence to consider is that from Taurapa. As mentioned previously, Taurapa has chosen not to engage in the hearing process or challenge these witnesses as he has concerns about other legal implications. We do however have his position before us to take into account, via the statements he has made in this matter. These are found in the summary of facts (paragraphs [57] – [58] of the summary included above) and also in his affidavit of 6 July 2022 (filed in support of interim name suppression). Both of these positions were advanced before the further evidence of Ms Dray and Witness A existed.

[89] In the affidavit, Taurapa stated in relation to Ms Dray that:

One of my students was experiencing difficulties with her mental health throughout the relevant time period. The substantive hearing will involve considerable reference to the mental health issues that the student was experiencing...

The Disciplinary Tribunal will be considering whether my attempts to provide support the hauora and wellbeing of this student, in the context of tikanga Maori, breached my professional obligations and amounted to serious misconduct...

I intend to firmly defend this allegation of misconduct...

The nature of the allegations risk implication that a romantic relationship occurred, any implication is strenuously denied.

[90] We do not accept Taurapa's denials. Taurapa's responses however do not prove the charge, and there was no onus on him to disprove it. We put his responses to one side and return our focus to the evidence before us.

[91] We stand back and consider all of the evidence. There are several strands to it which to us naturally tie together: the messages from Taurapa to Ms Dray, which clearly indicate to us both a personal and a sexual interest in Ms Dray. We note the gifts for the 16th birthday, which included a romantic poem. It appears highly improbable that Ms Dray has fabricated those messages, and the photographs of the gifts.

[92] We note also the corroborative evidence of Witness A across several of the events. This all lends further support to the evidence being true. Again it would be quite an extreme ruse for Witness A to be making that evidence up to match Ms Dray.

[93] And then there are the similarities across the two aspects to the facts, as set out above.

[94] We are driven to the view that the further evidence (of Ms Dray and Witness A) is the truth. Or in terms of legal standards of proof, more probable than not. We would place it even higher than that. We have no reasonable doubts about it being correct. The entire picture now fits into place and makes sense. The entire account of Ms Dray (and Witness A) is found proven.

[95] We therefore conclude that Taurapa as an adult male high school teacher pursued and then engaged in a personal and sexual relationship with his Year 12 student Ms Dray. From initial grooming with attention and gifts, this quickly evolved into a highly inappropriate and sexualised relationship. We conclude that his inappropriate interest in Ms Dray must have been piqued when she was still aged 15, given the nature of the birthday gift and poetry on her 16th birthday, and the sexualised content of the message that occurred just a few days later on 20 April. We find that as Ms Dray turned 16 and thereafter the behaviour and relationship progressed. The birthday gifts evolved to daily personal messaging. Daily personal messaging evolved to time alone. Time alone became kissing and fondling. Personal discussions became sexual discussions. Sexual image sharing began. Regular kissing occurred. On one occasion, oral sex and digital penetration. We consider that the attention paid to Ms Dray was most intensive from around her 16th birthday for several months through Year 12, perhaps less so over that summer, and had ceased in early Year

13. Ultimately exact dates and length doesn't matter in terms of either liability or penalty for conduct at this level.

[96] We also find that during this time Ms Dray was in an emotionally vulnerable position. She had already been affected by some mental health issues. She was 16 years old. Taurapa was an adult male teacher. He was in an obvious position of trust and authority. That position was severely abused. Taurapa through his conduct left Ms Dray bouncing around a dangerous myriad of thoughts and feelings. We find that he both risked, and did cause, significant harm to Ms Dray through his conduct.

[97] We also find, consistent with the summary of facts, that Taurapa attempted a similar relationship with Ms Y, a similarly aged female school student. Taurapa was persistent in his intentions and attempts at progressing along a similar course. Fortunately he was unsuccessful on that occasion, before similar harm could be done.

Finding on liability / Kupu mō te taumahatanga

[98] This part of the decision will be short, for reasons which will by now be obvious.

[99] All limbs of the section 378 serious misconduct test are met by this proven conduct.

[100] The conduct adversely affected Ms Dray – section 378(a). We have set out the effects above when recounting her evidence, and have probably done so in an economic way. Taurapa was an adult male and respected teacher of Ms Dray. He showered her in communication, attention and affection. Some days she thought they were “in love”. He rapidly moved her through a range of intimate chapters. Mental and emotional impact began to occur even during the relationship. Even if Ms Dray was predisposed to that (on which we don't form a view, but which appears to have been how Taurapa initially intended to deal with the allegations from Ms Dray, as noted in his earlier affidavit, above), they were certainly exacerbated by Taurapa. We accept that the effect on her has been significant. This test is also met in relation to Ms Y.

[101] The conduct with both Ms Dray and Ms Y reflects adversely on Taurapa's fitness to be a teacher – section 378(b). It reflects extremely adversely. This type of conduct strikes at the heart of the teacher-student relationship (particularly in relation to Ms Dray, given he was her teacher). It is at the most serious end of serious misconduct cases that come before the Tribunal.

[102] The conduct on both particulars also brings the profession into disrepute – section 378(c). This is also present to a high degree. Conduct like this can be disastrous for the

repute of the profession (again, particularly with Ms Dray).

[103] The second limb of the serious misconduct test is also met in the most serious of ways, again across both incidents. Rule 9(1)(e) is breached (professional boundaries). As is Rule 9(1)(k) (disrepute).

[104] Finally we note that even if the further affidavit evidence had not been provided, the evidence that Taurapa had already agreed to (the agreed summary of facts) would have met the serious misconduct test (although likely not as severely as has now occurred).

Penalty / Whiu

[105] This area too will be short. Cancellation is a near presumption for this type of conduct.

[106] We do not consider any other outcome appropriate due to the nature of the conduct and the lack of any acceptance or insight from Taurapa. Even if there was acceptance and insight the same result would have been likely, due to the severe nature of the conduct with Ms Dray.

[107] Cancellation of Taurapa's registration is therefore now ordered pursuant to section 404(1)(g) Education Act 1989.

[108] We also note that even on just the agreed evidence that we would have considered cancellation appropriate, at least as a starting point, subject to what information and courses of action Taurapa might have advanced to persuade us otherwise.

Permanent non-publication orders / Ngā Whakahau whakaputanga-kore pūmau

[109] There are several publication issues to work through. We begin with the legal principles to apply.

[110] Section 405(6) of the Act provides as follows:

- (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:
 - (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
 - (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
 - (c) an order prohibiting the publication of the name, or any particulars of the

affairs, of the person charged or any other person.

[111] The default position is that Tribunal hearings are to be conducted in public. Consequently the names of teachers who are the subject of these proceedings are to be published. The Tribunal can only make one or more of the orders for non-publication if we are 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.

[112] The purposes underlying the principle of open justice are well settled. As the Tribunal said in *CAC v McMillan*, the presumption of open reporting “exists regardless of any need to protect the public”.¹⁰ Nonetheless, that is an important purpose behind open publication in disciplinary proceedings in respect to practitioners whose profession brings them into close contact with the public. In *NZTDT v Teacher* the Tribunal noted that the transparent administration of the law also serves the important purpose of maintaining the public’s confidence in the profession.¹¹

[113] In *CAC v Finch* the Tribunal described a two-step approach to non-publication that mirrors that used in other disciplinary contexts.¹² The first step, which is a threshold question, requires deliberative judgment on the part of the Tribunal as to whether it is satisfied that the consequence(s) relied upon would be “likely” to follow if no order was made.

[114] What does likely mean? In the context of the statutory test, this simply means that there must be an “appreciable” or “real” risk. Consistent with the approach taken in *CAC v Teacher*,¹³ we have adopted the meaning of “likely” described by the Court of Appeal in *R v W*.¹⁴ The Court said there that “real”, “appreciable”, “substantial” and “serious” are all qualifying adjectives for “likely”. They bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

[115] In deciding whether there is a real risk, the Tribunal must come to a judicial decision on the evidence before it. This does not impose a persuasive burden on the party seeking non-publication. If so satisfied, the Tribunal must then determine whether it is proper for the presumption to be displaced. This requires the Tribunal to consider, “the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression”.¹⁵

¹⁰ *CAC v McMillan* NZTDT 2016/52.

¹¹ *NZTDT v Teacher* 2016/27,26.

¹² *CAC v Finch* NZTDT 2016/11.

¹³ *CAC v Teacher* NZTDT 2016/68, at [46].

¹⁴ *R v W* [1998] 1 NZLR 35 (CA)

¹⁵ *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4, at [3].

[116] In *Y v Attorney-General* the Court of Appeal noted that while a balance must be struck between open justice considerations and the interests of a party who seeks suppression, “[A] professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure”.¹⁶

[117] The Court of Appeal in *Y* also referred to its decision in *X v Standards Committee (No 1) of the New Zealand Law Society*, where the Court had stated:¹⁷

The public interest and 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 informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

[118] In *J v New Zealand Institute of Chartered Accountants Appeals Council* Gwynn J considered the applicable principles for suppression in professional disciplinary matters.¹⁸ That case concerned a Chartered Accountant’s disciplinary decision. Although the specific statutory wording in that legislation used the term “appropriate” (instead of “proper”), we consider the observations of the Court are of application here. Gwynn J stated:

[85] Publication decisions in disciplinary cases are inevitably fact-specific, requiring the weighing of the public interest with the particular interests of any person in the context of the facts of the case under review. There is not a single universally applicable threshold. The degree of impact on the interests of any person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error). Nonetheless, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.

[86] I do not consider the use of the word “appropriate” in r 13.62 adds content to the test usually applied in the civil jurisdiction or sets a threshold lower than that applying in the civil jurisdiction. The rule is broad and sets out neither a specific threshold nor mandatory specific considerations. The question will simply be, having regard to the public interest and the interests of the affected parties, what is appropriate in the particular circumstances.

(citations omitted).

[119] Having set out the general principles above, we will turn now to consider the various publication issues that arise here.

Publication of Ms Dray’s name

[120] Typically in a case such as this a non-publication order would be sought for the

¹⁶ *Y v Attorney-General* [2016] NZCA 474, [2016] NZFLR 911, [2016] NZAR 1512, (2016) 23 PRNZ 452 (at [32]).

¹⁷ *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

¹⁸ *J v New Zealand Institute of Chartered Accountants Appeals Council* [2020] NZHC 1566.

students concerned. They are near always granted.

[121] Ms Dray however has expressed to us in her affidavit that she does not wish to be afforded a non-publication order.

[122] The starting point is that the witnesses name is able to be published, as no orders have been made and there is no automatic suppression. We are however required under rule 34(1)(b) and 34(2)(c) Teaching Council Rules 2016 in a case such as this (i.e. sexual conduct with a student) to consider whether it is proper to make a non-publication order. The student/victim is entitled to be heard on this.

[123] This issue more commonly arises in the criminal court jurisdiction with victims of sexual crimes.¹⁹ A difference however is that in the criminal courts there is automatic name suppression for victims of sexual crimes. A victim can then apply to the court to have that suppression removed.

[124] If the victim so applies, section 203(4)(b) Criminal Procedure Act 2011 states that the court must not make an order (lifting suppression) unless the applicant is 18 or over and:

the court is satisfied that the complainant understands the nature and effect of his or her decision to apply to the court for the order;

[125] If satisfied however, the criminal court has no discretion – it *must* make the order removing suppression of the victim’s name.

[126] Although these statutory provisions doesn’t apply to this Tribunal, we have taken a similar approach to ensure that the complainant is aware of the nature and effect of her decision. Once that factual inquiry is complete, we do however retain a discretion, unlike in the criminal court scenario above.

[127] Ms Dray’s views initially came to us via her recent affidavit. She is now in her early 20’s. Ms Dray is very clear in her affidavit that she does not want her name suppressed, is not ashamed of what occurred and does not see any benefit to her in a non-publication order.

[128] Despite the information provided in that affidavit, the Tribunal wished to absolutely ensure that Ms Dray was aware of the nature and effect of her request. A Minute was issued to the attention of Ms Dray. The Tribunal noted in that Minute that near all of the evidence would be recorded in this decision, that it would be available online, and once issued could

¹⁹ Our reference to “sexual crimes” is not a suggestion that we consider Taurapa has committed a crime. That issue is not before us and we have not expressed any view on it.

not be undone. The Tribunal also noted that these types of cases can often attract media attention. The Tribunal noted that it was not challenging Ms Dray's view, which is for her, but simply wished to ensure that she was aware of all implications.

[129] Ms Dray has responded via the CAC investigator who reached her by telephone (as she is overseas at present). The investigator has reported to the Tribunal in a memorandum that our Minute was read to Ms Dray, and that in response she has again confirmed her position. This confirmation was in much the same terms as in her affidavit.

[130] We note the argument from Taurapa via his counsel Ms Boulton that Ms Dray is advancing this position to reduce the chances of Taurapa's name not being published.

[131] Short of some quite strong and clear evidence, it is a long bow to draw to ask the Tribunal to make such a conclusion. Whilst Ms Dray has commented that she would be unhappy that non-publication for Taurapa would (in her view) allow him to move on easily, where she cannot, we note that victims of misconduct (especially in these types of cases) often express a dim view on non-publication of the perpetrator.

[132] We are mindful however to come to our own decision. Given the careful attention that Ms Dray has now paid to whether or not her name should be published, we cannot accept that this is an ill thought out reaction driven by a desire to punish Taurapa, regardless of any implications for herself. And we again observe, as we did earlier when considering credibility, that Ms Dray has demonstrated a balanced approach in her evidence.

[133] We consider that Ms Dray understands the nature and effect of her decision. She has twice now confirmed her position, and on a fully informed basis. A non-publication order would normally be made to respect her privacy. She however has waived that right to privacy. There is little ground left then for the Tribunal to order non-publication. Whilst we have been careful to ensure Ms Dray is aware of the implications, judicial paternalism has its limits. It is not for us to argue the point with Ms Dray when she has made a considered decision to waive her privacy and is competent and of capacity (in the legal sense) to make such decisions.

[134] We will respect her views. Her name therefore will not be subject to non-publication.

Ms Y

[135] The CAC has indicated that non-publication is sought for Ms Y.

[136] Ms Y is a victim of the conduct falling under the second limb of this charge. Her

interests in maintaining privacy outweigh any (limited) public interest in knowing her name. We consider it proper to order non-publication of the name and any identifying details of Ms Y.

[137] This will include other particulars which could lead to her identification. The order will extend to non-publication of the name of her employer at the time (who she worked for, whilst working at Christ's College), and any other names of people that worked with her or for that employer.

Witness A

[138] The CAC has advised that a non-publication order is sought regarding the name of Witness A. We consider that there is little public interest in her name being known. Her privacy interests prevail and we will make an order prohibiting her name from publication. For the avoidance of doubt, the name of the school she attended can be published (this is also addressed below for the schools).

Teaching/school staff

[139] Several other teaching staff (and former staff) are mentioned in this decision. Their employer (or former employer if they have left) has sought orders for non-publication of their names. We are aware that, generally, cases of this nature attract some publicity. We consider it proper to order non-publication of the names of the other teachers and staff that are mentioned in the evidence, and any other information that could lead to their identification (such as their role, title or department). Their involvement is peripheral to the real issues here. There is little public interest in their names being known.

Schools

[140] Both Christ's College and Rangī Ruru seek an order for non-publication, made via their counsel Mrs Keir.

[141] The application for Rangī Ruru is mostly based on the risk that identification (of the school that Ms Dray attended) might lead to identification of her, or, incorrect rumours about other students.

[142] Given Ms Dray's name will not be subject to a non-publication order, these arguments now fall away.

[143] Mrs Keir also submits for Rangī Ruru that there is no evidence of any inappropriate or unreasonable conduct on the part of the school, the school acting as soon as it became

aware of the conduct. The Tribunal agrees with that position. However, it has been noted before that there will often be some fall out for schools following a finding of serious misconduct against a teacher, but it would rarely displace the principle of open justice.²⁰ Appropriate conduct of a school in and of itself is not a good reason to displace the principle. Ultimately it is the teacher that has committed the misconduct, not the school.

[144] Mrs Keir submits that the combination of two private secondary schools gives rise to a risk of disproportionate media coverage, potentially upsetting students and reputation. We do not accept that this is a real or appreciable concern. In our experience cases involving teachers entering into intimate relationships with students will often attract media attention beyond that of other cases in this Tribunal. But in our view the type of school involved is not causative of the media attention. The conduct is. Whether a school is public or private is generally not something that we take into account in determining these applications.

[145] The application for Christ's College begins with much the same grounds as for Rangī Ruru i.e. protection of Ms Dray. For the same reasons as above we need not consider that further.

[146] The next ground is that a reference to school boarding facilities in the facts (where Taurapa was residing) might be upsetting for students or former students. That is not a real or appreciable concern. Any upset in our view even if it was to occur would not be enough to displace the principle of open justice.

[147] The identity and actions of the other teachers mentioned in the facts is also raised as a ground. We have however already made a separate order for non-publication of their names.

[148] The next submission is that Christ's College acted responsibly when concerns were raised. We agree but again this is not a good reason do displace the presumption.

[149] Finally the same private school media interest argument is made, which we have dealt with above.

[150] Once the identification of Ms Dray is removed, the concerns really are reputational. We agree with the submission of the CAC, which was:

The threshold for schools to obtain name suppression, particularly on the basis of a possible risk of reputational damage from publication, is a high one, and such applications will rarely be granted. In *CAC v Teacher*, the Tribunal stated that, while there may be rare cases where suppression is required to protect a

²⁰ *CAC v Teacher* NZTDT 2016-27 (at [69]).

learning institutions interests, in the majority of cases, the principle of open justice places the interests of the educational community at large ahead of those individuals of an individual school. Further, in *CAC v Mackey* the Tribunal noted that, where reputational damage is advanced as a ground for non-publication, “[e]vidence, rather than a bare assertion of hardship, is required”.²¹

[151] Although not raised as a ground, we have also considered whether the non-publication order for Ms Y would be undermined by naming Christ’s College. However given that she was not a student there, was not an employee of Christ’s College, was not a student of Taurapa’s, and the extent of time that has passed, we can see no connection to her or risk of her being identified just through Christ’s College being identified.

[152] We decline to grant the non-publication orders sought for Christ’s College and Rangi Ruru.

Taurapa

[153] Taurapa currently has the benefit of an order for interim non-publication of his name, pending a final determination. We will now consider that. Several grounds are advanced by Taurapa in support of the order being made permanent.

[154] Taurapa argues that because he is Māori he will suffer from “tabloid style” publication. Taurapa produces articles discussing racial bias in reporting in support of his argument.

[155] The suggested risk is speculative and uncertain. Or, not real and appreciable. It requires us to proceed on the assumption that there will be racially biased reporting in this case. We are not in a position to make such determinations. In fact it could be taken from the Stuff article and apology made by Stuff (provided by Taurapa to us) that quite some lengths have been taken now to ensure that reporting is not infected by such issues (at least for the Stuff organisation).

[156] In any event, in our view the real reason that any significant reporting may occur is not caused by Taurapa being Māori. It would be because as an adult male teacher, trusted to work closely with young women in a high school, he severely breached the trust reposed in him by engineering a sexual relationship with a 16 year old female student of his, causing her significant harm. That is what will be causative of any publicity. Any teacher of any race

²¹ Citing *CAC v Complaints Assessment Committee v Teacher* NZTDT 2016/27, 25 October 2016, at [69] and *Complaints Assessment Committee v Mackey* NZTDT 2016/60, 24 February 2017, at [65].

is likely to be at risk of significant publicity (compared to other Tribunal cases) in a case such as this.

[157] Taurapa also believes that his parents and siblings will be harmed and embarrassed, and their businesses impacted. Similar arguments are made for wider whānau. This is all entirely speculative, although it is easy enough to accept that any family or relations will be embarrassed. In the main thought the risks are not real or appreciable. They are not a good reason to displace the presumption of open justice. Indeed if they were, it could invite a near presumption of non-publication across many cases. There is often some difficulty for respondent's and close ones when such findings occur, but that is a natural result of this conduct being determined.

[158] A possible effect on any criminal proceedings, impeding on fair trial rights, is raised by Taurapa as another ground for non-publication. We note however that there is no evidence of an actual criminal complaint, nor investigation, let alone any criminal charges. Nor has our decision determined, or been asked to determine, any criminal matters.

[159] Even if the evidence or findings in this decision did appear to expressly align with criminal offences, we note that no admissions have been made by Taurapa in this proceeding regarding the sexual facts and behaviour (if they are what the concern is, which appears to be the case). Further, whilst this Tribunal has made particular factual findings, those findings are not admissible in any criminal hearing.²² We also note that any jury, if that day were to come, can be given directions to not seek out and/or to disregard any previous media reporting (assuming media reporting was to occur).

[160] We therefore do not see that a lack of a non-publication order has any real or appreciable risk of interfering with any possible future criminal proceedings.

[161] Taurapa also asks us to take into account his permanent departure from the profession. We do not consider that this is relevant in a case such as this. Many teachers walk away from their profession when facing serious allegations like these. Doing so doesn't influence the presumption of open justice to any great degree in most cases.

[162] Overall there is a strong public interest in cases of this nature being, in the main, subject to the presumption of open justice. Public confidence would be eroded if we were to order non-publication of Taurapa's name because of his perceptions about media treatment, flow on effects to family and whānau, or vague concerns about fair criminal trials.

²² Section 50(1A) Evidence Act 2006.

[163] We are not persuaded that there are any real or appreciable risks that come anywhere close to making it proper to order non-publication of Taurapa's name in this case.

[164] We therefore now revoke the interim non-publication order. Publication can occur of Taurapa's name, including his former name.

Costs

[165] The parties provided agreed evidence. There was however then a need for two further affidavits, although the affidavits were fairly short themselves and in the main produced statements taken by the investigator.

[166] Prior to the hearing of this matter there was also a number of pre hearing discussions and memoranda, as the parties tried to reach agreement, followed by the further evidence changing the course of the hearing.

[167] The total fees of the CAC (including estimates) of \$28,358.50 are higher than we might usually expect to see in a matter such as this – involving agreed evidence, two further uncontested affidavits, and a hearing on the papers. Although, we suspect some of the blame for the higher costs could be a result of the case being prepared for hearing based on one version of facts, only for the facts to then change, requiring preparation on another basis. Further, the various stops and starts that occurred would have increased costs.

[168] We do not think it reasonable for Taurapa to wear all of those costs however, as it was ultimately the CAC case that evolved.

[169] We currently consider that reasonable costs should be set at \$20,000. If the CAC wish to be heard on this, a submission may be filed within 10 working days. If nothing is filed the above order will stand. We consider that a contribution of 45% is appropriate in this case given the limited engagement and therefore the requirement to prove the charge. We therefore make a costs order that Taurapa is to pay costs to the CAC of \$9000.

[170] Tribunal costs will be in excess of \$3000. We again order 45%, and take the figure of \$3000. 45% is \$1350.



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

NOTICE

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 498(2) or 500 of the Education and Training Act 2020 may appeal to a District Court under section 504 of the said Act.
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) of the Education Act 1989 apply to every appeal as if it were an appeal under section 356(1).