



resignation. The College claims further that there was a full and final settlement agreement (“the Settlement Agreement”) concluded between the parties, which precludes Mr Hansen from bringing any claim against it.

[5] The College claims that there is no basis on which the Authority should grant leave to Mr Hansen to bring his disadvantage grievance outside the statutory time limit.

[6] This determination addresses the preliminary issues of whether Mr Hansen’s resignation was unlawfully obtained by the use of a threat of a complaint to the Police, such as to render the Settlement Agreement invalid; whether the Settlement Agreement between the parties is a full and final settlement, such that Mr Hansen is precluded from bringing a claim against the College; and, if it is determined that the Settlement Agreement between the parties is invalid, whether Mr Hansen should be granted to leave to bring a disadvantage grievance out of time.

### **Issues**

[7] The issues for determination are:

- Whether Mr Hansen’s resignation was obtained as a result of the College blackmailing Mr Hansen by unlawfully threatening to make a complaint about Mr Hansen’s actions to the Police in order to obtain his resignation;
- Whether Mr Hansen’s resignation was obtained through undue influence or duress by the College blackmailing Mr Hansen by unlawfully threatening to make a complaint about Mr Hansen’s actions to the Police in order to obtain his resignation;
- If it is determined that Mr Hansen’s resignation was unlawfully obtained, whether the full and final agreement between the parties is thereby rendered null and void, such that Mr Hansen may proceed with his claims against the College.
- If it is determined that the Settlement Agreement is null and void, whether leave should be granted to Mr Hansen to bring his unjustifiable disadvantage grievance outside the statutory time frame set out in s 114(1) of the Act.

## **Background Facts**

[8] The College is a Year Seven to Year Thirteen School of 450 students situated in Ruakaka.

[9] Mr Hansen commenced employment with the College as Head of Department (“HOD”) Social Services, in 1996.

[10] Between 2001 and 2005, Mr Hansen was appointed as Assistant Principal, and in 2006 was one of three appointments to the position of Deputy Principal. In this latter position, Mr Hansen also undertook the role of HOD Geography until the start of 2010.

[11] On 20 August 2010 Mr Hansen was advised in a letter from Mr Wayne Buckland, Principal of the College, of three allegations against him. The three allegations were:

- Falsifying of an internal moderation document;
- Assisting his daughter in writing an assignment; and
- Providing his daughter with exam grades bearing no relationship to her examination performance.

[12] Mr Hansen attended an initial disciplinary meeting on 25 August 2010. At the meeting Mr Hansen, a member of the New Zealand Post Primary Association (“PPTA”), was accompanied by Mr Gavin Kay, a Field Officer for the PPTA.

[13] At the commencement of the meeting Mr Buckland provided Mr Hansen and Mr Kay with a folder containing documentation in support of the allegations, and had referred to Mr Hansen having brought the College into disrepute, mentioning in this connection the names of some other teachers who had also done so.

[14] Mr Kay said that these names held no significance to him, but they clearly did to Mr Hansen, who said that he had been very distressed by the reference as the teachers had been referred to as a paedophile, a thief and a conman.

[15] Mr Kay explained that Mr Buckland had advised that the disciplinary matter would need to be reported to the Teachers Council and had mentioned deregistration. Mr Kay explained that a possible consequence of this report might be a recommendation from the College that Mr Hansen would be deregistered as a teacher.

[16] Mr Kay stated that at this point he had raised the issue of Mr Hansen having been suffering from workplace stress, however Mr Buckland had not accepted that Mr Hansen had been suffering from stress.

[17] During the course of the meeting Mr Hansen had admitted that he had falsified a moderation document, and had offered explanations for the other two allegations.

[18] Mr Kay said that he had considered the reference by Mr Buckland during the meeting to possible deregistration to have been unnecessary, and that he had discussed it briefly after the meeting with Mr Hansen. Mr Kay said that Mr Hansen had observed that he would be deregistered, however Mr Kay said that he had tried to reassure Mr Hansen that the possibility of deregistration had *“a long way to go yet”* and that he would not be deregistered.

[19] Following this meeting Mr Hansen had returned home and had attempted to commit suicide. Fortunately Mr Hansen had been found in the process of the act and had been taken to hospital to recover. Following his discharge from hospital Mr Hansen said that he had received on-going counselling.

[20] Mr Peter Dunn, Chairman of the Board at the College, said that the College’s Board of Trustees (“the Board”) were informed of the allegations against Mr Hansen. Mr Dunn said that from the outset the Board had engaged the services of Mr Eric Woodward, an Advisor for the New Zealand School Trustees Association (“NZSTA”), of which the College was a member. Mr Dunn explained that Mr Woodward’s role was to provide the College with advice, support and representation in the disciplinary issues involving Mr Hansen, and that the sub-committee appointed to deal with these issues worked collaboratively at all times under the advice and guidance of Mr Woodward.

[21] Mr Buckland and Mr Dunn had had a preliminary meeting with Mr Woodward at which the allegations against Mr Hansen were discussed. Mr Woodward said he had been concerned at the seriousness of the allegations, and in particular the allegation that Mr Hansen had falsified a moderation document.

[22] Mr Woodward said that he had advised the Board to conduct a process alleging serious misconduct against Mr Hansen in which one of the potential outcomes could be Mr Hansen’s dismissal. Mr Woodward explained that a finding of serious misconduct against, or the dismissal of, a teacher would have triggered a mandatory reporting requirement to the Teacher’s Council.

[23] Mr Woodward said that he had also advised Mr Buckland and Mr Dunn that there were two options, the first being to go to the Police with Mr Hansen's admission that he had forged a document; the second being that the Board proceed with the disciplinary process rather than involve the Police.

[24] Mr Buckland and Mr Dunn said that their preference had been that the disciplinary process route was followed and that they had rejected the option of reporting the matter to the Police. Mr Dunn said that this had been his and Mr Buckland's joint recommendation to the Board on 27 August 2010, and that the Board had agreed formally with this recommendation resulting in the formation of the sub-committee to deal with the disciplinary issues. The sub-committee was headed by Mr Dunn, who had been given full authority to act on behalf of the Board.

[25] Mr Dunn explained that the sub-committee of the Board was delegated full authority to act on behalf of the Board, and that he was delegated as spokesperson for the sub-committee in the issues regarding Mr Hansen and in any communications with Mr Hansen or Mr Kay.

[26] Mr Kay explained that he had been concerned that, irrespective of what had preceded the falsification of the moderation document, it was a potentially dismissible offence to which Mr Hansen had admitted, and that there were also two other serious allegations with which to contend.

[27] Mr Kay explained at the Investigation Meeting that in the event that a teacher is found to have committed serious misconduct, or is dismissed, or is subjected to a formal disciplinary process and resigns within a period of 12 months thereafter, there is a mandatory reporting requirement to the Teachers Council. Such a report to the Teachers Council may also be accompanied by a recommendation from the school involved for the deregistration of the teacher.

[28] Mr Kay said that his major concern for Mr Hansen was to avoid a recommendation by the Board to the Teachers Council for deregistration, as such a recommendation would make it very difficult for Mr Hansen to be able to pursue a future teaching career. Mr Kay stated that this was as important a consideration to him as the outcome of any disciplinary process by the Board.

[29] Mr Kay stated that on several occasions over the course of discussions with Mr Hansen, Mr Hansen had emphasised the shocking effect Mr Buckland's comments in the meeting on 25 August 2010 had had upon him.

[30] As a result, within a few days of the meeting with Mr Buckland on 25 August 2010, Mr Kay initiated a conversation with Mr Woodward to ascertain if the Board would consider a voluntary exit by Mr Hansen from his employment. Mr Kay confirmed at the Investigation Meeting that it had been his view that a voluntary exit would involve a resignation by Mr Hansen.

[31] Mr Kay said Mr Woodward had confirmed that he believed the Board would be agreeable to the suggestion. On 2 September 2010 Mr Kay said he had met with Mr Hansen, and had suggested to him that a voluntary exit was an option that should be seriously considered explaining to Mr Hansen the reasons why he believed this course of action to be appropriate.

[32] Mr Kay said that he was not sure whether at that time Mr Hansen really understood what he was explaining initially, but that they did discuss the voluntary exit option at subsequent meetings on 10 and 21 September 2010.

[33] Mr Hansen said that he had been made aware by Mr Kay of a voluntary exit as an option, but that his preferred option was to stay at the College. Mr Kay said that Mr Hansen had vacillated between the two options and that on at least one occasion he had made it clear that staying at the College was the best option for him.

[34] As Mr Hansen was in a fragile state of health and on sick leave at this time, Mr Kay said that he was in no hurry to move things along, and that the Board was also not putting applying any pressure to hasten progress.

[35] Mr Kay said he had met with Mr Hansen on 10 and 21 September 2010 and had gathered information from Mr Hansen which he intended to use as evidence in the submissions he would be making to the Board on Mr Hansen's behalf, and to also discuss the options with Mr Hansen.

[36] Mr Kay said that Mr Woodward had, at some time in the course of their discussions, made reference to the fact that the Board could report Mr Hansen's fraudulent action to the Police. Mr Kay said he had just taken this comment as a piece of information rather than a threat. Mr Kay confirmed that he had passed on this information to Mr Hansen who had said that the news had greatly concerned and worried him.

[37] Mr Woodward said that he had advised Mr Kay orally that the Board could raise the falsification of the moderation document with the Police, but had explained that the Board were not going to pursue this course of action.

[38] Mr Kay said that during the meeting on 21 September 2010 he and Mr Hansen had decided to formally explore the possibility of a voluntary exit, and he had telephoned Mr Woodward to discuss the matter further

[39] Mr Woodward said that he had discussed the potential for obtaining a resignation from Mr Hansen with Mr Buckland and Mr Dunn on the basis that Mr Kay had given him the impression that Mr Hansen might agree and that this would resolve the matter quickly.

[40] Mr Woodward said that the Board had authorised him to make a 'Without Prejudice' offer to Mr Hansen allowing him to resign. Accordingly on 25 September 2010 Mr Woodward had emailed Mr Kay with an outline of what the exit package might comprise, this outline included the requirement for a resignation from Mr Hansen. The email also stated: "*Subject to further advice the Police may need to be notified of the fraud.*"

[41] Mr Woodward said he had included the reference to the Police in the email of 25 September 2010 as it was a matter of fact which he had recorded.

[42] Mr Kay said that while he would have preferred not to have seen the Police comment in the email of 25 September 2010, he had not been concerned about it as if it had been serious, he believe he would have been informed of this. Mr Kay explained that from his perspective the comments about the Police had been made in a low-key way, and that the emphasis in his conversations with Mr Woodward had been on achieving a dignified exit for Mr Hansen. Consequently he had not regarded the oral or written comments as overt threats.

[43] Mr Kay stated that he would in all probability have shown the email of 25 September 2010 to Mr Hansen. Mr Kay confirmed that Mr Hansen had raised the Police issue with him in their meetings and that each time he had confirmed his view to Mr Hansen that the Board would not report the matter to the Police, although he felt that Mr Hansen needed to keep this possibility in mind when they discussed the possibility of a voluntary exit.

[44] Mr Kay said that during the time following receipt of the 'Without Prejudice' offer he had been recommending that Mr Hansen accept the exit package which he had been negotiating with Mr Woodward on Mr Hansen's behalf.

[45] Concurrently with his negotiations with Mr Woodward, on 30 September 2010 Mr Kay had submitted lengthy submissions to the Board concerning the allegations against Mr Hansen. Mr Kay said that in so doing he appreciated that the submissions would form part of the written record when it became necessary for the College to deal with the Teachers Council.

[46] By the beginning of October 2010, although Mr Kay was continuing the negotiations with Mr Woodward, Mr Hansen instructed him to write to the Board with the proposal that Mr Hansen continue in employment as an Assistant Teacher. Mr Kay did so by letter dated 8 October 2010.

[47] On 13 October 2010 the Board had responded that it was not possible for Mr Hansen to continue in a teaching position, and stating that it regarded this request as indicating that Mr Hansen was withdrawing from the negotiations relating to a voluntary exit. Consequently the Board stated that it intended in the circumstances to proceed with the disciplinary process.

[48] In making this decision Mr Dunn and Mr Woodward said that they had been influenced by both frustration that no progress had been made in what they considered to be a very serious matter, and by the receipt of information that Mr Hansen had been active in the community and had applied for another job despite being on sick leave.

[49] Mr Kay said that both he and Mr Hansen had been dismayed by the information that the Board intended to proceed with the disciplinary process. Mr Kay responded to the letter on 15 October 2010 stating that he felt the Board's attitude to have been unhelpful, and reminding them of Mr Hansen's state of health.

[50] Mr Kay explained that in light of Mr Hansen's state of health, he believed it to be imperative to have matters resolved without Mr Hansen having to attend a Board hearing. Consequently he had resumed negotiations with Mr Woodward, sending an email dated 27 October 2010 in which he set out the elements of a settlement. Included in the proposals was that the College would not make a recommendation to the Teachers Council for the deregistration of Mr Hansen.

[51] Mr Kay said that he had discussed matters with Mr Hansen on 27 October 2010 and that Mr Hansen had agreed with the voluntary exit package option, and had written his letter of resignation, effective 9 December 2010.

[52] Unbeknown to Mr Kay or the Board until sometime later, on 28 October 2010 Mr Hansen had made a second suicide attempt.

[53] Mr Woodward had responded by email dated 29 October 2010 to Mr Kay's email of 27 October 2010. There was no mention of a Police referral in this email in which Mr Woodward had written:

*I have spoken with the Board Chair. Without prejudice Yes they would accept a resignation based on the admission about the moderation letter and that the other two issues will not be pursued in*

*deference to and out of respect for his current health issues and the fact that as time passes the rumour mill is destructive on the school and him.*

[54] Mr Woodward said that Mr Kay had responded to this email on 1 November 2010 with suggestions concerning the statement to staff regarding Mr Hansen's departure, and the date upon which Mr Hansen would vacate the school house.

[55] Mr Woodward said he had received a further email that day setting out the list of agreed settlement terms as he understood them to be. Mr Woodward said that the terms were essentially those agreed between him and Mr Kay, although he had made it clear to Mr Kay that the settlement agreement would be subject to the Board's approval.

[56] Mr Woodward said that the settlement proposal was submitted to the Board on 1 November 2010 and was approved by the Board on 2 November 2010. Mr Woodward said that the approval was in very similar format to that proposed by Mr Kay, the main differences being that the date that Mr Hansen's resignation would be effective from, and the date upon which Mr Hansen was to vacate the school house.

[57] Mr Woodward stated that he had telephoned Mr Kay on 2 November 2010 to confirm that the settlement agreement proposal had been accepted by the Board, and confirmed this by way of email on 3 November 2010. In that email Mr Woodward said he had intended to cover off all aspects of what had been agreed between the parties, and had stated:

*In summary I can also confirm the following:*

*Although the Board's view is that the matter of the falsified moderation document is serious misconduct and destructive of the trust and confidence required in the employment relationship, agreement has been reached without prejudice that Eric Hansen will resign effective for the last day of Term 4 2010, this being 9/12/10.*

*The Board had considered reporting the matter to the Police but will refrain from that as a result of Eric's acceptance of the seriousness of the matter and his resignation. No further disciplinary action will be taken as a result of his current health issues and resignation.*

*The matter will be reported to the Teachers' Council along with the other two allegations. There will be no recommendation for deregistration and in fact the Board shall neutrally advise the Council that it is for them to determine any question regarding Registration. ...*

*An agreement will be in full and final settlement of all issues between the parties.*

*The Board requires confirmation of these matters, along with the formal resignation on or by 5.00 pm Thursday 4 November.*

[58] Mr Kay said that he had not been worried by the reference to Police involvement in the email as he regarded it as being retrospective in nature; however he said that Mr Hansen was more worried about the comment than he had been.

[59] Mr Hansen stated that he had regarded the reference to the Police involvement not being taken as being conditional upon his resignation being received by the College.

[60] Mr Kay said that he and Mr Hansen had agreed to confirm the agreement, leaving only some further discussion to take place about the farewell and a few other arrangements.

[61] Mr Kay said that Mr Hansen had, albeit with some reluctance, written out his resignation in Mr Kay's presence. On 4 November 2010 Mr Kay telephoned Mr Woodward to inform him that Mr Hansen was coming into the College to deliver his resignation.

[62] Mr Kay said that the terms of the 3 November 2010 settlement agreement were fulfilled with the exception of agreement on a reference, however this matter was resolved on 21 January 2011.

## **Determination**

### **Was Mr Hansen's resignation unlawfully obtained by blackmail?**

#### **The Law**

[63] Blackmail is defined in s 237 of the Crimes Act 1961:

#### **237 Blackmail**

*(1) Every one commits blackmail who threatens, expressly or by implication, to make any accusation against any person (whether living or dead), to disclose something about any person (whether living or dead), or to cause serious damage to property or endanger the safety of any person with intent –*

*(a) To cause the person to whom the threat is made to act in accordance with the will of the person making the threat; and*

*(b) To obtain any benefit or to cause loss to any other person*

(2) *Every one who acts in the manner described in subsection (1) is guilty of blackmail, even though that person believes that he or she is entitled to the benefit or to cause the loss, unless the making of the threat is, in the circumstances, a reasonable and proper means for effecting his or her purpose.*

(3) *In this section and in section 239, benefit means any benefit, pecuniary advantage, privilege, property, service, or valuable consideration.*

[64] There are three elements identified in s 237 of the Crimes Act 1961 as being essential requirements for the act of blackmail:

1. a threat to make an accusation has been made;
2. with the intention to cause a person to act in accordance with the will of the person making the threat; and
3. with the intention to obtain a benefit.

**Was Mr Hansen's resignation unlawfully obtained through blackmail?**

[85] Blackmail is an offence under the Crimes Act 1961. Mr Hansen was employed by the College and as such any claim made within the context of Mr Hansen's employment is subject to the Employment Relations Act 2000 ("the Act"). The Test of Justification prior to the amendment on 1 April 2011 and which is applicable in this case, is set out at s 103A of the Employment Relations Act 2000 ("the Act"):

*For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred"*

[86] As such, whilst I shall examine the three requirements of a charge of blackmail, these shall be considered in the context of the actions of a fair and reasonable employer.

## *Threat*

[65] It has been established in criminal cases concerning the issue of blackmail that the threat does not need to be overt, it may be subtle and indirect<sup>1</sup>, and it does not need to be received directly by the ‘victim’ provided that it is conveyed to him or her<sup>2</sup>.

[66] It is evident from the statements of Mr Kay that Mr Hansen had been extremely concerned by the situation in which he found himself on 25 August 2010. He was facing allegations of serious misconduct, the possibility of deregistration had been raised by Mr Buckland, and there was a real possibility that he might have been facing dismissal. The future pursuit of his chosen, and up to that point in time highly successful, career was in serious jeopardy.

[67] The attempt to commit suicide made by Mr Hansen on 25 August 2010 took place in light of these considerations, but prior to any mention being made of the possibility of Police involvement.

[68] The alleged threat of Police involvement was first made at some time during the course of discussions between Mr Kay and Mr Woodward in the period between the meeting on 25 August 2010 and 15 September 2010. Mr Kay stated that he had regarded the comment by Mr Woodward that the Board could report the fraud of the moderation documents to the Police as merely a factual piece of information rather than a threat, and had represented it as such to Mr Hansen.

[69] It was clear from Mr Kay’s evidence that he had not at any stage regarded the comment by Mr Woodward as in the nature of a threat, nor had he conveyed it as such to Mr Hansen and when Mr Hansen had raised the matter with him, he had reassured Mr Hansen that he had nothing to fear in that context.

[70] Despite these assurances, Mr Hansen stated that the information had greatly worried him. There is no doubt that Mr Hansen was in a fragile state of mental health at this time, he was receiving counselling following the attempt to commit suicide following the meeting on 25 August 2010.

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<sup>1</sup> Adams on Criminal Law, at CA237.02

<sup>2</sup> Adams on Criminal Law, at CA237.03

[71] The medical reports submitted in evidence did not contain any reference during this period to Mr Hansen having referred to his actions being reported to the Police as a specific concern to him, which I might have expected there to have been had the matter been greatly concerning and worrying him, however I have not laid undue significance on the omission.

[72] Mr Buckland and Mr Dunn had stated that on 27 August 2010 the Board had decided to pursue the disciplinary action from the outset of the process. Following the interruption of the negotiation process for Mr Hansen's exit by Mr Hansen's voluntary proposal that he continue employment as an Assistant Teacher, and consistent with the statements of Mr Buckland and Mr Dunn, the Board response on 13 October 2010 had been to reactivate the disciplinary process.

[73] There was no allusion at this stage to the Police involvement which I find to be due to the fact that the College had no intention to pursue this course of action. I find support for this view in the evidence of Mr Kay that at no stage had he regarded the alleged threat as other than a factual piece of information but not a route to be pursued by the College.

[74] The second reference to the alleged threat is in the detailed email dated 3 November 2010 from Mr Woodward to Mr Kay in which Mr Woodward writes:

*In summary I can also confirm the following:*

*Although the Board's view is that the matter of the falsified moderation document is serious misconduct and destructive of the trust and confidence required in the employment relationship, agreement has been reached without prejudice that Eric Hansen will resign effective the last day of Term 4 2010, this being 9/12/10.*

*The Board had considered reporting the matter to the Police but will refrain from that as a result of Eric's acceptance of the seriousness of the matter and his resignation.*

[75] Mr Kay was clear in his evidence that he had not regarded this statement as presenting an active threat, but rather that the full email summarised all the matters traversed during the lengthy period of negotiations.

[76] Whilst Mr Hansen stated that he did regard it as a threat; having considered the matter I conclude that Mr Woodward's intention in including the reference was to summarise the situation on the basis that in the opening paragraph of the email dated 3 November 2010. Mr Woodward writes

*We don't believe it materially changes anything that is already agreed ...*

[77] I find that by the time the 3 November 2010 email was written, the main points of the voluntary exit package, including the fact of Mr Hansen's resignation, had been accepted by the parties, and that agreement had already been reached without any recent or recurring mention of Police involvement.

[78] Mr Hansen had admitted falsifying the moderation document at the meeting on 25 August 2010. From this point Mr Hansen had been facing a disciplinary process which involved allegations of serious misconduct, one of which he had admitted, and as a result of which there was a strong possibility that the outcome might have been the termination of his employment.

[79] At this point both Mr Hansen and Mr Kay knew that a mandatory report to the Teacher's Council was inevitable, and that Mr Buckland had alluded to the fact that this might include a recommendation from the College for Mr Hansen's deregistration as a teacher. Had deregistration occurred, Mr Hansen would be faced with the loss of the career to which he had committed himself.

[80] Mr Woodward had entered into negotiations prompted by Mr Kay and aimed at securing a voluntary exit by Mr Hansen, such an exit to involve his resignation. Such a course is not unusual in disciplinary proceedings between an employer and an employee facing a serious allegation and in which, as in this case, there is a real possibility that the employee would be facing dismissal as an outcome of the disciplinary proceedings.

[81] While Mr Woodward had alluded at some point in what were protracted negotiations to the possibility of Police involvement, and however Mr Hansen had regarded this piece of information, I find that the College had not intended the information to have been a threat, nor was it considered as such by Mr Kay, and that its conduct from that point on had been consistent with the disciplinary process open to any employer in a similar situation.

[82] I do not find the first requirement of the act of blackmail to have been established. I further find that the College had acted as a fair and reasonable employer would have done in all the circumstances.

#### *Intention*

[83] The second requirement is that there must be an intention to cause the person to act in accordance with the will of the party making the threat: s 237(1)(a) of the Crimes Act 1961.

In this case it is alleged is that the intention was to make Mr Hansen act in accordance with the will of the Board, this being that Mr Hansen should resign.

[84] The evidence of Mr Kay was that it had been he who had initiated a conversation with Mr Woodward within a few days of the meeting with Mr Buckland on 25 August 2010, the purpose of that conversation being to ascertain if there was a possibility of negotiating a voluntary exit for Mr Hansen. Mr Kay had been very clear in his evidence that he had considered a resignation on the part of Mr Hansen to have been a key feature of such an exit.

[85] On 2 September 2010 at a meeting with Mr Hansen, Mr Kay had followed up this suggestion of a voluntary exit option which he had made to Mr Woodward, and had suggested to Mr Hansen that an exit option was the appropriate course of action in the situation in which Mr Hansen was facing allegations of a serious nature, and possible deregistration.

[86] Mr Kay said he and Mr Hansen had further discussed the voluntary exit option on 10 and 21 September 2010. Mr Kay stated that on 21 September 2010 Mr Hansen had agreed to their formally exploring the voluntary exit possibility, and he had accordingly telephoned Mr Woodward to discuss the matter.

[87] As a result of Mr Kay having initiated the voluntary exit option with Mr Hansen's agreement, on 25 September 2010 Mr Woodward had forwarded an outline of a draft exit package including a proposal as to Mr Hansen's resignation.

[88] I find that far from the College intending by means of a threat to coerce Mr Hansen to accede to its will by offering his resignation, it was Mr Kay acting as Mr Hansen's representative, who initially made the suggestion of a voluntary exit option in which Mr Hansen's resignation was an intrinsic part, and it was Mr Kay who actively progressed the voluntary exit option.

[89] Significantly I find that the initiation of the voluntary exit package by Mr Kay a few days following the meeting on 25 August 2010 was made prior to any mention of Police involvement, and that Mr Kay's evidence was that he had been not been influenced in his progressing of the voluntary exit package by any subsequent reference to Police involvement.

[90] I do not find the second requirement of the act of blackmail to have been established. I further find that the College had acted in a matter consistent with the action of a fair and reasonable employer being approached by the representative of an employee facing a serious misconduct allegation who had suggested a voluntary exit option.

*Benefit*

[91] Benefit is defined in s 239 (3) as: “*pecuniary advantage, privilege, property, service, or valuable consideration*”.

[92] Had Mr Hansen not resigned, the College would have proceeded with the disciplinary process. Mr Hansen was facing serious allegations and dismissal was a possible outcome. By accepting the voluntary exit package, the disciplinary process came to a halt.

[93] As a result of Mr Hansen’s resignation, Mr Hansen was paid until the end of term, rather than possibly being summarily dismissed as a result of the disciplinary process, and was able to negotiate the date when vacation of the College-owned house in which Mr Hansen resided would take place.

[94] I have considered whether the College may have gained a benefit through the avoidance of any adverse publicity; however I consider this to be speculative and insufficient without further evidence of being considered a benefit.

[95] I find that the third requirement being that the College obtained a benefit through Mr Hansen’s resignation is not established.

[96] I determine that Mr Hansen’s resignation was not unlawfully obtained by blackmail.

[97] I find that the College acted as a fair and reasonable employer, noting the comments of Mr Kay, who as an experienced PPTA Officer represented Mr Hansen’s interests throughout the process, in an email to Mr Buckland dated 25 March 2011:

*I accept that the school’s intention from the outset was to work towards a resolution that was in Eric’s interests as well as the school’s, and that Eric’s wellbeing and dignity were things that the school sought to preserve.*

[98] I determine that the Settlement Agreement is not rendered invalid due to blackmail

## Was Mr Hansen's resignation unlawfully obtained through duress and undue influence?

### The Law

[87] Lord Scarman in the case of *Pao On v Lau Yiu Long*<sup>3</sup> defined duress as follows:<sup>4</sup>

*Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. ... [In] determining whether there was a coercion of the will such as there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are ... relevant in determining whether he acted voluntarily or not.*

[88] In subsequent cases, the focus shifted to concentrate more on the quality of the consent in terms of the degree to which consent was impaired, rather than on duress being seen as vitiating consent, as consent would exist in virtually all cases.

[89] In the recent case of *Pharmacy Care Systems Ltd v Attorney-General*<sup>5</sup> the Court of Appeal listed what were referred to as seven "elements" of duress recognised in New Zealand Law:<sup>6</sup>

*In summary, the elements of duress in New Zealand law today are these: First, there must be a threat or pressure. Secondly, that threat or pressure must be improper. Thirdly, the victim's will must have been overborne by the improper pressure so that his or her free will and judgment have been displaced. Fourthly, the threat or pressure must actually induce the victim's manifestation of assent. .Fifthly, the threat or pressure must be sufficiently grave to justify the assent from the victim, in the sense that it left the victim no reasonable alternative. Sixthly, duress renders the resulting agreement voidable at the instance of the victim. This may be addressed either by raising duress as a defence to an action, or affirmatively, by applying timeously to a court for avoidance of the agreement. Seventhly, the victim may be precluded from avoiding the agreement by affirmation.*

[90] The Court of Appeal also observed in relation to a threat of criminal prosecution that:<sup>7</sup> "A threat to instigate a criminal prosecution has generally been regarded as an improper means of inducing a party to make an agreement."

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<sup>3</sup> [1980] AC 614

<sup>4</sup> Ibid at pg 635

<sup>5</sup> Court of Appeal, CA 198/03, 16 August 2004

<sup>6</sup> Ibid at para [98]

### *Improper Pressure*

[91] There was certainly pressure on Mr Hansen at the relevant time, given the serious nature of the allegations against him and the potential to adversely impact upon his chosen career. This is pressure which is to be found in any disciplinary process when an employee is facing allegations of serious misconduct, and is not of an improper nature.

[92] Mr Hansen had admitted the allegation of falsifying a moderation document. As an experienced teacher who had been both an Assistant and a Deputy Principal, I consider that Mr Hansen would have been aware that if he had been found to have committed serious misconduct, had been dismissed, or had been subjected to a formal disciplinary procedure and had resigned within the period of 12 months thereafter, a mandatory reporting requirement to the Teachers Council would have been triggered.

[93] Mr Buckland had alluded at the meeting on 25 August 2010 to the possibility of deregistration. Mr Kay stated that his wish was to avoid such a possibility as he recognised that deregistration might seriously impede Mr Hansen continuing a teaching career in the future.

[94] It was clear from Mr Kay's evidence that Mr Hansen following the meeting on 25 August 2010 had been concerned that he would be deregistered as a teacher following the meeting on 25 August 2010, and his first suicide attempt immediately followed this meeting. This was prior to any mention of Police involvement.

[95] I have found Mr Kay to have been the instigator of the voluntary exit option and the resignation by Mr Hansen.

[96] Mr Kay was an experienced PPTA representative. Whilst new to the Northland region, he had had significant experience prior to this and I consider that he had been competent to advise Mr Hansen.

[97] Whilst there is evidence that Mr Hansen had been reluctant to sign a resignation letter, I consider that this was attributable to the fact that Mr Hansen was reluctant to end a teaching career at the College which he had clearly valued and which was important to him, rather than because his will had been overborne by improper influence resulting from a threat of Police involvement.

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<sup>7</sup> Ibid at para [94]

[98] In reaching this conclusion I took into consideration the fact that Mr Hansen had independent advice from Mr Kay at all times throughout the process.

[99] Further there had been undisputed evidence at the Investigation Meeting that Mr Hansen had applied for a job at a different school which had been advertised in the Education Gazette on 17 September 2010 and which had a closing date of 26 October 2010. Mr Hansen had clearly applied for this position prior to receipt of the email dated 3 November 2010.

[100] I consider that the application for alternative employment made prior to 26 October 2010 indicates that Mr Hansen intended to resign for this particular purpose apart from any other consideration, and by so doing to he would thereby avoid the possibility of facing dismissal, and possible deregistration.

[101] In all the circumstances I do not find the allegation that Mr Hansen's resignation was obtained by duress and undue influence to be valid.

[102] I determine that Mr Hansen's resignation was not unlawfully obtained by duress and undue influence.

[103] I consequently determine that the Settlement Agreement is not rendered invalid due to duress and undue influence.

[104] Having determined that the Settlement Agreement is valid, I am unable to assist Mr Hansen further.

### **Costs**

[105] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Respondent may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Applicant will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

**Eleanor Robinson**  
Member of the Employment Relations Authority