



## Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee ("CAC") alleges that the respondent engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. The CAC alleges that the respondent's conduct amounts either separately or cumulatively to misconduct pursuant to either section 139AB of the Education Act 1989 ("the Act") for conduct prior to 30 June 2015, or section 378 of the Act for conduct from 1 July 2015.
2. Further, that the conduct is in breach of either Rule 9(1)(d), 9(1)(e) and/or 9(1)(o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 ("the 2004 Rules") for conduct prior to 1 July 2016, or Rule 9(1)(e) and/or 9(1)(o) of the Education Council Rules 2016 ("the Rules") (as drafted prior to the May 2018 amendments) for conduct after 1 July 2016, or alternatively amounts to conduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.
3. The charge is that the respondent:
  - (a) While Student C was under the age of 16 and a learner at the School ("the School"), did form an inappropriate relationship with Student C; and/or
  - (b) While Student C was aged between 11 to 13 years old and a learner at Primary School:
    - (a) Engaged in inappropriate conduct by engaging with Student C in person socially (unrelated to her education); and/or
    - (b) Engaged in inappropriate conduct by holding hands with Student C; and/or
    - (c) Engaged in inappropriate conduct by giving Student C jewellery and money; and/or
  - (c) Formed and/or continued to form an inappropriate relationship with Student C when Student C left Primary School with whom he was in contact with as the result of his position as a teacher at Primary School; and/or
  - (d) After Student C left Primary School and moved to a local secondary school, the teacher:

- (a) Regularly saw Student C outside of school; and/or
  - (b) Allowed Student C to visit him in his classroom after school; and/or
  - (c) On multiple occasions, invited Student C and her friend to his home so they could play on his jet ski and quad bike; and/or
  - (d) Regularly communicated with Student C via a messaging application on her phones; and/or
  - (e) Went with Student C and her friend to the movies; and/or
  - (f) Met with Student C and her friend in Palmerston North; and/or
  - (g) Put his hand on Student C's leg.
- (e) After Student C graduated from high school in December 2016:
- (a) Sent Student C a Christmas card including the message, *"I feel so lucky to share my life with you... Merry Christmas with all my love"*; and/or
  - (b) Continued to allow Student C and her friend to visit him at his home; and/or
  - (c) During one of these visits, placed his hand on Student C's inner thigh; and/or
  - (d) During one of these visits, hugged Student C; and/or
  - (e) Sent Student C a postcard while on holiday signed off with, "Lots of love, C"; and/or
  - (f) Entered into a romantic relationship with Student C on or about January 2017; and/or
  - (g) Allowed Student C to move in with him on or about June 2017.
4. The matter proceeded by way of a hearing-a-tinana (in person hearing).

**Ko te hātepe ture o tonono nei – Procedural History**

5. A Pre-Hearing Conference ("PHC") was held on 10 October 2018 where the Tribunal tentatively set down a hearing date for February 2019 but noted it was dependent on the availability of witnesses.
6. The respondent was granted interim name suppression and the matter was scheduled for a further PHC in November 2018.
7. A further PHC was held on 28 November 2018 where the parties indicated that the matter was progressing towards completion of agreed Summary of Facts. The parties agreed a timetable with the hearing scheduled to take place on 12 and 13 February 2019.
8. Due to the unavailability of a Chair the February hearing date was vacated and a PHC was held on 5 February 2019. A further hearing date was scheduled for May 2019 and timetabling for the filing of submissions was also agreed.
9. The respondent was unavailable to attend the May hearing and the matter was set down for 9 – 11 July 2019 and an amended filing timetable was agreed.
10. The matters proceeded on 9-11 July 2019.

**Kōrero Taunaki - Evidence*****CAC Evidence***

11. The following were the CAC witnesses:
  - (a) Witness A – Principal of the Primary School;
  - (b) Witness G – Caretaker of the Primary School;
  - (c) Witness C – Father of Student C;
  - (d) Witness D – Mother of Student C;
  - (e) Witness B – Friend of Student C;
  - (f) Witness E – Cousin of Student C.

*Evidence of Witness A*

12. Witness A is the Principal of the School. After Student C and Witness B left the School in December 2011, Witness A saw them visit the respondent at the School. He described them as relatively regular visitors within the first year after they left. His evidence is that after the first year these visits dropped off but then started again from approximately January 2015.
13. It was Witness A's evidence that while it is not unusual for former students to visit teachers after they leave, Student C and Witness B continued to make visits after the point where other students would stop. This is usually sometime within the first year of leaving. Often other students were with Student C and Witness B when they visited the School. From Witness A's recollection, the visits continued until roughly March 2017.
14. Witness A gave evidence about Student C and Witness B as students at the School. He described them both as naïve and struggled with academic learning. Regarding Student C, he recalls there being in-class support for her and that she was a target student. He described her as quiet and withdrawn, lacking in confidence with a limited number of friends. Witness A was aware that Student C was close with her cousin Witness E and they supported each other.
15. Under cross examination Witness A accepted that Student C may not have always been with the group of students that visited the respondent. However, he did recall that she always wore a black beanie, so he did notice her when she was there.
16. Witness A's evidence was that he had a "professional boundaries" discussion with the respondent in 2015 due to the visits from the students. He also gave evidence that there were competency concerns in relation to the respondent's ability to teach Year 7 and 8 students. As a result, a support and guidance programme was put in place.
17. During cross examination from Ms Andrews, Witness A confirmed that he did not remember receiving a written complaint regarding earrings that the respondent had allegedly given to Witness E.

*Evidence of Witness G*

18. Witness G was the Caretaker at the Primary School and had been in that role since May 2001. Witness G did not give evidence at the hearing, we only have his written brief, therefore the Tribunal is only able to give limited weight to his evidence.
19. Witness G recalls Student C, Witness B and other students visiting the respondent once or twice a term immediately after they left the school.
20. Witness G overheard conversations between the respondent and the students which included discussions about what they were doing at school and what movies they had seen.
21. His evidence was that sometimes the students would arrive when the respondent was in a staff meeting and they would wait until he was available.
22. Witness G remembers going to the movies and saw and spoke to the respondent for a short while. After the respondent left to get the tickets, he noticed that Student C was also there. Witness G confirms that he cannot say whether they were at the movies together, but rather that they were at the theatre at the same time. This part of his evidence was not disputed.

*Evidence of Witness C*

23. Witness C is Student C's father.
24. Witness C shared how he first learnt of the relationship between Student C and the respondent on Queen's Birthday weekend in June 2017. Student C had told her parents that she was in Napier that weekend with three of her friends, but she had actually spent the weekend in Whanganui with the respondent.
25. Student C had been telling her parents that she was spending her weekends with friends at the beach when she was actually staying at the respondent's house.
26. After learning about Student C's relationship with the respondent, Witness C said that he then recalled Student C talking about going to see the respondent at his school. He assumed that she was going as a group and did not think much of it. He also remembered Student C mentioning a couple of times that he was a great teacher.

27. When he found out about the relationship, he asked Student C what she saw in the respondent and she told him that he was nice to her and took her shopping.
28. Witness C and his wife arranged to meet with Student C at a café in the town to discuss the relationship. Witness C' evidence is that for the most part he read the paper to allow Student C and her mother to talk. They spoke about whether Student C wished to move to Australia or stay in the town. He said that he heard Student C say she wanted to go to Australia.
29. Witness C said they were in the café for about two hours and were not aware that the whole time the respondent was waiting in his parked car outside the neighbouring shop. Student C's parents then spoke to the respondent and Student C together in a public park. Witness C' evidence is that they spoke about Student C moving to Australia to have a chance of a good future. He said that he asked the respondent directly how he would feel in their position if he had an 18-year-old daughter. He recalls the respondent saying he could understand where they were coming from.
30. Witness C' evidence is that Student C was crying and sobbing during that discussion. When the respondent was told Student C was going to Australia Witness C' observation was that respondent appeared troubled by this.
31. Student C went to Australia in August 2017 and her parents set her up with some money and a car. Witness C understood that Student C had a job lined up when she got over there. However, on cross-examination Witness C accepted that he had presumed that she had a confirmed job over there but acknowledged that she may not have.
32. Student C returned to New Zealand on 7 September 2017 as her brother sent her home because he was upset that the situation with the respondent had found its way into his home in Australia.
33. Witness C was aware that on 8 September 2017 the respondent turned up in Australia wanting to see her. He understands that the respondent got angry when he was told she had returned to New Zealand.

34. Witness C' evidence is that on Student C's return to New Zealand she stayed with her parents for about a week and then went to the respondent's house. He recalls coming home from work one day to find Student C had left.
35. Witness C went round to the respondent's house a month or so later to see Student C. He asked her to come for a walk and his impression was that the respondent was reluctant to allow her to go.
36. He had heard that they were moving to China and asked Student C if she wanted to go. His evidence is that she said, "*not really*".
37. When they returned to the house, Witness C said that he got into an argument with the respondent. He rang a family friend who spoke with Student C on the phone. Student C started to get into the car to go with her father. Her feet were out of the car and Witness C lifted them and put them in the car. He remembers the respondent running out, opening the car door, trying to convince Student C to stay. Witness C' evidence is that there was then a physical altercation between himself and the respondent.
38. Witness C took Student C to a friend's house to stay for a while. Three days later she jumped out of the window and hitchhiked back to Palmerston North. She was reported missing to the Police.
39. Witness C believes that there was a huge change in Student C's behaviour when she started seeing the respondent. This included how she engaged with her parents when she sent messages, and she looked scared the last time her saw her.

#### *Evidence of Witness D*

40. Witness D is Student C's mother.
41. Witness D described Student C as needing extra learning support while she was at school. When Student C left school she did not have a job and did not go on to tertiary study. She spent some time when she finished school doing domestic work for her family. Her parents suggested that she go on the unemployment benefit which she did until she left for Australia.



42. Witness D gave evidence that when the respondent was Student C's teacher, she did not think that there was anything out of the ordinary in their teacher-student relationship. She remembers Student C saying that he was a "cool teacher", but nothing caused her to be suspicious.
43. When Student C moved onto college, whilst she does recall Student C talking about the respondent, her recollection was that it was because he was mentioned by her younger cousins that were still at the school. When Student C had issues at college, she would reflect on what the respondent said to her about how to handle certain situations. She was aware that Student C and her friends would visit the respondent at the school, but even then, Witness D did not think there was any need to question that.
44. Witness D remembers that for some time Student C had been telling her parents that she was spending her weekends with friends at the beach, when she was staying at the respondent's house.
45. At the end of Year 13 in 2016 Student C told her mother that the respondent had bought her and Witness B Christmas gifts. She said they were going to the respondent's house to get the gifts but would not show Witness D what the gifts were.
46. She only became aware that the relationship was something more during Queens Birthday weekend 2017 when a Police Officer came to the door to ask where Student C was. At that point she thought she was in Hawke's Bay with friends. The Police Officer returned a while later and confirmed that Student C was not in Hawke's Bay, but in the area with the respondent. She told the Detective that Student C would be home on Sunday, and she would speak with her. She found a contraceptive pill packet in Student C's drawer that weekend. It was dated March 2017.
47. When Student C returned home, Witness D spoke to her daughter about the respondent. Student C told her that they were in love and Witness D remembers that she could not get Student C to understand why this was so concerning and upsetting for her.
48. Witness D recalls asking Student C about whether she was in a sexual relationship with the respondent. Student C told her that the respondent would not have sex with her until she was on the contraceptive pill. Sometime later Student C confirmed that she was in a sexual relationship with the respondent.

49. After finding out about the relationship, Witness D's evidence is that Student C would come and go from their house to the respondent's house in what she described as a bit of a "tug of war". For her parents, they felt that her focus should be a future career and that she had worked hard to get her Level 1 and 2 NCEA in hospitality and needed a barista course to complete this. She remembers Student C saying to her that she just did not understand and that they were in love.
50. Witness C described the café meeting in the town in the same way as Witness C.
51. Witness D remembers saying to Student C, "*Are you sure you want to go to Australia because we can't afford to just buy the tickets, we have to take out a loan*". Student C assured her parents that she did want to go.
52. Witness D confirmed the evidence of Witness C in relation to Student C's stay in Australia. She also confirmed his evidence regarding Student C staying with them for about week after she returned from Australia. She recalls it was a Thursday and she and her husband both had an early start at work. After they left for work the respondent picked Student C up and took her back to his place.
53. In January 2018 Witness D received texts from Student C accusing her of being a liar. This was about a newspaper article. Witness D had gone to the newspaper about the relationship between the respondent and Student C as she did not feel as though the education system was taking her seriously.
54. In December 2018 she received a text invitation to Student C and the respondent's wedding. They did not attend the wedding, but she understands that they were married in January 2019. At the end of January 2019 Student C came and saw them for three-quarters of an hour.
55. A week or so prior to the hearing Witness D said she received a text message from Student C saying that they were returning to Aotearoa for a holiday.
56. Witness D spoke about the impact that the relationship has had on family life, her relationship with Witness C and the fact that it has "*ruined what was a fantastic mother and daughter relationship*". It has also impacted on her ability to function at work.

57. In cross-examination Ms Andrews talked to Witness D about Student C's inability to find work when she left school and the fact that this would have been disparaging for her. She also spoke to her about Student C's desire to travel.

*Evidence of Witness B*

58. Witness B was a childhood friend of Student C's and they attended the School and College together.
59. Witness B's evidence is that they started returning to visit the respondent at the School in 2014 when they were in Year 11. These visits continued throughout Years 12 and 13. He did not know what triggered the visits and commented that he recalled it was just to see how the respondent was, as they had enjoyed him as a teacher. Witness B explained that he was Facebook friends with the respondent and would message him on Facebook Messenger. This evolved into texting and visiting him at the School. The visits at school he described as just "catching up" and the respondent would ask how they were and how College was going.
60. Witness B's evidence was that they would text the respondent in advance to see if he was busy and if not, they would go and visit him. Witness B confirmed that he mainly contacted the respondent, but sometimes it was Student C. He cannot recall how he got the respondent's number and thinks that he then gave it to Student C.
61. Witness B said that he and Student C would visit the respondent's house at the beach and would play on his jet ski and "hang out". A couple of times another friend went with them. Other times he and Student C would meet the respondent at the movies or in the city.
62. When asked why they visited the respondent at his home, Witness B said he did not really know. He remembers that a friend said he had been to the respondent's place so he said to the respondent that "*We should come out too*". Witness B's evidence was that he would tell his parents that they were going to the town and they would go over for a few hours and come back after dinner. He said that the respondent would drop them at home but would not come in.

63. Witness B was also asked about the three photos he produced. Two were of Witness B in the foreground taking the photo, “selfie” style, with the respondent and Student C in the background by the quadbike and jet ski on a beach. Both of those photos show the respondent with his arms around Student C. One with his arms around the top part of her chest/neck area with Student C holding onto his arms, and the other one with his arm around her waist.
64. The third photo is taken outside by an outdoor table and chairs. The respondent and Student C are sitting next to one another and Witness B is standing next to Student C. The respondent has his right hand on Student C's inner thigh. From the photo's “properties” it would appear that it was taken on 20 December 2016 at 4.32pm. This was not disputed. Witness B could not remember who took this photo but thought it may have been another friend, S.
65. Witness B remembered Student C telling their group of friends in Year 12 or 13 that she had a boyfriend, but she made up a name. She said he had a job but did not say what the job was, and they never met him. He did not recall her having any other boyfriends at college.
66. Towards the end of 2016 Witness B began noticing small changes in the relationship between the respondent and Student C. He observed the respondent touching Student C, for example, a hand on her leg and rubbing her stomach. He described it as “weird” and a “little bit odd”.

#### *Evidence of Witness E*

67. Witness E is Student C's younger cousin.
68. She gave evidence of her time at the School with Student C. She was Year 4 when Student C was Year 8.
69. She explained that sometimes Student C would stay behind after class to talk to the respondent. If she saw Student C's bag she would go into the class. Her evidence is that she saw their hands touching a few times and when she walked in there would be an awkward silence and they would look at her and shuffle apart.

70. She described the conversations she overheard between the respondent and Student C as “not normal”. She heard them talking about what Student C wanted to do when she was older. When she walked in, the respondent would sometimes say "*Student C, you can go now*".
71. Witness E gave evidence about how she would look in and around the respondent's desk when she was in his classroom and touch and play with the things that she saw including earrings and stickers.
72. Witness E's evidence is that at the end of Student C's Year 8 year the respondent gave her some money and jewellery and he also gave Witness E \$5 and some earrings. When she took them home, she described her parents as "*flipping out about it*". In cross examination Witness E was asked whether she knew about the rewards system that the respondent had in his class. She acknowledged that she did not and accepted that the things she saw could have been prizes for that system. She explained that her mother complained about the earrings and money the respondent gave her but did not know whether the school responded to that complaint.
73. Witness E remembers staying at Student C's house in around 2016 and Student C was texting the respondent. "*I asked her about it, and she told me to shush and it doesn't matter*". Witness E described the texts as being “low key”, like Student C was talking to a friend.
74. She recalls Student C talking about the respondent, describing him as her favourite teacher and that she and her friends hung out with him in the weekend. Witness E also explained that Witness B showed her a video of Student C falling off the jet ski. She described Student C as trying to "*brush it off*".
75. Ms Andrews put to Witness E that her evidence had changed over time. Her initial statement as part of the CAC investigation process did not include many of the significant details she has since provided in the evidence. She put to Witness E that she had been pressured into making the statements that she had made and asked her whether she had been in a “tug of war”. Witness E responded, "*Yes, I just want my cousin back*".

76. In re-examination, Ms Feltham referred to Witness E's evolving evidence throughout the process and Witness E explained that she had continued to recall different details and that is why her evidence had been added to over time.

*Evidence of Daniel Rakic*

77. At the respondent's request, Mr Rakic was called to allow an interview he conducted on 5 December 2017 to be put in evidence. Mr Rakic is a Senior Investigator with the Teaching Council. As part of that role, he interviewed Witness D, Witness C, and TA about this matter.
78. Mr Rakic put in evidence the 23-page transcript of that interview.
79. He was cross-examined on the appropriateness of interviewing three people together and the style of some of the questioning used.

***Respondent's Evidence***

*Evidence of Teacher F*

80. The respondent spoke briefly about immigrating to Aotearoa with his wife, and her untimely death in 2012. He gave evidence about the romantic relationships he had following his wife's passing and before his relationship with Student C.
81. As a student, he described Student C as "*a good, hardworking girl from a nice family*". He explained that the reason she sometimes stayed behind in class was to help tidy up the classroom. He denied giving Student C any gifts such as money or jewellery and refuted Witness E's evidence that he and Student C would be touching hands.
82. The respondent confirmed that Student C and Witness B started visiting him at school in 2015 whilst they were at College. He explained he had many former students come back to visit him and that there was nothing inappropriate about this.
83. The respondent said that Witness B, Student C, and himself enjoyed Star Wars and Witness B had invited him to go to the movies with them. He said that Witness B and Student C came together, and he would drop them back to their homes in the centre. He did not go and see their parents.

84. His evidence is that it would be Witness B that would message him to see if he was free and not Student C. He understood that Witness B's dad would drop them in Palmerston North, and he would drop them back home. He does not know how Witness B got his phone number and assumes it was from another friend of Witness B's and Student C's.
85. The respondent explained that he was friendly with a couple of families whose children he had taught, and they used to come and visit him at his house at the beach. He understood Witness B had heard about these visits and asked if he could also visit as well. He said it was Witness B that initiated these visits and asked if he could bring Student C. The respondent felt that as Witness B was about to turn 18 it was not a problem. He explained that he felt that the fact that he wanted to bring Student C, made the respondent feel more comfortable, rather than him being alone with Witness B.
86. The respondent's evidence is that he thought both Student C and Witness B had told their parents that they were coming to visit him. He said that Witness B's father would take them to Palmerston North, and he would pick them up and take them to the beach and then return them to the centre in the evening.
87. The respondent said that these visits happened once or twice a term on a Saturday and they would stay for around six hours, play on the quad bike and jet ski.
88. In terms of the beginning of his relationship with Student C, the respondent explained that they started text chatting in late 2016 about music and discovered that they had similar tastes. He said that they started to see each other alone when he returned from an overseas holiday in January 2017. He wanted to tell Student C's parents about the relationship, but Student C asked him not to.
89. The respondent described the evolution of his relationship with Student C. Their relationship was purely teacher/student when she was in Year 7 and 8 in 2010 and 2011. He did not have any contact with her again until late 2015. He described them as becoming friends during 2016, that their intimacy grew in late 2016 and they became a couple in early 2017 and married in January 2019.
90. The respondent's evidence was that it was April 2017 when they went on a trip to Whanganui for the weekend, not June. When they returned to his house, the Police arrived alleging that he was seeing an underage person. He said he explained that

Student C was 18 and gave him her name, date of birth and address. He understood that the Police then went to Student C's home to speak to her parents.

91. The respondent said that Student C moved in with him in June 2017 and stayed for about two weeks before returning to her parents' home. After a week there, she returned to the respondent's home. He said that he would have liked to talk to Student C's parents about the relationship, but that she told him that they did not want to have anything to do with him.
92. He recalls Student C's parents coming to the town to talk to her in a café and they then spoke to him. He said the first that he had heard about Student C going to Australia was at that meeting in the town. He explained that after the initial surprise, he was supportive as could see the benefits for Student C. He thought that going to Australia would help her mature and there would be good work opportunities. He felt that Student C was getting disillusioned by being unable to find work in and around the village.
93. The respondent explained that they kept in touch and he went to Australia to see Student C on her birthday. His evidence is that Student C invited him over.
94. On returning to New Zealand from Australia, the respondent's evidence is that Student C asked him to pick her up after she had had spent time with her parents and friends.
95. In February 2018, they decided to go travelling around Asia. He proposed to Student C whilst overseas and they were married on 19 January 2019.
96. He describes Student C as being his soul mate and that one of his greatest wishes is to sit down with her parents and *"have a normal conversation explaining how much their daughter means to me"*. He further describes Student C as his true partner and that they love to do everything together and she is involved in all our decision making. *"Just because I am older, I have never forced my ideas or opinions onto her. I love that she is now able to be herself: she's funny, smart, determined and a wonderful wife. We have many things in common but our favourites are music, cooking and travelling"*.
97. Under cross-examination, the respondent disagreed with the evidence of Witness C, Witness D and Witness A that Student C required general extra learning support. He said it was only for maths.



98. When Ms Feltham put to him that he could have discouraged the visits from the students by making it clear that they should not come back, he responded by saying that he did not want to be unkind, though he was *"not best pleased"* that students had his number. Ms Feltham referred to the professional boundaries discussion that Witness A had with him in 2015 and the respondent replied that his interpretation of that discussion was more about his Principal being concerned that the student visits may distract the respondent from his work. Whilst Witness B said that they visited the respondent at his home in the town approximately 20 times, the respondent's evidence is that it was only 10.
99. The respondent confirmed that he did not see an issue with his relationship with Witness B and Student C as they were nearly adults. He accepted Student C's word that her parents knew that they were coming over and he did not think that he needed to follow up with them directly. The respondent confirmed that in 2015/2016 he saw Witness B and Student C as former students. Things started to change towards the end of 2016, and it was not until the latter part of 2016 when they were virtually finished school that he considered them to be friends as opposed to "former students".
100. He did not accept that Student C was a vulnerable young person and disagreed with the description of her as being shy, introverted and not street smart. When asked if he accepted that a teacher should not enter a close personal relationship with a student, he commented that it *"depended what close and personal means"*. When asked whether he accepted that teachers should not enter an intimate relationship with a student, he acknowledged that this was not acceptable. However, his position remained that the situation with Student C was different as he was no longer her teacher and they had not been in contact for some time.
101. The respondent accepted that Student C was financially and emotionally dependent on him and that she looked up to him and was impressed by him. However, he did not accept that he had abused that trust.
102. The respondent was questioned about the photographs taken of him with his arms around Student C on the beach. He described the photos as *"staged selfies"* and said he was not hugging" her.
103. In relation to the photograph on the deck where he has his hand on Student C's upper thigh, he also described this as staged and that he was poking his tongue out and it was

*“a bit of fun”*. He said that it could have been a photograph taken with *“any friend”* and that there was no suggestion of intimacy. Based on that response, the Tribunal asked him whether he would have had the same sort of photograph with Witness B. He conceded that he would not. The respondent also acknowledged that it was about the time the photo on the deck was taken (20 December 2016) that he realised that he had become attracted to Student C.

104. In relation to the post card that the respondent sent Student C in early 2017 whilst travelling overseas, the respondent downplayed the signoff *“Lots of love C xxx”*, as not being intimate. This was despite him having already acknowledged that he stated becoming attracted to Student C in December 2016.
105. Whilst the respondent accepted that the relationship was kept a secret, he denied that it was because he knew it was wrong but did say that he thought that his employer would not approve because of the age gap. When asked whether he thought that the only concern was the age gap he responded, *“I don’t know how schools work”*.

#### *Evidence of Student C*

106. Student C gave evidence about her upbringing in the village and her time in the respondent's class. As a teacher, she described him as funny and sometimes strict. She explained that she would sometimes stay back after school to help clean up the class and this would involve cleaning the utensils which would only take a few minutes. Whilst she was helping with the cleaning, she would talk about college with the respondent and what she wanted to do once she left college. She denied that the respondent ever held her hand or physically touched her at that time. She also denied receiving any money or jewellery from the respondent. She said she received a jewellery box as a prize because she came top in her spelling group in a test. She said other students also received prizes as well.
107. In her college years she explained that she got her first cell phone before Christmas in 2015. She explained that her friendship with Witness B grew in Years 11 to 13. She had a boyfriend in Year 12 but felt that he was controlling, violent and if she had stayed with him, she would have been in a toxic relationship, so she ended it.

108. She received NCEA Levels 1 and 2 in Maths, English, and Hospitality. In Years 12 and 13, she did the Gateway programme.
109. She described herself as being very shy and quiet while she was at college and explained, *"I was not bullied and mocked. It felt like I was invisible to others. When I left college, I realised that I seriously had to talk more to others and voice my opinions if I wanted to be noticed and get on with life"*.
110. In terms of reconnecting with the respondent, she explained that it was around November 2015 when her and Witness B decided to go and see their old teacher. She explained that she would get the bus home from college and when she got home there were things that she needed to do and after that her and Witness B would go and see the respondent. This happened once or twice per term from late 2015 to 2016.
111. Student C denied returning to see the respondent immediately after leaving primary school. She also denied visiting him in January 2015 which was Witness A's recollection. Student C explained that they did not go and visit the respondent until later in 2015, close to the summer holidays.
112. Student C explained that when they visited the respondent, they would talk about what they had been up to at school, what they were doing for the weekend and just general chat.
113. At the end of 2015, Student C said that her and Witness B asked the respondent to come to the Star Wars movie with them.
114. Regarding the evolution of their relationship, Student C explained that when her and Witness B started visiting the respondent again at the the School she saw him as an ex-teacher who she called "Mr F". It was not until 2016 that she began to consider him a friend. When asked whether she considered the respondent a teacher when they went to the movies at the end of 2015, she said, *"No"*. She was asked whether she considered him to be an ex-teacher at that point and she said *"No"*. Student C was then asked what she considered him to be and she said, *"a friend"*.
115. Student C's evidence was that she got the respondent's number off Witness B in 2016.

116. It was in the middle of 2016 that Student C realised she had feelings for the respondent, but she did not disclose this to him. Her evidence was:

*"Our bonding started in late 2016. I had Teacher F's number and we would chat a few times. We would talk about our interests. We would communicate mainly by text. I finished college in November and the feelings came to me more and more.*

*We started to see each other once or twice a week after he finished work. We talked about our feelings but he said he was going on holiday over the summer so he would think about what we should do. I was very happy to get a Christmas card from him and even happier to know that he was okay when he sent me a postcard.*

*When he came back in January 2017, we texted more and we decided that we would be a couple. Our relationship has continued from this time.*

*My parents found out about our relationship in April 2017 and there has been conflict with them since then."*

117. At that time Student C described having strong, loving feelings for the respondent and that she, *"knew in my heart, soul and brain that he was the one I wanted and I wanted us to have a proper relationship"*.

118. She talks about enjoying travelling with him and experiencing new places and cultures. She explained,

*"teacher F means the world to me. He treats me with total respect; he supports me in everything that I want to do and comforts me when I'm feeling low. teacher F involves me in every decision that concerns us, not [sic] matter how big or small. I've always been treated as an equal, a mature adult, his best friend and partner."*

*My last boyfriend was a complete idiot. He was violent, aggressive, selfish and dangerous. The total opposite of teacher F. I didn't want that relationship to continue with that young man as I was frightened that he would do something violent to my parents or our home. The experience with a man of my own age made me realise that many younger males in my area were far too immature for me.*

119. Whilst Student C described her relationship with the respondent as being an equal one, on questioning from the Tribunal, Student C confirmed that she had no money or assets in her own name. The respondent owned the house they lived in, the car that they drove and all chattels/contents. The Tribunal asked Student C what she did in China while the respondent was tutoring English, she explained that she *“stayed home and did the cooking and cleaning”*. When asked what money she had at her disposal, she said that she would ask the respondent for money for clothes and groceries.
120. When she was back in New Zealand, she would not go out to catch up with her friends on her own, but rather they would come and visit her at the respondent’s home.
121. Student C talked about her wedding in early 2019 and how it was, *“the best day of my life and it was everything I always wanted and dreamed of”*. She explained that her friends shared her day with her, and her maternal grandparents were also a part of the day. She described feeling hurt that her parents did not attend, but also relieved as she was worried they may create a scene.
122. When questioned about the three photographs and the status of her relationship with the respondent at the time the photographs were taken, Student C described the respondent as a friend at that point. When asked if he was a “special friend”, she said “No”. She described the photographs as “friendly”, and nothing more. However, when asked whether she would have the same type of photograph (i.e. arms around her and hand on upper thigh) with her *friend* Witness B, she conceded that she would not. When asked what the difference was in those “friendships” at that time, she did not answer.
123. The Tribunal talked to Student C about the level of intimacy between her and the respondent at the time of the photograph with the hand on the inner thigh (20 December 2016). She explained that they had not yet kissed, but when asked whether they were “touching” she said “Yes”. She was asked when they first kissed, and she shared that it was in the first part of 2017, and that they first had intercourse in April 2017 when she was on the contraceptive pill.
124. When asked why she made up a boyfriend's name and did not tell her friends, she said that she did not know how they would react. She thought that they may not like her and may *“wonder what the hell I was doing”*.

## Ngā Kōrero a te Kōmiti – CAC Submissions

### *The Legislation and the Rules*

125. The CAC discussed the definition of "serious misconduct" pursuant to section 139AB of the Act (for conduct prior to 1 July 2015) and section 378(1) of the Act (for conduct after 1 July 2015) as well as the different Rules in force during different periods.
126. Prior to 1 July 2016, the criteria for reporting serious misconduct was found in Rule 9 of the 2004 Rules. The 2004 Rules cover the period when Student C was in the respondent's class and then the beginning of Student C and the respondent reconnecting in 2015/2016. The relevant Rules are:
- (a) Rule 9(1)(d) - involved in an inappropriate relationship with any person under the age of 16 years;
  - (b) Rule 9(1)(e) – 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;
  - (c) Rule 9(1)(o) – any act or omission that brings, or is likely to bring, discredit to the profession.
127. From 1 July 2016 (18 May 2018 when there was a further amendment), the following rules are relevant, and as noted by the CAC the wording a virtually unchanged. This is for the period from halfway through Student C's Year 13 year:
- (a) Rule 9(1)(e) – 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 position as a teacher;
  - (b) Rule 9(1)(o) – any act or omission that brings, or is likely to bring, discredit to the profession.
128. The CAC submits that the purpose of Rule 9(1)(e) under both sets of Rules is self-evident in that it underscores the inherent power and balance between a teacher and student.<sup>1</sup>

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<sup>1</sup> Above n 1 at [201]

Rule 9(1)(e) is prophylactic in nature,<sup>2</sup> and thus is concerned with the prevention of harm to a student that an inappropriate relationship with a teacher might cause.

129. The CAC further submits that a narrow and literal interpretation of Rule 9(1)(e) suggests that the conduct that has led to the commencement of the inappropriate relationship has to be "*as a result of*" the respondent's "*position as a teacher*". Such an interpretation could potentially exclude any teacher who is not actually teaching the student at the time the relationship began.
130. However, as the cases of *CAC v Teacher*<sup>3</sup> and *CAC v Teacher B*<sup>4</sup> make clear, the Tribunal accepts that a purposive approach should be taken to Rule 9(1)(e) "*simply requiring that there be some form of causal nexus between the teacher-student relationship and the subsequent contact for the rule to be met*".
131. Further the CAC submit that this approach is in accordance with *CAC v Teacher C*<sup>5</sup> where the Tribunal held that rule 9(1)(e) was met where there was a causal nexus between the respondent and student's professional relationship and their subsequent personal one.<sup>6</sup> In *Teacher C*, the Tribunal inferred that one of the reasons the student in that case sought out the respondent's support was because she had been his teacher. Further the Tribunal considered it not necessary for the CAC to prove contact commenced exclusively because the respondent was Student A's teacher.
132. In relation to Rule 9(1)(o) of both sets of Rules, the CAC submits that the test in *Collie*<sup>7</sup> would be met in this situation.

*The Code of Ethics and the Code of Professional Responsibility*

133. The CAC refers to the two Codes in force during different times throughout the alleged conduct.
134. Prior to 30 June 2017 the Code of Ethics for Registered Teachers makes it clear the expectations the teaching profession has to develop and maintain professional

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<sup>2</sup> *CAC v Teacher* NZTDT 2016/64, 16 February 2017 at [28].

<sup>3</sup> Above n 3 at [43].

<sup>4</sup> Above n 4 at [27].

<sup>5</sup> Above n 1.

<sup>6</sup> Above n 1 at [181].

<sup>7</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]

relationships with learners, to promote their wellbeing and to maintain and raise professional standards through responsible ethical practice.<sup>8</sup>

*The Code of Professional Responsibility and Standards for the Teaching Profession*

135. The Code of Professional Responsibility sets out the high standard of ethical behaviour expected of every teacher and emphasises the position of trust that teachers hold, in society and their role and influence on the learners in their care.
136. The CAC acknowledges that the Code was not in place at the time of the alleged conduct, but submits it is instructive in an assessment of the professional standards.

*Previous Tribunal Cases*

137. The CAC referred the Tribunal to several previous Tribunal cases involving inappropriate relationships with students, both non-sexual and intimate.

Inappropriate (Non-Sexual) Relationships with Students

138. The Tribunal has previously found misconduct even where a relationship has fallen short of a sexual relationship but still involved the crossing of professional boundaries.
139. In the case of *CAC v Holmes*,<sup>9</sup> a teacher engaged in inappropriate intimate online communications with a student at the conclusion of the school year. The Tribunal found serious misconduct and considered that the behaviour engaged all three criteria and that it adversely affected the wellbeing of the student, reflected adversely on Mr Holmes' fitness to be a teacher, and brought the teaching profession into disrepute. The Tribunal was also satisfied that the respondent's conduct was of a character and severity addressed by rules 9(1)(e) and 9(1)(o) of the 2004 Rules.
140. In the case of *CAC v Teacher*,<sup>10</sup> a female teacher developed a friendship with a Year 11 male student which led to communicating and socialising with the student outside of school hours. The Tribunal found serious misconduct albeit at the lower end.

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<sup>8</sup> Code of Ethics for Registered Teachers

<sup>9</sup> *CAC v Holmes* NZTDT 2018/23, 19 September 2018.

<sup>10</sup> *CAC v Teacher* NZTDT 2016/64



141. In *CAC v Teacher*,<sup>11</sup> a teacher formed an inappropriate relationship with a Year 10 student. The teacher took the student home on two occasions, sent personal messages via Instagram, and provided the student with treats including a onesies, soft toy, food, and money. On that occasion, the Tribunal said:

*"We 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 maintain and respect the professional boundary placed between them and their charges. 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'."*

142. In the case of *CAC v Huggard*,<sup>12</sup> the teacher sent a considerable number of text messages to a Year 9 female student which were of a personal nature and engaged in lengthy texts, and phone calls late at night. In this instance, the Tribunal said:

*"As the adult and the 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. This did not happen here."*

143. Further, in the case of *CAC v Teacher*,<sup>13</sup> a male teacher had taught a student when the student was in Year 7 and 8. The student and the teacher developed a close relationship and when the student went on to college and was having difficulties, the teacher was invited into the student's home by the mother to help. However, the mother soon became concerned regarding the content of the text messages the student and the teacher were sending to each other. Ultimately, although the Tribunal was not convinced that the text exchange was sexually motivated, it still found the relationship to be inappropriate.

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<sup>11</sup> *CAC v Teacher* NZTDT 2016/55.

<sup>12</sup> *CAC v Huggard* NZTDT 2016/33, 14 November 2016 at [21].

<sup>13</sup> *CAC v Teacher* NZTDT 2013/41, 26 August 2013.

### Inappropriate Intimate Relationships with Former Students

144. The CAC referred to several cases where the Tribunal has found “serious misconduct” where teachers have engaged in sexual relationships with former students.
145. The case of *CAC v Teacher S*<sup>14</sup> involved a teacher performing oral sex on a student after the school leaving dinner. The Tribunal found serious misconduct, and in that case, at paragraph [43] said:
- "[T]his sort of behaviour effects the way in which students view teachers and therefore influences the learning environment as a whole" and is "not the conduct of a person who is fit to teach".*
146. In the case of *CAC v Teacher*,<sup>15</sup> a teacher had sex with a former student who was attending the school at which he previously taught. He came across the student (and others) at a bar and bought them drinks before arranging for the two of them to go to his apartment where they had sexual intercourse.
147. In the case of *CAC v Teacher C*,<sup>16</sup> the Tribunal considered whether a teacher could ever pursue a romantic or intimate relationship with a former student and noted that there is not, and cannot, be a blanket prohibition on intimate relationships between teachers and former students. Whether or not the relationship is inappropriate will be a context specific enquiry. In that case, Teacher C was employed as a teacher at a Youth Justice residence where she first met Student A as a remand prisoner. When they met, Student A was 16 years old and Teacher C was 32. Student A was transferred from the residence to prison in September 2011 and an intimate relationship between them began in early 2013.
148. In that case, the Tribunal referred to the Northern Territory Teacher Registration Board Guidelines ("NT Guidelines") and the General Teaching Council for Scotland's Code of Professionalism and Conduct ("Scotland's Code of Conduct"). The Tribunal was also assisted by expert evidence.<sup>17</sup>

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<sup>14</sup> *CAC v Teacher S* NZTDT 2016/69, 14 June 2017.

<sup>15</sup> *CAC v Teacher* NZTDT 2011/17, 1 September 2011.

<sup>16</sup> Above n 1

<sup>17</sup> The expert in that case was a former Principal of 19 years, 45 years' experience as a teacher and professional leader and was employed as an independent educational consultant providing leadership through coaching, mentoring, supervision, training, and project management. For the seven years prior giving evidence in the *Teacher*

149. Taking into account the international guidelines and the expert evidence, the Tribunal in *Teacher C* held that:

*"We emphasise that whether a relationship is inappropriate is a context specific enquiry not amenable to prescriptive regulation. It is essential that practitioners exercise personal judgement and ask themselves whether their behaviour towards, or interactions with, a student or former student may risk blurring the teacher/student boundary".*

150. The CAC also referred to the more recent decisions of *CAC v Teacher B*<sup>18</sup> and *CAC v Teacher*.<sup>19</sup>

151. In *CAC v Teacher*, a teacher had taught a student in 2012 and 2013. At the end of 2013, the student left the school and joined the teacher's adult kapa haka roopū in March 2014. The teacher was the cook and part of the tutoring team. A sexual relationship between the two began in March or April 2014. In April, the student discovered that she was pregnant to the teacher.

152. The Tribunal was satisfied that at the time their relationship commenced, the teacher and student were in contact as a result of his position as a teacher, therefore the necessary causal nexus between the teacher/student relationship and subsequent contact was established. However, the Tribunal were not satisfied that the relationship was inappropriate and therefore while very finely balanced, concluded that the CAC had not proved the charge to the required standard.

153. In reaching this conclusion, the Tribunal at paragraph [63] said:

*"... while the age difference between the respondent and Student S is relatively significant – and the gap between when Student S finished her schooling and the relationship beginning was relatively short, we are not satisfied that these two factors, in combination, meant that the respondent embarked on an inappropriate relationship. The focus of the enquiry described in Teacher C is on whether there was a persisting power imbalance between the teacher and former student at the time the relationship began. Given the lack of evidence about Student S's*

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C case, the expert had been a mentor in the First Time Principal's Programme. Mr Ching at that time was also a member of the Education Council's (as it then was) Complaints Assessment Committee.

<sup>18</sup> Above n 4

<sup>19</sup> Above n 3

*emotional and social maturity in March 2014, it would be speculative to find that she was vulnerable, and that the respondent effectively remained her teacher because he was in a position of 'trust, care, authority and influence'."*

154. In the *Teacher B* case, a teacher entered a romantic relationship with a student very shortly after she had completed her Year 13 school year. The teacher had taught the student in Years 9, 10 and 11. Their relationship was preceded by significant social media activity commencing when they became Facebook friends in the middle of Year 11. From the end of Year 12, the teacher began attending events the student was participating in outside of school and during Year 13, would spend time with Student E and her friends at school. By December of Year 13, the teacher and student became aware of feelings that they shared and in late December, they met the student's mother to seek permission to start a relationship.
155. The Tribunal had little difficulty in concluding that the first element of Rule 9(1)(e) had been met and that the teacher and student were in contact as a result of his position as a teacher. The Tribunal found that this relationship was inappropriate after considering the NT guidelines, noting that it began just weeks after the student finished school, involved a 25-year age gap and there was some evidence of vulnerability. There had been improper social media contact for some time while the student was still at school and the teacher had disregarded warnings about the importance of maintaining professional boundaries with children.

#### *Codes of Conduct from other Professions*

156. As was noted in *CAC v Teacher C*<sup>20</sup> the Tribunal noted that helpful guidance can be taken from codes of conduct from other professions which also deal with vulnerable persons. In that regard, the CAC refers to the Medical Council's Code of Conduct, the New Zealand Association of Counsellors' Code of Ethics, the Social Workers' Registration Board's Code of Conduct, and the New Zealand Psychologists' Board Code of Ethics.

#### *Application of the Law to the Current Case*

157. The CAC submits that the respondent's conduct can be viewed in three phases. Firstly, his conduct with Student C while she was a student at primary school in 2010 and 2011.

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<sup>20</sup> Above n 1

Secondly, his conduct with her while she was at secondary school and thirdly, his relationship with her after she left school in December 2016. It is submitted that the first phase is quite distinct, but the second and third phases demonstrate the development of an inappropriate relationship which then became an intimate one.

### First Phase

158. The CAC acknowledged that the Tribunal's consideration of the respondent's conduct during this phase will depend on our assessment of Witness E's evidence as both the respondent and Student C denied there was any inappropriate contact between them when Student C was a student of the respondent.
159. The CAC refers to some of the observations that Witness E described when she would go to the respondent's classroom to walk home with Student C. She saw the respondent and Student C sitting closely together, touching hands and would quickly pull apart and go quiet. She described feeling awkward and that she had also received a gift of earrings from the respondent. The CAC submits that this evidence engages rules 9(1) (d) and (e) of the 2004 Rules, that the respondent was clearly engaging in an inappropriate relationship with Student C because of his position as her teacher.

### Second and Third Phases

160. The CAC acknowledges that there is no clear evidence as to when contact between the respondent and Student C resumed after she started secondary school. Witness A's evidence is that Student C was among a group of former students who visited the school the year after leaving. However, Witness B's recollection was that the visits to the respondent's classroom started sometime in 2014 when he and Student C were in Year 10. Witness A gave a similar timeframe for when these visits started happening again. Witness A recalls that date because the respondent moved classrooms in January 2015. It was also something he noted because it was unusual for older students to return and be regular visitors. So much was his concern that he spoke to the respondent about professional boundaries.
161. The CAC acknowledged that the timeframe was disputed by the respondent and Student C who both said that the visits did not start until late 2015. However, the CAC submit that the visits to the classroom were ongoing for some time before the trips to the movies, the

meetings in Palmerston North and then the day trips to the respondent's home at the beach began.

162. The CAC submits that these visits, while they were in high school, occurred because of the respondent's position as a teacher. The CAC submits that Witness B and Student C were there to see the respondent because they regarded him as a great teacher and likewise the respondent presented himself in his capacity as a teacher.
163. The CAC position is that the continuation and frequency of the visits by Witness B and Student C marked the beginning of the blurring of professional boundaries. The respondent did not discourage their attendance or distance himself from them as it was his responsibility to do. In fact, he escalated the nature of the contact by going to the movies and hanging out with the students at a shopping mall in Palmerston North. Significantly, the CAC says this occurred without any involvement from Witness B and Student C's family or other extra-curricular activities in common. At any time, the respondent could have chosen to end the visits or not go to the movies or shopping trips.
164. Although the meetings were not connected to school, the CAC submits that they remained very much defined by the student/teacher relationship. Witness B confirmed that he called the respondent Mr F until after he left school and the respondent agreed that while he was getting friendly with Witness B and Student C in 2016, they were not friends and he saw them as students only. Student C said that she called the respondent teacher F from early 2016 when she started seeing him as a friend, even though she did not get his cell phone number until later in the year when she asked Witness B for it.
165. The CAC say that the relationship with Student C and Witness B escalated further when they began visiting the respondent's home at the beach, approximately an hour away from their homes in the centre. The evidence before the Tribunal is unclear as to when these visits began but at the latest the CAC said they started over the 2015/2016 summer and continued during 2016.
166. The trips involved Witness B and Student C spending the day at the respondent's home including staying for dinner. While Witness B estimated there were 20 such visits, the respondent and Student C said there were 10. Regardless, the CAC submit that 10 visits indicates they were relatively regular.

167. Whilst the respondent maintained that Student C's family were aware of these visits, he never spoke to them directly to be assured of that despite the fact he was frequently dropping her home. Student C's parents said that while they knew Student C was going to the beach, they had no knowledge it had anything to do with the respondent.
168. The CAC submit that the frequency, nature, and largely secretive contact that the respondent had with Student C and Witness B during their last two years of school was unacceptable. During 2016, there was a further development in the respondent's relationship with Student C and this stemmed from the relationship the respondent had fostered with her over the preceding 18 months and culminated when the respondent and Student C began an intimate and eventually sexual relationship.
169. Student C's evidence is that she obtained the respondent's cell phone number from Witness B in mid-2016 and began communicating with him. Despite the respondent saying that he was *"not best pleased"*, by the fact students had his number, the fact that it was used to arrange meet ups and communicate privately with Student C, the CAC submits suggests otherwise. He did not block her number or choose not to respond but instead not only responded, but it was happening frequently when she was at school, to the point that Student C had to invent a boyfriend to hide to her friends the fact she was communicating with the respondent. Witness E confirmed in 2016 that she saw Student C texting the respondent although Student C tried to hide her messages.
170. It is submitted that this marks a further significant shift in the respondent's relationship with Student C and that it enabled a close personal relationship to develop between the two which became intimate before long. Witness B's evidence was that he noticed changes in the behaviour of Student C and the respondent in 2016 and by the time of the 20 December 2016 photograph, the respondent was openly displaying affection for Student C. The respondent acknowledged in evidence that by the time the photograph was taken on 20 December 2016, he and Student C had gone past the "friends zone". This is supported by the Christmas card sent to Student C by the respondent and his evidence that *"intimacy grew in late 2016 and we became a couple in early 2017"*. Student C's evidence was similar, and she confirmed that when he returned from holiday in January 2017, *"we decided that we would be a couple"*. She said that they first had sex in April or May 2017.

171. Student C turned 16 on 29 August 2014 when she was in Year 11. While the visits back to the school may have started before this, most of the contact between them was after this time. The CAC submit therefore that the respondent's conduct during this phase should be considered under Rule 9(1)(e) rather than Rule 9(1)(d). The conduct after 1 July 2016, when Student C was in Year 13, will need to be considered under the new Rules, specifically Rule 9(1)(e) and Rule 9(1)(o).
172. The CAC submits that the first issue for the Tribunal is whether the respondent was, or was when the relationship commenced, in contact with Student C as a result of his position as a teacher.
173. The CAC submits that the break between Student C ending the School and commencing a relationship with the respondent does not lessen the respondent's culpability. For at least two years during this break, the respondent was developing a strong connection with Student C while apparently still leveraging his position as a teacher at the School. Indeed, the CAC submit that in this case, where the gap between the student/teacher relationship ending and an intimate relationship beginning largely encompasses a student's post-primary years, the relevance of that gap would be extremely limited. Here the gap occurred while Student C was immature and still in the education system. There has not been any true opportunity for the power imbalance inherent in the student/teacher relationship to dissipate. The CAC refers to the comments of the Tribunal in *Teacher B* at [29]<sup>21</sup>.
- Put another way, we accept that there was a nexus between the respondent and Student E's professional relationship and the subsequent personal one. It is a logical and unavoidable inference, that Mr Teacher B's recent association with Student E in his capacity as a teacher was a, if not the, reason why the relationship developed."*
174. The CAC submits that the Tribunal can be sure the first element of Rule 9(1)(e) is met. The second issue for consideration is whether it was inappropriate.
175. The CAC position, as already noted, is that the relationship between the respondent and Student C was already inappropriate before it became intimate. The CAC submits the

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<sup>21</sup> Above n 4



following aggravating features which can be drawn from the case law, NT Guidelines and the Code highlight why the relationship between the respondent and Student C was inappropriate.

*The length of time between the conclusion of the teacher/student relationship and the commencement of their intimate relationship*

176. The CAC refer to the Tribunal's decision in *CAC v Teacher*<sup>22</sup> and submit that while there is a gap of around five years between the respondent teaching Student C and the beginning of an intimate relationship, its relevance is offset by the fact that the respondent formed an inappropriate relationship with Student C, one to two years before the relationship became intimate. Furthermore, the respondent continued to leverage his position as a teacher in his relationship with Student C. In these circumstances the CAC submit there has been no effective break between the student/teacher relationship and the ongoing intimate relationship.

*Age disparity between the teacher and former student*

177. While this factor will heavily weigh in the mix, it must be considered in conjunction with other factors in determining whether the relationship is inappropriate. The age difference here is significant, there is a 34-year age gap between Student C and the respondent.

*The emotional/social maturity and/or vulnerability of the former student*

178. The CAC notes that in both *Teacher B*<sup>23</sup> and *CAC v Teacher*,<sup>24</sup> the Tribunal focused heavily on the emotional and social maturity of the student in determining whether the relationships were inappropriate. In this case, the Tribunal heard directly from Student C, her parents, her school Principal, and a close friend. The CAC submits that the evidence graphically illustrated Student C's immaturity and vulnerability. She was described by her mother as quiet, shy, put others' needs before her and did not go out a lot. Her father said she was academically not mainstream but would help anyone out and was quiet and well liked. Her former principal, Witness A said that Student C was quite naïve and required

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<sup>22</sup> Above n 3

<sup>23</sup> Above n 4

<sup>24</sup> Above n 3

additional learning support. At secondary school, she undertook a Gateway Programme. When Student C left school, she had no job and no plans for further study.

179. This is at odds with the respondent's description of Student C as a bright and determined girl. The CAC note that the respondent did not support Student C's dream of a job in hospitality but rather was content for her to be available for him. The CAC say that this was demonstrated by the fact that the relationship remained a secret with Student C's parents only becoming aware of it after a member of the public alerted Police to what they thought was an adult with an underage person.
180. Student C's parents were very concerned about the relationship but their efforts to try and discuss the relationship directly with Student C were hampered by the respondent. Student C's parents tried to talk to the respondent and ask him to allow her to go to Australia and have a chance of a life. The respondent said that their love was strong, so he was willing to let her go, and he saw the benefits in her going to find work, grow up and mature. The CAC say that while Student C did go to Australia, it is only because the respondent permitted it. By then, they had only been officially a couple for over six months although for most of that time, no one was aware of it. After arriving in Australia, Student C relatively quickly had a job prospect, which while not in hospitality, would have been an important first step for her. However, a month later the respondent went to visit, and she returned to Aotearoa. From this point onwards, Student C has lived with the respondent and has had almost no contact with her family. Contact with her friends seems to be limited to online contact or visits by them to the respondent's home in S.
181. The CAC disputes the respondent's submissions that Student C demonstrates independence and resourcefulness and there is no evidence of vulnerability. Instead, the CAC say the relationship was always characterised by a significant power imbalance. The evidence shows that Student C is totally dependent on the respondent financially, socially, and emotionally. He is the only real boyfriend that she has ever had, and their relationship was about fulfilling his needs rather than hers.

*The potential for harm to the former student*

182. The CAC referred to the criminal jurisdiction where it is recognised that often young people, who have been subjected to such a breach of trust, do not appreciate the consequences for many years or sometimes at all but this does not mean that objectively

there has been no breach. In other words, it is not just Student C's view of whether the relationship with the respondent was proper at the point it started. The CAC acknowledges that although Student C seems happy, it is concerning that when asked, she was unable to articulate whether her relationship with the respondent was appropriate or not.

*The nature of the student/teacher relationship*

183. This includes the closeness, dependence, significance, and length of the relationship at school. The respondent taught Student C for two years when she was 11½ to 13½ years old. The CAC say this was a formative age and as a teacher he had a major impact on her which is why Student C and Witness B returned to see the respondent and only the respondent, several years after he taught them. The CAC submit that the respondent continued to emphasise his role as a teacher when Student C continued to have contact with him whilst she was at College.

*The duration of the intimate relationship between the teacher and former student*

184. The relationship between Student C and the respondent is ongoing.

*Awareness by the teacher of the appropriateness of the relationship*

185. The CAC remind the Tribunal that the respondent was warned by his principal, Witness A as early as 2015 about the need to maintain professional boundaries due to the frequency of the visits by Student C and her friends to his classroom at the School.
186. The CAC submission is that this case clearly involves a long and inherently problematic relationship by a teacher with a vulnerable young woman that should warrant a disciplinary response. The evidence establishes that the respondent entered an inappropriate relationship with Student C and he repeatedly and deliberately blurred the proper boundaries that exist between a student and then former student. Their intimate sexual relationship is the most extreme expression of their inappropriate relationship. However, the CAC maintains that the conduct prior to that intimacy was already an inappropriate relationship in accordance with rule 9(1)(e) and brings discredit to the profession under rule 9(1)(o).
187. Finally, the CAC submit that if the Tribunal is satisfied that the relationship between Student C and the respondent was inappropriate, then it follows that the conduct reflects

adversely on his fitness to teach and brings the profession into disrepute. It also adversely affected the wellbeing of Student C and accordingly it is submitted that the Tribunal should find the CAC has proven the charge of serious misconduct.

*Penalty*

188. The CAC submits that the only conceivable outcome that the Tribunal must reach is one of cancellation. The CAC say that the respondent's relationship with Student C is not the conduct of a person who is fit to teach. Further, it is too serious to permit any outcome in the public interest other than cancellation which should be considered a commensurate and necessary disciplinary response in such circumstances.

**Ngā kōrero a te Kaiurupare – Respondent's submissions**

189. The respondent's position is that his relationship with Student C was not inappropriate and therefore could not bring the profession into disrepute or amount to serious misconduct. In her submissions Ms Andrews for the respondent has broken down the evolution of the relationship between the respondent and Student C over the period that they knew each other.

*Nature of the relationship when Student C was in the respondent's Year 7 and 8 Class*

190. The respondent submits that his relationship with Student C while he was her teacher was a normal student/teacher relationship and denies any inappropriate behaviour, the touching of hands or giving of gifts. Witness E's evidence is disputed in its entirety.

*Nature of the relationship after Student C went to college in 2011 and before she turns 16 on 29 August 2014*

191. It is submitted that when Student C went to college, she initially had no contact with the respondent. Student C got on with college life, had a boyfriend briefly and became good friends with Witness B and other teenagers.
192. The respondent lost his wife in 2012 and had two other relationships between April 2013 and November 2015.
193. The respondent's submission is that there was no relationship between Student C and the respondent at this time as they had lost contact and had different focuses in their lives.

*Renewed contact*

194. The respondent says that Student C and Witness B occasionally started visiting the respondent from about late 2015 when Student C was in her Year 12 year. Student C got her first cell phone before Christmas in 2015.

*Evolving friendship with Student C and Witness B*

195. The friendship between Witness B, Student C and the respondent grew during 2016 and with Witness B being interested in the quad bike and jet skiing, they occasionally visited the respondent's house at the beach. They had similar tastes in movies so attended Star Wars movies and a DC Comic movie. The respondent submits that it was Witness B, not Student C, that made most of the arrangements to meet. This was when they were Year 13 year and Student C turned 18 on 29 August 2016.

*Blossoming romance*

196. During 2016, Student C got the respondent's cell phone number from Witness B and started texting the respondent about mutual interests. By Christmas 2016, Witness B started to observe intimacy between Student C and the respondent.

*Becoming a couple*

197. The respondent's position is that they became a couple in early 2017, and Student C's evidence supports this.
198. The respondent says that he wished to resolve the conflict between himself, Student C, and her parents but the time has never been right. The respondent and Student C have travelled together through Asia, sharing their mutual interests in travel, and exploring different cultures. While travelling, they realised they were committed to each other and decided to marry.
199. They describe their relationship as being loving and respectful. Student C contrasts this with a previous boyfriend who she found to be abusive and toxic.

*Getting married*

200. The respondent and Student C returned to New Zealand in February 2019 to get married and then resumed their travels.
201. In submissions Ms Andrews sets out the statutory framework that the Tribunal must consider given that the allegations span over a period of time which includes amendments to legislation, the Teaching Council Rules and Codes of Conduct.
202. The respondent refers the Tribunal to the case of *CAC v Teacher C*,<sup>25</sup> which Ms Andrews categorises as the leading case relating to teacher relationships with former students. She notes the three key principles highlighted by the Tribunal in *Teacher C*:
- (a) The long-settled position is that for a teacher to have a sexual relationship with a student at the school at which he or she teaches is serious misconduct at a high level;
  - (b) A relationship need not be sexual for it to be improper and to cross professional boundaries; and
  - (c) There is not and cannot be a blanket prohibition of intimate relationships between teachers and former students.

*NT Guidelines*

203. Ms Andrews also applies the NT Guidelines to the present case.

*The length of time between the conclusion of the teacher/student relationship and the beginning of the intimate relationship*

204. It was submitted that when Witness B and Student C started revisiting the respondent at the School, he was no longer in a pedagogical role and had not been for several years. Further, at that time, the pedagogical responsibility for Witness B and Student C had shifted to the teachers at the college they now attended and was not held by the respondent. The fact that they still called him Teacher F is not evidence that they saw him in a pedagogical

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<sup>25</sup> Above n 1

role, but it is the name that they had always known him by and were not yet familiar enough to call him by his first name.

205. Ms Andrews distinguishes this case from the *Teacher B*<sup>26</sup> decision by saying that Teacher B had a direct pedagogical responsibility for the student because she was a student in the school in which he taught. As that relationship only began within weeks of her leaving that school, that was significant.
206. The respondent said that Student C was clear in her evidence that she first visited him in his classroom in November 2015 and any evidence suggesting that it was earlier than that is disputed.
207. The first trip to the movies was in December 2015, four years after Student C was in the respondent's class. The respondent says that he accepted the invitation to the Star Wars movie as not many of his other friends like Star Wars and they were “*nice former students*”.
208. The respondent says that the trips to the movies and the mall all included Witness B and were in public and so there was not a secretive element to the engagement as has been suggested by the CAC.
209. It is also submitted that the visits to the beach were not secretive and that the respondent was conscious about not wanting to have Witness B there on his own, so Student C was there as a safety measure. It is further submitted that the respondent openly dropped Student C and Witness B off and while he did not speak with Student C's parents, it is possible they could have seen his car when she was dropped off.
210. The respondent's position is that Witness B gave Student C his number in June 2016 and that is only when private communication with the respondent happened. The respondent submits that whilst he could have blocked Student C's number or told her not to contact him, he was not obliged to. She had been his student four and a half years ago and was about to turn 18.
211. It is also submitted that the evidence points to Student C having pursued the relationship with the respondent. Ms Andrews says that while there is an obligation for a teacher to resist advances of a current student, this cannot be the case for former students as

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<sup>26</sup> Above n4

otherwise it would be impossible to have a relationship with a former student which is inconsistent with where the Tribunal landed in *Teacher C*.

212. During 2016, the relationship between the respondent and Student C evolved. The respondent's submissions record:

*At the beginning of the year, Student C and Witness B were just "nice former students", sometime during the year a friendship developed. By the end of the year, Student C and the respondent were in a loving relationship. After the respondent's summer trip the respondent and Student C determined to become a couple in early 2017 and started seeing each other alone from this time. The sexual relationship developed in April/May 2017.*

*The loving or intimate relationship began in the later part of 2016 when Student C was turning 18 years old – nearly 5 years after she stopped being the respondent's student.*

*It is not accepted that this relationship developed secretly as it developed in front of Witness B who was free to tell anyone he wanted. It was so overt that Witness B was able to take photos of the respondent touching Student C in late 2016. S was also seen texting the respondent by Witness E in late 2016. Witness E could have easily told Student C's parents if she was inclined. Moreover, it's quite common for teenagers to not tell their parents about the relationships that they are having.*

*The time lapse between the student-teacher relationship ending and the intimate relationship beginning is nearly 5 years. The residue of the teacher influence has long since ebbed away. In this time Student C has matured substantially.*

*The age difference between the student and the teacher*

213. It is accepted by the respondent that 35 years is a large gap and in and of itself, accentuates any power imbalance. However, it is submitted that power imbalance only becomes an issue if the holder of the power misuses it.
214. The respondent says that he takes steps to mitigate the potential power imbalance, the most significant of these being to ensure that Student C is an equal decision maker within the relationship and that her decisions are respected. Ms Andrews submits that the respondent took no steps to pursue the relationship and that it was Student C coming to



the School with Witness B of her own volition. She further says that they were never invited and all organising of outings to the beach and movies were done with Witness B and not Student C.

215. It was submitted that there is evidence that there are no constraints on Student C being able to keep in contact with family and friends and maintains these relationships via social media during her travels. Both have maintained their own friends.
216. Ms Andrews seeks to distinguish the present factual scenario from that in *Teacher B* where the teacher and student became Facebook friends while she was in his class and this continued and became more intense through her time at college. In this situation, Student C got the respondent's number in the middle of her Year 13 year.
217. Student C has her own bank accounts and organised the wedding without the respondent's input as he was still overseas at the time. In relation to the evidence that came out during the hearing that Student C was not in paid employment and did not have her name on the title of the house at the beach, it is submitted that despite this she has the full use and enjoyment of the respondent's assets without having the burden of being liable for costs of maintenance, insurance, and rates etc. Ms Andrews submitted,
- Property may well be an anchor for an older person but to someone of Student C's age it is likely to be a ball and chain.*
218. It is also submitted that as Student C never gave evidence about whether she wanted to have her name on the property title, no inferences should be drawn about whether that was what she wanted.
219. It is submitted that the fact that the respondent sat outside in his car while Student C and her parents were meeting in a café in the town is not evidence of a misuse of power. As there had already been conflict between Student C and her parents, the respondent allowed them to talk privately but was available for a safe exit if she needed it. The respondent denies impeding Student C's dreams and that it was her decision to turn down the job at the chicken farm in Australia, as at the age of 19, she was free to disagree. The respondent went to Australia because Student C invited him, but he did not initiate his visit. Whilst it was Student C's decision to go to Australia, it was also hers to return. This was not impacted in any way by the respondent.

220. When Student C's father took her away from the respondent's house, it is submitted that he allowed her to go and did not follow her.

*The emotional/social maturity of the student*

221. Ms Andrews in submissions does not accept the evidence of Witness A and Student C's parents that she struggled academically at school. It is highlighted in submissions that Student C completed all five years of secondary school and obtained NCEA Levels 1 and 2 in English, Maths and Hospitality. Ms Andrews refers to the fact that whilst travelling through Asia, Student C has been learning about different cultures, languages and religions and her education is continuing. It is submitted that no inferences should be drawn from the fact that Student C has not yet engaged in tertiary education.
222. In relation to her interpersonal style and connections, it is submitted that she has a quiet demeanour but attracts people. She has maintained friendships from her schooling years and forms strong friendships with people and has a readily available support network.
223. Student C enjoys helping people and the fact that she is not in paid employment but assists and supports the respondent with his work, is not just "*being available*" as submitted by the CAC but is an important contribution to their family unit and should not be minimised. It is submitted that Student C is involved in all aspects of the decision making with the respondent and evidence of her strength in that regard is that of terminating a relationship in high school that she considered to be toxic. She made the decision to pursue a relationship with the respondent because he treated her and her family with respect.
224. It is also submitted that Student C is independent and takes responsibility for herself and others as is evidenced in looking after her younger cousin during their primary school years. She obtained a driver's licence at a young age and organised contraception before getting into a sexual relationship. She is clear in her opinion about what sort of relationship she wants and can articulate this and stand by it even though it may not fit within social norms.
225. The respondent submits that Student C's evidence outlines the experiences that she went through at college which have assisted her social and emotional development. This includes having a boyfriend who behaved badly and observing drug and alcohol abuse from a safe distance yet deciding to not engage with that.

226. It was submitted that as Student C was 18 at the time the relationship developed, there is a presumption that she is legally autonomous and there needs to be considerable evidence to displace this presumption. The evidence that Student C was naïve is disputed and on behalf of the respondent, it was submitted:

*The former principal knew nothing about the experience she gained through college. The fact that she has helpful and has a quiet interpersonal style does not mean she is naïve. She grew up in a home of hardworking parents who expected to contribute, it is explicable she would too. Her evidence is that she makes her own decisions, even the hard ones and did not follow the crowd at college – she wisely rejected alcohol, drugs and abusive relationships and chose positive friends instead. Choosing a reliable partner is an extension of this approach and aligns with the practical wisdom of her parents. If Student C was malleable, it would have been expected that she would have followed some of her classmates into violent relationships; and alcohol and substance abuse. She would also have buckled when her parents put pressure on her to give up her relationship and the respondent, but this isn't the case.*

227. Ms Andrews describes Student C as, *"determined and someone who quietly holds her ground when it is important to her. This is neither naïve or immature"*.

*Evidence of the nature of the teacher/student relationship, including the closeness, dependence, significance, and length of the relationship at the school*

228. Ms Andrews distinguishes the present case from *Teacher C*<sup>27</sup> submitting that in that case the former student was highly dependent on the teacher. She also notes that in *Teacher B*<sup>28</sup> contact between teacher and student intensified in the student's last two years of high school and became romantic within weeks of the student leaving the school.
229. The respondent emphasised the fact that Witness E was only eight at the time that Student C was in the respondent's class and therefore her evidence is unreliable. It is also not accepted by the respondent or Student C, who both gave evidence, that the relationship between them was anything but a normal student/teacher relationship. It is also submitted

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<sup>27</sup> Above n 1

<sup>28</sup> Above n 4

that Witness E's evidence has evolved over time to include allegations of hand touching and the giving of gifts of money and jewellery.

*Was this an inappropriate relationship?*

230. It is accepted that the relationship between the respondent and Student C is unusual, but it does not satisfy the test in *Teacher C*. Ms Andrews described it as an autonomous 18-year-old pursuing a relationship with a former teacher four and a half years after the teacher/student relationship ended. Suggestions that Student C was naïve, a follower and struggles academically do not stack up, it is submitted, when tested against her actual conduct which shows she is strong-minded and demonstrates mettle. There is no evidence that the respondent pursued Student C or engaged in any manipulative or predatory behaviour. He understands the significance of the age gap and takes steps to ensure that Student C has an equal voice. Ms Andrews described the respondent as simply a responsible, reliable man who cares for Student C.
231. It is therefore not accepted that the relationship is inappropriate.

*Causal Nexus?*

232. Ms Andrews submitted that the causal nexus was broken by the fact that both Student C and the respondent had other close personal relationships between the time she left primary school and when their intimate relationship began therefore "*breaking the chain of causation*".
233. It is not accepted that this relationship arose out of contact as a result of the respondent's position as a teacher, but instead it arose out of the respondent's acquaintanceship with Witness B who reintroduced them.
234. The respondent's position is as there was no relationship when Student C was in his class Rule 9(1)(d) of the 2004 Rules is not satisfied. Further as it is not accepted that the later relationship 4 ½ years after the teacher-student relationship ended, was inappropriate then Rule 9(1)(e) (in both sets of Rules) is also not met. As there was no inappropriate

relationship, it is submitted that the test in *Collie*<sup>29</sup> can also not be met and therefore Rule 9(1)(o) cannot also not be satisfied. In that regard it was submitted that:

*We now live at a point in history where loving relationships are accepted that were not accepted only 20 years earlier. Given the liberal society that we now live in, this relationship should not concern a reasonable member of the public.*

### *Penalty*

235. In terms of penalty, it was submitted on behalf of the respondent that as there was no serious misconduct there should be no penalty. However, if the Tribunal were to find serious misconduct, the respondent submits that cancellation is not appropriate in these circumstances. The respondent refers on the case of *CAC v Teacher A*,<sup>30</sup> which sets out the penalty principles. Further, the respondent relies on the District Court decision in *Scully v CAC*,<sup>31</sup> which did not result in the cancellation of a practicing certificate on appeal. A censure with conditions, such as a requirement to do a course on professional boundaries and mentoring, would be sufficient to discharge the Tribunal's obligations in that regard.

### **Te Ture - The Law**

236. For conduct before 1 July 2005, section 139AB of the Education Act 1989 ("the Act") defines serious misconduct as:

***serious misconduct*** means conduct by a teacher –

- (a) *that –*
  - (i) *adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or*
  - (ii) *reflects adversely on the teacher's fitness to be a teacher;*
- and*
- (b) *that is of a character or severity that meets the Teachers Council's criteria for reporting serious misconduct.*

237. The test under section 139AB was conjunctive meaning that as well as having one or more of the adverse consequences described in section 139AB(1)(a), it also needs to be of a

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<sup>29</sup> Above n 7

<sup>30</sup> *CAC v Teacher A* NZTDT 2018/53.

<sup>31</sup> *Scully v CAC* CIV-2008-085-000117.

character or severity that meets the Teaching Council's criteria for reporting serious misconduct.

*For conduct from 1 July 2015*

238. Section 139AB of the Act was replaced by section 378 which defines serious misconduct as:

***serious misconduct*** means conduct by a teacher –

- (a) *that –*
  - (i) *adversely affects, or is likely to adversely affect, the wellbeing or learning of 1 or more students; or*
  - (ii) *reflects adversely on the teacher's fitness to be a teacher; or*
  - (iii) *may bring the teaching profession into disrepute; and*
- (b) *that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.*

239. Like its predecessor section 378 is conjunctive and as well as requiring one or more of the adverse professional effects, the conduct must also be such that it meets the Teaching Council's criteria for reporting serious misconduct.

*New Zealand Teachers' Council (Making Reports and Complaints) Rules 2004*

240. Prior to 1 July 2016, the criteria for reporting serious misconduct was found in Rule 9 of the 2004 Rules.

241. The relevant rules under the 2004 Rules are:

- (a) Rule 9(1)(d) – for a teacher to be involved in an inappropriate relationship with any person under the age of 16 years;
- (b) Rule 9(1)(e) – to be 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;
- (c) Rule 9(1)(o) – any act or omission that brings or is likely to bring discredit to the profession.

242. From 1 July 2016 to 18 May 2018<sup>32</sup> the 2016 Rules apply. Whilst the wording was virtually unchanged from the 2004 Rules, for completeness the relevant rules are:

- (a) Rule 9(1)(e) – an inappropriate relationship with a student with whom the teacher is or was when the relationship commenced in contact as a result of his or her position as a teacher;
- (b) Rule 9(1)(o) – any act or omission that brings or is likely to bring discredit to the profession.

243. If the Tribunal finds that an inappropriate relationship exists under Rule 9(1)(d)<sup>33</sup> and/or (e) then there is no need to consider Rule 9(1)(o) in detail as the specific allegation and elements of (d) and/or (e) have been met and in doing so the respondent's behaviour is such that brings discredit to the profession. However, if we find that the CAC has not met the burden of proof required to prove the elements of rule 9(1)(d) or (e), we note the comments of the Tribunal in *CAC v Teacher B*<sup>34</sup> in that regard:

*[57] The language employed in r 9(1)(o) almost replicates that used in s 378(1)(a)(iii) of the Education Act, which defines, as serious misconduct, any conduct that “may bring the teaching profession into disrepute”. Section 378, which came into effect on 1 July 2015, can be contrasted with its predecessor, s 139AB of the Education Act,<sup>35</sup> which defined serious misconduct as behaviour by a teacher that:*

*(a) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; and/or*

*(b) Reflects adversely on the teacher’s fitness to be a teacher.*

*[58] Thus, s 378 added a third criterion.*

*[59] We acknowledge the CAC’s submission that the Tribunal has previously held that any discreditable behaviour that is of a severity to engage r 9(1)(o) will*

<sup>32</sup> Rule 9 was replaced by the Education Amendment Rules 2018 on 19 May 2018.

<sup>33</sup> Under the 2004 Rules

<sup>34</sup> Above n 4 at [57] to [61].

<sup>35</sup> This was not a proceeding to which the repealed s 139AB applies (pursuant to cl 5 of Schedule 20), as the mandatory report that ultimately resulted in the CAC’s notice of charge post-dated the coming into force of Part 32 of the Education Act on 1 July 2015.

amount to behaviour that brings the profession into disrepute under s 378(1)(a)(iii).<sup>36</sup>

[60] In *Teacher Y*, the District Court recently held that r 9(1)(o) is not subject to the *ejusdem generis* rule, but rather:<sup>37</sup>

*[Reflects] a legislative intention to expand the scope of the Rule beyond the categories set out in the previous subparagraphs to effectively act as a “catch all” provision catching any act or omission that brings, or is likely to bring, discredit to the profession. What that conduct might be is a matter for the Tribunal.*

[61] In 2018/41, we stated:<sup>38</sup>

*While we of course accept the CAC’s submission that the Tribunal is imbued with specialist expertise and therefore best placed to determine whether there has been a departure from the standards expected of a teacher<sup>39</sup> - given that r 9(1)(o) is a “catch all”, we question how it can have application when we have held that the elements of r 9(1)(e) have not been met. As we said on 1 April 2019:*

*In this case, given that r 9(1)(e) is directly responsive to the type of mischief alleged, we are not prepared to find that this is behaviour that is caught by the general - r 9(1)(o) - where we have held that it does not contravene the specific - r 9(1)(e). This is because the way in which it is alleged that [REDACTED] brought discredit to the profession was by initiating an inappropriate relationship with Student S.*

244. Both the CAC and the respondent have helpfully referred us to numerous cases on the issue of inappropriate relationships. We note specifically the following key principles:

(a) From *CAC v Huggard*, the Tribunal held:<sup>40</sup>

*As the adult and a teacher, [the teacher] has a responsibility to maintain professional boundaries. [The teacher and student] are not contemporaries. They could not be friends. [The teacher is] in a position of power and responsibility, where [he or she] should role model appropriate behaviour. [His or her] actions should attract esteem, not discomfort, or fear. Students and parents should be able to trust that when a student seeks mentorship, counsel*

<sup>36</sup> Referring to *CAC v Uosufuno* NZTDT 2017/30 at [19] cited in *Teacher B*.

<sup>37</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [66] cited in *Teacher B*.

<sup>38</sup> NZTDT 2018/41 at [70] cited in *Teacher B*.

<sup>39</sup> Referring to *Cole v Professional Conduct Committee of the Nursing Council* [2017] NZHC 1178, at [61].

<sup>40</sup> Above n 12



*or comfort from the teacher, the teacher will respond in a way that has the student's wellbeing as being paramount."*

- (b) In *Teacher C*, the Tribunal acknowledged the helpful criteria in the NT Guidelines about whether a relationship is or was inappropriate. However, the Tribunal went on to say:<sup>41</sup>

*However, we emphasise that whether the relationship is inappropriate is a context specific enquiry and not amenable to a prescriptive regulation. It is essential that practitioners exercise personal judgement and ask themselves whether their behaviour towards, or interactions with, a student or former student may risk blurring the teacher/student boundary. Teachers carry the responsibility to distance themselves from any potentially inappropriate situation.*

### **Kōrerorero – Discussion**

245. The Tribunal is tasked with determining whether the respondent's relationship with Student C amounts to serious misconduct. The conduct is alleged to have begun when Student C was in the respondent's class as a Year 7 and 8 student, and then after a period of no contact, recommenced and intensified when the Student C was in her last year or two of college.
246. The charges relate to three time periods:
- (a) While Student C was a student at the School and in the respondent's class;
  - (b) While Student C was at College; and
  - (c) After Student C graduated from College.
247. As noted by the CAC the first time period is quite distinct but the second two overlap, with the third phase being a continuation or the beginning of, a relationship.
248. We will go through the particulars referred to in the Notice of Charge later in the decision.

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<sup>41</sup> Above n 1 at [192].

*While Student C was a student at the School and in the respondent's class*

249. As has been acknowledged by the CAC and emphasised by the respondent, the CAC's case in relation to conduct when Student C was in the respondent's class is based solely on Witness E's evidence. At that time, Witness E was only eight years old and it is now almost a decade later.
250. Both Student C and the respondent dispute Witness E's evidence almost in its entirety in terms of what she says she saw by way of interaction between Student C and the respondent. The Tribunal is being asked to rely on the observations and interpretation of an 8-year-old about the interaction between a student and a teacher, that she is being asked to recall almost 10 years later.
251. We are not convinced that Witness E's evidence is reliable enough in and of itself to persuade the Tribunal to the necessary standard. The small amount of her evidence that did not appear to be disputed, are the discussions between Student C and the respondent about what she wanted to when she left school. These are not unusual student-teacher conversations and are certainly not unacceptable and/or inappropriate.
252. In short, there is insufficient evidence to make out the CAC's charge of serious misconduct in relation to Student C's time at the School.
253. Therefore, we will focus our discussion on when Student C was at College and when she finished Year 13.

*While Student C was at College and after Student C graduated from College*

254. The evidence is unclear as to when exactly the visits to the respondent at primary school commenced. Student C, Witness B, and the respondent all dispute that these visits began as soon as Student C left primary school. Witness A believes that they started in at least January 2015, Witness B recalls they started in 2014 but Student C and the respondent say later in 2015.
255. The Tribunal is satisfied that Student C (and others) were visiting the respondent in his classroom from at least 2015. Given the uncertainty as to the exact dates, we have chosen the arbitrary date of 1 July 2015 which means that our decision will be based on section 378 of the Education Act which applied from 1 July 2015.

256. The CAC alleges that the respondent's conduct is in breach of either rules 9(1)(d), 9(1)(e) and/or 9(1)(o) of the 2004 Rules.
257. Rule 9(1)(d) is that a teacher is involved in an inappropriate relationship with any person under the age of 16 years. We have already concluded that there is insufficient evidence to find that the respondent was engaged in an inappropriate relationship with Student C while she was a student in his class. Further, Student C turned 16 on 29 August 2014. As we have already said, the Tribunal is satisfied that the visits to the respondent did not commence or at least did not commence in earnest, until 2015 at which point Student C was already over 16. We therefore do not find that the respondent's conduct falls within Rule 9(1)(d) of the 2004 Rules.
258. To be in breach of Rule 9(1)(e), a teacher must be found to have been, or still be 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.
259. Rule 9(1)(e) requires two separate assessments. Firstly, the Tribunal must determine whether the student and teacher are in a relationship as a result of the respondent's position as a teacher. Secondly the question to be asked is whether or not that relationship is inappropriate.
260. In relation to the first step the Tribunal in *CAC v Teacher*<sup>42</sup> the Tribunal accepted the submissions of the CAC that a purposive approach should be taken to Rule 9(1)(e) *simply requiring that there be some form of causal nexus between the teacher-student relationship and the subsequent contact for the rule to be met.*
261. We do not accept as submitted by the respondent that:

*The causal nexus is broken by the fact that both Student C and the respondent had other close personal relationships between the time she left the School and their intimate relationship began, thus breaking the chain of causation.*

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<sup>42</sup> Above n 3 at [43]

*It cannot be accepted that this relationship arose out of contact as a result of the teacher's position as a teacher, but instead it arose out of the respondent's acquaintanceship with Witness B.*

262. The sole reason that Witness B and Student C decided to revisit the respondent was because he had been their teacher. They both gave evidence that they thought he was a good teacher. They were returning to see their former teacher. Witness B did not force Student C to come with him, she went because she wanted to. It is clear that the contact commenced, and the subsequent relationship developed, as a result of the respondent's position as a teacher. It is for no other reason.
263. It was submitted on behalf of the respondent that when Witness B and Student C started revisiting him that he was no longer in a pedagogical role. He was no longer their teacher and therefore his pedagogical responsibility had ebbed away. As the case law has established, it does not matter that the respondent was not **their** teacher at the time, but rather it was because of his position as **a** teacher that the contact and subsequent relationship commenced.
264. Further, Ms Andrews also talked about the evolving relationship between the respondent and Student C:

*Through 2016, the relationship between the respondent and Student C evolved. At the beginning of the year, Student C and Witness B were just 'nice former students', sometime during the year a friendship developed.*

265. In her own words, Ms Andrews accepts that as late as 2016, the respondent himself saw both Student C and Witness B as **former students**. He viewed them not as friends, not as equals, but as former students.
266. It was not until somewhere near the end of 2016 that Student C stopped calling the respondent Mr F.
267. We are satisfied that the contact and subsequent relationship between Student C and the respondent was solely as a result of his position as a teacher.

268. Turning now to the second limb of Rule 9(1)(e) and whether or not the relationship was also inappropriate. As we did in the *Teacher C* case and the *Teacher B* case, we look to the NT Guidelines to assist in determining the second limb.

*The length of time between the conclusion of the teacher-student relationship and the commencement of the intimate relationship*

269. We note our comments in *CAC v Teacher* where we said<sup>43</sup>:

*[49]...we expect that it will seldom be satisfactory to consider time-lapse in isolation in order to determine whether a relationship between a teacher and former pupil began inappropriately. As the NT Guidelines say:*

*The length of time between the conclusion of the teacher-student relationship and the beginning of an intimate relationship is only one of a number of critical factors that regulatory authorities may take into consideration when judging the appropriateness of a teacher's conduct in these circumstances. [our emphasis]*

*[50] We recognise that the difference in power and authority between a teacher and former student, "[Do] not suddenly disappear at a specific point in time. They linger as an imbalance between two individuals and as a potential impediment to their capacity to make decisions in their own and others' best interests. The other factors described in the NT Guidelines inform the enquiry whether the requisite imbalance still "lingered" at the point the relationship began.*

270. The respondent submits that there was a gap of 4 ½ years between the student-teacher relationship ending and the intimate relationship beginning meaning that the teacher influence had dissipated. This time period suggests that the intimate relationship did not commence until the end of Student C's Year 13 year.
271. We do not accept that this was when it started. The Tribunal has previously held that a relationship need not be sexual for it to be improper and cross professional boundaries.<sup>44</sup> The evidence is that Student C and the respondent were engaging via text message with enough regularity that Student C felt she needed to make up a boyfriend to her friends to distract them. We heard from Student C that the text messaging was happening during

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<sup>43</sup> Above n 3

<sup>44</sup> Above n 2

school hours, as well as outside of school which was confirmed by Witness E. That level of communication points towards intimacy and affection.

272. We also note here with concern that the visits to the School did not occur soon after the end of the school day as Student C walked past on her way home. Student C's evidence is that she took a 10-15 minute bus ride home from College, then went home and did chores and after she had finished those, then her and Witness B would visit. At a best guess this would have been close to 4pm at the earliest, many staff would have left for the day by this point leaving the students and the respondent that much more vulnerable. This should have raised alarm bells very quickly for the respondent to put an end to the visits if for no other reason than his own safety.

*The age difference between the student and the teacher*

273. There is a 34-year age difference between the respondent and Student C. It has been accepted by the respondent that this is significant. A considerable age gap as noted in *CAC v Teacher*<sup>45</sup> tends to accentuate the power imbalance between the teacher and the former student. While it is noted that a substantial age gap is not in and of itself enough to establish that an inappropriate relationship exists, it is one of the main factors to be considered.
274. In the recent cases of *CAC v Teacher*,<sup>46</sup> the age gap was 18 years and in *CAC v Teacher B*,<sup>47</sup> the age gap was 25 years. Neither as wide as the age gap in the current case. It is a factor that the Tribunal place some weight on.

*The emotional/social maturity of the student*

275. Ms Andrews advocated strongly to persuade the Tribunal that Student C was a strong, independent, and assertive young woman. That she was confident, responsible, determined, and able to make her own decisions.
276. Ms Andrews highlighted the fact that Student C was very clear about not wanting to be in a toxic relationship as she had previously experienced a relationship of this nature and had quickly ended it. That she was not susceptible to peer pressure and that she did not

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<sup>45</sup> Above n 4 at [197].

<sup>46</sup> Above n 3.

<sup>47</sup> Above n 4.

engage in some of the adolescent behaviour her friends did such as alcohol and drugs. It was submitted that in her relationship with the respondent, Student C was an equal and her voice was heard and considered in decision making.

277. Student C's parents described her as being introverted, did not go out a lot and needed extra learning support at school. They also said she was kind and always willing to help others. Her former Principal said she was quite naïve while at the School and confirmed that she received additional learning support. Student C undertook a Gateway Programme while at College, and upon completing Year 13 had no plans of further study and did not have a job.
278. We had the benefit of hearing directly from Student C, including asking her questions and observing her responses. The impression Student C left with the Tribunal was of a vulnerable young woman who was impressionable, easily led and not overly street smart. When questioned, at times she did not understand the questions or words that were used, and these needed to be rephrased. The Tribunal acknowledges that giving evidence is very difficult and witnesses often give answers that they would not ordinarily give in a different environment. However, Student C demonstrated a vulnerability and lack of maturity that troubled us. Her answers were often very surface level without a genuine comprehension of what was being asked of her.
279. We agree with the CAC that Student C is totally dependent on the respondent, financially, socially, and emotionally. Her role in the relationship is about fulfilling his needs and wants. The power imbalance now that they are married is as significant as it has always been. We do not accept the submissions that the respondent takes steps to mitigate that. Quite the opposite. He has taken Student C away from her whānau and friends to the other side of the world. When they return to New Zealand, she sees her friends only in his presence in his home. His behaviour is about power and control not partnership and reciprocity.

*The potential for harm to the former student*

280. We accept the submissions by the CAC that often young people who have been subjected to a breach of trust do not appreciate the consequences of that for many years or sometimes at all. That lack of awareness however does not mean that objectively there has been no such breach. The respondent and Student C have married, and Student C

described her wedding day and marriage as the happiest time of her life. However, despite this as submitted by the CAC, when asked whether it was appropriate for a teacher and former student to be in a relationship, Student C said that she did not know. When asked by the Tribunal why she did not tell her friends about the respondent, she said she did not know how they would react, that they may no longer like her and that they may “*wonder what the hell I was doing and think it was weird.*”

*The nature of the teacher/student relationship*

281. The respondent taught Student C when she was in Years 7 and 8, just before she went off to college. The end of a child's primary school/intermediate years are incredibly formative as it is just before they take what is quite a big step into their high school journey. Both Student C and Witness B described the respondent as a good teacher and one they liked, hence the decision to return and reconnect with him. They did this because they respected him and looked up to him as their teacher. Student C spoke to him about what she wished to do when she finished school. She still saw him in a mentoring role, even though the formal pedagogical relationship had ended. Right up until mid to late 2016, Student C called the respondent Mr F which is further evidence of the fact that she viewed him as someone whom she held in high regard and was in a position of seniority.

*The duration of the intimate relationship between the teacher and the former student*

282. The respondent and Student C have now married, and the relationship is ongoing.

*Awareness by the teacher of the appropriateness of the relationship*

283. In 2015, the respondent's principal was concerned enough to have a professional boundaries discussion with the respondent. This was due to the frequency of the visits by Student C, Witness B, and their friends. So even if the respondent had not personally “checked himself” as to the appropriateness of the engagement he was having with Student C and her friends, his educational leader felt strongly enough to have a discussion. At that point, it is the Tribunal's view that the respondent should have been even more conscious about his level of engagement with his former students. However, this was not the case. His engagement with Student C and Witness B especially, not only continued but intensified. The meetings progressed from after school catch ups to trips to



the movies, and trips to the respondent's home. These were all done without the respondent having any contact with both Student C and Witness B's parents.

284. During 2015 and the majority of 2016, both Student C and Witness B referred to the respondent as Mr F. Towards the end of 2016, and certainly by 20 December 2016, which is when the photograph on the deck was taken with the respondent's hand on Student C's inner thigh, the relationship had changed. Witness B's evidence is that he had started to notice changes in the relationship. He recalls being at the respondent's home and seeing him rub Student C's stomach. He thought that this was odd. There were also the two photographs on the beach with the jet ski and quad bike where the respondent had his arm around Student C.
285. We do not accept the respondent's evidence that those photographs were "staged selfies" that could have been taken with anyone and not just Student C. When asked by the Tribunal whether he would have had a similar photo with Witness B he accepted that he would not have.
286. Certainly, when the Tribunal put to Student C, that the respondent considered the photos to be "staged selfies" that he could have taken with anyone, she presented as being quite upset by that thought. When she was asked whether she would have the same type of photo with Witness B she said "no".
287. It was clear to the Tribunal that the photographs are evidence of the early stages of an intimate relationship. Whilst at the time of the photos the relationship may not have been sexual, a relationship need not be sexual for it to be inappropriate.
288. We are satisfied that both limbs of Rule (1)(e) have been met.

#### *Factual Findings*

289. We turn now to the actual charges against the respondent. We set out below our factual findings on those.

*While Student C was under the age of 16 and a learner at the School ("Primary School"), did form an inappropriate relationship with Student C; and/or*

*While Student C was aged between 11 to 13 years old and a learner at Primary School:*

- (a) *Engaged in inappropriate conduct by engaging with Student C in person socially (unrelated to her education); and/or*
- (b) *Engaged in inappropriate conduct by holding hands with Student C; and/or*
- (c) *Engaged in inappropriate conduct by giving Student C jewellery and money; and/or*

290. As already noted, there is insufficient evidence to make any findings that the respondent's relationship with Student C while she was in his class at the School was anything other than a normal student-teacher one. The only evidence of anything other than this is from Witness E who was only 8 years old at the time. We have concerns about her recall of the events relevant to this case.

*Formed and/or continued to form an inappropriate relationship with Student C when Student C left Primary School with whom he was in contact with as the result of his position as a teacher at Primary School; and/or*

*After Student C left Primary School and moved to a local secondary school, the teacher:*

- (a) *Regularly saw Student C outside of school; and/or*
- (b) *Allowed Student C to visit him in his classroom after school; and/or*
- (c) *On multiple occasions, invited Student C and her friend to his home so they could play on his jet ski and quad bike; and/or*
- (d) *Regularly communicated with Student C via a messaging application on her phones; and/or*
- (e) *Went with Student C and her friend to the movies; and/or*
- (f) *Met with Student C and her friend in Palmerston North; and/or*
- (g) *Put his hand on Student C's leg.*

*After Student C graduated from high school in December 2016:*

- (a) *Sent Student C a Christmas card including the message, "I feel so lucky to share my life with you... Merry Christmas with all my love"; and/or*

- (b) *Continued to allow Student C and her friend to visit him at his home; and/or*
- (c) *During one of these visits, placed his hand on Student C's inner thigh; and/or*
- (d) *During one of these visits, hugged Student C; and/or*
- (e) *Sent Student C a postcard while on holiday signed off with, "Lots of love, C"; and/or*
- (f) *Entered into a romantic relationship with Student C on or about January 2017; and/or*
- (g) *Allowed Student C to move in with him on or about June 2017.*

291. However, once Student C left the primary school and began reconnecting with the respondent a relationship began to form. The regularity of the visits to the classroom, the trips to the movies and the Mall as well as the visits to the respondent's home equate to an inappropriate relationship and a severe blurring of professional boundaries.

292. The eventual sexual relationship is as the CAC has described "*the most extreme expression of their inappropriate relationship*".<sup>48</sup> However, the relationship was inappropriate before it became intimate and eventually sexual.

293. We find that the respondent formed an inappropriate relationship with Student C while she was at the College and the particulars recorded at paragraphs 1(c), (d) and (e) of the Notice of Charge have all been made out.

### **Kupu Whakatau – Decision**

294. Student C reconnected with the respondent due to the fact he had been her teacher. There was no other reason. From that point, despite being warned by his Principal about professional boundaries, the respondent embarked on a deliberate and consistent pattern of behaviour in pursuit of a vulnerable young woman. His conduct was about taking small yet purposeful steps so as to not draw attention to himself and also in our view not to alert Student C herself to his intentions.

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<sup>48</sup> Refer Submissions of the Complaints Assessment Committee 6 August 2019 at [75]

295. The casual, seemingly innocent texting during school hours was to ensure he was always front of mind for Student C. He asked everyday questions about how she was and what she was doing to elicit continuing dialogue. His conduct was calculated and intentional.
296. There is one particular submission made by the respondent that we wish to comment on. The respondent submits that it was Student C that pursued the relationship. Ms Andrews for the respondent submits<sup>49</sup>:
4. *The evidence points to [Student C] having pursued the relationship with the respondent. While there is an obligation for a teacher to resist advances of a current student, this cannot be the case for former students as otherwise it would be impossible to have a relationship with a former student which is inconsistent with Teacher C.*
297. We wish to caution the approach that it is ever acceptable to apportion the initiation of a relationship on a student. At all times, a teacher has a professional duty to remove themselves from a situation whereby a student may wish to form a relationship other than an appropriate student – teacher connection. Given the inherent power imbalance, the onus is always on the teacher as the professional to set and maintain the boundaries.
298. We are not accepting here that Student C did pursue the respondent as has been submitted, in fact quite the opposite, as already noted we have found the respondent’s conduct deliberate and targeted. We are simply being clear that even if there was such evidence, it is difficult to imagine circumstances in which submissions in mitigation apportioning blame to the student are ever going to be accepted.
299. The respondent’s conduct is a clear example of serious misconduct at the most extreme and engages all three planks of section 378 of the Act in that the wellbeing of Student C is likely to be affected, the conduct reflects adversely on the respondent’s fitness to be a teacher and would bring the profession into disrepute.

### **Whiu – Penalty**

300. Having determined that this case is one in which we consider exercising our powers, we must now turn to consider what is an appropriate penalty in the circumstances.

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<sup>49</sup> Refer Final Submissions on Behalf of the Respondent 9 September 2019 at [4]

**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.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

301. Given our finding is serious misconduct at the most severe end, it is the Tribunal's view that the only appropriate penalty is cancellation of the respondent's registration.

### **He Rāhui tuku panui – Non-publication**

302. The respondent has sought permanent name suppression for himself, Student C, and all other witnesses in the hearing as well as suppression of the name of the School.
303. Student C, Witness B and Witness E are all children or young people for the purposes of these proceedings pursuant to Rule 34(1)(a) of the Rules and therefore publication of their names or identifying particulars is prohibited pursuant to section 405(6) of the Act.
304. Ms Andrews submits that now the respondent and Student C are married and carry the same surname, identification of the respondent will inevitably lead to identification of Student C. This is accepted by the CAC.
305. We agree that naming the respondent will lead to the identification of Student C and therefore make orders pursuant to section 405(6) of the Act prohibiting the publication of his name and identifying details.
306. Given the small community, the fact that this matter has already been in the media albeit with no names mentioned,<sup>50</sup> it would not take much to piece the puzzle together. We therefore are satisfied that it is also proper to order suppression of the names and identifying details of all witnesses in these proceedings and the name of the school.

### **Utu Whakaea – Costs**

307. We are minded to award 50% costs.
308. The CAC is to file and serve a copy of its cost schedule. Under section 404(1)(h) the respondent is ordered to pay 50% of the costs shown in the CAC schedule unless the respondent files and serves submissions as to costs within 10 days of the date the CAC has sent the cost schedule. If these submissions are received the Tribunal delegates to the Deputy Chair the task of fixing the amount of the CAC's costs.
309. The Disciplinary Tribunal Coordinator is to circulate a costs schedule for the Tribunal. The respondent is also ordered to pay 50% of the Tribunal's costs pursuant to section 404(1)(i).

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<sup>50</sup> [REDACTED] went to the media in 2018.

Any objection should be filed within 10 days of receipt of the decision and referred to the Deputy Chair.



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Rachel Mullins  
Deputy Chair

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

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