

SUPREME COURT OF QUEENSLAND

CITATION: *Brockhurst v Rawlings* [2021] QSC 217

PARTIES: **NICHOLAS BROCKHURST**
(Plaintiff)
v
MEREDITH LYNNE RAWLINGS
(Defendant)

FILE NO: 7248 of 2018

DIVISION: Trial Division

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 27 August 2021

DELIVERED AT: Brisbane

HEARING DATE: 3-12 March 2021, 18-19 March 2021, 24 May 2021

JUDGE: Ryan J

ORDER: **Judgment for the plaintiff in the sum of \$1,456,524.15.**

I will hear the parties as to costs.

CATCHWORDS: TORTS – INTERFERENCE WITH THE PERSON – TRESPASS TO THE PERSON – GENERALLY – where the plaintiff was a student and the defendant was his teacher – where the plaintiff alleges that the defendant sexually abused him – where the plaintiff claims damages from the defendant for personal injury, in trespass, by battery

DAMAGES – ASSESSMENT OF DAMAGES IN TORT – PERSONAL INJURY – GENERALLY – where the plaintiff was displaying behaviours consistent with oppositional defiant disorder before the alleged sexual abuse occurred – assessment of quantum of damages to be awarded – whether exemplary and aggravated damages should be awarded

B v Reineker [2015] NSWSC 949, considered
BDT v BDG [2019] QDC 74, cited
Briginshaw v Briginshaw (1938) 60 CLR 336, cited
Browne v Dunn (1893) 6 R 67, cited
Dare v Pulham (1982) 148 CLR 658, cited
Katsilis v Broken Hill Pty Co Ltd (1977) 18 ALR 181, cited
Longman v The Queen (1989) 168 CLR 79, cited
Mark Bain Constructions Pty Ltd v Avis; Mark Bain Constructions Pty Ltd v Barnscape Pty Ltd [2012] QCA 100, considered

Mount Arthur Coal Pty Ltd v Duffin [2021] NSWCA 49, considered

P v R [2010] QSC 139, considered

WAQ v Di Pino [2012] QCA 283, cited

COUNSEL: Mr B Dooley SC and Mr A Harris for the Plaintiff
Mr S MacDonald for the Defendant

SOLICITORS: Shine Lawyers for the Plaintiff
MacDonald Law for the Defendant

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OVERVIEW

- [1] Meredith Rawlings, a teacher, seduced her student, Nicholas Brockhurst. Her relationship with him began when he was 13 years old, in his first year of high school. He became infatuated with her. They had sexual intercourse when he was 14.
- [2] Mr Brockhurst's parents found notes from Mrs Rawlings to their son which were affectionate and loving. Without fully appreciating all that had gone on between Mrs Rawlings and Nicholas, they raised concerns about her with the school. After being questioned by the Headmaster about Mr Brockhurst, Mrs Rawlings tendered her resignation and ended their relationship. Mr Brockhurst was devastated.
- [3] Having struggled for years in the aftermath of his relationship with Mrs Rawlings, Mr Brockhurst now claims damages from her for personal injury, in trespass, by battery. The tort of battery is committed when one person intentionally makes contact with another in a harmful or offensive way. Personal, intimate or sexual contact, without voluntary consent, is offensive contact.¹ At 13 or 14 years of age, Mr Brockhurst was unable to voluntarily consent to Mrs Rawlings' intimate and sexual contact with him. Thus, her intimate and sexual contact with him amounted to a series of batteries ("sexual abuse").
- [4] I found that Mrs Rawlings' sexual abuse of Mr Brockhurst caused him personal injury, including a depressive disorder. He has suffered economic and non-economic loss because of her abuse of him. I award damages to him in the amount of \$1,456,524.15.
- [5] My reasons follow.

PART A PRELIMINARY MATTERS

- [6] The plaintiff alleged that his relationship with the defendant was romantic, intimate, and sexual.
- [7] The defendant admitted to being too close to the plaintiff and allowing him to become too dependent on her. She said their relationship was "complicated", with "fuzzy" boundaries. But, she said, the plaintiff's evidence that it was romantic, intimate or sexual was a fantasy that he convinced himself was true.
- [8] The primary issue for me was the nature of the relationship between Mrs Rawlings and Mr Brockhurst. To resolve it, I was required to evaluate the truthfulness and reliability of the plaintiff's account in the face of the defendant's adamant denial of it. Bearing in mind the onus of proof, the standard of proof, the seriousness of the plaintiff's allegations, and that almost 25 years had passed since the plaintiff was 14, I scrutinised his evidence in great detail.

¹ Because of the approach of the parties, I did not need to decide whether "lack of consent" was an element of the tort of battery or whether "consent" was a defence to the tort (to be proved by the defendant).

Consent

- [9] Mr Brockhurst welcomed and enjoyed Mrs Rawlings' physical contact. But he was only 13 or 14 at the time.
- [10] Mrs Rawlings has not been charged with criminal offences. Mr Brockhurst chose to pursue Mrs Rawlings in tort, rather than complain to police about her conduct.
- [11] The defendant agreed that Mr Brockhurst was not able to voluntarily consent to conduct which, if proved, amounted to criminal offences because of his age, if not also because of the power imbalance in his relationship with Mrs Rawlings, and her grooming of him.
- [12] The defendant accepted that, if I found that there had been intimate or sexual contact between the parties, then I would find that there had been battery (or more accurately, one battery per intimate or sexual contact).

The presence of oppositional defiant disorder in the plaintiff before the abuse

- [13] The matter proceeded on the basis that the plaintiff was displaying behaviours consistent with oppositional defiant disorder (ODD) *before* he was groomed and seduced by the defendant.

Causation

- [14] I was troubled by the defendant's counsel's admission, made as late as day 5 of the trial, that he had not "finally turned [his] mind" to the issue of causation. He was not then able to tell me whether he intended to suggest that any of the symptoms of psychological distress manifested by the plaintiff were the result of issues he had around his adoption (which had been the subject of the defendant's counsel's cross-examination that day).
- [15] On day 8 of the trial, I asked the defendant's counsel how he intended to use the fact that the plaintiff was exhibiting conduct consistent with ODD before it was alleged that his relationship with Mrs Rawlings commenced. Counsel said that the "main thrust" of his approach was that it was a "pre-existing condition". I asked him whether he intended to ask questions of the psychiatrists designed to establish that the "greater causal component" of the plaintiff's psychological distress was ODD. Counsel said, "No. Not really".
- [16] I pushed the defendant's counsel further. Ultimately, his position on day 8 was that the issue for me on causation was resolved by my decision on the facts: that is whether I accepted the plaintiff's evidence about the defendant's relationship with him, or not. The defendant's counsel said, "if the events occurred as alleged, then, of course, it becomes the – probably the dominant cause of his conditions".² However, the defendant's counsel appeared to retreat from this position during his closing submissions.
- [17] In his closing written submissions, under the heading "General Damages", the defendant's counsel asserted that: "Because of the other conditions suffered by the plaintiff, it is submitted that the award of general damages ought to be reduced to

² Transcript 8 – 14, lines 26 – 32.

take into account those matters”. During his oral closing submissions, the defendant’s counsel said that the defendant’s case was that the sexual abuse did not occur and that the plaintiff’s psychological injuries were the product of other “matters”. The defendant’s counsel submitted that those other matters included not just ODD, but also unnamed or unidentified “organic conditions”.

- [18] When I asked the defendant’s counsel where I might find evidence that the plaintiff suffered from “organic conditions”, he told me I could take “judicial notice” of them. He developed that argument in the following way. In 1997, the plaintiff was referred to a psychiatrist, Dr Scott, after his parents raised their concerns about the defendant with the school. Counsel for the defendant submitted that I would conclude that the plaintiff was not referred to Dr Scott because he had been sexually abused – rather, I would conclude he was referred for treatment of his “organic conditions”. Counsel submitted –

If the plaintiff’s referral was for either bad behaviour or as a result of some trauma, including sexual abuse, it would be usual for the referral to be to a psychologist, rather than a psychiatrist.

Psychiatrists usually treat organic conditions. Therefore, it is more likely that the plaintiff was being treated for his own organic conditions, not as a result of some trauma [that is, sexual abuse].

- [19] That proposition was not put to any of the psychiatrists for their comment. When I asked the defendant’s counsel for the evidential foundation for the submission, he said –

Well, your Honour, I submit that that is also something that judicial notice would be taken of. That is, in my experience, the usual course: that one would be referred by a GP to a psychologist initially
...

- [20] Ultimately, counsel conceded that there was no evidential foundation for his submission that I ought to conclude that the plaintiff was referred to Dr Scott for treatment of an “organic condition”. But he persisted with the submission that “there may be other issues” which had not been brought before the court.

- [21] I pushed further for clarification of the relevance to the defendant’s case of ODD and the unrevealed “other” things. Counsel confirmed that the defendant’s position was that I ought not to reason back from the plaintiff’s presentation to the psychiatrists that he had been sexually abused by the defendant.³ I was not convinced that that was in fact the defendant’s position. So, I considered the evidence (limited though it was) about the potential contribution of ODD to the plaintiff’s psychiatric injuries, for the benefit of the defendant.

Failure of the defendant’s counsel to comply with “the rule in *Browne v Dunn*”

- [22] Although I reminded the defendant’s counsel several times during the trial of the need to comply with the rule in *Browne v Dunn*, there were many occasions on which he did not comply. There is nothing to be gained by my itemising here the allegations in the defendant’s case which were not put to relevant witnesses for their

³ Transcript 11 – 23 lines 34 – 42.

comment. It is enough to say that the defendant's counsel's failure to comply with the rule in *Browne v Dunn* did not assist me in the assessments which I had to make.

PART B THE PLAINTIFF'S EVIDENCE IN CHIEF

The plaintiff's account of his grooming and seduction

- [23] Nicholas Brockhurst grew up on a property at Drillham, 20 kilometres west of Miles, a town in the western Darling Downs. His parents, Cecily and Owen, adopted him when he was very young. They also adopted his sister.
- [24] He attended the local primary school with another 30 or so children across Years 1 to 7.⁴ In 1995, he was one of four Year 7 students.
- [25] Mr Brockhurst turned 13 in January 1996.
- [26] He started high school (Year 8) at Toowoomba Grammar (TGS). He was a boarder, assigned to Mackintosh House. He understood that Mrs Rawlings was there to "look after" the boys in Years 8 and 9 of Mackintosh House. She was also Mr Brockhurst's Year 8 English teacher.

Meeting Mrs Rawlings

- [27] As Mr Brockhurst recalled it, within a couple of weeks of starting Year 8, he saw Mrs Rawlings for tutoring/help with his homework about twice a week. He saw her, with other boys, in her classroom under the library. The assigned times for tutoring were communicated to him (and the other boys) by their "housemaster" or by Mrs Rawlings herself. The tutoring times for Years 8 and 9 fell between the end of the school day, at around 3 pm, and 5.30/5.45 pm, at which time the boarders had to get ready for dinner. The older students were tutored after dinner.
- [28] Mr Brockhurst found Mrs Rawlings very friendly. She seemed to care about his schoolwork and how he was progressing. He felt very comfortable with her. By the middle of 1996, he felt that they had grown "closer". Their conversations were not all about schoolwork. They spoke to each other about their personal life and their backgrounds. They were "getting to know each other".

Relationship over semester 1, 1996

- [29] Mrs Rawlings offered extra tutoring sessions to Mr Brockhurst. As Mr Brockhurst saw it, they enjoyed their time together so much that they sought more of it. Most of the time the extra sessions were arranged by Mrs Rawlings paging Mr Brockhurst, over the loudspeaker, to attend at the school office during lunchtimes or after school. She would then meet him there and pass a note to him which invited him to attend her room at a certain time.
- [30] Mr Brockhurst played cricket in the first term of 1996. Mrs Rawlings came to watch his games. He opened the batting for his team. Once he was dismissed, he was permitted to return to the crowd which consisted of parents, teachers and other supporters. He often sat with Mrs Rawlings in the crowd but there was no physical contact between them.

⁴ When Year 7 was the final year of primary school.

- [31] Mr Brockhurst played rugby in the second and third terms of 1996 (from April until September). Mrs Rawlings often attended his games. Once he finished playing, they found time to be together – even if only for ten minutes.
- [32] By the end of semester 1 of 1996, Mr Brockhurst saw Mrs Rawlings for tutoring nearly every day, but very little academic work was done. Mr Brockhurst could not remember much about what Mrs Rawlings told him about her personal life – only that her husband Mark was a chef and that she had not long finished university (she gave evidence that she completed her Master’s Degree in Education in 1996). She also spoke to him about her parents. Their conversations were very friendly, like Mr Brockhurst had known Mrs Rawlings for a long time.

Relationship over semester 2, 1996

- [33] By semester 2 of 1996, Mr Brockhurst was paging Mrs Rawlings so that he could pass notes to her. Sometimes they exchanged notes. This practice of paging one another over the loudspeaker continued until Mrs Rawlings resigned.
- [34] In semester 2 of 1996, Mrs Rawlings and Mr Brockhurst saw each other almost every weekday. The time they spent together each day would depend on Mr Brockhurst’s commitments. If he had after school sport, he might only see her for 30 minutes. Otherwise, he would see her for about two hours, until dinner time.
- [35] By about September 1996, the tone of Mrs Rawlings’ notes changed and they included phrases like “I miss you”. Sometimes, but not often, Mr Brockhurst added to his notes something like “I miss you as well”. He sent his first note of that kind about a week after Mrs Rawlings’ first “I miss you” note. His note prompted an “I miss you more” response from her.
- [36] In about September of 1996, Mrs Rawlings gave Mr Brockhurst her home phone number on a note which said, “Call me whenever you like”. Thereafter, he called her at home, at first about twice a week and then later, on average, four times a week. He called her on days he did not see her. They spoke on the telephone about personal things including about how Mr Brockhurst was finding school, their home lives and sport. He recalled that she told him that her husband worked at a restaurant at the top of the Toowoomba Range. He would ask about her and her husband’s “project” (opening a new restaurant called “Encores”). At the end of their phone calls, sometimes, one would say to the other “I will see you tomorrow because I miss you” or “I will see you tomorrow because I want to talk to you”.
- [37] If he called her during the school week, he would call her in the evening from one of the two public phones available to the Mackintosh House boarders. The Year 8 boarders had to be in bed by 9.45 pm, with “lights out” at 10 pm. Mr Brockhurst’s calls to Mrs Rawlings would sometimes last more than an hour, and sometimes beyond “lights out”. The more lenient supervisors would allow him to remain on the phone after lights out. The stricter ones would hang up the call. He was often in trouble for being on the phone. Sometimes the calls would be cut short because other boarders “kicked” him off the phone. Mostly, Mrs Rawlings answered his calls. Occasionally, her husband did.

“Proper” hugs

- [38] Towards the end of 1996, “things changed” and “got a bit physical” when they were alone in Mrs Rawlings’ room. It began with Mrs Rawlings patting Mr Brockhurst on the shoulder and transitioned quickly to what Mr Brockhurst called “proper hugs”. He could feel Mrs Rawlings “holding on” during the hugs. She would also rest her hand on his shoulder or leg including at the top of his thigh.
- [39] When they were together, Mrs Rawlings would ensure that the roller blinds to the windows of her room were drawn to a level which stopped people looking in, but which allowed her and Mr Brockhurst to see whether anyone was walking by (through a gap between the bottom of the blind and the bottom of the window frame).
- [40] The older boarders began to call Mr Brockhurst “the chosen one”; “the special one” and “teacher’s pet”. He was receiving notes from Mrs Rawlings almost daily, telling him that she missed him a lot or that she could not wait to see him; or asking whether he had a game on that she could come and watch; or inviting him to stay a bit longer after a tutor group. She would add to her notes a “little footnote” which said “I miss you” or something similar. Mrs Rawlings signed her notes “MLR” and often with an “xxoo”. In the notes Mr Brockhurst wrote to Mrs Rawlings, he thanked her for being kind to him. He told her that he was very happy that he knew her; she made him happy; and he liked her a lot.
- [41] If Mr Brockhurst was invited to see Mrs Rawlings after a tutor group which involved only a small number of boys, he would enter the room and wait until the group was finished to spend time with her. He would not enter the room if she was tutoring a large group. He would wait until the group left.
- [42] The boarders had a roll call before dinner. Sometimes, Mr Brockhurst would leave Mrs Rawlings to attend roll call and then skip dinner to return to her.
- [43] By the end of 1996, Mr Brockhurst was beginning to see himself and Mrs Rawlings as a couple. When they were together, they smiled and laughed a lot. They often “hugged” in her room in a way in which Mr Brockhurst felt “meant something”. He still called her “Mrs Rawlings”.

First kiss

- [44] Mrs Rawlings kissed Mr Brockhurst for the first time towards the end of 1996. Their first kiss was on a Saturday. She was at the school, in her room, at 5 pm. She may have been coaching sport earlier than day. They had organised to meet, by a note which also said, “I miss you”, the day before. While they were sitting together, laughing and smiling, they hugged (which Mr Brockhurst thought was “great”). Then Mrs Rawlings lent forward and kissed Mr Brockhurst on the lips. The kiss lasted about 15 seconds. His mouth was not open. He was “shocked in a good way”. They were silent after the kiss.
- [45] There were then other occasions of kissing. Mr Brockhurst estimated that they kissed about 12 times before the end of year school holidays. They kissed in Mrs Rawlings’ room but more often in her car, which she parked at the school. On occasions, they kissed with open mouths and tongues. Mr Brockhurst felt

“ecstatic”. He said, “I was a 13-year-old boy being kissed by an adult and I thought I was amazing”.

- [46] As to how Mr Brockhurst came to be in Mrs Rawlings’ car, he explained that, by the middle of 1996, neither wanted their tutoring sessions to end. As he said, “I didn’t want her to go home and she didn’t want to go home but she clearly had to. And I’d ... walk out into the carpark with her. Just dawdle out there with her, sit in the car with her in the front seat and spend another 10 minutes with her. That was not unusual.”
- [47] He walked Mrs Rawlings to her car when it was dark and there was no occasion then for the boarders to be around the car parking spaces. Touching (though not on the breast or genitals), hand holding and hugging accompanied kissing in the car in 1996.

Relationship over the December/January school holidays

- [48] Mrs Rawlings and her husband planned to holiday in Europe at the end of 1996. She told Mr Brockhurst that she wished he could come with her. She told him that she would write to him often. Mr Brockhurst was “over the moon” about that. By this time, the notes they exchanged normally contained phrases like “I miss you” or “I want to see you”.
- [49] Mr Brockhurst went home to his family’s farm for Christmas. Mail was delivered to the Drillham Post Office in the first instance. Then, twice a week, it was delivered to its recipients. Mr Brockhurst could not wait for the mail delivery to his farm. Instead, he would ride his bicycle to the post office to see if there was any mail for him from Mrs Rawlings.
- [50] Mrs Rawlings sent him postcards every few days. He remembered one in particular. It was from Salzburg. It read, towards the bottom, “It’s very cold here Nick. I wish you were here next to the fire with me. xxoo MLR”.
- [51] She telephoned him once from overseas. He remembered that call because she ended it by telling him she had to get off the phone because it was costing a fortune. There was a fax machine at Mr Brockhurst’s parents’ farm. Sometimes, over the holiday period, Mrs Rawlings sent faxes to Mr Brockhurst. Her notes, faxes and the phone call included sentiments like “I miss you”; “I’m thinking of you” or “I wish you were here”.

- [52] Mr Brockhurst turned 14 in January 1997.

Relationship over semester 1, 1997

- [53] At the beginning of the 1997 school year, Mrs Rawlings invited Mr Brockhurst to call her “Meg” when others were not around. Mr Brockhurst felt their relationship was stronger after all of Mrs Rawlings’ correspondence to him from Europe. They spent even more time together, and each told the other than they *adored* them; or *really* liked them; or *really* missed them.

Farm visit

- [54] Around Easter of 1997, Mr Brockhurst decided that he would like Mrs Rawlings to see where he lived on the farm. He explained that he “thought [they] were going somewhere and it was like a relationship nearly at that stage and I wanted her to know more about me, my background, my family, where I came from, what I know”. He told Mrs Rawlings that he wanted to show her his farm. He could not remember whether she took much convincing, but it was arranged that she would spend a weekend with him there.
- [55] They left on a Friday night after school, at 7 pm, by bus. They arrived in Drillham at about 11 pm. The bus was not full – it was never full. They sat towards the back of the bus and kissed and touched during the journey. Mrs Rawlings put her hand on Mr Brockhurst’s leg and near his right hip.
- [56] Mrs Rawlings stayed at the farm on Friday and Saturday night. One morning, she came into Mr Brockhurst’s bedroom. She was in a nightie. He was wearing shorts and a t-shirt. She got into his bed and they talked and laughed and “it got physical” and “she put her hands on” Mr Brockhurst, touching his backside, arm and shoulder. They kissed and intimately hugged. They were looking at each other as they lay down together.
- [57] At 3 pm on the Sunday, they left Drillham for the return journey to school. There was no touching on that journey because it was daytime.

Relationship after Easter 1997

- [58] At around this time, the notes they exchanged began to use the language of “love”. Mrs Rawlings would write “I love you xxoo”. Mr Brockhurst was “excited” and “ecstatic”. He told her that he loved her as well – many times. If he heard love songs on the radio, he would write the lyrics out and include them in a note to her, to convey to her how he felt. She did the same.
- [59] His phone calls to her at night never stopped. The frequency of their physical contact increased. They would hug nearly every day – including after a class (if she was a substitute teacher for one of Mr Brockhurst’s classes) if no one was watching. Mr Brockhurst would deliberately be the last to leave the class. Kissing became “more regular”.
- [60] Mr Brockhurst continued to see Mrs Rawlings in her room. He would walk her to her car at the end of the night to spend time with her until she *had* to go to ensure she was home before her husband, who arrived home after work at about 10 pm.

April 1997

- [61] Other evidence established that Mr Brockhurst and Mrs Rawlings were seen by other school students in a compromising position in her classroom in April 1997. Mrs Rawlings was thereafter directed not to be alone with Mr Brockhurst, or any other schoolboy.
- [62] Mr Brockhurst was not told about what the other students saw. Nor was he told about the school’s direction to Mrs Rawlings that she was not to be alone with him.

But Mrs Rawlings said that it was after this direction, and after discussing things with Mr Brockhurst's mother, that they (she and Mrs Brockhurst) decided that he could telephone her at home. Mrs Rawlings said that it was only after April 1997 that he did so.

Intimate touching

- [63] Just before the June/July holidays of 1997, their relationship became more intimate. Mrs Rawlings touched Mr Brockhurst on the penis, on the outside of his clothing and then underneath, on his skin. Mrs Rawlings first put her hand on Mr Brockhurst's penis while they were alone together in her room. She fondled him. His penis became erect. He did not ejaculate. He was touching her while it occurred, but not on her vagina.
- [64] After two or three similar episodes, Mr Brockhurst wanted to "return the favour" but did not really know what to do. Mrs Rawlings showed him. She placed his hand on her leg, and slowly "crept" it up to her vagina, on the outside of her clothing (she often wore cargo pants). He rubbed her vagina. Then she guided or "helped" his hand underneath her pants, onto her vagina. He had his hands down her pants for about a minute. At about the same time, after an episode of kissing, she took his hand and placed it on her breast, on the outside of her clothing, and held it there. In the car, once or twice, a matter of days after he first touched her breast in her room, she "helped" him touch the skin of her breasts, under her shirt. Touching of that kind occurred about ten times.

Visits to Mrs Rawlings' house

- [65] Mr Brockhurst visited Mrs Rawlings' house. Sometimes, she drove him there. Other times, he ran there from the school. It took him about 25 minutes. He described the route he took in a way I found particularly convincing.⁵ His first visit was on a Sunday. She picked him up from the boarding house in the afternoon. He did not have to "sign out" of the boarding house. He was supposed to, because he was leaving the school, but things were relaxed on a Sunday. Mrs Rawlings' husband was not at home when she and Mr Brockhurst first arrived, but he returned home later that day. Mrs Rawlings showed Mr Brockhurst where she lived. He could remember only talking (no touching) on that occasion. Then she drove Mr Brockhurst back to the school. He had been away about two hours.

First occasion of sexual intercourse

- [66] The second term of 1997 ended on a Thursday. On Friday, Saturday and Sunday, there was a schoolboys' rugby carnival at Downlands College in Toowoomba. Mr Brockhurst was doing a course in refereeing and he was allowed to be part of the carnival to gain practical experience. Mrs Rawlings asked him to stay at her house for the carnival and he thought that was a great idea. He asked his parents for permission to do so and it was granted. As far as he could tell, it suited his parents too.
- [67] There were two bedrooms at the front of Mrs Rawlings' house, separated by a hallway (in the style of a worker's cottage). There was a loungeroom in the middle,

⁵ Transcript 2-73, Lines 30-35; Transcript 4-53, Lines 20-30.

running the width of the house and, at the back of the house, a kitchen, bathroom and third bedroom. As one is looking at the house from the road, Mrs Rawlings and her husband slept in the bedroom on the left-hand side of the hallway, at the front. Mr Brockhurst said he slept in the other bedroom at the front on the opposite side of the hallway. Mrs Rawlings claims he slept in the third bedroom – because her father-in-law was in the other front bedroom. Mr Brockhurst does not remember Mrs Rawlings' father-in-law being at the house at that time.

- [68] Mr Brockhurst did not recall anything in particular happening on the Friday night. He spent most of Saturday at the carnival at Downlands. Mrs Rawlings dropped him there and collected him at about 4 o'clock. Later they had dinner and he went to sleep. He was pretty tired from the day. Mr Brockhurst's understanding was that Mrs Rawlings and her husband were preparing to open their restaurant at around this time. Sometime over that weekend, he was shown the restaurant.
- [69] He woke mid-morning on the Sunday, between 9 and 10 am. Mrs Rawlings came into his bedroom. He did not understand her husband to be home. She got into bed with him. They kissed passionately. She undressed herself, and undressed Mr Brockhurst. She touched his penis and he became erect. She caused him to touch her vagina. As he was lying on his back, she got on top of him and put his penis into her vagina. He did not ejaculate during intercourse, but did so when she masturbated him, not long after intercourse. Whilst he had ejaculated before, that was the first time he had ejaculated in Mrs Rawlings' company.
- [70] After their sex, Mrs Rawlings took him to the carnival. He spent half a day there and then went home (to the farm) for the rest of the holidays.

Mr Brockhurst's parents found the defendant's correspondence

- [71] Other evidence established that, unbeknownst to Mr Brockhurst, during the holidays, his father found one of the faxes which Mrs Rawlings sent to him. Also unbeknownst to him, his mother went through his belongings and found other notes, faxes, letters et cetera from Mrs Rawlings to him, the content of which was affectionate and loving.
- [72] At the beginning of term 3, which commenced on 14 July 1997, without saying anything to Mr Brockhurst about it, Mr Brockhurst's parents took the correspondence which they found to TGS. The correspondence was taken from them – they presumed to be photocopied – and then given back to them. The Headmaster, Hugh Rose, was on sabbatical leave. They were advised to wait until his return to discuss matters further. Some of the correspondence found by Mr Brockhurst's parents was tendered at trial.
- [73] According to the defendant, during the school holidays, the plaintiff told her that his parents were going to complain to the school about her being too close to him. At Mrs Rawlings' instruction, Mr Brockhurst returned some of the correspondence to her.

Fellatio

- [74] Mr Brockhurst returned to school for term 3. About a month into the term, while they were alone in Mrs Rawlings' car, Mr Brockhurst asked her to fellate him. He

had seen that activity in magazines which the boys had in the boarding house. She did so, in total, about ten times before their relationship ended with her resignation from the school. She fellated him in her car; in her room at the school; and a couple of times at her house after Mr Brockhurst ran there.

Other occasions of sexual intercourse

- [75] On one cold and foggy day, Mr Brockhurst ran to Mrs Rawlings' house early in the morning and they had sexual intercourse under doonas in the lounge room watching "Rage" on the television. They had sexual intercourse one more time at school, in Mrs Rawlings' room, but it was "very fast". It occurred after 8 pm. They removed their pants only. Mr Brockhurst lay down on a desk in the room and Mrs Rawlings had sexual intercourse with him, on top of him. He did not ejaculate. He did not ejaculate often whilst with Mrs Rawlings and especially not if they were at the school.
- [76] As mentioned above, throughout their relationship, Mr Brockhurst sent Mrs Rawlings notes or letters setting out the lyrics of songs which captured how he felt about her. He sent her the lyrics of about a dozen songs, including "Truly Madly Deeply" by Savage Garden. He would send either the lyrics of the whole of the song, or just its chorus: whatever was "applicable" or "mattered".

Mrs Rawlings left TGS

- [77] Mr Brockhurst's Year 9 class went to camp for a week in early August (although Mr Brockhurst thought it was in September).⁶ Mr Rose was back at school by then. After Mr Brockhurst's parents complained to him about Mrs Rawlings' relationship with their son, the school counsellor, Robert Wood, drove to the camp, collected Mr Brockhurst, and drove him back to the school. Nothing was said between them until they were in Mr Wood's office. Mr Brockhurst found Mr Wood an imposing man. Mr Wood said, "there's something going on between you two". Mr Brockhurst understood him to be referring to Mrs Rawlings. He "sheepishly gave an indication" that there was, but he did not want to say too much so he "shut up shop". Although Mr Wood was included as one of the defendant's witnesses on the trial plan, he was not called to give evidence in her case.
- [78] The plaintiff remembered being spoken to by the Deputy Headmaster, Mr Buttenshaw, but he could not recall any of the conversation. Mr Buttenshaw, who was called in the plaintiff's case, was not questioned about it.
- [79] It was decided that the plaintiff ought to spend the balance of term 3 at home with his parents. From Mr Brockhurst's perspective, Mrs Rawlings then "just disappeared"; "vanished into ... thin air". Other evidence established that Mrs Rawlings tendered a letter of resignation dated 11 August 1997, effective as at 19 September 1997 (the last day of term 3).⁷ But it seems that she actually returned to the school in term 4 and stayed a week, to "settle in" her replacement.
- [80] Mr Brockhurst did not know what was going on. He called Mrs Rawlings. She told him she wanted to meet him, but she was not allowed back on the school grounds.

⁶ The school diary for 1997, which was tendered, notes the camp dates.

⁷ As per the school diary.

They met near the tennis courts. She told him she would not be returning to the school. He was heartbroken. He rang her again in less than a week. She picked him up from the boarding house and they went to the food court at the Clifford Gardens' shopping centre, which was close to her house. She told him that she could not see him anymore; their relationship had to end; they had to finish it. As Mr Brockhurst saw it, their relationship, which he thought was serious, "very close to nearly a husband and wife", was "just being thrown away".

The plaintiff left TGS

- [81] Later that year, Mr Brockhurst was "kicked out" of TGS by the Headmaster for bullying behaviour – including bullying a boy in his year (X). Mr Brockhurst said he had not bullied X. The only thing that he "really participated in" was "hazing". He did not elaborate upon what "hazing" involved. Mr Brockhurst admitted to playing football "rough" with X in the hallways of the boarding house but said that no one gave X a hard time because his brother was older (in Year 10), bigger and had a temper.

Mrs Rawlings' notes

- [82] Mr Brockhurst kept a lot of the letters/notes Mrs Rawlings wrote to him in a padlocked red toolbox which he had at school and brought home for the school holidays. He kept the ones that had "meaning" for him: that is, the ones that included phrases like "I love you"; "I miss you"; or "I wish you were here". He kept them to "reflect" on them. He thought his mother threw them out when the family moved from the farm at Drillham into the town of Miles in 1999 because she did not want to bring back old memories. (Mrs Brockhurst thought it was later than 1999 that she threw the correspondence out.)

The plaintiff's perception of the change in his behaviour during his relationship with Mrs Rawlings

- [83] As Mr Brockhurst saw it, his behaviour changed during the latter part of 1996. He felt he had something more in his life than school. He was only interested in Mrs Rawlings. He felt like a "social outcast" and his behaviour "dropped a bit". By "dropped a bit" he meant that he would not listen to his teachers. He received "Friday Detentions". He did not try very hard with his assignments.
- [84] After they had sexual intercourse for the first time, Mr Brockhurst "disintegrated" when it came to his school performance. As he saw it, he went from a polite and nice boy to one who challenged authority and was argumentative. He put no effort into his schoolwork. He did not respect many of the other teachers. As he saw it, he "had Mrs Rawlings" and knew she would protect him.
- [85] The boys in Mackintosh House asked questions about his relationship with Mrs Rawlings. Some asked him whether he could "hook [them] up" with her. Others asked what colour her "pubes" were. He was known as "the guy who was with the teacher".

The aftermath of the abuse

Schooling / personality after the abuse

- [86] After he left TGS, at the end of 1997, Mr Brockhurst went home to the farm heartbroken and angry. He said he was “completely different”. He was not interested in the things he would ordinarily be interested in.
- [87] In 1998 and 1999, he attended Miles State High. He did not do well. He could not “do” schooling anymore. His attendance was sporadic. His attitude was “rubbish”. He did not care what anyone thought of him. The only thing he cared about was playing a bit of sport.
- [88] His relationship with his parents fell apart. He understood that they knew that *something* changed him completely, but he did not tell them the whole story. He was angry all the time. He was angry because he thought his parents had deliberately stepped in to end his relationship with Mrs Rawlings. He was angry because they did not protect him from the school, which (as he saw it) fabricated a reason to kick him out.
- [89] In 2000, Mr Brockhurst’s parents got in touch with the registrar of TGS about his returning there for Year 11. His return was on the condition that he went to another boarding house. His attitude upon his return was “pathetic”. He wanted to “reset” but his old friends did not want to know him because he was “that guy who got kicked out of school for being with a teacher”. He did not bother with his schoolwork. He did not want to be a part of anything extra-curricular. He made friends with “the wrong crowd” – that is, the guys who smoked weed behind the footy oval. In 2000, he and others ordered products online (in their own names). He said they thought it was a joke and that nothing would arrive at school – but it did. Police were called and he was asked to leave the school, again. He pleaded guilty to fraud.
- [90] He then attended The Southport School. He lasted three weeks. He hated it. He said his “behavioural traits” – by which he meant not being bothered about going to school, not trying, not respecting his teachers, not being considerate of others – followed him. He thought the whole world was against him. He saw no reason to do anything because his life was “pretty rubbish”.
- [91] He went to Miles State School again briefly, before enrolling at St Joseph’s College, Nudgee for the balance of 2000 (year 11) and 2001 (year 12). His behaviour at Nudgee was a little better. It had an agricultural program. He tried to “reset” and make a go of it, but academically it was pointless: he was so far behind. He participated in sport and made acquaintances, but his Year 12 Certificate results were “diabolical”.

Post-school employment and relationships

- [92] In 2001, through Nudgee, he undertook a school-based apprenticeship as a mechanic. He did not last long because, once school ended, he had no accommodation in Brisbane.

- [93] Then he did not want to do anything. He wanted to be at home by himself. He did not want to see anyone. He wanted to step back from life.
- [94] By the time he was 20, he appreciated that what had happened to him as a 13 and 14-year-old was wrong. He was mad, angry, bitter and upset.
- [95] In 2003, Mr Brockhurst went overseas on a “scholarship” which arose out of his earlier involvement in a Young Endeavour program (a leadership program for young people, based on a sailing ship). He explained that, after he finished his Young Endeavour program, he was offered an opportunity to travel to the United Kingdom for a similar experience (his “scholarship”). It was “a big deal”. He had lunch with the Prime Minister (John Howard) and Rear Admirals. The scholarship lasted two or three weeks. He enjoyed the UK so much that he returned there in 2005 to play cricket.
- [96] In 2003, he was employed by an insurance company in Chinchilla.
- [97] In late 2004, he was employed by PDF Foods in Miles. He only lasted a month, mostly because he could not sleep and the lack of sleep caught up with him, leaving him exhausted and emotionally drained. He slipped back into his old habit of “not caring”. Also, he was drinking heavily – up to two six-packs of rum a day. He was smoking “a pack a day” and gambling on poker machines and horses. He was drinking and gambling for years, until he met his ex-wife when he was nearly 30.
- [98] In 2005, aged about 24, he travelled to the UK to play cricket. At the same time, he was working in a bar. He did not get on with some of his fellow workers. He was told that he could not play cricket if he could not get along with them. He returned home.
- [99] He obtained work at the Choice Service Station in Miles. He got on well with the manager, who was about his age. After a couple of months, he was offered a job in their new service station at Gin Gin. He and the manager both went to Gin Gin and “made a crack at it” for four or five months. It was during that time that he had his first relationship. But he did not want anyone to touch him and he avoided intimacy. His girlfriend ended the relationship. That “cut him to pieces” and he went home to his parents.
- [100] He obtained an IT traineeship with the Department of Education, based at a school at Wandoan, near Taroom. He acknowledged that it was a good opportunity, but he struggled being among teachers, who were the last people he trusted. He was also required to drive 70 kilometres each day, which took its toll on him because of his poor sleep. He “slipped back” into hating life and himself.
- [101] In late 2006, he got a job as a personal banker at the Westpac Bank in Toowoomba. It was difficult from the start. “Everything” came back to him. He hated work. He did not want to be out in the world. He did not want to do anything. He was still angry and felt “haunted”. He left the bank and was unemployed for about a year before commencing work at Elders in Dalby, in October 2007. As part of a certain Elders program, he sold satellite internet to primary producers. At the end of three months, the program ended. He had other work in Dalby available to him, but he was finding life difficult.

- [102] After Elders, he decided to try a “new experience” and obtained work teaching English in China. However, upon his arrival in China he was provided with a fraudulent work visa which claimed he had a doctorate from QUT. He would not work fraudulently, so he returned to Australia and reported the matter to QUT. He had been in China for about a month.
- [103] He was then unemployed for about three years. It was the worst he felt. He would not socialise – even in the company of his parents or with long time family friends. He spent half of the day in bed, “locked away from the world”. During those three years, he was offered a job with the council driving a loader, but he did not make it to work on the first day because he had not slept the night before.
- [104] He obtained work with the ANZ Bank at Chinchilla, commencing on 27 September 2010. He worked at the bank until February or March of the following year, 2011. He wished to take six weeks leave to visit the USA to meet his future wife, Katherine, whom he had met online whilst he was in China. He was not entitled to leave of that duration, so he resigned.
- [105] After six weeks in the USA, he returned to Australia and obtained work with QR National at Rockhampton as an apprentice diesel fitter. He began well, enjoying the manual work. But after two or three months, he “fell back into a hole”. Katherine’s visa process was taking a while. He was not sleeping. He could feel “the rut” coming. He spoke to his manager and was given time off, but he found himself arguing over trivial matters with his parents and accusing them of not having helped him since he was 13 at TGS. At times, he felt that no one would know whether he was “here” or not. He did not ever attempt to take his own life although he was “thinking it, perhaps” in the mid-2000s.⁸
- [106] He resigned from QR National in April 2012. Towards the end of 2012, he “got lucky” and was offered employment, via a labour hire company, as an apprentice diesel fitter at Peabody Energy at Dalby. This gave him a start in the mining industry. He worked on heavy machinery and enjoyed it although he was “having trouble” with drinking and gambling. He worked at Dalby until April 2013 by which time the mine was winding down.
- [107] Katherine arrived in Australia in November 2012 or 2013 (the plaintiff’s evidence was inconsistent). Her visa required them to marry within 90 days. They married on 8 January 2014 or 12 January 2013 (the plaintiff was inconsistent). Mr Brockhurst found, overall, that his relationship with Katherine made him feel better. He got on well with her family and felt “a little normal again”.
- [108] Mr Brockhurst’s next employment was with Cummins in Mackay which offered to continue his apprenticeship. However, Mackay was an expensive place to live and Katherine was not working. He resigned.
- [109] He then worked at the Commonwealth Bank in Toowoomba. As far as he was concerned, he was good at this work (personal banking) and enjoyed it. After three or four months with the bank, he was offered a role with Ritchie Brothers Auctioneers in Brisbane. They sold dozers, graders, dump trucks, mining equipment et cetera – things he was interested in.

⁸ Transcript 4-88, line 20.

- [110] He started with Ritchie Brothers in late November but was terminated over an issue to do with a Spanish medical certificate. He had fallen ill whilst on holidays in Spain with Katherine and did not return to work when he was expected to. Upon his return, he produced a medical certificate, which was in Spanish, that his employer did not accept.
- [111] His relationship with Katherine was “up and down”. He found it hard to be intimate with her and made excuses to avoid it. It felt like “an invasion of privacy all over again”. When they were intimate, he saw a “photo image” of Mrs Rawlings in his head, looking at him during their sexual intercourse when he was 14.
- [112] In July 2014, he was offered a job by Dominic Kerwick, a family friend, who owned an earthmoving business. He enjoyed that employment and remained in it for three years. Mr Kerwick was very good to him. Mr Kerwick trusted him and upskilled him. It was while working for Mr Kerwick that the plaintiff decided to see Shine Lawyers about his childhood sexual abuse. After seeing Shine Lawyers, Mr Brockhurst told Mr Kerwick what he had done (consulted Shine Lawyers) and why (in brief terms).
- [113] Katherine left Mr Brockhurst in November 2017. By that time, they were sleeping in different rooms. Katherine could not understand why Mr Brockhurst did not want to be intimate with her. Her leaving “nearly killed [Mr Brockhurst] for a long time”. It felt like 1997 again “when your heart gets crushed and you don’t know what’s going on and then that’s it, and the only thing you have to tell yourself is that you had to accept it, because there’s nothing you can do about it”. As Mr Brockhurst saw it, the trigger for the deterioration in their relationship was his going to Shine Lawyers and “asking for help”. The burden of going through the memories and explaining things in detail (to Shine), “punched [Mr Brockhurst] into the ground”.
- [114] In 2018, through a labour hire company, Mr Brockhurst obtained a position driving haul trucks and water carts at a coal mine at Dysart. He worked there until Easter of 2018 at which time he was offered an “upgrade” to an Anglo American coal mine at Lake Lindsay. He lasted there only two months, because he found the week on/week off roster difficult. During his week off, he lived, with other workers, in “camp”, in a “little donga”, with nothing to do but think of this legal process and what had happened to him as a child. He could not “handle” being away from his family and he left the position.
- [115] He was offered a job at the North Goonyella mine at Moranbah driving dump trucks and water carts. But he instead took up a position at the Peak Downs mine where he worked between June and November of 2018. He enjoyed the job, but after his sixth or seventh “swing” (that is, his rostered week off) he could feel himself “slipping” emotionally. He met with the project manager. He broke down in front of him and told him about this legal process and how difficult he found it. He was given leave and a transfer to Muswellbrook in New South Wales.
- [116] He could not find accommodation in Muswellbrook so did not work there. Instead, he took another job with Peabody, “the world’s biggest coal mining company”, in November 2018, because “you did not knock back an offer of work from them”. He stayed there until April 2019. He worked at Coppabella, which he found a very good site. He worked with people he found kind and genuine and he “made a

couple of good mates”. But by late January 2019, the pattern was repeating. He had been reliving the abuse (during interviews with experts for the purposes of this trial) which overwhelmed him. He tried to fight it. He called the Human Resources Manager one evening and told her about this case. He told her that he could not deal with the isolation of one week on/one week off and he was unable to concentrate, which was a safety risk. He was transferred to another mine, in a “residential role”, in July 2019. He was so proud that he had been offered that role, especially after telling his story. He thought the business would want nothing to do with his drama. He worked well there, even though he spent 11 ½ hours by himself a day.

- [117] By October 2019, he was receiving statements from the defendant’s lawyers, which included (what he saw as) lies. He could not sleep. He tried to remain calm but his patience was “pretty thin”. He was irritable. He was thinking about this case all the time. When it became “real tough”, he arranged a meeting with the Human Resources Manager and the lead engineer. He told them his story. They offered him leave without pay until after Christmas 2019. It was intended that he return on New Year’s Day 2020, but he felt terrible, embarrassed, and ashamed. He did not want to see them again. He did not think he could return to work because, even while he had been at home, he could not sleep. He was arguing with his parents in a way he could not control.
- [118] In about March of 2020, he obtained a job with Wolff Mining (via a labour hire company) but there was some contractual “misunderstanding” and, while he and other workers were paid, they stayed in camp. It did not last long.
- [119] His next employment was with BHP. During the Covid-19 pandemic, the composition of BHP’s workforce at mine sites was uncertain (because of travel restrictions) so it employed standby workers, who were required to work at a moment’s notice. Mr Brockhurst was employed on a paid, standby, basis for 11 or 12 weeks.
- [120] During this trial, he was due to start with Evolution Mining in West Wyalong on 16 March 2021. The mining company was to provide him with a house and base pay of \$97,000 per annum.
- [121] Over the years, he made three applications to join the Defence Force. He said that he was “vetted for a top secret [security] clearance”. He said he had never been unsuccessful in any of his applications to the Defence Force but, as I understood his evidence, he missed a certain intake date because he was waiting for his security clearance to come through.
- [122] He said that he was offered a position (or perhaps another position) in the Defence Force which he was unable to take up because he had “some small problems with [his] shoulder” which he was trying to fix.
- [123] Mr Brockhurst explained that he was able to get the many jobs he held since leaving school because he performed well in interviews and researched beforehand the companies to whom he applied for work. He learnt about the vacancies by either reading the newspaper (mostly the Chinchilla News); searching online; or through word of mouth. Also, from time to time, labour hire companies, would invite him

to take up a position at a mine because of his experience in/qualifications for the use of certain machinery.

Emotional aftermath of, and psychological treatment for, the sexual abuse

- [124] While the plaintiff was still at school, word of the defendant's relationship with him spread. He was known as "the guy kicked out of Grammar because of the teacher". But no one asked whether he was okay. As a younger person, he felt like he was "the King" when the boys said things like, "I wish I was you". As he got older, he hated it.
- [125] As Mr Brockhurst understood things, in 1997, the school "really ... put it on" his parents to arrange for him to see Dr Scott, a psychiatrist. He told Dr Scott that he had "physical relations" with Mrs Rawlings, but they brushed over the detail. He told Dr Scott that the school kicked him out; he was heartbroken; he missed it all and he was angry because something he loved had been taken away from him and he had no idea why.
- [126] Dr Scott wanted Mr Brockhurst to take medication (the name of which he could not remember), but he did not want to take it. He did not feel he had to take it. He did not feel that anything was wrong with him.
- [127] Mr Brockhurst saw Dr Scott from October 1997 until May 1998. Thereafter, apart from two phone calls to an employee hotline, and one visit to a psychologist (Ken Smith) in 2008, he sought no psychological treatment for the abuse until after seeing his present lawyers in 2015. He then saw his general practitioner and was prescribed an anti-depressant which he took only for a few days.
- [128] In addition to his "diabolical" school results, Mr Brockhurst was bitter and angry "at the world". He fought with his parents all the time, including over trivial things. His accusation that his parents had not protected him brought his mother to tears. Mostly he felt "why me?" He thought about Mrs Rawlings all the time. To this day, he experiences flashbacks of the first time they had sexual intercourse. He still does not trust people. He still cannot sleep. He is ashamed that he had to rely on his parents when he had gaps in employment. As he sees it, they "carried him" and he contributed nothing.

The plaintiff's occupational plans

- [129] If his results had been better, Mr Brockhurst would have considered studying agronomy, and a return to the farm. (But the farm was sold after the drought.) He loved using his hands and building things which made civil engineering an attractive option. He also thought about the Defence Force (to which he did apply) or the police service.

PART B CROSS-EXAMINATION OF THE PLAINTIFF

Inconsistency generally

- [130] The defendant submitted that I would find so many inconsistencies in the plaintiff's case, including between the plaintiff's testimony and his prior statements, that I could not be satisfied of his credibility or reliability. Many of the inconsistencies relied upon by the defendant were said to have been between the plaintiff's

evidence before me and statements he made to the three psychiatrists, Dr Leong, Dr Evans and Dr Chalk, who provided reports for the purpose of this litigation.

[131] The inconsistencies relied upon by the defendant to detract from the plaintiff's credibility and reliability did not cause me any concern.

[132] Putting to one side for the moment (a) statements made by the plaintiff in his applications to join the Defence Force; (b) his statements to the psychiatrists about the absence of past trauma; and (c) whether, in 1997, he told Dr Scott about the sexual abuse (which are considered separately below), in my view, the other statements which counsel for the defendant suggested were inconsistent were either

–

- not in fact inconsistent when evaluated reasonably. For example –
 - the plaintiff's ability to attend to the activities of daily living was not inconsistent with his suffering from depression; and
 - the plaintiff did not work for the Navy; but his statement to "Mandy" from Centrelink, about "working" overseas for the Navy in a civilian capacity undertaking "PR for Australia", was not inconsistent with his loose description of his "scholarship" arising out of the Young Endeavour program, which was delivered by Navy personnel;
- not in fact inconsistent because the different statements related to the plaintiff's conduct or behaviour at different periods of time over the two and a half decades since he was 13/14. Into this category fell statements about the quality of his sleep; mood; social interactions; energy levels; or alcohol consumption – which varied over the years;
- satisfactorily explained by the likelihood that the apparently inconsistent prior statement reflected misunderstanding or mistake on the part of the person to whom Mr Brockhurst spoke about what Mr Brockhurst in fact said. For example –
 - In evidence, Mr Brockhurst denied having gambling issues from the age of 16. He denied that he told Dr Leong that he did. I accepted his denial. He had no obvious reason to lie about the age at which his gambling issues onset. It is likely that Dr Leong misunderstood the information given to him by Mr Brockhurst;
 - In evidence, Mr Brockhurst said he had no memory of Mrs Rawlings jumping up and down on the sidelines of his *soccer* field, while he played as goalkeeper; and he denied telling Dr Evans so. He said in evidence that he had a memory of Mrs Rawlings on the sidelines of his rugby match. I accepted that Mr Brockhurst did not describe a *soccer* memory to Dr Evans. He did not play soccer. Dr Evans was likely mistaken. Regardless, this inconsistency was trivial;
- satisfactorily explained by Mr Brockhurst's unsurprisingly patchy memory of peripheral matters. For example, I accepted that Mr Brockhurst forgot, until he spoke to Dr Chalk in February 2019, that he had smoked cannabis once, in Amsterdam in 2003;

- satisfactorily explained by the different persons to whom Mr Brockhurst made the inconsistent statements or the context in which the separate statements were made. For example, I accepted that Mr Brockhurst was prepared to tell persons he trusted, including employers or human resource managers, about Mrs Rawlings' sexual abuse of him but was not prepared to disclose his sexual abuse in answers to questions contained in a Defence Force questionnaire;
 - satisfactorily explained by the plaintiff. For example, I accepted that Dr Chalk dealt briefly with contextual matters, such as the amount of alcohol the plaintiff consumed over his adulthood, and his gambling behaviours, and that the plaintiff responded briefly and not comprehensively to questions of that sort;
- or
- trivially inconsistent. For example, whether there were 29 or 32 children at his primary school; or whether he was 16 or 17 when he pleaded guilty to fraud.

[133] I will now deal with the three matters listed in [132].

Applications to the Defence Force

[134] In his three applications to the Defence Force, Mr Brockhurst lied about his school results and other achievements by overstating them. He lied about his mental health vulnerability by claiming that he had none. Under cross-examination, he admitted those lies. He said he lied to get to the next step in the Defence Force recruitment process. He rationalised his lies because he believed any information he provided would be checked if he were progressed to the next stage.

[135] The plaintiff's applications to the Defence Force were witnessed documents, made on statutory declaration. The fact that the plaintiff made false statutory declarations told against his credit, obviously. But the lies were ones told by a man suffering emotionally who was trying to "reset". As he said, "I was ashamed of who I am and I never wanted to talk about it".⁹ In my view, they did not detract from the credibility of his sworn testimony about his grooming and abuse or its aftermath.

Past trauma contributing to the plaintiff's symptoms

[136] The material provided to the psychiatrists included records from Mr Brockhurst's general practitioner. Those records included information to the effect that Mr Brockhurst had suffered "trauma" after a cosmetic procedure (liposuction) in 2010.

[137] Mr Brockhurst did not mention his liposuction or its aftermath when he was asked by each of the psychiatrists about "past trauma". However, I was not persuaded that, by his silence, he was deliberately hiding a "trauma" which may have contributed to his symptoms or that the psychiatrists were misled for the following reasons.

⁹ Transcript 3-81, Lines 3 – 4.

- First, the cross-examination of the plaintiff about this issue revealed that the trauma experienced by the plaintiff post liposuction was physical not psychological. It is not unreasonable to infer that the plaintiff did not understand the psychiatrists' question about past trauma to include physical trauma.
- Secondly, his trauma post liposuction *per se* was not of particular interest to the psychiatrists. Dr Evans and Dr Chalk were more interested in the body image issues which may have driven the plaintiff to a liposuction procedure because body image issues may have been the product of the sexual abuse.
- Thirdly, even if the plaintiff experienced relevant trauma post liposuction in 2010, that trauma could not explain the symptoms of his depressive disorder prior to 2010.

Plaintiff's statements to Dr Chalk about what he told Dr Scott

[138] The plaintiff's testimony was to the effect that he *told* Dr Scott that he and the defendant had "physical relations" but they "sort of just brushed over it".

[139] The defendant's position was that the plaintiff had *not* told Dr Scott that he'd been a sexual relationship with the defendant because he had not been in such a relationship with the defendant. Mr Brockhurst was cross-examined with a view to establishing that he *told* Dr Chalk that he had *not* discussed "sexual issues" with Dr Scott. In other words, the defendant's position was that the plaintiff's statement to Dr Chalk (as per Dr Chalk's report) was true but his testimony was not.

[140] Dr Chalk's report was in fact inconsistent about what the plaintiff said to Dr Scott (my emphasis) –

- at page 7 of his report dated 22 February 2019, under the heading "History", Dr Chalk stated –

He then [having been asked to leave TGS] seems to have seen Dr Douglas Scott, a consultant psychiatrist. He saw him for a number of months and **apparently told him what had occurred**, as he had done to the school counsellor.¹⁰

- at page 10 of the same report, under the heading "Current Medication and Treatment", Dr Chalk stated –

Mr Brockhurst saw Dr Scott in 1997 and he was apparently prescribed Lovan at that time. He seems to have had treatment over a relatively brief period of time although **apparently the issues were not disclosed** ...

[141] There was therefore no clear inconsistency between the plaintiff's testimony and his statements to Dr Chalk about what he told Dr Scott.

[142] However, *even if* the plaintiff made inconsistent statements about what he told Dr Scott, that inconsistency *per se* would not cause me to be concerned about the

¹⁰ Mr Wood.

plaintiff's credit on critical issues. More relevant than what Mr Brockhurst *told* Dr Chalk about his discussions with Dr Scott is what he *in fact said* to Dr Scott.

- [143] Dr Scott cannot now remember the plaintiff. Nor does he have relevant records. Dr Scott said in evidence that he was required to report the sexual abuse of a minor. He made no such report about Mr Brockhurst which, at face value, suggested that Mr Brockhurst did not tell Dr Scott about the defendant's sexual relationship with him. Even though I was inclined to accept the plaintiff's evidence about what he told Dr Scott, for the benefit of the defendant, I evaluated the plaintiff's credibility on the basis that he did not disclose to Dr Scott that he had been sexually abused.
- [144] There was once a theory that a "genuine" victim of sexual abuse would complain at the "first reasonable opportunity". That theory has long been debunked. At the relevant time, the plaintiff was a heart-broken 14-year-old boy, displaying difficult behaviours in the aftermath of the end of a relationship with a woman he adored: a relationship which he did not then understand as "abusive".
- [145] The plaintiff may not have told Dr Scott about the extent of his relationship with Mrs Rawlings. Indeed, he did not tell his parents for decades. But I did not find that the plaintiff's years of silence about his abuse, including (if it were the case) to Dr Scott, told against his credit. In any event, I found that he made a "complaint" of sorts before he saw Dr Scott and well before these proceedings commenced. I accepted the plaintiff's evidence that, in August 1997, he sheepishly intimated to Mr Wood, the school counsellor, that there was "something going on" between himself and the defendant, even though I did not hear from Mr Wood.¹¹ Apart from the fact that I found the plaintiff a credible witness overall, his evidence about his interaction with Mr Wood had a ring of truth to it.¹²
- [146] While I am dealing with Dr Scott, it is worth discussing one of the closing arguments for the defendant which was along these lines –
- (a) Because –
 - (i) the plaintiff did not tell Dr Scott that he had been sexually abused by the defendant, and/or
 - (ii) Dr Scott made no report of the plaintiff's sexual abuse to child protection authorities;
 - (b) I would not be satisfied that the plaintiff had been *referred* to Dr Scott *because* he had been sexually abused;
 - (c) Therefore, the plaintiff had not been sexually abused;
 - (d) It followed that Dr Scott was treating him for an (unidentified) organic condition; and
 - (e) That organic condition and his ODD explained his presentation to the psychiatrists.

¹¹ I am not suggesting that this evidence would amount to evidence of preliminary complaint as permitted by the *Criminal Law (Sexual Offences) Act 1978*, if this were a trial of a sexual offence.

¹² I note that the plaintiff told Dr Chalk that he had disclosed to Mr Wood (although I appreciated the limitation of that prior consistent statement).

- [147] With respect, that argument was illogical.
- [148] Proposition (b) did not follow from proposition (a)(i) and/or (ii).
- [149] Proposition (c) did not logically follow from propositions (a) and/or (b).
- [150] Further, as to (a)(i): I have dealt with the failure of a child to complain above.
- [151] Further, as to (a)(ii): From May 1980, the *Health Act Amendment Act* 1980 required a medical practitioner who suspected, on reasonable grounds, “the maltreatment or neglect of a child in such a manner as to subject ... the child to unnecessary suffering or danger” to notify the relevant authority “by the most expeditious means available” of his or her suspicion.¹³ Whilst the community now is well aware of the devastating effects of “consensual” sexual activity between an adult and a child, I am not sure that in 1997 it was understood that the female defendant’s sexual relationship with the male plaintiff was “maltreatment ... in a manner as to subject ... the child to unnecessary suffering or danger”.
- [152] Further, as to (b), at a minimum, the evidence was to the effect that TGS arranged for the plaintiff to see Dr Scott after TGS became aware that the defendant sent loving correspondence to the plaintiff, months after she had been seen with him on her lap and warned to keep her distance from him. It is reasonable to assume that Dr Scott was at least aware that there was an issue with the relationship between the defendant and the plaintiff. But simply as a matter of logic, proposition (c) did not follow from proposition (b). The “referrer’s” understanding of the situation may or may not have reflected the reality of it.
- [153] Proposition (d) was speculative. Indeed, the defendant took her speculation further by making an unsustainable submission that the plaintiff had a “serious psychological condition that could affect his reliability as a historian and a witness generally about incidents and events he says took place in 1996 and 1997”.
- [154] No witness was asked to comment on proposition (e) (on the unlikely assumption that the proposition could be sensibly put without knowing what the “organic condition” was).

“Bad” behaviour

- [155] As noted above, this matter proceeded on the agreed basis that the plaintiff demonstrated ODD behaviours prior to his grooming and abuse by the defendant. Also, the plaintiff admitted that there had been a deterioration in his behaviour during and after his grooming and abuse. I therefore struggled to understand the point of the cross-examination of Mr Brockhurst about his “bad behaviour”. Perhaps the defendant’s counsel was hoping to expose Mr Brockhurst as a liar if he were to falsely deny an instance of bad behaviour. But – assuming that was the point – the difficulty in making it was that Mr Brockhurst was cross-examined about his “bad behaviour” in general terms only, even though Mrs Rawlings gave very detailed examples of it. For example, Mr Brockhurst was asked whether he was “defiant”, whether he “made fun” of others, whether he “mucked around” et

¹³ Section 76K *Health Act Amendment Act* 1980. Teachers were not subject to mandatory reporting until 2006.

cetera. Generally, his responses to non-specific allegations like these were that he could not recall having behaved in that way, or he denied it. No further detail was put to him. I did not find this cross-examination of any assistance in my evaluation of the plaintiff's credit.

Cross-examination about the plaintiff's motive for his claim

[156] The defendant's theory as to why the plaintiff brought this claim included the following: even though their relationship was not intimate or sexual, the plaintiff was infatuated with the defendant; he had "abandonment issues" because he was adopted; and he sought to punish her for abandoning him as a 14-year-old when she left TGS.

[157] Under cross-examination, the plaintiff denied having "abandonment issues" because he was an adopted child who was sent to boarding school. He said he did feel abandoned by Mrs Rawlings when he was 14, but he denied bringing this claim because she hurt him. He said that he brought this claim to stand up for himself because he was sick of living with what Mrs Rawlings had done to him. He was not looking to punish her – he was looking for closure for himself. I accepted the plaintiff's explanation of his motive for bringing this claim. And indeed, even if he brought the claim because he felt "abandoned" by Mrs Rawlings, it did not follow that his allegations against her were false.

Lack of opportunity

[158] A long time was spent cross-examining the plaintiff about the layout of TGS and the location of its car parks. The point of this cross-examination was to lay the foundation for the defendant's submission that the abuse would not have occurred at the TGS locations nominated by the plaintiff (the defendant's classroom and in her car in certain parts of the TGS car parks) because of the risk that they would be seen in those locations.

[159] The evidence about the number of people around the school at relevant times did not cause me to doubt the plausibility of the plaintiff's version of events. Evaluating the evidence by drawing on common sense and life experience, I found that only a few people (including students) would have been walking around the school *after dark* near Mrs Rawlings' classroom. Of course, Mrs Rawlings took a risk in behaving intimately or sexually with the plaintiff anywhere on TGS grounds. But it is reasonable to assume that Mrs Rawlings chose her moments. And of course, *they were seen* in compromising circumstances, at least once in the defendant's classroom after dark.¹⁴ And they were seen alone together, interacting playfully, in 1996, after dark, in the area outside Mackintosh Boarding House.¹⁵

[160] Drawing on common sense and life experience, I found that the defendant's evidence (including that called by her) overstated the volume of foot/vehicular traffic in the TGS carparks at night. Generally, the car parks of schools – even boarding schools – are quiet after dark. I accepted that, on various evenings during school terms in 1996 and 1997, adults drove to and from TGS to attend meetings. I

¹⁴ Perhaps twice, if Donald McConnel and Stewart Selby were describing different incidents (see below).

¹⁵ By Derek Ranclaud.

accepted that, on various evenings during school terms in 1996 and 1997, students and others were driven, or drove, to and from the school for rehearsals or the like. But obviously, whilst those present on school grounds at night were at meetings or in rehearsals, they were not in the car parks.

- [161] Mr Brockhurst's evidence was to the effect that he and Mrs Rawlings stayed in her car until she had to leave to be home before her husband. It is therefore reasonable to infer that they were in the car park together at a time closer to 10 pm than to 6 or 7 pm. Nothing in the evidence assisted me to understand how late meetings or rehearsals or the like usually lasted. Nevertheless, I considered it reasonable to infer that intimate or sexual activity in Mrs Rawlings' car only occurred when it was judged "safe" to engage in it because others were not around. That is not to say that there was no risk that they might be seen in the carpark. But it was not a surprise that they were not.
- [162] I found that the cross-examination of the plaintiff designed to establish lack of opportunity did not detract from his credibility or reliability. In fact, I found Mr Brockhurst's explanation as to how he came to be in Mrs Rawlings' car compelling, and consistent with life experience. As he explained, they did not wish their time together to end, so he walked her to her car and sat in it with her until it got to the point where she *had* to leave to ensure she was home before her husband.

PART C THE DEFENDANT'S EVIDENCE

Overview

- [163] In broad terms, the defendant's evidence was to the following effect. She was not involved romantically, intimately, or sexually with the plaintiff. She had a very close and supportive – but appropriate – relationship with him, which was encouraged by his mother. She was alone with the plaintiff in her classroom only once (on 12 April 1997). She was never alone with him in her car. Nor was she ever alone with him at her house. She did not invite him to spend the weekend of the Downlands rugby carnival at her house. Her loving and affectionate correspondence with the plaintiff had to be viewed in the light of his mother's encouragement of their relationship and in the light of her concerns that the plaintiff might self-harm. When viewed in that light, the correspondence did not reveal her romantic feelings for him. Rather, it was "motivational" and intended to improve his self-esteem.
- [164] Mrs Rawlings commenced her evidence in chief with a detailed elaboration of her good works over many years. They included coordinating a project designed to encourage community engagement for those with mental illness, during which she saved two persons after their attempted suicides.
- [165] She clarified aspects of the plaintiff's evidence. She explained that she was responsible for the pastoral care of the Year 8 boys (not 8 and 9) of Mackintosh House in 1996. There were nine or ten in the group. Pastoral care groups were called tutor groups. She also provided "extra help" to students who needed it – in her classroom or in the library. She provided "prep help" every Wednesday, from 6.45 pm until 8.45 pm in her classroom. Prep help was open to anyone but tended to include students from Years 8, 9 and 10, who would come and go over that two-hour period. I noted that the end time for prep help was not inconsistent with the

plaintiff's evidence of walking Mrs Rawlings to her car and staying there with her until she had to leave to be home before her husband finished work at 10.

1996

- [166] On the plaintiff's case, Mrs Rawlings invited Cecily Brockhurst to a parent/teacher interview at the end of Term 1 as part of her grooming of the plaintiff and his family.
- [167] Mrs Rawlings said that she invited Mrs Brockhurst to attend the interview because she was concerned "from a pastoral tutor perspective" that Mr Brockhurst was not responding to the detention system which was the preferred system of discipline at the school. Her version of that parent teacher meeting, and the information conveyed by Mrs Brockhurst to her during it, was different from Mrs Brockhurst's.
- [168] I did not accept that this invitation to the parent/teacher interview was part of Mrs Rawlings' grooming of the plaintiff and his parents. However, I proceeded on the basis that the defendant *believed* that Mr Brockhurst had self-esteem and abandonment issues because he was an adopted child, on the strength of what she had been told by Mrs Brockhurst (whatever that actually was). But of course, the more vulnerable Mrs Rawlings understood Mr Brockhurst to be, the more serious her breach of trust.
- [169] With some caution, and to the benefit of the defendant, I proceeded on the basis that Mrs Rawlings told Mrs Brockhurst that she wished to implement a Behaviour Recovery Program (BRP) with Mr Brockhurst¹⁶ which would involve her leaving notes in his diary, reminding him to be of good behaviour. Mr Brockhurst had no idea about any BRP. That is not surprising. I doubt that Mrs Rawlings would have expressly told the 13-year-old plaintiff that she was implementing a BRP for him. Of more significance is Mr Brockhurst's strong denial that Mrs Rawlings placed *sticky notes* in his diary to remind him how he should behave.
- [170] Mr Brockhurst Senior gave evidence that he and his wife found sticky notes from Mrs Rawlings among their son's things (see below). Mrs Rawlings' evidence about the BRP provided the basis for her innocent explanation of the evidence that she had given the plaintiff notes at school. She said that BRP notes were the *only* notes she gave Mr Brockhurst. I did not believe her. In fact, Mrs Rawlings' own correspondence (discussed below) proved that she gave Mr Brockhurst affectionate, non-BRP notes at school.
- [171] Mrs Rawlings said she did not page Mr Brockhurst and the paging system was "dreadful". She said that students were not allowed to page teachers but that an "office lady" would get a teacher from the staff room at a student's request. The propositions that the paging system was dreadful and that students were not allowed to page teachers were not put to Mr Brockhurst. Nor was any other witness familiar with the school questioned about these matters. I did not need to make a finding about the paging system to decide this case. But I considered the evidence about paging in the plaintiff's account a believable detail which was unlikely to be fabricated.

¹⁶ Mrs Brockhurst did not recall a discussion about a Behaviour Recovery Program.

- [172] In the first term of 1996, Mrs Rawlings updated Mrs Brockhurst on her son's behaviour about once a fortnight, by way of telephone calls which she (Mrs Rawlings) mostly initiated. Mrs Brockhurst also telephoned her. Mrs Rawlings felt that she and Mrs Brockhurst were at the beginning of a friendship.
- [173] Mrs Rawlings denied attending Mr Brockhurst's cricket matches during the first term of 1996. She said their relationship at the time was "pretty fractured". Nor did she attend his rugby matches in the second or third term of 1996. She was not required to because her extra-curricular activity was the school newspaper. Her testimony was inconsistent with her further amended defence, which was filed on 3 March 2021 – the first day of the trial – in which she admitted that she attended the plaintiff's sporting events from mid-1996.¹⁷
- [174] She said that in the fourth term of 1996 there were phone calls both ways between herself and Mrs Brockhurst. She told Mrs Brockhurst about her planned European holiday. They arranged for Mrs Brockhurst, Nicholas Brockhurst and his sister to stay at Mrs Rawlings' house to allow Miss Brockhurst to attend work experience.
- [175] Mrs Rawlings said that Mrs Brockhurst told her that it might be nice if she sent postcards to Nicholas Brockhurst from Europe, from places which he had studied in history, because he and Mrs Rawlings had built up such a nice rapport. This evidence provided Mrs Rawlings' explanation for sending Mr Brockhurst postcards while she was on holidays although she denied sending the postcard which included her wish that he were there with her next to the fire. I accepted that such a postcard was sent. Mr Brockhurst described it in believable detail and its tone and content were consistent with the stage of their relationship at that time.
- [176] Mrs Brockhurst denied suggesting that Mrs Rawlings send postcards to Mr Brockhurst. I accepted her denial. I considered it an unlikely thing for her to do. But *even if* Mrs Brockhurst suggested that Mrs Rawlings correspond with her son over the holidays, it could not sensibly be suggested that she encouraged correspondence which included Mrs Rawlings' wish that 13-year-old Nicholas was with her by the fire as she holidayed with her husband in Europe. Indeed, *if* Mrs Brockhurst was in fact relying on Mrs Rawlings to correspond with her son for his benefit, then the more brazen and egregious Mrs Rawlings' breach of trust.

1997

- [177] Mr Brockhurst was assigned to Mrs Rawlings' General Studies (or special education) class in the first term of Year 9. Mrs Rawlings said Mrs Brockhurst was "quite friendly by then". She rang Mrs Rawlings a lot, including at home at night. Sometimes, Mrs Rawlings' husband answered the calls (as he confirmed in evidence).
- [178] Mrs Rawlings gave evidence of Mr Brockhurst "going mad" twice when his parents arrived to collect him for dinner or overnight leave. On both occasions, she was

¹⁷ Paragraph 16 of the amended statement of claim (which was in its original form) asserted that the defendant began to attend the plaintiff's sporting events from about mid-1996. In her amended defence, filed on 3 March 2021 (day 1 of the trial), the defendant admitted to attending the plaintiff's sporting events. She added that the plaintiff's "team" (she did not nominate a sport) included other students she tutored or taught; she was not only interested in the plaintiff; and she was expected to attend school sporting events, consistent with her pastoral care role at TGS.

asked to reason with Mr Brockhurst, and she did. She also attended at the Motel Glenworth on one occasion, where Mr Brockhurst was staying with his parents on overnight leave. Mrs Brockhurst told Mrs Rawlings that she was concerned they might be asked to leave the motel because Nicholas was yelling a lot. She asked Mrs Rawlings to come and settle him down. By the time of Mrs Rawlings' arrival, Mr Brockhurst was sobbing. He said he was being bashed by the boys after lights out in Mackintosh House.

- [179] Mrs Rawlings said that Mrs Brockhurst invited Mrs Rawlings and her husband to stay at the Brockhursts' farm one weekend. Mrs Brockhurst said that Mrs Rawlings invited herself (and herself only). The plaintiff's evidence was that it was his idea for Mrs Rawlings to visit his farm – but he did not explain how the visit came about.
- [180] I considered it more likely that Mrs Rawlings initiated the farm visit including because I found Mrs Brockhurst's account of her conversation with Mrs Rawlings about it inherently believable. According to Mrs Brockhurst, Mrs Rawlings said she wanted to see "where Nicholas lived and his environment". Mrs Brockhurst recalled observing to Mrs Rawlings that she would be a busy person if she visited the homes of all the boys she was working with or supporting. Regardless, what mattered more than who invited whom to the farm is what happened there between the plaintiff and the defendant.
- [181] Mrs Rawlings said that shortly after she arrived at the plaintiff's farm, she sat on the end of Mr Brockhurst's bed; he sat near his pillow and Mrs Brockhurst was standing near the door. This evidence provided the basis for Mrs Rawlings' innocent explanation for Mrs Brockhurst's evidence that she'd heard and seen Mrs Rawlings in her son's room in her nightwear over that weekend. I preferred Mrs Brockhurst's account of what she saw, and when (discussed below), which was consistent with Mr Brockhurst's evidence.

April 1997

- [182] Some of the boarders saw Mrs Rawlings in a compromising position with Mr Brockhurst in her classroom in the evening of 12 April 1997, a Saturday. Four boarders were spoken to by Mr Buttenshaw about what they saw and his notes of what they said to him were in evidence and are discussed below. Mr Buttenshaw then spoke to Mrs Rawlings. According to Mrs Rawlings: he accused her of having Mr Brockhurst sit on her lap; told her that she was leaving herself open to "accusations"; and warned her not to be alone again with Mr Brockhurst or any boy.
- [183] Mrs Rawlings gave evidence to the effect that the boys had seen something innocent. She also said, more than once, that this was the only occasion on which she was alone with the plaintiff in her classroom.
- [184] She said she'd been at TGS that Saturday (during the day) because the soccer team she coached was playing. She saw Mr Brockhurst's parents there. They wanted to go home but were in possession of some of their son's belongings, including his school hat. They asked Mrs Rawlings to put them into her car for Mr Brockhurst to retrieve once he'd finished his sport. Mrs Rawlings said she forgot the items were in her car and went home. Sometime later, Mrs Brockhurst rang her and asked her to go to the school to meet her son because he needed his hat and was in a bit of a panic. (Mr Brockhurst said he would be unlikely to care about his hat on a Saturday

– which, had the ring of truth to it.) Mrs Rawlings drove to school and went into her classroom to meet Mr Brockhurst. She decided to get some printing done while she waited for him. She was having trouble with the printer when Mr Brockhurst entered her room. He offered to help. She said that he was in his “rugby playing gear, including his head wear”. Mrs Rawlings said that Mr Brockhurst told her to “shove over” and he sat down beside her, on the one chair – not on her lap. He fixed the printer. Then he started to talk about his rugby game and began to re-enact some of his moves with her. She could not, in her evidence in chief, remember any of the moves Mr Brockhurst re-enacted or the type of moves they were. She said that nothing inappropriate happened. Under cross-examination, Mrs Rawlings was asked whether Mr Brockhurst’s re-enactments involved him physically touching her. She said, “I don’t recall him physically touching me, no”.

[185] This version of events, in which there was no physical contact between them on the Saturday evening, was not consistent with the propositions put to Mr Brockhurst by the defendant’s counsel about what happened. It was suggested to Mr Brockhurst that, in the course of re-enacting the way in which he tackled an opposing player who was “trying to score a try”, he “went in and wrapped [his] hands around” Mrs Rawlings. It was suggested to Mr Brockhurst that although he was “trying to get” Mrs Rawlings to play the role of the person on the opposing team, she did not do so. She asked him to stop and told him to head off to have a shower and dinner.

[186] Mrs Rawlings was not cross-examined about the difference between the propositions put by her counsel to Mr Brockhurst about this incident and her own evidence of it. Because Mrs Rawlings was not provided with an opportunity to explain this significant inconsistency, I did not rely upon it in any way.

[187] Mr Brockhurst denied being in his rugby gear/head gear so many hours after the end of his game. On the evidence, the boys were required to change out of their rugby uniform into their school uniform after they played to support other teams, including the Firsts. Mr Brockhurst denied every other aspect of Mrs Rawlings’ description of what went on in her room that Saturday. He denied the proposition that this was the only time he had been alone with Mrs Rawlings in her classroom. He said, and I accepted, “I was alone in that classroom of hers [with her] dozens of times in 1996 and 1997”.

[188] Mrs Rawlings said that after she was accused by Mr Buttenshaw of leaving herself open to accusations, she told Mrs Brockhurst that she would not be able to give Mr Brockhurst the support “they” had “agreed” she would give him at school. She said Mrs Brockhurst suggested that Mr Brockhurst call Mrs Rawlings at home. I preferred Mr Brockhurst’s evidence that he telephoned Mrs Rawlings at home before April 1997. I found his explanation – that he called her on days he did not see her – persuasive. Further, it was not inconsistent with the evidence of Mr Ranclaud (see below) that Mr Brockhurst was always on the phone in 1996; and consistent with the evidence of Mrs Rawlings’ husband that he answered a few phone calls from Mr Brockhurst to his wife on the weekends in 1996.

[189] Mrs Rawlings said that Mrs Brockhurst – rather than her son – invited her to her sister’s open garden. This was denied by both Mrs Brockhurst and Mr Brockhurst. I preferred the evidence of Mr Brockhurst and his mother to that of Mrs Rawlings. I accepted that Mr Brockhurst invited Mrs Rawlings to his aunt’s open garden

because it was, as he explained, something with an element of romance to it, consistent with their relationship. As it turned out, Mrs Rawlings did not attend the open garden.

The rugby carnival

- [190] Mrs Rawlings said that Mrs Brockhurst asked whether Mr Brockhurst could stay with her to attend the rugby carnival at Downlands. Mrs Brockhurst denied that the suggestion came from her. She said it came from Mrs Rawlings. I preferred the evidence of Mrs Brockhurst. A note from Mrs Rawlings herself (see below) supported Mrs Brockhurst's evidence that it was Mrs Rawlings' idea and that it was the Brockhursts who might need persuading.
- [191] The same note reveals Mrs Rawlings' enthusiasm for the plan, contradicting her evidence that she only *reluctantly* agreed to allow Mr Brockhurst to stay with her.
- [192] Mrs Rawlings said that nothing intimate or sexual could have happened between her and Mr Brockhurst that weekend because her husband or father-in-law or both were always present in the house when Mr Brockhurst was there and also because she was experiencing a heavy menstrual period at the time. She said she was about to recall that she was menstruating at the time because she recalled feeling "paranoid" that, in her one-bathroom house, Mr Brockhurst would find out that she was menstruating and that her period would be a topic of conversation at school. Whether that was true or not, a menstruating woman may still engage in sexual intercourse.

The June/July 1997 holidays

- [193] Mrs Rawlings said that she had a lot of contact with Mrs Brockhurst after the rugby weekend (once Mr Brockhurst had returned home to his parents for the balance of the holidays). She said Mrs Brockhurst became anxious about her son's behaviour. He threatened to hurt himself whilst at home. This was denied by Mrs Brockhurst and not put to Mr Brockhurst, although Mr Brockhurst frankly admitted that he wanted to be with Mrs Rawlings, rather than at home with his parents, after they'd had sex.
- [194] Mrs Rawlings said Mrs Brockhurst asked her to telephone Mr Brockhurst to settle him down on one occasion during the holidays. She said that, when she phoned, she could hear Mr Brockhurst Senior telling Mr Brockhurst to get off the "fucking" phone. Mrs Rawlings said that she and Mrs Brockhurst agreed that the phone call idea had not been very successful, and that Mrs Brockhurst suggested that she (Mrs Rawlings) therefore write to her son.
- [195] Mr Brockhurst Senior did not recall this incident. Nor did Mr Brockhurst. Mrs Brockhurst said she "did not believe" that she asked Mrs Rawlings to call Nicholas. She said that she could not recall Mr Brockhurst Senior ever swearing at his son. I struggled to understand why Mr Brockhurst Senior would want Mrs Rawlings to get off the phone to his son if the purpose of her phone call was to calm him down (as she had done at the Motel Glenworth, for example).
- [196] Mrs Rawlings' evidence about her phone call to the house and its aftermath was designed to set up Mrs Rawlings' explanation for her personal and affectionate

faxes and notes to Mr Brockhurst which were in evidence. But I did not accept that Mrs Rawlings wrote to Mr Brockhurst at his mother's suggestion or in this context. Nor did I accept that Mrs Rawlings only began writing to Nicholas (other than for the purposes of the BRP) *after* this phone call during the holidays. That was plainly a lie. Mrs Rawlings' own correspondence confirmed Mr Brockhurst's evidence that she sent personal/affectionate notes to him before the end of term 2.

[197] Mrs Rawlings gave other evidence about the plaintiff's mother seeking her assistance to deal with the plaintiff's difficult behaviour, which is unnecessary to detail. I accepted that Mrs Brockhurst sought Mrs Rawlings' help in dealing with Nicholas from time to time.

The complaint to the school and contact with Mrs Brockhurst thereafter

[198] Mrs Rawlings said that the plaintiff became too dependent upon her, which caused his parents to (unfairly) complain to the school about her.

[199] She said that Mrs Brockhurst contacted her several times after the plaintiff left TGS, including by sending her a Christmas card and a card to congratulate her on the birth of her first child. She said that Mrs Brockhurst apologised to her for making a complaint about her and said she recognised that Mrs Rawlings only had the best intentions towards Nicholas. Mrs Rawlings made contemporaneous notes of a telephone call from Mrs Brockhurst on 3 February 1999 (discussed below). In more recent times, when they had seen each other at Mrs Rawlings' fish and chip shop and at Mrs Brockhurst's work function (which was catered for by Mrs Rawlings' business), Mrs Brockhurst had been friendly to her.

[200] Mrs Brockhurst's evidence was to the effect that she had not maintained contact with Mrs Rawlings after Mr Brockhurst left TGS and that her contact with Mrs Rawlings more recently had not been friendly.

[201] I accepted that Mrs Brockhurst was in contact with Mrs Rawlings between Mr Brockhurst's leaving TGS and February 1999. I proceeded on the basis that their more recent contact at the fish and chip shop was cordial at least. I found myself unable to reach a finding about the way in which the women interacted at Mrs Brockhurst's work function, but such a finding was not necessary for me to resolve this matter as I have explained below.

Lack of opportunity

[202] Mrs Rawlings was in evidence in chief for about four hours. About half of that time involved her explaining the layout of the school, and the location of her classroom and the car parks, with a view to establishing a lack of opportunity for sexual abuse because of the risk of being seen.

[203] Much of this evidence dealt with the people and traffic around the school and in Mrs Rawlings' room during the school day. It was therefore mostly irrelevant. The plaintiff did not suggest that relevant activity occurred during the school day other than occasionally when Mrs Rawlings was a substitute teacher for his class.

[204] Regardless, I accepted that there was a risk that they would be seen together. But I concluded that it was a risk that Mrs Rawlings was willing to take.

[205] On a related matter, Mrs Rawlings also said that she did not park in a certain TGS car park nominated by Mr Brockhurst as one of the locations at which they had been alone together in her car. She said her husband did not wish her to park her car there because of the risk that bunya nuts (from the trees around the location) might fall on it. Mr Rawlings, who gave evidence after his wife, was not asked in chief about his instruction to her about the risk of bunya nuts falling on the car. Nor was he asked about it in cross-examination. For what it's worth, cross-examination of Mrs Rawlings about the frequency with which bunya nuts fell went nowhere. But *even if* Mrs Rawlings' evidence about bunya nuts and the car was true, this was a matter of little moment. It did not detract from the credibility of the plaintiff's evidence that he was alone with the defendant in her car in the evenings, in a TGS car park, wherever at TGS the defendant parked her car.

PART D CECILY BROCKHURST

[206] Mrs Rawlings attributed blame for the closeness of her relationship with the plaintiff to his mother who had become, she said, her friend.

[207] Generally, Mrs Brockhurst's evidence was that she was grateful for the attention Mrs Rawlings gave her son and for Mrs Rawlings' willingness to "support" him, but that she and Mrs Rawlings were not particularly close.

[208] I have already discussed Mrs Brockhurst's responses to some of the defendant's assertions. Additionally, Mrs Brockhurst said – in response to propositions put to her by the defendant's counsel – that she did *not*:

- pursue a friendship with Mrs Rawlings;
- initiate phone calls to Mrs Rawlings (including after school hours) although she did return Mrs Rawlings' calls (if she had been unavailable to take them);
- call into Mrs Rawlings' home unannounced with the plaintiff in tow;
- suggest that the plaintiff telephone Mrs Rawlings;
- tell Mrs Rawlings that the plaintiff had been self-harming;
- encourage Mrs Rawlings to write to him;
- ask Mrs Rawlings to send the plaintiff a photograph of herself;
- seek Mrs Rawlings' help in dealing with the plaintiff's difficult behaviour – other than when she asked Mrs Rawlings to come to the Motel Glenworth; or
- contact Mrs Rawlings at all after the plaintiff left TGS in 1997, including by sending her cards, or telephoning her on 3 February 1999.

[209] According to Mrs Brockhurst, her more recent contact with Mrs Rawlings was not friendly at all. At the fish and chip shop, they acknowledged one another but otherwise did not speak. (Mr Rawlings, who was also at the shop that day, gave evidence that they had a conversation.) At the work function, Mrs Rawlings intimidated her including by saying that she was looking forward to seeing Mrs Brockhurst in court.

[210] Having considered –

- the competing evidence of Mrs Rawlings and Mrs Brockhurst about the closeness of their relationship;
- the evidence of Mr Brockhurst Senior that his wife and Mrs Rawlings had a “close” relationship and telephoned one another up to several times a week,¹⁸
- the evidence of Mr Rawlings about Mrs Brockhurst’s visits, phone calls, drop-ins, and conversation with his wife at the fish and chip shop; and
- the content of Mrs Rawlings’ contemporaneous note of her conversation with Mrs Brockhurst on 3 February 1999 (see below),

I found that Mrs Brockhurst understated the closeness of her relationship with Mrs Rawlings. I found that she understated how often she was in contact with Mrs Rawlings while Mr Brockhurst was at TGS. I found that she was in contact with Mrs Rawlings after August 1997 and that their contact was friendly at least until 1999.

[211] I found that Mrs Brockhurst was, to an extent, dependent upon Mrs Rawlings when it came to dealing with Nicholas’ difficult behaviour (as demonstrated by her calling Mrs Rawlings when Nicholas became upset and distressed at the Glenworth Motel). However, I preferred Mrs Brockhurst’s evidence that she did not encourage Mrs Rawlings to send postcards to the plaintiff or to write to him. But *even if she did*, Mrs Brockhurst would not have been aware of any risk to her son in encouraging that contact. Indeed, I found that Mrs Brockhurst trusted Mrs Rawlings with her son to such a degree that it outweighed any concerns she might have had after finding Mrs Rawlings in his bedroom at the farm (see below), or after hearing from Mrs Rawlings that she had been warned by the school about being too close to him. But, having said all of that –

- The *opinion* held by Mrs Brockhurst’s in 1996, 1997, or 1999 (or, for that matter, now), about the propriety of Mrs Rawlings’ relationship with her son was not something which could assist me in deciding whether their relationship was a sexual one.
- Mrs Brockhurst’s *attitude* towards Mrs Rawlings (in the 1990s, at the fish and chip shop, or at the work function) was not something which could assist me in deciding whether Mrs Rawlings sexually abused Mr Brockhurst.
- To determine the plaintiff’s claim, I did not need to understand Mrs Brockhurst’s motivation for not insisting on appropriate boundaries between Nicholas and Mrs Rawlings (by, for example, not allowing Nicholas to stay with Mrs Rawlings for the rugby carnival).
- Further, to determine the plaintiff’s claim, I did not need to understand Mrs Brockhurst’s motivation for keeping in touch with Mrs Rawlings after August 1997. She may have been naïve – even remarkably so. She may have regretted the decision to complain about Mrs Rawlings because of her son’s deterioration thereafter (not knowing, until decades later, what went on between them). Her reasons for keeping in touch with Mrs Rawlings, or her view of Mrs Rawlings, simply do not matter.

¹⁸ Transcript 4-119, lines 1 – 5. See also Transcript 4-107 lines 13 – 15.

PART E EVIDENCE WHICH PROVIDED SUPPORT FOR THE PLAINTIFF'S ACCOUNT OF ABUSE

- [212] The critical issue in this case was the nature of the relationship between Mr Brockhurst and Mrs Rawlings. Was it a close, “complicated”, but appropriate, friendship relationship between a teacher and a student, perhaps driven by Mrs Rawling’s maternal feelings (as she suggested to the Headmaster); or a romantic, intimate, and sexual relationship?
- [213] There was evidence tendered at trial, independent of the plaintiff, which in my view revealed an inappropriate closeness between the defendant and the plaintiff, providing support for his evidence that his relationship with the defendant was romantic, intimate, and sexual. In my view, this evidence went beyond revealing merely “fuzzy” boundaries or *innocent* “closeness”: it revealed Mrs Rawling’s inappropriate sexual attraction to Mr Brockhurst. In other words, it corroborated his account of sexual abuse.
- [214] This corroborative evidence included –
- notes taken by Mr Buttenshaw of statements made to him by TGS students in 1997;
 - oral evidence from former TGS students;
 - oral evidence from the plaintiff’s parents; and
 - the defendant’s own correspondence to the plaintiff and to others.
- [215] In my view, the inference to be drawn from this evidence in combination was convincingly in the plaintiff’s favour.

Notes of statements made by TGS students

- [216] In April 1997, Mr Buttenshaw spoke to Donald McConnel, Derek Ranclaud, Geoff Seccombe and Glen Heidke about what they had seen between the plaintiff and the defendant in the defendant’s classroom on Saturday 12 April 1997. Mr Buttenshaw made notes of what they told him which were tendered under section 92(b) of the *Evidence Act 1977*.¹⁹
- [217] The admissibility of the students’ statements (recorded by Mr Buttenshaw) as evidence of the facts contained therein was *prima facie* dependent upon the four men being called as witnesses at the trial, unless section 92(2) of the *Evidence Act 1977* applied.
- [218] Mr McConnel, Mr Ranclaud and Mr Seccombe were called as witnesses. Mr Heidke was not. However, I was persuaded (on evidence available to me under section 92(3)) that section 92(2)(d) applied to Mr Heidke’s statements having regard to the passage of time. Indeed, neither Mr Seccombe nor Mr Ranclaud could remember the specific incident or being spoken to by Mr Buttenshaw about it.
- [219] Mr Buttenshaw’s record of the boys statements were as follows –

¹⁹ Exhibit 42.

Don McConnel

- saw NB & MLR at Computer
- NB sitting on MLR's knee
- did not feel there was anything unusual about this

Geoff Secombe

- D McC sent around to get boys in at 8.00 – 8.15 on Sat. Night
- walking around Library
- looked in Spec. Ed. Room
- NB sitting on MLR's lap, had his arm around her
- at computer

Derek Ranclaud

- Spec. Ed. Room
- going up to Taylor House - told by GS & D. McC that things were going on
- blind cut off their head
- standing up & hugging & mucking around
- NB had back to DR, could see MLR's hands
- NB had headgear and MLR trying to get it off him
- could see MLR's hands around NB's back

Glen Heidke

- DR and GH going up to Taylor
- ran into GS & Don McC who said NB was sitting on MLR's lap
- went & had a look
- looked again on way back from Taylor

- saw NB & MLR hugging
- looked like MLR was initiating contact

- touching each other
- she grabbed NB's hand and put it on her breast

[220] In estimating the weight to attach to the statements, I applied section 102 of the *Evidence Act 1977*. The statements were made by schoolboys to their Deputy Headmaster within a day or so of having seen what they described. In other words, they were reasonably contemporaneous and made in a serious context. The statements were broadly consistent. They contained no obvious exaggeration. It was not suggested that the boys had any incentive to conceal the truth. Nor was there any obvious reason why they might lie about what they had seen. I treated these statements as accurate descriptions of what the boys saw in April 1997 (and rejected Mrs Rawlings' account of what was happening in her room). I treated Mr McConnel's statement that he did not see anything unusual in Mr Brockhurst's sitting on Mrs Rawlings' knee as his irrelevant opinion.

[221] Generally, this evidence revealed an inappropriate physical closeness between the defendant and the plaintiff – consistent with Mr Brockhurst's description of the nature of their relationship and inconsistent with it being an appropriate relationship. Further, Mr Heidke's statement gave express support to Mr

Brockhurst's allegation that Mrs Rawlings placed Mr Brockhurst's hand on her breast in her classroom.

Donald McConnel's evidence

[222] In 1997, Mr McConnel was in Year 12 at TGS. He was a senior in Mackintosh boarding house and his responsibilities included bed checks.

[223] In evidence before me, he recalled an incident in 1997 when Mr Brockhurst was not in his bed after "lights out" around 9 pm (that is, the incident he reported to Mr Buttenshaw).

[224] He and the Year 11 boarder on duty with him searched the three levels of Mackintosh House for Mr Brockhurst but could not find him. They "knew" he could be in Mrs Rawlings' room because they knew she "helped him a lot". She had more to do with Mr Brockhurst than with the other boys.

[225] He, and the Year 11 boy he was with, went to the library building. The lights were on in Mrs Rawlings' room but the blinds were pulled down. He said –

We've looked in – like, we had to crouch down and look through the blinds ... Just between the window ledge and the blind, there was just a little gap that we could see through ...

We observed Ms Rawlings sitting on Nick's lap while he was working on a computer in there.

[226] Under cross-examination he said that Mrs Rawlings was sitting on Mr Brockhurst's "left-hand leg".

[227] He said there wasn't much they could do about it, so they headed back up to the boarding house. The "master" on duty, a "Pommy gap student" noticed that Mr Brockhurst was missing as well. Mr McConnel (and the Year 11 student he was with) told the master that Mr Brockhurst was down in Mrs Rawlings' room and that there was "something a bit funny about it". They left it at that. He thought it must have been on a night when "prep" was done – that is, a night during the week. The next day, they were called to see the Deputy Headmaster, Mr Buttenshaw.

[228] Whilst Mr McConnel recalled the April 1997 incident differently in 2021 from the way in which he described it to Mr Buttenshaw (as to who was sitting on whose knee or lap), he described an inappropriate physical closeness between the defendant and the plaintiff – supporting the plaintiff's account of events.

Derek Ranclaud's evidence

[229] Mr Ranclaud is two years older than Mr Brockhurst. They were both boarders in Mackintosh House. He did not recall speaking to Mr Buttenshaw in April 1997 or the April 1997 incident but he gave other relevant evidence before me.

[230] He said that when he was in Year 10, and the plaintiff was in Year 8, his room in the boarding house overlooked the outdoor telephone which the Mackintosh House boarders were permitted to use. It was not unusual for Mr Brockhurst to be on the telephone late at night. He was on the phone at least once a week: he was "the sort

of kid that was always on the phone”. He recalled that Mr Brockhurst was regularly in trouble for being out of his bed at 9.30 pm. He said that it was not common for a teacher to be at school at 9.30 at night: it was not something he had seen before – a matter relevant to the evidence designed to establish lack of opportunity.

[231] He recalled an evening in 1996, between 9.30 pm and 10 pm, when he heard and saw Mr Brockhurst and Mrs Rawlings playfully interacting. Mr Brockhurst had Mrs Rawlings’ keys and she was asking for them back. He described Mr Brockhurst dangling the keys in front of Mrs Rawlings to entice her to grab them from him. In addition to what the key-dangling incident implied about the relationship between the defendant and the plaintiff, Mr Ranclaud’s evidence as to the time was consistent with Mr Brockhurst’s evidence that he would be with Mrs Rawlings at night until she had to leave to be home before her husband.

[232] Mr Ranclaud observed a closeness between the defendant and the plaintiff which he described in this way –

... at times because teachers would eat their lunch up in our dining room. So she would – either whether he had her prior to that in classes, but he would, sort of, accompany her up to the dining rooms and stuff like that, and there was a general thing where, you know, he would, sort of, grab her arm or something like that, or you know ...

... it was a fairly strict school in regard to, I wouldn’t touch another teacher within the boundaries of the school ground, and there was, sort of, a feeling, I suppose, that there was really an established boundary between, like, that’s the teacher and that’s the student ...

... I didn’t see or witness any other student that would have that type of relationship with her.

[233] In my view, overall, Mr Ranclaud’s evidence revealed an unusual closeness, including an unusual physical closeness, between the defendant and the plaintiff – consistent with the plaintiff’s description of their relationship.

[234] At face value, Mr Ranclaud’s evidence provided support for Mr Brockhurst’s evidence about his telephone calls to Mrs Rawlings – although I acknowledge that Mr Brockhurst was not asked how frequently he called his parents in 1996 and I therefore treated this aspect of his evidence as of little weight.

Stewart Selby’s evidence

[235] Stewart Selby, who was a year above Mr Brockhurst at TGS, saw Mr Brockhurst and Mrs Rawlings through a gap between the drawn blinds and the vertical side of the window frame of one of the windows to her classroom –

... sort of wrestling in the room by themselves, and then he picked her up and/or they walked back onto a desk and she was sitting on the desk and he was standing between her legs.

[236] Mr Selby thought this incident occurred when he was in Year 9 and the plaintiff was in Year 8 (1996). He was spoken to by a “school marshal”, Trevor Evans, about what he’d seen a few weeks after he had seen it. Mr Selby was not one of the boys

interviewed by Mr Buttenshaw about the April 1997 “lap-sitting” incident. It is not clear whether he was talking about the April 1997 incident or another incident. The point though is that he, like Mr McConnel, Mr Ranclaud, Mr Seccombe and Mr Heidke, described circumstances which revealed that the defendant and the plaintiff were inappropriately physically close for a teacher and student – indeed, for a 29/30 year old woman and a 13/14 year old male child.

Geoff Seccombe

- [237] Mr Seccombe could not recall speaking to Mr Buttenshaw in April 1997. He did not recall, at trial, seeing anything “out of the ordinary” occur between the plaintiff and the defendant.

Owen Brockhurst

- [238] Owen Brockhurst, the plaintiff’s father, saw relevant contact between his son and Mrs Rawlings at a cricket game.
- [239] He explained that he tried to get to as much of his son’s sport as he could. He observed the following at one of Mr Brockhurst’s cricket matches –

... Nicholas didn’t know I was coming, because something had happened at home and I was able to get away. Anyway, I walked in and I was looking around to find where the boys were, and I noticed him sitting beside this lady, and they were sitting close together, like, shoulder to shoulder, or – and during the day, I noticed that their company seemed pretty close. And I didn’t take a lot of notice of it, but it seemed to me a little strange to me. There would be other – other – plenty of kids there to be looked after and all that, but Nicholas just seemed to be the one that was very close to this person.

- [240] The person was Mrs Rawlings.
- [241] Mr Brockhurst Senior’s evidence was inconsistent with Mrs Rawlings’ evidence that she did not attend any of Mr Brockhurst’s sporting events. I preferred his evidence, which was consistent with his son’s (and indeed, if this cricket match was in the first term of 1997, consistent with the defendant’s filed defence).

Cecily Brockhurst

- [242] Mrs Brockhurst became aware that Mrs Rawlings was in her son’s room one morning, in her “night attire”, during the weekend she stayed at the Brockhursts’ farm. Mr Brockhurst was in the clothing he normally wore to bed. Mrs Brockhurst saw Mrs Rawlings lying on the bed and her son sitting up. They were not “close close” but she’d heard giggling which was what caused her to go into her son’s bedroom. She said something like, “breakfast’s ready” or “I think it’s time to get up”.

The notes which Mrs Rawlings sent to Mr Brockhurst

- [243] As mentioned above, Mr Brockhurst Senior found a fax from the defendant to his son on his home office fax machine over the 1997 June/July holidays. That fax was not in evidence, but Mr Brockhurst Senior recalled, and I accepted, that it included

words like, “Don’t let your mum and dad see this”; “Between you and I”; “How I miss you”; and “love you”.

- [244] In my view, the defendant’s instruction to the plaintiff that he not let his parents see the fax conveyed the defendant’s awareness that their relationship was something to be kept secret. Her not wanting the plaintiff to show his parents a document which included phrases like “How I miss you” and “Love you” conveyed the defendant’s recognition that those phrases implied something more than the appropriate affection of a friend or maternal figure.
- [245] Mr Brockhurst Senior discussed the fax with his wife when she came home from work. They did nothing about it immediately but kept it in their possession. They said nothing about it to the plaintiff.
- [246] Mrs Brockhurst began to feel uncomfortable about the fax so she searched her son’s schoolbag and found letters, notes and “little notelets” from the defendant to him. She thought there were 15 to 20. Mr Brockhurst Senior said there were “a lot” – including sticky notes or post-it notes. They included phrases like “I love you”; “I miss you”.
- [247] As I have mentioned, Mr and Mrs Brockhurst took Mrs Rawlings’ notes et cetera to TGS at the beginning of term 3, 1997. A selection of those notes (retrieved from the records of TGS) were tendered in evidence (exhibits 19 to 24).
- [248] I did not accept Mrs Rawlings’ claim that she gave or sent to the plaintiff *only* the correspondence which was in evidence and notes in the context of the BRP. I found that Mrs Rawlings gave or sent to the plaintiff dozens, if not scores, of personal letters, notes, cards, faxes et cetera. I accepted that much, if not most, of Mrs Rawlings’ correspondence included statements like “I love you”; “I miss you”; “I can’t wait to see you”. I based that finding on my acceptance of the plaintiff’s evidence, supported by his parents, and by the content of the defendant’s own correspondence.
- [249] In my view, exhibits 19 to 24 (discussed below) expressly revealed Mrs Rawlings’ romantic or sexual interest in Mr Brockhurst. In reaching that conclusion, I took into account not only the content of those exhibits but also their timing. It seems that all, or almost all, of exhibits 19 to 24 were sent *after* Mrs Rawlings had been told in April 1997 that she was leaving herself open to accusations in her dealings with Mr Brockhurst and after she agreed to keep her distance from him. It is reasonable to assume that, if Mrs Rawlings’ interest in Mr Brockhurst was wholly appropriate, then –
- the warning would have caused her to be cautious in her interactions with him – both at and away from school; and
 - she would have ensured that her correspondence to him was unquestionably proper.
- [250] Frankly, after being warned, if Mrs Rawlings’ interest in Mr Brockhurst was wholly appropriate, one would have expected her not to write to him at all and certainly not to invite him to stay at her house overnight (see below).

- [251] Although I have dealt with Mrs Rawlings' notes individually, I considered each in the context of the others. I found that their cumulative effect convincingly conveyed Mrs Rawlings' sexual attraction to Mr Brockhurst.

The note about the rugby carnival (exhibit 23)

- [252] As the rugby carnival was held on the first few days of the 1997 June/July school holidays it follows that the arrangement for Mr Brockhurst to stay with Mrs Rawlings for the carnival must have been made *during* term 2. Accordingly, the following note must have been sent by Mrs Rawlings to Mr Brockhurst *during the term* – inconsistent with her evidence that she only wrote to Mr Brockhurst at Mrs Brockhurst's suggestion *after* he had gone home for the June/July 1997 holidays.

- [253] The note read –

Hi!

Thanks for your notes. I was in the middle of writing out "Truly Madly, Deeply" for you – so we must be on the same wavelength!

I'm sorry if I've been grumpy lately – I'm just concerned about your study. You know that so I won't rave on!

I'm really really sorry I can't come to Kearneys. Things are just getting really hectic, & now it looks like my mum & dad are coming to T'mba on Sunday – Yah! (sarcastic yah!) (I wonder if mum will speak!)

Please try & organise to stay with me for the Downlands thing. I'd really like you to. I love you xxoo

- [254] "Truly Madly Deeply" begins, "I'll be your dream, I'll be your wish, I'll be your fantasy. I'll be your hope, I'll be your love, be everything that you need. I love you more with every breath, truly, madly, deeply do ...".

- [255] Mrs Rawlings said that she was writing out the lyrics to Truly Madly Deeply at Mr Brockhurst's request, because he was trying to learn the song on the guitar. She said he requested the song lyrics from her because he was aware that she had CDs in her home which contained lyrics, having stayed there with his mother and sister in December 1996/January 1997.

- [256] The parties jointly admitted that Truly Madly Deeply was released as a single on 3 March 1997. On the assumption that the single was released before the album, Mrs Rawlings could not have owned a CD including those lyrics in December 1996/January 1997. On that assumption, she lied about the genesis of Mr Brockhurst's request for song lyrics. However, there was no evidence before me about the release of the album containing the single and I decided to give evidence of the single's release date limited weight.

- [257] Regardless, I accepted Mr Brockhurst's evidence that he and Mrs Rawlings sent lyrics from love songs *to each other* as much more plausible than Mrs Rawlings' explanation for sending him the lyrics. I found that Mrs Rawlings' reference in this note to their being "on the same wavelength" was a reference to them each choosing that song to express how they felt about the other. I accepted Mr Brockhurst's

evidence that the last thing he was interested at the time was the guitar.²⁰ Also, for what it is worth, the lyrics without the chords were unlikely to be of much use to a beginner guitarist.

[258] Of the “Please try to stay with me for the Downlands thing. I’d really like you to. I love you xxoo”, Mrs Rawlings said –

...one of the ways that I found to work with Nick was to pacify him. So as he had become quite agitated about the open gardens scheme, when I spoke to his mother about that we had also been in discussion about the rugby camp and she had suggested that I say that to him as a pacifier that, “I can’t come to this but why don’t you organise that”.

[259] That conversation was not put to Mrs Brockhurst. Nor was it put to Mr Brockhurst that he was “quite agitated” or “angry”²¹ about Mrs Rawlings’ not attending his aunt’s open garden.

[260] The suggestion that Mrs Brockhurst proposed that strategy for dealing with Mr Brockhurst was implausible. If anything, Mrs Brockhurst was looking to Mrs Rawlings for strategies.

[261] Mrs Rawlings said that the sentence ending in “xxoo” was written to convey how “really really positive and genuine” she was (as part and parcel of her attempt to pacify the plaintiff).

[262] Having given evidence about how badly timed Mr Brockhurst’s stay was (just a week before the opening of Encores) and how reluctant her husband was about it, Mrs Rawlings was asked whether her husband knew she’d told Mr Brockhurst that she “really” wanted him to stay. Her response was evasive and unconvincing –

MR DOOLEY: Did you tell your husband that you had several weeks before this Downlands weekend, told him [Mr Brockhurst] that you’d really like him to stay and you would organised for him to come to – want him to – that you wanted him to stay and that you really would like him to stay for that weekend. Is that what you’d told your husband?---My husband and I had discussions about Nick staying, yes.

Did you tell him, “I really want him to stay”? Is that what you told your husband?---Mark knew that there was behaviour issues associated with the – with if he was allowed to stay or not, so yes.

[263] She said she assumed that her husband knew that her notes to Mr Brockhurst included her statements of love –

MR DOOLEY: And did he know that you were writing notes that had words like, “I love you” in it? Did he know that?---I’m assuming he did, yes, because he was often around when I was writing to Nick.

²⁰ Transcript 4-62, lines 44 – 47.

²¹ As she had suggested in evidence in chief: Transcript 7-13 line 34.

And then you - - -?---As I said, I say that sort of thing to my children all the time, and I felt quite maternal towards Nick.

Well, you told you – told us that you were a friend, not a mother. You're friend. That's what you told us. Isn't that right?---I didn't know they were mutually exclusive.

You don't understand the difference between the love and affection towards a child and somebody from outside the family. Is that what you tell us?---What I'm saying is that I felt maternal. I felt like I was a – my relationship with Nick, I felt more like a mother-type figure than a – as you're suggesting, a girlfriend figure.

[264] I rejected Mrs Rawlings' explanation for the incriminating statements in this note. In my view, by this note, Mrs Rawlings confirmed that –

- Mr Brockhurst was sending her notes during the school term (“Thanks for your notes”);
- They sent lyrics from romantic songs to each other to convey their feelings;
- They communicated as equals: she apologised to him for being “grumpy”; they sent song lyrics to each other; and she confided in him about her relationship with her parents;
- She was very keen to have Mr Brockhurst stay at her house for the rugby carnival (“I'd really like you to”) – consistent with her attraction to him and contrary to her evidence at trial and her written statement to Mr Rose in August 1997 (see below) that she was reluctant about it; and
- She had romantic feelings for Mr Brockhurst conveyed by the song lyrics, her expression of love and her “xxoo” sign-off.

[265] Bearing in mind that this note was sent *after* the defendant had been warned that she was leaving herself open to accusations because of her dealings with the plaintiff²² and *after* she had agreed not to be alone with him (at least at school), her sending the plaintiff the lyrics of a love song and desiring him to stay overnight at her house were only explicable as driven by her sexual attraction to him. If the defendant was not attracted to the plaintiff, she was taking an enormous professional risk for no reward.

The lyrics to Celine Dion's “Seduce Me” (Exhibit 24)

[266] The defendant sent the plaintiff a note containing some of the lyrics to the Celine Dion song “Seduce Me” which she had handwritten –

EVERYTHING YOU ARE
EVERYTHING YOU'LL BE
TOUCHES THE CURRENT OF LOVE
SO DEEP IN ME

²² The conversation about “Kearneys” and the open garden was in May 1997.

EVERY SIGH IN THE NIGHT
EVERY TEAR THAT YOU CRY
SEDUCES ME
AND ALL THAT I AM
AND ALL THAT I'LL BE
MEANS NOTHING AT ALL
IF YOU CAN'T BE WITH ME
YOUR MOST INNOCENT KISS
OR YOUR SWEETEST CARESS
SEDUCES ME

I LOVE YOU

- [267] Mrs Rawlings said that the phrase “I love you” is part of the lyrics of the song. It is not.²³ I inferred that she added that phrase to them. Also, for what it’s worth, these are not exactly the lyrics of the song. She added a couple of “Ands” to the second paragraph.
- [268] Mrs Rawlings claimed that the plaintiff requested the lyrics of this song because he wished to play it on the guitar. She said she did not give a lot of thought to the actual meaning of the words when she sent the lyrics to him – she simply wished to encourage Mr Brockhurst’s guitar playing because it was a positive activity.
- [269] I rejected that explanation. I accepted the plaintiff’s evidence that he did not make such a request. I accepted his evidence that he had no particular interest in the guitar at this time. And again, the lyrics without the chords would not assist a beginner.
- [270] In my view, the sending of these lyrics to the plaintiff bore no other reasonable complexion than that the lyrics expressed the loving and sexual feelings the defendant had for him – as reinforced by the defendant adding “I love you” to them.

Fax about returning “the stuff” (exhibit 19)

- [271] Mrs Rawlings’ fax to Mr Brockhurst, dated Friday, 27 June 1997, read (my emphasis) –

Dear Nick –

Got your fax. Thanks. You can fax me at the restaurant on Saturday night – after 8pm would be good, as that’s when the show starts so all the guests will be gone.

²³ The parties jointly agreed that the song did not contain the phrase “I love you”: Transcript 10 – 33 lines 5 – 10.

Glad to hear you're still there – (keep it that way!) **Do take care what you say, if you know what I mean.** (I spoke with your mum today).

Have you sent me that stuff? I think it would be a very good idea. Otherwise you could put it in a bag, tape up the bag and wrap it in my tracksuit pants. You could then give it to me when you give me the trakky pants.

Nick – do take care – if things are getting too much for you, maybe you should write them down & send them to me.

I OU as well.

M

- [272] Mr Brockhurst understood that the statement “Glad to hear you’re still there” referred to his threatening to run away from the farm, to go back to Mrs Rawlings, the day before. In that context, Mrs Rawlings’ instructions to him to “keep it that way” and to take care with what he said “if [he knew] what [she meant]” implied that she understood that his reasons for wanting to run back to her was something they had to keep secret, which she could not expressly state – namely, their sexual relationship.
- [273] Mrs Rawlings admitted that she was aware that the Brockhursts were intending to complain about her to the school by the time she sent this fax – *cf* the reference to her speaking to Mrs Brockhurst “today”. She said that the “stuff” she wanted was the notes she had written in the course of the BRP. When asked why she would want them back (because, as she had earlier explained, they concerned the way in which Mr Brockhurst ought to behave at school) she said, in effect, that – as appropriate as they were – she was paranoid that Mr Buttenshaw would “misconstrue” them, as he did “virtually anything [she] did”. She maintained this explanation even after being reminded that she said that she had spoken to Mr Buttenshaw and Mr Kennedy about implementing the BRP.
- [274] In my view, the fax clearly conveyed Mrs Rawlings’ concern about the content of her correspondence to the plaintiff. That is the “stuff” she wished him to return to her, having concealed it in a taped bag and in her tracksuit pants. Her concern about the correspondence, and her desire to conceal it, is consistent with her knowing that it contained inappropriate expressions of love and affection.
- [275] The defendant suggested that her telling the plaintiff to “take care” with what he said was part of her reminding him to behave well towards his parents. I rejected that explanation. In my view, as I’ve explained above, the phrase “Do take care what you say, *if you know what I mean*” is the defendant’s caution to the plaintiff not to reveal the extent of their relationship. If she was – with the encouragement of the plaintiff’s mother – writing to the plaintiff as his supporter or mentor, then there was no reason for her to be coy about what he had to take care about. In other words, if the defendant was intending to remind the plaintiff to be polite to his parents, she could simply have said so.
- [276] Mrs Rawlings’ explanation for the “I OU” was unconvincing. She said –

... when we had the behaviour recovery program ... I offered to buy him something from the canteen at the end of – if we had a successful week when we first initiated the program. And he said he didn't want anything from the canteen. And so it became a bit well, I owe you something then. So it was – and it became a bit of a - like a little positive reinforcement, positive – you know, like a – written high five, I don't know what you would like to call it, but something that was – it became a bit of a code to say, you know, I owe you, you've done well, whatever.

- [277] Apart from the implausibility of that explanation, it does not explain the inclusion of “as well”. I accepted Mr Brockhurst's explanation that the “I OU” was a shorthand expression they used with each other in an affectionate way: “I owe you a kiss/I owe you a hug”. The “as well” suggested that Mr Brockhurst had recently conveyed an “I OU” to Mrs Rawlings.

Fax sent 3 July 2019 from Encores Restaurant (exhibit 20)

- [278] On 3 July 2019, Mrs Rawlings sent Mr Brockhurst a fax from Encores restaurant which said (my emphasis) –

Hi Nick – **sounds like you've been really busy**. Bit like here. **Did you get my letter?** There's not much news really – except I'm still battling with the cappo machine! I saw Mr Munro, Mr Vernon & Mr & Mrs Sanderson last night. I may as well be at school! Miss Hobson is coming for dinner on Sunday. I've also seen quite a bit of Mrs Gillies because she's working backstage – she gets to meet all the stars!

Well I better keep moving, as there are people wanting to pay their bills and I'm the check out chick!

Keep smiling! **I'm looking forward to hearing/reading from you tomorrow.**

Love

Me

- [279] In my view, by this fax, Mrs Rawlings conveyed –
- that she and Mr Brockhurst were in regular contact: she is obviously responding to something from him; she had sent him an earlier letter; and she anticipated hearing from him the next day; and
 - their intimacy; by her signing off with “Love Me” – both in its statement of “love” and in her use of “Me” rather than her name.

The little yellow notes

- [280] One of Mrs Rawlings' notes to Mr Brockhurst was spread over the front and back of two small pieces of yellow “MEMO” paper. It was obviously written over the June/July 1997 school holidays. It read (my emphasis) –

Dear Nick,

This is a little “private” note. I thought it would be a good idea if you could show the letter to your mum and dad, but I also wanted to let you know how much I miss you. Thank you for your letter and photos. I thought you might like one in return. It's little because it was my passport photo.

I hope everything's okay – well – I just spoke to you on the phone & you sounded pretty miserable. Try not to make your mum and dad cranky. I won't rave on but if they're cranky with you they will be less inclined to do what you want. “Rave Rave” I know you've heard it all before. Nudgee sounds serious. What are you going to do? It's a hard decision, although it sounds like it's not your decision to make. You could get HAs though – just need to put your mind to it, get yourself organised etc (I won't rave on about that either.) I bought you a card the other day, but I'll give it to you when you get back to school.

So just remember, just because you're not hearing from me often, doesn't mean I'm not thinking of you. I'm thinking of you every minute of the day – I go to sleep with you on my mind & I wake up the same way. You are very special to me Nick & I love you very much. By the way, the letter you wrote me with the photos – that was the saddest but nicest letter I have every received. I really love you. Meg.

- [281] Mrs Rawlings attempted to place an innocent spin on this letter. She acknowledged that it contained expressions of affection but said that “affection” was “a very broad term”. When it was suggested to her that the note “fit[ted] entirely with” a girlfriend/boyfriend relationship, she said it was “a matter of interpretation” and that the situation was “much more complex”. She said that phrases like “I'm thinking of you every minute of the day” were “not necessarily” the words of one lover to another. She said that her telling Mr Brockhurst that she went to sleep with him on her mind and woke up the same way indicated not that she was thinking about him all the time, but that she was worrying about him a lot. She said that her telling Mr Brockhurst that he was very special to her and that she loved him very much were the words of one friend to another who was having “difficulties with their mental state”. She said she was worried about Mr Brockhurst's state of mind and was trying to make him feel better about himself. It was “simplifying” the situation to suggest that she wrote that she loved him because she loved him. Her expression of love in the note was “motivational” –

MR DOOLEY ... we're talking about a 14 year old boy. Do you really think writing to him as a 30-year-old woman saying “I love you” is motivational? --- Mr Dooley, I tell my children I love them all the time, so yes, I suppose it is motivational in one way because it makes you realise you are valued.

So you see no real difference between telling [your] children that you love them and telling a 14-year-old boy who is a friend that you love them: is that right? --- I believe the motivation for me saying that was similar or the same, yes. I felt quite maternal towards Nick.

What, you would [see] nothing wrong if one of your children aged 14 received a letter from someone, assuming they're heterosexual, from the other sex who is 30 years of age writing to them saying "I love you", Is that what you tell the trial judge? --- If the person writing to my children had been discussing it with me, if my child was suicidal, if my child had a positive relationship with this person, these are all factors that you would have to consider.

- [282] It was put to Mrs Rawlings that the suggestion that Mr Brockhurst was suicidal was a fabrication, intended to justify the fiction of his mother asking her to speak to and write to him. She said it was not. It was put to Mrs Rawlings that she sent Mr Brockhurst a passport sized photograph so that he could keep it in his pocket or wallet. Mrs Rawlings claimed that the photo was "normal sized" – inconsistent with her own description of it in the note as "little" because it was her "passport photo".
- [283] I rejected Mrs Rawlings' attempts to explain away this note as something innocent – intended to motivate, or to convey her concern for, the plaintiff. I rejected the proposition that Mr Brockhurst was suicidal or the suggestion that Mrs Brockhurst told Mrs Rawlings so. I accepted the evidence of Mr Brockhurst and his mother to the contrary. If Mrs Rawlings had the experiences she said she had with attempted suicides, then one would have expected her reaction to information that the 14-year-old plaintiff was feeling that way to involve something more than sending him loving letters and a photograph. Indeed, one would expect more from any intelligent adult.
- [284] Further, *even if* I accepted Mrs Rawlings' evidence that she was writing to Mr Brockhurst to provide him with mental health support, such support could have included affirmations and statements of encouragement without expressions of love – particularly after she had been warned about leaving herself open to accusations.
- [285] The note suggested that Mrs Rawlings sent a photograph of herself to Mr Brockhurst in response to his sending a photograph of himself to her. I rejected Mrs Rawlings' evidence that she checked with Mr Brockhurst's mother about sending the photograph (denied by Mrs Brockhurst). Apart from the incredibility of that suggestion, if Mrs Rawlings' sending her photograph to Mr Brockhurst was sanctioned by his mother, then there was no need to include it in a "private" note to Mr Brockhurst.
- [286] In my view, this "memo" revealed the following –
- Mrs Rawlings had romantic or sexual feelings for Mr Brockhurst – she thought about him every waking moment and she really loved him;
 - Mrs Rawlings appreciated that the nature of her relationship with Mr Brockhurst was more intimate than was appropriate, which was why she wrote a letter suitable for Mr Brockhurst's parents and a "private" one for Mr Brockhurst;
 - Their relationship was intimate to the point where they sent one another photographs of themselves;

- They communicated frequently during the school holidays. In fact, while Mrs Rawlings was writing this note, Mr Brockhurst telephoned her (“well – I just spoke to you on the phone”). He sent her photographs of himself and the “saddest but nicest” letter.²⁴
- Although they did communicate frequently during the school holidays, their communication then was not as frequent as it had been at school (to be inferred from Mrs Rawlings statement “... just because you are not hearing from me often ...”); and
- Mrs Rawlings intended to give Mr Brockhurst the card she’d bought for him *at school* – inconsistent with her evidence that she kept her distance from him at school after being spoken to by Mr Buttenshaw and inconsistent with her suggestion that she was paranoid that Mr Buttenshaw would misinterpret anything she did and therefore asked for the return of the notes she claimed to have written as part of the BRP.

The note thanking Nick for the parcel (exhibit 22)

[287] This note too was incriminating –

Hi Nick,

Thank you for the parcel. The little “item” made me very happy. It’s really cute. Thank you for the other things as well. I’ll look after them for you – however, you didn’t put the Rugby card in. Please don’t leave it on your shelf when you go back to school. Bring it with you and I’ll put it with the other things. Also please don’t leave this note or the little yellow one I sent you with the aircraft photo. Anyway, I just wanted to let you know that it (the parcel) arrived and thank you. Let me know the school decision if and when you can. I’m not game to ring you, because I don’t think your mum would want me to. Try & be really nice to everyone for the rest of the hols. Love me x.

[288] Mrs Rawlings explained that that the “Rugby card” was a card with the Wallabies on it which she purchased for Mr Brockhurst. Mrs Rawlings said the “item” was an ornament on a little stand: something that a “friend” might buy for another “friend”.

[289] She said that the “other things” she thanked Mr Brockhurst for were, possibly, the tracksuit pants and the BRP notes, which she had previously explained were reminders to the plaintiff about how he was to behave. Even though they were “innocent” documents, she said that she was “confused” and “concerned” that the notes could be misinterpreted and she wanted to hide the notes from Mr Buttenshaw. I rejected that explanation.

[290] The reasonable inference to draw from this note is that Mr Brockhurst sent back to Mrs Rawlings her letters and notes et cetera – as per her “very good idea” – because their content had to be kept secret: it revealed the intimacy of their relationship. Obviously, Mrs Rawlings understood that, because of their content, the card and the

²⁴ Mr Brockhurst said that that letter was one saying how much he really cared about the defendant. He said he was in love with her and he wanted their relationship to be a serious relationship “like adults”. He could not remember the sad element of the letter.

little yellow notes had to be returned to her for safe-keeping as well. The reference to her “aircraft photo” is probably a reference to her passport photo. Her statement that she was not “game” to ring Mr Brockhurst because of his mother’s likely reaction is consistent with Mrs Rawlings’ awareness that Mrs Brockhurst and her husband were intending to report her closeness to the plaintiff to the school.

Written statements of the defendant (apart from correspondence sent to the plaintiff)

Written statement of the defendant to Mr Buttenshaw

[291] After interviewing the boys about what they had seen on Saturday 12 April 1997 – referred to by counsel as the “lap-sitting” incident – Mr Buttenshaw spoke to Mrs Rawlings and followed up with a letter to her, dated 15 April 1997, setting out certain conditions with which she had to abide. Mr Buttenshaw wrote (my emphasis) –

Dear Meredith,

This note is to follow up our conversation of this morning. As I said at that interview I ask that:

- (i) you make it very clear to all boys what the boundaries are for acceptable conduct and behaviour. This is to include the **complete prohibition of any physical contact between the boys and yourself.**
- (ii) you accept that you should **not normally be alone in a room with a single boy, and especially with the door closed and blinds drawn.**
- (iii) **you never put yourself in the situation of being alone in a room with Nicholas Brockhurst. If he is to receive individual instruction** this must be in a public place (such as the Library) and **not in the withdrawal room.**

I hope that you accept these conditions as a result of our discussion. If you are not happy with any of these, would you please see me immediately.

[292] When Mrs Rawlings received this note, she was almost 30. She had a Master of Education and was teaching General Studies (Special Education), English and History at a prestigious private school. The note clearly communicated to someone of her education and intelligence that the accusations made against her were to the effect that there had been *unacceptable* or *concerning* physical contact between her and Nicholas Brockhurst. The note also implied that Mrs Rawlings had provided individual instruction to the plaintiff alone in a room and explicitly stated that that had to cease.

[293] Mrs Rawlings’ reply, dated 16 April 1997, was as follows (my emphasis) –

Dear Roger,

Thank you for your letter with the guidelines for seeing boys outside school hours. I am enclosing a copy of my timetable, **outlining when and where I see boys, and for what reasons**.

In my own defence of the **report** of which we spoke in today's interview, being trained in Special Education makes me acutely aware of the **'power' of touch when dealing with other people, and in particular people who experience continual failure and low self esteem**. Special Education is an area in which **physical contact is regularly highlighted**. However, under the present circumstances, I will be more than happy to adhere to the guidelines you have outlined, **particularly with regard to Nicholas Brockhurst**.

I appreciate your support in this matter.

Yours sincerely,

Meredith Rawlings

TIMETABLE FOR EXTRA HELP SESSIONS

Monday 3:30 pm – 4:30 pm: [Name of student redacted], Nick Brockhurst; and (intermittently) [Name of student redacted] (all Year 9) in either General Studies Classroom or upstairs in library **if only one is present** (Extra Maths and English)

Tuesday 8 – 8:25 am: [Name of student redacted] (Year 8) in General Studies classroom. (Extra Maths and English).

Wednesday 8-8:25am: [Name of student redacted] (Year 10) in General Studies classroom (Extra reading)

Wednesday 3:30 – 4:30pm: [Name of student redacted], [Name of student redacted] (both Year 10) and [Name of student redacted] (year 8) in General Studies classroom. (Extra Maths and English)

Wednesday 6:45 – 7:45 pm: [Name of student redacted], [Name of student redacted] and [Name of student redacted] (Year 8) in General Studies classroom. (Extra Maths and English)
Maths help is also on during this prep. Boys are encouraged to seek help with their maths and then return to prep.

Thursday 8-8:25am: [Name of student redacted] and [Name of student redacted] (Year 8) in General Studies classroom. (Extra Maths and English).

[294] Mrs Rawlings accepted that, when she wrote this letter, she understood that it had been reported to Mr Buttenshaw that she had been seen with Mr Brockhurst on her lap. She said she did not know what else had been alleged. She acknowledged that she understood Mr Buttenshaw to have been referring to a recent event in his discussions with her.

[295] In my view, Mrs Rawlings' reply to Mr Buttenshaw, when read in the context of his letter to her, contains statements against her interest and statements inconsistent with her testimony. In my view, Mrs Rawlings written "defence", invoking "the

‘power’ of touch”, contains an implied admission that she *intentionally touched* Mr Brockhurst on Saturday 12 April 1997. Mrs Rawlings’ statements about her Monday timetable contain an implied admission that she was providing extra help to Mr Brockhurst and that sometimes he was alone with her for that extra help – inconsistent with her evidence at trial that she was only alone with Mr Brockhurst once (on Saturday 12 April 1997) and consistent with Mr Brockhurst’s evidence.

[296] Mrs Rawlings was well aware of the incident Mr Buttenshaw was discussing with her. It was only days old. If all that had occurred was as Mrs Rawlings described in evidence – that is, Mr Brockhurst retrieving his clothing and hat from her at the request of his mother; sitting *beside her* on her chair to fix her printer; and re-enacting some football moves in his headgear – then, *on one view*, she would have said so in her written “defence”.

[297] I questioned Mrs Rawlings about the absence of a reference to the broken computer/printer or the football re-enactment in her letter. She said she did not mention those things because “he [Mr Buttenshaw] had already spoken to her about those” and her letter was “a response to ... the conditions”. She clarified that she “tried” to tell Mr Buttenshaw about the printer, but that he was “really, really wound up” and might not have accepted her explanation. When pressed on what she said to Mr Buttenshaw about her version of events, she said she attempted to tell him her version, but could not remember what she said. She said she did not know whether she mentioned the football re-enactments to him or not. Her focus was on the lap-sitting allegation. She did not recall having the opportunity to, or even thinking to, mention the re-enactments.

[298] Mrs Rawlings alleged that her interaction with Mr Buttenshaw was unfair. He’d bailed her up in the hallway. She’d had no time to prepare. He berated her. He told her she had left herself open to accusations. The conversation was one-sided. He said he was not interested in hearing what she had to say. He said he would give her a handwritten letter which would not go on her file about the conditions she had to work under and that she was required to acknowledge in writing her receipt of it.

[299] None of that was put to Mr Buttenshaw for comment. It should have been. On Mrs Rawlings’ case it was critical context for her response. Indeed, it was, in effect, suggested to Mrs Rawlings by senior counsel for the plaintiff that her description of her interaction with Mr Buttenshaw was a recent fabrication. Her counsel did not attempt to prove that it was not. Mrs Rawlings’ version of being bailed up in the hallway was inconsistent with her reference to an ‘interview’ in her response to Mr Buttenshaw’s letter. I did not accept her evidence that she was bailed up in the hallway et cetera. But I had no difficulty accepting that Mr Buttenshaw spoke strongly to her about the lap-sitting incident – which makes her contact and correspondence with Mr Brockhurst thereafter almost inexplicable, other than on the basis of her sexual attraction to him.

[300] Mrs Rawlings claimed that, when she received Mr Buttenshaw’s “conditions”, she assumed that by “physical contact” he was referring to “things like high-fives” and that was what she was referring to when she mentioned “the power of touch”. She said that if she had known that which was alleged against her, her response would have been different. While I found the suggestion that Mrs Rawlings thought Mr Buttenshaw was referring to things like high-fives implausible, I was prepared to

proceed on the basis that the *absence* from Mrs Rawlings' letter of 16 April 1997 of a reference to a printer, or to Mr Brockhurst's re-enacting his football moves, ought not to be used against her as proof that her version of what went on in her classroom was a recent fabrication.

- [301] The plaintiff urged me to find that Mrs Rawlings came up with her account of the events (involving rugby moves) after learning in the course of this litigation that one of the boys to whom Mr Buttenshaw spoke referred to the plaintiff's headgear. The inference that Mrs Rawlings' version was woven around the reference to headgear in Mr Buttenshaw's note was certainly open. However, I did not consider it necessary to reach a conclusion about whether Mrs Rawlings made up the *whole* of her evidence about having trouble with the printer (it will be remembered that TGS boys saw Mr Brockhurst at Mrs Rawlings' computer) or Mr Brockhurst's re-enacting his football moves. *Even if* those things were true, that did not mean that there was not *also* inappropriate interaction between them on that day. I accepted the evidence of the TGS students that there was.

Written statement of the defendant to Mr Rose

- [302] On 12 August 1997, Mrs Rawlings wrote a lengthy letter to Mr Rose – having delivered a letter of resignation to him the day before, which he did not accept. While much of this letter was self-serving, it contained admissions by the defendant to her “personal” closeness with the plaintiff.

- [303] The letter said (my emphasis) –

Dear Hugh,

I wanted to write to thank you for your understanding and personal commitment to me over the past few days. I have really appreciated the feeling of support from you.

I also wanted to “present my case” of this “incredible stuff up” because after talking with you on Sunday night I feel there's a lot of questions I haven't satisfactorily answered.

The first concern I have is over the alleged lap sitting incident. Obviously I was understandably upset and I talked with both Alan Hill and Trevor Evans. Trevor decided to look into things a little bit and asked a Yr 12 Mackintosh boy to see what he could find out. It appears that the 4 boys who reported the incident actually admitted they hadn't seen anything, but heard about it from 2 Yr 10 boys. Trevor asked one (Stuart Selby) who said he'd seen a variety of things. Trevor then asked the other (Jeff Inch) who was with Selby at the time, and he said he hadn't seen anything. Selby then admitted he hadn't seen anything either. The reason why I didn't act on this was because

- a) I didn't feel comfortable bringing it up with Roger;
- b) I didn't want to involve Nick Brockhurst or Jeff Inch, in particular, in interviews etc on my behalf;

- c) I thought I would get the opportunity to discuss it with you at my staff appraisal.

I didn't speak about it on Sunday night because it seemed pretty pointless. **I suppose I'm still reluctant to speak about it because I don't want it to be "reopened"**. I believe it would be extremely difficult to obtain an accurate story now, not to mention added pressure to Nick Brockhurst if it, once again, became a topic of discussion around the house.

My second concern is regarding the Brockhurst's concerns about Nick's dependence on me. **You asked why I hadn't "stepped back" after receiving notice from Roger. The truth was that I did at school.** I made sure I did as was requested. However, I also spoke to Cecily about it (although I did not go into details about the incident. I told her that I had been asked not to leave myself open to accusation.) She didn't mention any of her concerns, although, as I said to you, she rang me at least once, often more, each week. Usually she rang me at home, so the opportunity to speak was always there.

Instead, she suggested that if Nick needed to discuss things with me, he should ring me (which I did not encourage) or write me letters. She seemed to think that he needed the support he gained from me. Cecily would also often call in when she was in Toowoomba, often with Nick in tow. One afternoon, after watching his sport, she brought him round and sat and chatted until it was time to drop Nick back at school. Although this was harmless enough, in retrospect, I believe it encouraged a certain dependence.

Cecily also invited me to her sister's open garden in Brisbane, at the end of last term. She wrote a note with the invitation, stating that she'd love me to come because Nick was very keen that I should attend. I suppose, considering her concerns, this seems a bit of an odd thing to do (I didn't go by the way).

My husband and I were also invited to Drillham earlier in the year. I went, although Mark couldn't because of work commitments. There was also one Friday night last term when they had Nick out on overnight leave. She rang me about 9.30 pm stating that Nick was extremely upset. He couldn't talk unless I was there. So, I went over to their motel and was there until midnight. (He was upset about being hit by other boys after lights out in Mackintosh,) and by the time I left, everything seemed to be quieter/calmer etc. Once again, in retrospect, I think such things as these helped Nick's dependence on me increase. I must admit that this particular incident maybe was exacerbated because **Nick had asked if I could come over in the afternoon after he was out on leave** and Cecily & Owen had said to me that they had things to do. **Unfortunately they told him I had things to do, but then let him ring me to find out why I hadn't turned up.** However, they neglected to let me know the difference in their stories.

The final problem arose when **they organised** for Nick to stay with Mark and I at the beginning of the holiday. He was attending a rugby thing and he told me that his mum would have to stay in a motel for 4 days. I spoke with Mark who **reluctantly** accepted because it was the week before the restaurant opened and we (sic) really very busy, so I rang Cecily or she rang me (I can't remember which) **and I offered (as a last resort)**. She got back to me and accepted because she felt he would be better looked after with us than if he stayed with his sister. This was obviously a big mistake although at the time, because of the fact she'd invited us to Drillham, we felt a little obliged.

So Hugh, as you can see a series of small stuff ups and not so well considered decisions has resulted in a very big problem. **If Cecily had been more open with me about her concerns, I would have made myself much less available, which is what I was doing at school.** I suppose I was feeling a little like I was between a rock and a hard place because of the "friendship" Cecily was cultivating with me.

There is one other factor I need to admit, which probably is a consideration (altho' not an excuse). This year because of [a certain health condition] Mark and I have found out the possibility of having children of our own is "severely limited" – in other words – non-existent. **I think part of my reaction to Nick has been partly a maternal reaction.** He does remind me of my brother (also adopted) and having that insight into the problems, along with a fairly frustrated maternal instinct may have promoted **my interaction with him on a more personal level (eg the "correspondence" that they refer to).**

So Hugh, not excuses, just explanations. I tried to be honest with you but **I would appreciate confidentiality on all fronts.** I think if the Brockhursts knew that I'd told you all his I would aggravate them further. **I also beg for your confidentiality regarding the 4 Yr 11 boys reporting that incident.** It seems pointless readdressing that issue and actually expecting a truthful account. They are not going to admit they lied (particularly Secombe and [name redacted] who consider me a "snob" because I wouldn't let them gossip about teachers/other kids being gay etc in General Studies last year).

I suppose I just wanted to be honest with you and open with you, **but I would appreciate your confidentiality in all matters.** I think if things go further, people will become quite upset. I'm also a little concerned because Nick may feel he has a little "power" over me now.

Sincerely,

Meg Rawlings

- [304] Jeff Inch was listed as a witness for the defendant in the trial plan. On day 7, the defendant's counsel said that he had instructions not to call him.²⁵
- [305] Mrs Rawlings was cross-examined about why she did not act on Mr Evans' information that the boys had concocted the lap-sitting incident. She provided a variety of reasons for not raising the issue. She said –
- Mr Buttenshaw told her that the notes and correspondence about the lap sitting incident would not go on her file (that was not put to him) and she thought that the “situation” was “finished”;
 - she was “overwhelmed” by Mr Buttenshaw and could not imagine talking to him about it;
 - she was concerned that Mr Buttenshaw could be vindictive and that the boys might be in trouble; and
 - she was also worried for herself.
- [306] It was put to Mrs Rawlings that she did not want the lap sitting incident investigated further because such an investigation would show that she in fact engaged in that activity. She said that was not so: she did not fear the truth coming out.
- [307] I found it surprising that Mrs Rawlings did not push for a further investigation of the lap-sitting incident, given that Mr Evans had apparently extracted statements from the boys that they had not seen anything untoward. But I was not prepared to treat Mrs Rawlings' requests to Mr Rose for no further action, or confidentiality generally, as evidence of her guilty conscience. Those requests might well have been prompted by other things, including, for example, a desire to put the TGS experience behind her and to concentrate on Encores restaurant.
- [308] Of particular relevance though were the defendant's admissions in this letter to Mr Rose – whom the defendant plainly saw as an ally – to the effect that –
- (a) she had maternal feelings for the plaintiff which led to a “personal” relationship with him;
 - (b) she had “stepped back” from him at school – implying that there had been frequent contact between them before she “stepped back” from it;
 - (c) the plaintiff was too dependent on her; and
 - (d) she had been too available to him (even post the lap-sitting incident) outside of school.
- [309] The plaintiff asked me to treat with scepticism the defendant's statement about her inability to have children because she produced no medical evidence in support of it and because she fell pregnant not long thereafter. That was no reason to reject Mrs Rawlings' evidence that she was struggling to conceive at the time. I accepted that she was. Regardless, I found that the defendant's relationship with the plaintiff was romantic, intimate, and sexual – not maternal.

²⁵ Counsel also said he had instructions not to call Thomas Hewitt (who was in the plaintiff's class at TGS) or Hugh Rose, the headmaster.

- [310] On a related issue, the plaintiff asked me to treat Mrs Rawlings' almost immediate tendering of her resignation as an implied admission by her that her relationship with the plaintiff had been sexual.
- [311] Mrs Rawlings said in evidence that she was not aware that TGS was in possession of her notes to the plaintiff when she resigned. That is plainly untrue. She referred to the "correspondence" in her letter to Mr Rose. She said she resigned because she felt that she had "stuffed up". She said –

When I spoke to Mr Rose ... I felt that I had lost control of the situation. I felt that I would not be able to discipline Nick or the class so there was a number of reasons. There was a number of personal reasons as well. And so when I spoke to Mr Rose ... we talked about various things. And one of the issues that came up was the fact that Nick had been threatening to self-harm and Mr Rose said that it would not do the school's reputation any good if he was successful. So I felt personally responsible for my behaviour and I felt that I had misjudged the situation. And I felt like I wanted to start again rather than trying to ... get control of the situation. I didn't feel like I could any more.

- [312] The defendant's counsel submitted that I ought not to treat the defendant's resignation as an admission. It was, he submitted, "an acceptance that the lines between friendship and teacher had become blurred, the plaintiff had become too dependent on her and she was unable to carry out his demands of friendship while also maintaining the limitations of a teacher".
- [313] I did not treat the defendant's resignation as an admission against interest. Nor did I read anything into the fact that, after TGS became aware of the closeness of the relationship between the plaintiff and the defendant (whatever they understood it to entail), the *plaintiff* was sent home whilst the defendant remained at school until the end of term 3 of 1997. That decision was likely to have reflected views held in the 1990s about "consensual" relationships between female teachers and male students – or perhaps, as the plaintiff's lawyers suggested, "how institutionalised sexual abuse was viewed in 1997 and in particular in the context of a sense of disbelief".

Notes of telephone conversation with Mrs Rawlings

- [314] Mrs Brockhurst rang Mrs Rawlings on 3 February 1999. Mr Rawlings suggested that Mrs Rawlings make a note of their call, which she did. The parties agreed that this note was admissible. It said (my emphasis) –

Cecily rang. "just to touch base" – she said she thought of me a lot. She said they were thrilled to hear I'd had a baby.

Both she and Owen were v. resentful of TGS – had never given them a fair go. Nick wasn't bad, just liked to test the limits. She had expected TGS to be able to cope with that.

Explained that N had been advised not to go to TGS by ed'nal psych at USQ – but when he started in Yr 8 he had really wanted to go.

Both she [and] O recognised that my intention had always been to help, that I had recognised the TGS discipline system was not

effective in N's case. She said in her heart of hearts she knew that all along.

Said N had a few friends, a couple of girls he contacted regularly – met thru internet – lots of calls etc & had met when girls visited last holidays.

She felt he still wasn't the "same" – she said he didn't talk to them abt things (adolescence?) but that he was okay.

Wasn't aware that N had called me last yr – but was really pleased he had (even tho' N said he'd told his parents)

She said he rang them a lot, like he used to do to me, as if he just needed someone to talk to.

C wanted to visit or meet somewhere – but I didn't want to

[315] I accepted that these notes accurately captured the content of the conversation and disproved Mrs Brockhurst's evidence that she did not make such a call. However, as I observed above, to resolve the plaintiff's claim, I did not need to understand why Mrs Brockhurst contacted Mrs Rawlings in February 1999 or why she did not admit to the contact. Nor was Mrs Brockhurst's friendly attitude towards Mrs Rawlings in 1999 relevant to any issues for me. Mr Brockhurst was then years off telling his parents about the sexual abuse. I have proceeded on the basis that Mrs Brockhurst understated her relationship with Mrs Rawlings. I have proceeded on the basis that Mrs Rawlings provided support for Mr Brockhurst with the thanks and encouragement of his mother. But her conduct with him (as observed by others), and her correspondence to him, cannot be explained away as manifestations of an appropriate relationship.

[316] Also, in my view, in this note confirmed that there was regular telephone contact between Mr Brockhurst and Mrs Rawlings ("he rang them a lot, like he used to do to me").

PART F THE CROSS-EXAMINATION OF THE DEFENDANT

[317] The defendant was cross-examined for many hours over three days. She had explanations at the ready for conduct which implicated her in a sexual relationship with the plaintiff. Many of her explanations involved laying blame on Mrs Brockhurst. She was steadfast in her denials of any impropriety and in her assertion that her correspondence and other contact with the plaintiff was appropriate in the context of their "friendship".

[318] I have already dealt with, and rejected, her explanations for her incriminating conduct and correspondence. I noted further that she denied that she –

- became attracted to Mr Brockhurst sexually within a short time of meeting him;
- commenced "a deliberate course of conduct to seduce him";
- groomed him to satisfy her sexual desires;
- was alone with him more than once;

- deliberately struck up a friendship with Mrs Brockhurst to allow “more ready access” to Mr Brockhurst; and
- deliberately manipulated Mr Brockhurst’s parents, especially his mother, to ensure that, if Mr Brockhurst reported Mrs Rawlings’ attention, it would not be suspicious.

PART G OTHER WITNESSES FOR THE DEFENDANT

Mark Rawlings

- [319] Mr Rawlings’ testimony was designed to establish that there was no opportunity for Mrs Rawlings to have had sexual intercourse with Mr Brockhurst when he stayed with them for the Downlands rugby carnival because he (Mr Rawlings) was always at home.
- [320] Mr Rawlings’ father was the main contractor for the restaurant fit out. Mr Rawlings said that, at that time, his father usually stayed at his house on Thursday and Friday nights. He said the first night of Mr Brockhurst’s stay was a Thursday night.
- [321] He said he and his father had access to the restaurant site during the week but not on weekends. He said he took Mr Brockhurst to the football carnival on the Friday morning. He could not recall who took Mr Brockhurst to the football carnival on the Saturday morning – but he did not leave the house before Mr Brockhurst. Nor did he leave the house on Sunday morning. He gave evidence to the effect that he and Mrs Rawlings did everything together on weekends.
- [322] He gave evidence about his and Mrs Rawlings two dogs, intended to convey that sexual intercourse between Mrs Rawlings and Mr Brockhurst in the house was not possible because the dogs would not leave them alone. Of course, as established in cross-examination, closing the door of a room would keep the dogs out.
- [323] Under cross-examination he conceded that – although it was rare – he might have left the house to walk his dogs (one at a time) alone. He also conceded that he did not actually recall what he did that Sunday morning. The first time he was asked to recall Mr Brockhurst staying at his house for the rugby carnival was in 2017. He said that the “main detail” that he could recall was that Mr Brockhurst stayed with them (although he thought it was only for two nights); they went out for dinner; his father was there on the Thursday and Friday night and it was the weekend before the restaurant’s opening weekend.
- [324] Mrs Rawlings said in evidence that she remembered travelling to Rome and areas of Tuscany during her and Mr Rawlings’ European holiday in 1996/1997. She said she “did not believe” that she went to Salzburg. Mr Rawlings said that they were mostly in Italy but spent some time just out of Innsbruck, Austria in a ski village. Innsbruck is near Salzburg.
- [325] Whilst I found Mr Rawlings overall a truthful witness, I did not accept his evidence to the extent that it was intended to convey that he and Mrs Rawlings were *never* apart on that weekend. I accepted the plaintiff’s evidence that sex occurred while he was away from the house. Drawing on common sense and life experience, it is more probable than not that he left the house on his own at least once over that

weekend, leaving the plaintiff and the defendant alone at the house for a period of time. Indeed, his leaving on his own to attend to something (not necessarily for the restaurant – just as part of everyday living) was probably preferable to leaving the 14-year-old plaintiff alone at the house.

Lynette O’Sullivan and Ian Young

- [326] Lynette O’Sullivan, who worked with the defendant at TGS, gave evidence designed to establish that there was no opportunity for Mrs Rawlings to have sexually abused Mr Brockhurst in her classroom because of the number of people around (inside or outside the library building in which it was contained). However, she had not “personally observed” the foot traffic around the library after 5 pm in 1996/1997, which rendered her testimony of little relevance.
- [327] Ian Young worked at TGS for 31 years. He gave evidence about the routines of the boarding houses, including roll calls and dinner time routines. His evidence was designed to establish a lack of opportunity for Mr Brockhurst to break away from the other boarders, after roll call and before dinner, or after dinner, to return to Mrs Rawlings’ classroom. He said he would “like to think” he’d notice if one of the boys was not at dinner. He said the boys were “supposed to” not wander away after dinner but instead to return to their boarding houses. He said – very reasonably – that “by and large” that happened. It is reasonable to assume, as his testimony implied, that supervision of the boys was not perfect and it was not impossible for Mr Brockhurst to have slipped away to see Mrs Rawlings as he said he did.
- [328] Mr Young’s evidence was also designed to establish that there was no opportunity for Mrs Rawlings to have sexually abused Mr Brockhurst in her classroom or the car park because of the number of people around including after school hours. I have dealt with that proposition above.

PART H OTHER MATTERS ADVERSE TO THE DEFENDANT’S CREDIT

- [329] The plaintiff case was conducted on the basis that the defendant deliberately lied when she denied the plaintiff’s allegations of sexual abuse. Referring to *Hanson v Patrick* [2019] 3 Qd R 93 at [30] – [37], the plaintiff acknowledged that such an allegation was serious, but considered it justified in this case.
- [330] The plaintiff submitted that the defendant gave wholly fabricated explanations for inexplicable conduct, including, for example, her evidence about the plaintiff’s detentions in term 1, 1996 and the BRP. In support of that submission, he relied upon the unlikelihood that Mrs Rawlings, brand new to the school, would implement a unique disciplinary system for the plaintiff – given that the school had in place a system of detention. Additionally, he relied upon the failure of the defendant’s counsel to put to Mr Buttenshaw that the defendant had discussed the BRP with him (and with the housemaster, Scott Kennedy) as the defendant alleged. He also relied upon the failure of the defendant’s counsel to open evidence that the BRP had the approval of the school officials – particularly given the BRP’s importance in the defendant’s case.²⁶

²⁶ It will be recalled that the defendant admitted affixing post it notes to the plaintiff’s diary as part of the BRP.

- [331] I was not prepared to draw inferences adverse to the defendant from the way in which her counsel conducted her case because I was concerned that counsel was out of his depth. I was therefore not prepared to make a finding that the defendant's evidence about the BRP was wholly fabricated. But whether a BRP was in place or not, I found that the defendant sent non-BRP notes to the plaintiff prior to the June/July 1997 holidays, as alleged by the plaintiff and confirmed by the defendant's own correspondence.
- [332] There is no need for me to discuss in detail all of the other aspects of the defendant's evidence which the plaintiff submitted were wholly fabricated. I found that Mrs Rawlings lied about many matters – as explained above. However, three of her lies warrant special mention.
- [333] I found that Mrs Rawlings lied in her evidence about being alone with the plaintiff only once on 12 April 1997. I found that her own document proved that lie. It was tempting to treat it as evidence of her guilty conscience: she could not admit to the truth, that she had been alone with the plaintiff more than once, because she was aware that she behaved inappropriately when they were alone together. But there were other obvious motivations for such a lie – including a fear of being wrongly accused. I therefore treated it as relevant to her credit only.
- [334] I found that Mrs Rawlings lied when she said that the only notes she sent to the plaintiff prior to the June/July holidays in 1997 were notes related to the BRP. Again, her own document proved that lie. It was tempting to treat it as evidence of her guilty conscience: she could not admit to the truth about the nature of the notes she sent to the plaintiff before the June/July 1997 holidays because she was aware that they were inappropriate. Again, however, I proceeded on the basis that the fear of being wrongly accused might have been the motivation for this lie, so I treated it as relevant to her credit only.
- [335] Also adverse to her credit, I found that Mrs Rawlings was a woman of reasonable financial means but was reluctant to admit it. I found that she understated her involvement in the running of Encores restaurant. I did not accept her evidence that she had no idea of its gross earnings or turnover. Her description of herself as an Encores' employee on "JobKeeper" at the time of the trial was disingenuous.
- [336] The plaintiff asked me to draw inferences adverse to the defendant from her failing to call witnesses who had been subpoenaed by her and whose names appeared in the trial plan (Mr Rose, Mr Wood and, perhaps, Mr Inch and Mr Hewitt). As indicated above, I was not prepared to draw inferences adverse to the defendant from the way in which her case was conducted.

PART I WHETHER THE DEFENDANT SEXUALLY ABUSED THE PLAINTIFF

- [337] The critical question for me was whether I was satisfied, on the balance of probabilities, that Mrs Rawlings had intimate and sexual physical contact with Mr Brockhurst as he alleged. By "satisfied, on the balance of probabilities" in this case, in accordance with *Briginshaw v Briginshaw* (1938) 60 CLR 336, I mean, actually persuaded, by carefully scrutinised evidence, to a degree which recognised the seriousness of the allegations made by the plaintiff and their consequences.

- [338] I was so satisfied.
- [339] I found the plaintiff a credible and reliable witness, who gave a compelling account of his grooming and seduction by the defendant, without embellishment. His description of his growing relationship with the defendant, and the context in which it became sexual, was not at all inherently improbable (as the defendant submitted). To the contrary. The plaintiff described a very believable progression of intimacy over time, initiated by Mrs Rawlings, although he did not need much persuasion to a sexual relationship with her. Indeed, his frankness about how good the relationship made him feel as a schoolboy added to his credibility. One might have expected the plaintiff to have painted himself as a reluctant participant if his account of sexual abuse was fabricated.
- [340] The plaintiff's accusations were not in vague terms. His account included details which added to his credibility: including his description of the route he took from school to Mrs Rawlings' house; that she was above him during intercourse; that they had sex on her lounge room floor whilst watching *Rage* on the television; that he did not ejaculate much whilst engaged in sexual acts with her; and that it was he who requested fellatio, having seen it in a pornographic magazine in the boarding house.
- [341] Whilst the plaintiff had been dishonest in the past, the context for his dishonesty (a schoolboy prank; lies in his applications to the Defence Force) did not, in my view, detract from his credibility when it came to his account of sexual abuse by the defendant.
- [342] Even though it has been about 25 years since the plaintiff was at TGS, there was evidence created *in 1997* which confirmed the plaintiff's characterisation of his relationship with Mrs Rawlings – that is, the evidence admitted under section 92 of the *Evidence Act* and Mrs Rawlings' own correspondence to the plaintiff and others. Additionally, notwithstanding the passage of time, credible witnesses gave evidence of things they had seen in 1996 or 1997 which suggested an inappropriate relationship between the defendant and the plaintiff. In other words, the plaintiff's account of his relationship with the defendant was corroborated – not only by witnesses relying on their present memory but also by evidence, including the defendant's own correspondence, from 1997.
- [343] Other – almost incidental – pieces of evidence provided broader support for the plaintiff's account of events, including evidence of his rush to get to the Drillham Post Office during the June/July 1997 holidays; and evidence that other boys in the boarding house suspected that, if Mr Brockhurst was not in his bed he would be with Mrs Rawlings.
- [344] The defendant had what sounded to me like a constructed explanation for every incriminating piece of evidence in the plaintiff's case. A few examples included her evidence that she only sent to the plaintiff postcards of historical monuments from Europe; her explanation about placating the plaintiff by inviting him to stay at her house for the rugby carnival; her explanation for how she came to be sending correspondence to the plaintiff; her explanation for sending the lyrics of love songs to the plaintiff; and her explanation for the "I OU" sign off on one of her letters. She also had ready explanations to counter evidence from the plaintiff which was neutral. For example, the plaintiff said that he and the defendant sat at the back of

the bus on the way to Drillham for the weekend. She said they sat at the front, asserting: "I suffer from motion sickness Mr Dooley. I sit towards the front of a bus. Always have and always will".²⁷

- [345] The defendant did not impress me as a credible witness. I made every allowance I could for her. I was prepared to consider evidence from her point of view for the sake of argument, even if it was not the point of view I preferred,²⁸ and even if in respect of it her counsel failed to comply with the rule in *Browne v Dunn*. I proceeded on the basis that her evidence did not contain recent fabrication, designed around facts which were revealed only during this litigation. I proceeded on the basis that her lies were relevant to her credit only. Nevertheless, her evidence left me with little doubt that the plaintiff was telling the truth about her sexual abuse of him.
- [346] I rejected the defendant's attempts to place an innocent spin on language or conduct which plainly revealed her attraction to the plaintiff. Some of her explanations were laughable (for example, her suggestion that her expressions of love for Mr Brockhurst were intended to make him realise he was "valued"; or to "motivate" him). Some were contradicted by other evidence – including her own evidence (for example, her position that she had been alone with the plaintiff only once was contradicted by her letter to Mr Buttenshaw attaching her timetable and her letter to Mr Rose; her evidence that she did not send notes to the plaintiff until after the June/July 1997 holidays was contradicted by her own letter to him about the carnival, which must have been sent prior to those holidays).
- [347] The defendant's counsel urged me to conclude that the plaintiff's allegations were unbelievable, including because the defendant was a married woman and because (he submitted) women teachers rarely sexually abused their students. I was urged to conclude that it was "implausible" that the defendant would take the risks she took at the school in engaging intimately or sexually with the plaintiff.
- [348] To right thinking people, it does defy belief that a seemingly intelligent, mature, woman would risk her marriage and career to have a sexual relationship with a schoolboy. But I do not need to understand *why* the defendant was sexually attracted to the plaintiff or *why* she took the risks she did in being intimate and sexual with him. The critical question for me was whether the defendant sexually abused the plaintiff as he alleged – whether that made her rare or not. I was satisfied that she did, to a degree commensurate with the seriousness of the plaintiff's accusations. I reached that conclusion after a detailed consideration of the evidence, as above, and paying careful regard to the submissions of the defendant's counsel, as below. Although I have responded to the defendant's submissions separately, I considered them in the aggregate in my evaluation of the plaintiff's case.

²⁷ For what it is worth, it was not suggested to Mr Brockhurst that they sat at the front of the bus for the journeys to and from Drillham.

²⁸ For example, I considered matters on the assumption that she had been encouraged by Mrs Brockhurst to write to the plaintiff – even though I did not accept that that was in fact the case.

Defendant's submissions

Observation on quality of submissions

- [349] I am compelled to observe that some of the submissions made on the defendant's behalf were poorly thought through or unsupported by evidence or common sense. Also, it was of concern that, in this battery case, the defendant's counsel made written submissions about *negligence*.
- [350] During oral closing submissions, the defendant's counsel withdrew two of his most ill-considered written arguments:²⁹ one to the effect that, to find for the plaintiff, I had to be "convinced" that the defendant was a paedophile; and the other to the effect that I ought not to find for the plaintiff because there was no evidence that the defendant had sexually abused any other child. I have dealt with these arguments below so that my concerns may be understood.

The plaintiff's credibility

- [351] The defendant submitted that the plaintiff was not a witness of truth. She submitted that he ought not to be believed because he had made false statements to the Defence Force and to Centrelink and had been convicted of fraud. In contrast, it was submitted, "there [had] been no instances of dishonesty or false declaration admitted or made out [in] relation to evidence given by the defendant". She was "honest and forthright" in her evidence which explained that her correspondence with the plaintiff was "innocent".
- [352] I did not find that the plaintiff made false statements to Centrelink. But even if he did, having regard to the context for those statements, and the context for the plaintiff's false statements to the Defence Force, his prior dishonesty did not cause me to doubt his credibility when it came to his account of his grooming and sexual abuse.
- [353] In my assessment, the plaintiff was a witness of truth and the defendant was not. Some of her evidence was implausible. Some of it was contradicted by her own correspondence. Some of it was contradicted by other credible evidence (independent of the plaintiff). She might have been a confident witness, especially in evidence in chief, and she might not have backed down under cross-examination, but I found that she was not honest.

Inconsistency

- [354] The defendant submitted that the plaintiff's trial evidence was inconsistent with his *statement of claim* "in a number of areas", namely –
- (a) whether the parties professed their love for each other and kissed and caressed on the first night the plaintiff stayed with the defendant for the rugby carnival: in evidence he said nothing happened on "the Friday night" that he remembered;
 - (b) which morning of his stay for the rugby carnival he and the defendant had sexual intercourse;

²⁹ As well as his submissions on negligence.

- (c) whether there was kissing and touching on the bus to Drillham; and
- (d) whether anything amounting to battery occurred at Drillham.

[355] The defendant's counsel did not cross-examine the plaintiff about inconsistencies between his statement of claim and his evidence or otherwise highlight it during the trial. The defendant's counsel argued that the statement of claim operated like "particulars" in a criminal trial. As I understood his argument, it was that the plaintiff could not succeed unless his evidence at trial was completely consistent with his statement of claim.

[356] The purpose of the pleadings is to define the issues between the parties which are to be determined by the courts. The pleadings thereby identify for each party the evidence they must lead at trial – that is, evidence of the allegations essential to their case which have been put in issue. Strictly, the court should exclude evidence not alleged in the pleadings or particulars. But in practice, a more lenient approach is taken.

[357] During the trial, the defendant's counsel did not suggest that any issues arose as between the pleadings and the plaintiff's evidence. It was clear to me that nothing in the way in which the plaintiff presented his case caused surprise to the defendant. She had ready answers to it all. As explained in *B v Reineker* [2015] NSWSC 949, a failure to amend particulars to correspond exactly with the facts alleged in evidence does not preclude a court's reliance on those facts, particularly when they fall within the pleaded case (*Dare v Pulham* (1982) 148 CLR 658 at 664). Adapting that which was said by Stephen, Mason, Jacobs and Murphy JJ in *Katsilis v Broken Hill Pty Co Ltd* (1977) 18 ALR 181 at page 201, the only question for me was whether the plaintiff proved enough to entitle him to succeed in an action for battery against the defendant. The fact that he undertook to prove additional matters could not affect the result if the plaintiff, within the facts pleaded or particularised, proved enough to allow him to succeed (as I found he did). Nor were any of the inconsistencies between the statement of claim and the plaintiff's testimony such as to cause me any concern about his credibility or reliability.³⁰ They were explicable by reference to the passage of time and did not concern critical aspects of the plaintiff's allegations.

[358] Further, as to inconsistency, the defendant submitted that the information given by the plaintiff to the psychiatrists "varied significantly ... especially ... in relation to ... issues with alcohol, gambling and whether he had used illicit drugs and to the extent". The defendant also relied upon "inconsistencies" about the nature of the defendant's relationship with Mrs Brockhurst.

[359] I have dealt with the asserted inconsistencies in the plaintiff's evidence and with Mrs Brockhurst's relationship with the defendant above. None of the inconsistencies referred to by the defendant's counsel, or Mrs Brockhurst's evidence about her relationship with the defendant, caused me to be concerned about the plaintiff's credibility or reliability.

³⁰ I noted that the defendant may have misunderstood the allegations at 27A (a) – (e) of the amended statement of claim.

Delay

[360] Although the batteries allegedly occurred in 1996 and 1997, the plaintiff did not file this claim until 2018.³¹ The defendant submitted that the court's ability to do justice was adversely affected by the delay and I ought not to find in the plaintiff's favour. The defendant submitted that she was at a forensic disadvantage because of the delay, including because –

- (a) the plaintiff could not provide the dates upon which certain events allegedly occurred and the defendant could not therefore produce exculpatory evidence including, potentially, evidence of alibi;
- (b) her father-in-law was deceased and unable to give evidence including, possibly, an alibi, in relation to the allegation that she had sexual intercourse with the plaintiff at her house in June 1997;
- (c) not every witness to the lap-sitting incident was available and of those who were located, some had no recollection and others had an inconsistent recollection of the event;
- (d) Mr Selby's evidence was "clearly embellished and false"; and
- (e) Trevor Evans, the school "marshal" might have been able to give evidence of the results of his "investigation" into the lap-sitting incident.

[361] I accepted propositions (a), (b)³² and (e) but in my view any forensic disadvantage concern they raised was alleviated by the fact that the plaintiff was corroborated.

[362] As to (c), four witnesses to the lap-sitting incident made reasonably contemporaneous statements about what they saw. These statements, which I considered to be accurate, were admitted into evidence without objection. The fact that statements from 1997 were available minimised concerns about the present memory of the statement makers. Further, the defendant raised no issue about the unavailability of Mr Heidke when it came to the admissibility of his statement from 1997.

[363] As to (d), I rejected this submission. I found Mr Selby a credible and reliable witness. I was particularly impressed by his spontaneous responses to the suggestion from the defendant's counsel that his testimony was false, which included a sarcastic "Were you there, were you?"³³

[364] I did not consider that my ability to do justice was adversely affected by the delay.

Lack of corroboration

[365] Relying on *Longman v The Queen* (1989) 168 CLR 79, the defendant submitted that it would be dangerous for me to find in favour of the *uncorroborated* plaintiff, and I could not be satisfied of the truth of his evidence after scrutinising it with great care as required because of the delay. Rather than resolve the argument about the

³¹ Although TGS was on notice of it in 2015 and the defendant was served with a Part 1 Notice of Claim under the *Personal Injuries Proceedings Act 2002* (Qld) in December 2016.

³² Although her father-in-law did not routinely stay with Mrs Rawlings and her husband on a Saturday night.

³³ Transcript 4 – 93, lines 21-36.

applicability of *Longman* (which concerns directions to juries in criminal trials) to this civil matter, or the impact of section 132BA of the *Evidence Act 1977* upon it, I proceeded in accordance with *Longman* (without reference to section 132BA).

[366] As I understood the defendant's arguments, she contended that I ought to find the plaintiff uncorroborated because I ought to accept her explanations for her conduct and her correspondence and reject the evidence of the TGS school boys and the plaintiff's parents about what they saw. As above, I found that the defendant's correspondence conveyed her inappropriate feelings for the plaintiff and her understanding that their relationship was something which had to be kept hidden. Further, I accepted the evidence of the TGS schoolboys and the plaintiff's parents about what they saw of the conduct between the plaintiff and the defendant. Taken in aggregate, I found that this evidence strongly supported the plaintiff's allegation that their relationship was romantic, intimate, and sexual. Thus, I found that the plaintiff was corroborated. Nevertheless, I scrutinised the plaintiff's evidence with great care and I proceeded on the basis that the defendant was at a forensic disadvantage in a general sense because of the passage of time. However, two matters are worth mentioning.

[367] First, the defendant asserted that, because of delay, she was unable to produce evidence of alibi. However, her explanation to Mr Rose *in 1997* for her relationship with the plaintiff included that she allowed him to become too dependent upon her. Her position in 1997 was not that she was not in the company of the plaintiff much at all, a position which might have been supported by alibi evidence. Rather, her position was that she was *too* available to the plaintiff and that that led to an "incredible stuff up".

[368] Secondly, the defendant's case was opened on the basis that (a) Mr Evans would give evidence that he had spoken to Mr Selby and Mr Inch in 1997, who told him they lied about the lap sitting allegation; and (b) that Mr Inch would give evidence, presumably to say that he saw nothing untoward.³⁴ At least at the point of the defendant's opening, the forensic disadvantage complained of was not apparent. But the defendant changed her mind about calling Mr Inch. And when Mr Evans was called to give evidence, he could not remember the names of the boys to whom he spoke.³⁵ My impression was that Mr Evans was an under-prepared witness whose memory had not been "refreshed" by his proof prior to coming into court. But regardless, I treated his inability to remember as a manifestation of the defendant's forensic disadvantage. I do not know why the defendant changed her mind about calling Mr Inch.

[369] Having scrutinised the plaintiff's evidence carefully, bearing in mind the delay and the forensic disadvantage to the defendant, I accepted it. He was credible and his evidence was believable and compelling. It was consistent with evidence independent of him. I found the plaintiff's explanation as to why he brought this claim, and when, understandable. I found the defendant's evidence incredible. Her challenges to, and arguments about, the plaintiff's testimony, were unpersuasive. I

³⁴ Mr Inch was the defendant's witness. Unless he were declared hostile, Mr Evans would not have been able to give evidence of his prior statement.

³⁵ After an objection from senior counsel for the plaintiff, the defendant's counsel said he would not take Mr Evans evidence any further.

was satisfied to the requisite standard that the plaintiff was sexually abused as he alleged.

Inherent unlikelihood

[370] The defendant submitted that while there were “instances of a male teacher having sexual relations with female students (or even male students) it is a very rare occurrence where a female teacher has been found to have had sexual relations with a male student. Therefore ... the Court would accept that there is an inherent unlikelihood of the allegations having taken place”. It sounded to me like the defendant was submitting that I ought to proceed on the basis that the plaintiff’s evidence was suspect.

[371] I was prepared to proceed on the basis that, in the experience of the criminal courts, the majority of teachers prosecuted for sexual behaviour with their students are male. Having said that, I know of no rule or law or practice, nor was I referred to one, which required me to treat with caution the evidence of a male student about sexual misconduct by his female teacher. Frankly, to do so would be contrary to the gains made in the law’s understanding of child sexual abuse since the late 1980s.³⁶

[372] Further, on the assumption that the rarity of the *prosecution* of female teachers for sexual offences against male students reflected the rarity of that *conduct*, there was no reason why this case might not be a rare case. As I have said, I found the plaintiff’s account of his grooming and seduction by the defendant to be compelling and wholly plausible. It was supported, confirmed or strengthened by evidence independent of him – including evidence of the defendant’s own statements to him.

The correspondence

[373] The defendant submitted that the correspondence was “not really evidence of anything”. It did not prove or disprove the allegations. It was not open to infer from it that there was a sexual relationship between the defendant and the plaintiff.

[374] It is correct to say that the correspondence did not contain the defendant’s *admission* to sexual contact with the plaintiff and in that sense did not *directly* “prove or disprove” the allegations. But the correspondence indirectly, or circumstantially, tended to prove that the plaintiff was telling the truth. It was well open to me to infer from it the defendant’s sexual interest in the plaintiff – and I did so. In revealing the defendant’s attraction to the plaintiff, and her appreciation that their relationship was something to keep secret, the defendant’s correspondence circumstantially supported the plaintiff’s allegations. Indeed, it was powerful evidence against her.

[375] The defendant submitted that she made no attempt to hide her correspondence – implying that she had no concerns about its content. I accepted that the postcards sent by the defendant to the plaintiff were not in envelopes and that the faxes sent by the defendant were received in the plaintiff’s family’s home office. There was however no evidence before me about the defendant’s understanding of who would

³⁶ It was not all that long ago that juries were told by trial judges that it had been the experience of the courts that children fabricated allegations of sexual abuse for all sorts of reasons, and sometimes for no reason at all (*cf Bromley v The Queen* (1986) 161 CLR 315). How wrong that proposition was.

receive her postcards or faxes. Mr Brockhurst Senior said that he knew Nicholas went to the post office to collect the household mail each day – “just for a bit of exercise” – but he was unaware that Nicholas was collecting mail (including postcards) for himself.³⁷ Regardless, the suggestion that the defendant had no concerns about the content of her correspondence to the plaintiff was undermined by the evidence that Mr Brockhurst Senior received a fax from the defendant to the plaintiff which included an instruction to the plaintiff not to show it to his parents; and her own written instructions to the plaintiff to conceal her correspondence and/or return it to her.

The plaintiff’s “fantasy”

[376] The defendant submitted that the plaintiff had falsely convinced himself that he had a sexual relationship with her. She submitted that the plaintiff took her “wording” the wrong way. She submitted that I ought not to find for the plaintiff because of the prospect that his allegations were the product of “fantasy”.

[377] I had no concerns at all that the plaintiff’s account might be the product of fantasy. It bore all the hallmarks of a truthful account in its believable detail, its lack of exaggeration and in the plaintiff’s frankness about his enjoyment of the relationship. And of course, in addition to the believability of the plaintiff’s evidence, he was corroborated.

The plaintiff’s mental health issues

[378] The defendant did not suggest that the plaintiff had fabricated the symptoms he described. Rather, her position was that the plaintiff had serious undisclosed mental health issues (not the result of sexual abuse) which explained them.

[379] In support of this position, her counsel submitted that I would find that the plaintiff was not referred to Dr Scott because he was suffering in the aftermath of the end of his sexual relationship with the defendant. Instead, I would find that he was referred to Dr Scott because he was expressing suicidal ideation in the context of “a very serious mental health issue” which had not arisen out of sexual abuse. Counsel said (my emphasis) –

the plaintiff would **only** have been sent to Dr Scott and placed on the prescribed medication for **very serious mental health issues, including making suicidal ideations** as stated by the defendant. It is submitted that it would be **very unlikely for the plaintiff to have been sent to a psychiatrist and immediately placed on such medication without having shown very serious symptoms, such as suicidal ideations**. A referral from a general practitioner would ordinarily be required to see a psychiatrist and it would be **very unlikely to be referred immediately to a psychiatrist for allegations of abuse as these would ordinarily be dealt with by a psychologist**.

[380] This submission was without evidential foundation and it was misconceived.

³⁷ Transcript 4-108 lines 1 – 15.

- [381] First, no relevant witness was asked whether referral to a psychiatrist or a psychologist was more likely in the aftermath of sexual abuse.
- [382] Secondly, as Dr Evans explained, treatment for mental illness is symptom specific – not illness specific. Although he could not remember the plaintiff, Dr Scott gave evidence that he was likely to have prescribed the specific prescription medication he did to treat the plaintiff for depression or “intense anxiety”. The defendant’s counsel did not ask him whether he would have prescribed those medications in the absence of suicidal ideation or what it was about the plaintiff’s presentation which warranted the commencement of medication.
- [383] Thirdly, the real issue around the plaintiff’s referral to Dr Scott was the *cause* of the plaintiff’s mental health issues in 1997 which manifested in symptoms serious enough to warrant his referral to a psychiatrist as a 14-year-old and prescription medication.
- [384] Fourthly, Mr Rose was the obvious person to question about the reason for the plaintiff’s referral to Dr Scott because the referral was initiated by the school. Mr Rose was listed on the trial plan as one of the defendant’s witnesses but, as mentioned, the defendant’s counsel informed me (on day 7 of the trial) that the defendant would not be calling him.
- [385] It was suggested to the plaintiff during cross-examination that his symptoms were not the result of anything that the defendant did to him. On the evidence, the plaintiff was tracking along as an average student in his tiny primary school until his first year as a boarder at a prestigious high school, when his academic results diminished and he began to display the characteristics of ODD. The evidence before me included Mr Brockhurst’s three report cards from Year 8 (a brief report for term 1, and full reports for semesters 1 and 2). He received mainly Bs and Cs in his term 1 report. His semester 1 report included three sound results, three limited results, and one very limited result. His semester 2 report included four limited results and three very limited results. On that evidence, there was deterioration after term 1 and further deterioration between semesters 1 and 2. On one view, the deterioration *coincided* with the development of the defendant’s relationship with the plaintiff. Nevertheless, I proceeded on the basis of the parties’ agreement that the plaintiff’s ODD was a pre-existing condition. This case (at least before the defendant’s closing submissions) was conducted on the basis that the cause of the plaintiff’s symptoms was either (for the plaintiff) the sexual abuse (plus or minus his ODD) or (for the defendant) his ODD alone.³⁸
- [386] In my view, on the evidence, the defendant’s sexual abuse caused his personal injuries. Whilst his anger and irritability as an adult *might* have been symptoms of his ongoing pre-existing ODD, on the (limited) evidence about it, ODD did not explain his desire to retreat from the world, his flashbacks; his issues with sexual intimacy, or his insomnia. Causation is discussed further below.

³⁸ The defendant’s counsel put to the plaintiff that he had “abandonment issues” because of his adoption and his enrolment at boarding school. The plaintiff denied that that was the case and the matter was taken no further.

Risk/lack of opportunity/implausibility

[387] The defendant submitted that the plaintiff's case "defie[d] logic" because of the risk that he and the defendant would be seen. She submitted that the fact that the lap-sitting was seen made it implausible that no more intimate sexual contact was seen.

[388] I have dealt with the "implausible-because-risky" argument above. Yes, the defendant took a risk. But it is reasonable to assume that she minimised that risk by engaging intimately with the plaintiff when she did not expect to be seen. For the most part, she managed the risk well.

The plaintiff would have been in trouble if he was out of bed at 9.30 pm

[389] In the same vein, it was submitted that the plaintiff's evidence that he was with the defendant at night was implausible because he would have been in trouble if he was out of bed at 9.30 pm. That submission ignored the evidence that he was quite regularly in trouble for not being in bed at 9.30 pm *and* that the defendant's room was one of the places other students thought to look for him.

No evidence that the defendant was a paedophile

[390] This was one of the most unsophisticated of the defendant's submissions and, as I have noted, it was ultimately withdrawn.

[391] The defendant's counsel submitted that the plaintiff ought not to succeed because there was no evidence that the defendant "suffers from any **psychological issues or disorders** at all, certainly none that would lead to a **predilection to enter into sexual relations with a 13 or 14 year old boy**. For the Court to accept that the defendant undertook the course of conduct alleged and sexually assaulted the plaintiff as alleged, it is submitted that the Court would need to be **convinced that the defendant had some kind of attraction to young boys**" (my emphasis). In other words, the defendant submitted that I ought not find for the plaintiff because he had not produced evidence that she was a paedophile. Just how the defendant thought the plaintiff might be able to produce that sort of expert evidence was not explained. But in any event, the submission was misconceived. I did not need to find that the defendant was a paedophile for the plaintiff to succeed. I just needed to find that she had the sexual relationship with him he alleged.

No evidence that the defendant had sexually abused other boys

[392] This was another of the unsophisticated submissions of the defendant's counsel. Counsel submitted (my emphasis) –

It is **uncontroversial** that people that commit sexual offences against children are **rarely able to stop at relations with one child**. In the present case, there is absolutely no evidence that has come out in this high profile case (especially in Toowoomba) that the defendant has been the subject of any remotely similar conduct over the last 25 years. It is submitted that the **lack of any tendency type evidence** supports and strengthens the defendant's case and is also a factor in preferring the defendant's case over the plaintiff's case".

- [393] The alleged “uncontroversial” proposition is inconsistent with: the experience of the criminal courts; the experience of the Supreme Court of applications made under the *Dangerous Prisoners (Sexual Offenders) Act* 2003; common sense and life experience. The balance of this freewheeling submission was unsupported by evidence and, in any event, wholly misconceived. The plaintiff was not required to produce “tendency type” evidence to succeed.

Other reasons why the evidence of the defendant ought to be preferred

- [394] The defendant submitted that the plaintiff and his mother were “so keen to cover up the fact that there was a close relationship between [Mrs Brockhurst] and the defendant” because “such a relationship ...[lent] significant weight to the defendant’s evidence that she felt a familial type bond and love for the plaintiff ...”. She submitted that the relationship made her “explanations in relation to the notes, letters and postcards entirely reasonable”.

- [395] This proposition, that the plaintiff and his mother were involved in a deliberate cover up, was not put to the plaintiff or to his mother.

- [396] Although the 13 or 14 year old plaintiff was not in a position to know much at all about the relationship between his mother and Mrs Rawlings, as above, I found that Mrs Brockhurst downplayed her relationship with the defendant. Even so, it was, with respect, ridiculous to suggest that a friendship relationship between the two adult women led to an *appropriate* friendship or familial relationship between the defendant and the 13 or 14-year-old plaintiff *which found expression* in statements like “I’m thinking of you every minute of the day – I go to sleep with you on my mind & I wake up the same way”.

Other observations on the defendant’s submissions

- [397] I have not responded in detail to every submission made by the defendant in these reasons, but I considered them all, even though many went well beyond the evidence or espoused theories and made allegations not put to relevant witnesses. It is sufficient to state the following –

- (a) Life experience informed me that a postcard from Salzburg may well be available for purchase elsewhere in Austria.
- (b) The defendant’s correspondence suggested that she was immature but not naïve. And *even if* she were a naïve young teacher (as she submitted), she was warned by the Deputy Headmaster about her relationship with Mr Brockhurst and the risk that she’d left herself open to “accusations” but she invited Mr Brockhurst to stay with her at her house overnight and sent him loving correspondence regardless. If anything, she was bold.
- (c) Whether I considered the defendant’s correspondence from a 2021 perspective or a 1997 perspective did not matter. The meaning of statements like “I really love you Nick”; or “I’m thinking of you every minute of the day” has not changed in that time.
- (d) The criticism of Dr Evans was misconceived. Of course she could give her opinion of the plaintiff’s thoughts, feelings or desires in 1996 and 1997, in the sense that she could offer her opinion about his mental or psychological state

at that time, on the assumption that what he told her was true. Indeed, that is what she was engaged to do. That is not speculative. That is how opinion evidence works.

- (e) I would not use the reports of the experts to infer that sexual abuse occurred.

Conclusion

[398] Having scrutinised the plaintiff's evidence, and carefully considered the defendant's evidence and her submissions, I accepted that the plaintiff was sexually abused by the defendant as he alleged.

[399] That brings me to the issue of causation.

PART I EXPERT PSYCHIATRIC OPINION

[400] The plaintiff saw Dr Leong, Dr Evans and Dr Chalk for the purposes of his claim. Only Drs Evans and Chalk were required for cross-examination.

Dr Leong 2015

[401] Mr Brockhurst saw Dr Leong in October 2015. He was then working for Mr Kerwick. Mr Brockhurst appeared to Dr Leong to be of at least average intelligence. He was in a supportive marriage to Katherine although his libido was reduced. He was enjoying his work and felt emotionally more stable than he had in the past. His sleep was reasonable and he woke feeling reasonably refreshed. He had no significant pervasive depression.

[402] Dr Leong was of the opinion that Mr Brockhurst suffered from chronic dysthymia between the ages of 16 and 28. Dr Leong was satisfied, on the balance of probabilities, that there was a causal connection between the defendant's sexual abuse of the plaintiff and his past dysthymia. In Dr Leong's opinion, the abuse had affected the plaintiff's ability to work and study between 2001 and 2011, but from a psychiatric perspective there was not likely to be any future impact. I noted that Dr Leong did not proceed on the basis that the plaintiff had pre-existing ODD.

Dr Evans 2017

[403] Mr Brockhurst saw Dr Evans in February 2017. He told her that his wife was loving and caring and the reason for his psychological improvement. But he had ongoing sexual problems and he was afraid that she would leave him.

[404] On the strength of the results of the SOI Learning Abilities Test of the plaintiff in 1995 (the end of his primary schooling), which recorded that he functioned at the border of high average and above average, Dr Evans was of the opinion that Mr Brockhurst should have been able to handle high school with reasonable success.

[405] In response to a question about the nature and extent of Mr Brockhurst's symptoms, diagnosis and prognosis, Dr Evans said –

I note that Nicholas was exposed to a sexually abusive relationship over a 2 year period ...

Nicholas presents with negative alterations in cognitions and mood associated with these events which began at the time and worsened after the traumatic event. His memory for some of the events with Mrs Rawlings are poor. He has significant persistent exaggerated negative beliefs, particularly about himself, but also about the world. He has some significant persistent and distorted cognitions, which lead to significant negative emotional states, particularly of guilt, shame and anger. Nicholas, over time, displayed reduced interest in activities and certainly reduced participation.

He has significant and sustained feelings of detachment from others, and, in particular, from those who care most about him. Over time, Nicholas has had difficulty experiencing positive emotions. He has displayed a long-standing pattern of alterations in arousal and reactivity associated with events at the boarding house at Toowoomba Grammar School, which began and worsened after the traumatic events. These included being intensely irritable and suffering anger outbursts, usually with little or no provocation and, typically, leading to verbal or physical aggression.

In relation to self-destructive behaviour, Nicholas, at times, used alcohol to excess ... He has never engaged in direct self-harming behaviour, but has struggled, at times, with some suicidal thinking.

Nicholas is hypervigilant and has an exaggerated startle response. He has had significant problems with concentration and resultant academic difficulties. Sleep has been a problem at times. Nicholas also reports persistent periods of low mood. He associates this with having nothing to look forward to. He has suffered irritability and sleep disturbance. Nicholas reports, at times, engaging in excessive worry, particularly about his personal safety and also about his wife leaving him.

Nicholas developed a pattern of angry and irritable mood and argumentative and defiant behaviour with symptoms such as loss of temper, being easily annoyed, anger and resentment, arguing with authority figures, defiance and refusal to comply with requests.

- [406] Dr Evans' original diagnoses included Post Traumatic Stress Disorder (PTSD) as well as Persistent Depressive Disorder (in remission). She revised her diagnoses to exclude PTSD after considering Dr Chalk's report.³⁹ However, whatever the diagnosis, Dr Evans was of the opinion that Mr Brockhurst's symptom profile was consistent with his having suffered childhood sexual abuse. When she saw him, he remained vulnerable, especially if his marriage ended – which it did.
- [407] In Dr Evans' opinion, the aftermath of the sexual abuse had a marked impact on Mr Brockhurst's education and his academic outcome, which in turn affected the course of his work life and earning capacity.

³⁹ Because Mr Brockhurst's experience of sexual abuse was not traumatic, a diagnosis of PTSD was not available. PTSD and persistent depressive disorder share symptoms.

Dr Chalk 2019

[408] Mr Brockhurst saw Dr Chalk (the defendant's doctor) in February 2019. He was then working full time but had been separated from his wife for 14 months. Dr Chalk thought the plaintiff's mood then was "one of at best mild depression".

[409] On the strength of the material given to him, Dr Chalk proceeded on the basis that the plaintiff was displaying ODD behaviours *prior* to the alleged abuse. On that basis, Dr Chalk was asked whether it was "more likely than not" that the plaintiff *would* have developed problems related to it. Dr Chalk said that he "may". He said (my emphasis) –

It would appear [from statements provided to Dr Chalk that had not been provided to Dr Evans] that he was disruptive, oppositional and destructive of property, all of these behaviours being exhibited were prior to the time the alleged abuse occurred. His subsequent difficulties and problems at various schools likely reflect ongoing behavioural issues. Mr Brockhurst's longer term difficulties may reflect a continuation of **these issues** in his adulthood. Issues with his temper, opposition to rules, projection of his own mistakes/issues onto others and difficulties with behaviour can continue to manifest. Relationship and work difficulties would not be surprising.

[410] By this answer, Dr Chalk did not seem to be suggesting that ongoing ODD could account for the symptoms which were related to anxiety and depression which the plaintiff reported to him, such as feeling like "rubbish"; getting easily upset; not sleeping well; not wanting to be a part of society; issues with touch and sex; troubling memories of Mrs Rawlings on top of him during intercourse; his "at times" tearfulness et cetera. Dr Chalk clarified his opinion about ongoing ODD in his supplementary report of June 2019 (see below).

[411] Dr Chalk observed that the plaintiff had suffered from mixed anxiety and depressive symptoms over a period of time. In Dr Chalk's opinion, the plaintiff suffered from chronic dysthymia complicating personality issues. He was asked whether that condition was "more likely to be explained by other stressors (for example, employment and financial issues, psychosocial and lifestyle issues or other injuries/illnesses) as opposed to the alleged abuse". He was also asked whether the plaintiff was "predisposed to suffering a psychiatric disorder by reason of his pre-existing medical conditions/vulnerabilities/personality characteristics". By way of a global reply to these and other questions, Dr Chalk stated briefly –

If one accepts Mr Brockhurst's account then sexual abuse of the nature he describes may well explain at least some of the ongoing issues he has faced. However, it seems clear that he was having significant trouble previously though he does not describe significant difficulties at home. Mr Brockhurst's "bullying" and oppositional behaviour likely reflected a degree of underlying vulnerability.

[412] On the assumption that the plaintiff's account of sexual abuse was accurate, Dr Chalk was of the view that the abuse *and* his ODD had a "profound impact" on his schooling and education, and in turn his employment. Dr Chalk thought that the plaintiff would benefit from further treatment.

- [413] Dr Chalk agreed with Dr Evans that the effects of childhood sexual abuse were “insidious and pervasive”. He continued, “I note that Dr Evans seems to [attribute] Mr Brockhurst’s difficulties [to] the abuse, perhaps not being aware of the other statements that in my view suggest a degree of pre-existing difficulties and vulnerabilities”.

Dr Chalk 2019

- [414] Dr Chalk provided a supplementary report in June 2019. He was asked whether it was *possible* for the plaintiff’s chronic dysthymic disorder to develop “in the absence of the alleged sexual abuse”/whether there were “sufficient reasons in the plaintiff’s history and/or psychological make up to explain that condition in any event?” Dr Chalk said it was *possible*: the plaintiff’s difficulties *could* have developed in the absence of the alleged sexual abuse. He continued –

As noted in my previous report, there is, in the statement[s] you provided, evidence of significant issues prior to the alleged abuse. Indeed, as I noted in that report and reflecting the statements provided, “*It would appear that he was disruptive, oppositional and destructive of property ... all of these behaviours being exhibited prior to the time the alleged abuse occurred*”. I went on to note at that time that difficulties persisting into adulthood including “*issues with his temper, opposition to rules, projection of his own mistakes and issues onto others and difficulties with behaviour*” may well be related to constitutional and personality factors rather than issues of abuse. Essentially I am thus of the view that his difficulties could well have arisen in the absence of any alleged sexual abuse.

- [415] I could not tell from this answer whether the “difficulties” referred to by Dr Chalk therein included depression and anxiety. However, for the benefit of the defendant, I was prepared to proceed on the basis that they did.

- [416] Dr Chalk was asked the following critical question –

If one accepts the plaintiff’s account, it is more likely than not (i.e. greater than a 50 % chance) that the alleged abuse caused an injury (i.e. worsening of his pre-existing psychiatric injury)? If so, to what extent did the sexual abuse impact the plaintiff’s pre-existing condition?

- [417] Dr Chalk answered (my emphasis) –

This question is much more difficult to answer. Essentially however, it follows from what I have noted above, that his difficulties in my view could well have arisen without the sexual abuse occurring and I am not of the view that it is “more likely than not” that the abuse was the substantial cause or a substantial cause of his injury. **If however, one accepts Mr Brockhurst’s account in its entirety, it is in my view likely (that being a greater than 50% chance) that the alleged abuse could well have led to an aggravation of his underlying difficulties.**

Dr Evans June 2019

- [418] In June 2019, Dr Evans was provided with Dr Chalk's report and further material and asked to review Mr Brockhurst. The further material was that which provided the basis for Dr Chalk's assumption that the plaintiff displayed oppositional and defiant behaviours before the commencement of the abuse. Very little, if any, of this material was proved in evidence but the parties proceeded on the basis that that did not matter.
- [419] By the time of his June 2019 review by Dr Evans, Mr Brockhurst's marriage was over and this litigation was well underway. He reported preoccupation with it and intrusive thoughts about his treatment as a schoolboy. He elaborated upon his sexual difficulties, including that he saw sex as "dirty". He had become ashamed and more disconnected after talking about his abuse with his lawyers. He told Dr Evans that he found an attempted mediation with the defendant in 2018 extraordinarily emotionally distressing.
- [420] Dr Evans explored with Mr Brockhurst his behavioural problems. He admitted that it was difficult adjusting to TGS. Generally, while he admitted to "testing the boundaries" before the abuse, he denied any difficult behaviour at school and denied being spiteful, vindictive, or a bully. He told Dr Evans that the abrupt loss of his relationship with Mrs Rawlings "unleashed a nasty person".
- [421] Dr Evans observed that Mr Brockhurst presented with restricted affect. His thought content displayed "ruminations, intrusive images of abuse, a general lack of trust and a sense of demoralisation, particularly aimed at humankind".
- [422] She administered relevant tests which produced results consistent with severe depression, severe stress, extremely severe anxiety, extremely severe depression, and a tendency to minimise his symptoms or the harm. She found him to have diagnoses of Persistent Depressive Disorder, Alcohol Use Disorder, in remission, with pre-existing ODD. His Persistent Depressive Disorder was likely to follow a fluctuating course over his adult life. His ODD and Alcohol Use Disorder were likely to remain in remission.
- [423] Dr Evans acknowledged in this report that the plaintiff may have been vulnerable to the development of his disorders because of his ODD but it was also possible that his disorders may have been caused by the sexual abuse –

Assuming the veracity of Mr Brockhurst's history, it is likely that [ODD] could have heightened Mr Brockhurst's vulnerability to the later development of Alcohol Use Disorders and Depressive Disorders. Given its impact on the relationships with other children and adults, if persistent in adulthood, it would continue to have significant impacts on his interpersonal relationships in all life settings. However, it is also possible that development of Alcohol Use Disorders and Depressive Disorders may not happen in someone who has [ODD] and, in fact, such condition could improve when someone reaches adulthood and has capacity to be more self-determining. It is, therefore, possible that events such as an inappropriate relationship with a teacher could, in itself, act as a

causal factor for the development of a Depressive Disorder and Alcohol Abuse Disorder.

[424] She clarified her opinion on causation in her next report.

Dr Evans September 2019

[425] In this report, Dr Evans clarified that, in her opinion, on the balance of probabilities, the likely cause of Mr Brockhurst's Persistent Depressive Disorder and Alcohol Use Disorder was his inappropriate sexual relationship with the defendant.

Dr Evans 2021

[426] In her final supplementary report of February 2021, she said that (were it not for the abuse) if the plaintiff had developed a drive to study an area of interest to him, he would have been capable of studying for bachelor's degrees in Agronomy or Engineering. His ODD might have been a barrier, but with a strong enough drive, he may have been able to overcome it. She considered his mental health conditions to be chronic and likely to persist.

[427] On this topic, in his first report, Dr Chalk stated that "it would appear likely that, given the school reports, he [Mr Brockhurst] is performing less than might have been expected at one point in time".

Dr Evans – oral evidence

[428] Under cross-examination, Dr Evans explained that, on the assumption that the plaintiff suffered from trauma after liposuction in 2010, that trauma did not "neutralise" what had happened to the plaintiff as a schoolboy – it was an "add on". Nor did it explain his sexual problems or his being troubled by images of himself and Mrs Rawlings.

[429] She was asked whether Mr Brockhurst's "condition" after the sexual abuse might have "resolved" were it not for the "trauma" he sustained in 2010. She said she could not answer such a question with a blanket yes or no. It depended on the individual. Dr Evans continued –

One of the difficulties with sexual activity between a minor and an adult in childhood is that it impacts permanently on your interpersonal relationships, on your capacity to communicate effectively with people, your capacity to trust people. That stuff does not go away ... whether we've got at one point in time a situation where his depression was in remission, it doesn't mean that the sexual abuse, if it happened, isn't continuing to have a significant and detrimental impact on his life.

...

I think that even if someone has a chronic ongoing condition, that condition is a fluctuating condition that is impacted by other things going on in life and so it's unlikely that it ever goes away completely. So my sense is he would still have ended up with a depressive disorder that continued to wax and wane over – over his

lifetime ... Whether indeed ... the other event had happened or it had not happened.

- [430] In re-examination, Dr Evans explained that she did not have enough to “go on” (about the post liposuction “trauma”) to express an opinion about its psychological sequela.

Dr Chalk – oral evidence

- [431] In evidence in chief, Dr Chalk was questioned about the relevance of the plaintiff’s “trauma” post liposuction in 2010. He said that the fact that the plaintiff found the procedure traumatic did not cause him to substantially alter his views, but it suggested that the plaintiff was “fragile in his body image” at that time. There was though no psychiatric significance to his experience of pain after the procedure.

- [432] Of the plaintiff’s ODD behaviours, Dr Chalk conceded that it was “entirely possible” that the plaintiff would have had difficulties coping with all the changes which occurred when he commenced high school, which may have contributed to behaviour problems. Whether those problems would persist long term would depend on a range of factors – including whether the behaviours continued and whether there were other vulnerability factors. Dr Chalk agreed that people found to be bullies at school do not “inevitably” go on to become people with significant personality problems. Some “mature” out of it.

PART J – PERSONAL INJURY; CAUSATION

- [433] Dr Chalk and Dr Evans agreed that the plaintiff suffered from persistent depressive disorder; alcohol use disorder and ODD in remission; with significant personality dysfunction.

Plaintiff’s submissions

- [434] The plaintiff submitted that nothing in the evidence supported the proposition that his symptoms were due to ODD rather than sexual abuse. Even if I were to find that ODD played *some* part in his psychological state, there was no evidence before me which would permit the disentanglement of the effects of ODD from the effects of child abuse. Further, the defendant’s own doctor acknowledged that the effects of child abuse were insidious and pervasive and that (assuming the plaintiff’s allegations to be true) the sexual abuse endured by the plaintiff had a profound effect on him.

- [435] The plaintiff described his suffering in the aftermath of the sexual abuse as including (but not limited to) emotional and physical exhaustion; issues with trust; issues with touch; intimacy difficulties; flashbacks; anger; feeling like “rubbish”; not bothering at school; enduring on-going gossip; indulging in excessive smoking, drinking and gambling; sleeping difficulties; the end of his marriage; and interference with his education and employment. He described wanting to step back from life and described feelings consistent with anhedonia.

- [436] The plaintiff asked me to find that his depressive disorder was likely to continue and that he might relapse into alcohol use disorder. He asked me to find that the sexual abuse which he endured impacted upon, and would continue to impact upon, his

interpersonal relationships, his capacity to communicate effectively with new people, and his capacity to trust. He asked me to find that his condition was chronic and unlikely to ever go away completely.

Defendant's submissions

[437] The defendant's primary position was that I would not be persuaded that the defendant sexually abused the plaintiff as he alleged therefore his claim ought to be dismissed. However, if I were to find for the plaintiff on liability then, she submitted, he had "not discharged his onus to prove that he has suffered loss and damage that has been caused as a result of any matters alleged in these proceedings".

[438] The defendant also submitted that I would not accept that the plaintiff suffered the "psychological sequelae of sexual abuse" that he described to Dr Evans: he had painted "a very different picture" to Dr Leong.

[439] The defendant submitted that the award of general damages ought to be reduced to take into account the "other conditions" suffered by the plaintiff. The defendant did not specify what those other conditions were. There was no *evidence* that the plaintiff suffered from any other relevant pre-existing condition apart from ODD.⁴⁰ And, as above, the defendant's *reasoning* to the proposition that I would take "judicial notice" of the fact that the plaintiff did suffer from *something else* was illogical.

[440] On the question of disentanglement, the defendant submitted –

The plaintiff may indeed suffer from some form of psychological conditions; however, just because he has some condition, this does not mean that the conditions arise from sexual abuse. There is no evidence to support the proposition that the plaintiff's oppositional defiance disorder, rather than effects of sexual abuse could not be the cause of the plaintiff's ongoing issues.

Consideration of submissions

[441] In my view, the difference between the plaintiff's presentation to Dr Leong and his presentation to Dr Evans and Dr Chalk illustrated the fluctuating course of his depressive disorder over his adult life.

[442] When the plaintiff saw Dr Leong, things were going well. He was married and in a job he enjoyed. He told Dr Evans, in effect, that his marriage made him feel better. But things were not going well for him after his wife left him; and he found this litigation difficult. I was left in no doubt that the plaintiff suffered from the consequences and symptoms he described; and that his diagnosed depressive

⁴⁰ The plaintiff's "trauma" post liposuction made no relevant contribution to his condition. Nor did the defendant's counsel suggest it did in his closing submissions. Although there were some questions asked about "abandonment issues" (whatever that meant) during the trial, there was no evidential basis for a suggestion that abandonment issues contributed to the plaintiff's condition. Nor, I should add, did the defendant's counsel suggest there was.

disorder will be life long, even though it will “wax and wane”. I considered the re-emergence of alcohol use disorder a possibility.

[443] On the issue of the contribution of ODD to the plaintiff’s symptoms, the plaintiff referred me to the case of *Mount Arthur Coal Pty Ltd v Duffin* [2021] NSWCA 49, which set out the law concerning “disentanglement”.

[444] *Mount Arthur Coal* was a negligence case. Mrs Duffin suffered injuries – physical and psychological – when the grader she was driving hit an abnormality on the road surface at the mine. An issue on appeal was whether the primary judge made appropriate deductions to the award of damages because of Ms Duffin’s “pre-existing injuries”. Mount Arthur argued that in awarding certain future out of pocket expenses the trial Judge had failed to take into account her findings about pre-existing injuries. In dismissing this aspect of the appeal, Payne JA with whom Meagher JA and Gleeson JA agreed, said –

42 The real question was whether Mount Arthur had led any evidence sufficient to permit the effects of the previous conditions suffered by Ms Duffin to be “disentangled” from the effects of the injury for which Mount Arthur was responsible. That involved an analysis of the stream of High Court authority in *Watts v Rake* (1960) 108 CLR 158; [1960] HCA 58; *Purkess v Crittenden* (1965) 114 CLR 164; [1965] HCA 34 and *Malec v JC Hutton Pty Ltd* (1990) 169 CLR 638; [1990] HCA 20.

43 Those authorities were addressed ... by this Court in *Seltsam Pty Ltd v Ghaleb* [2005] NSWCA 208, where Ipp JA (with whom Mason P relevantly agreed) explained the operation of the relevant principles thus:

[105] Where a defendant alleges that the plaintiff suffered from a pre-existing condition, the evidential onus as explained in *Watts v Rake* and *Purkess v Crittenden* remains on the defendant and must be discharged by it. Nevertheless, to the extent that the issues involve hypothetical situations of the past, future effects of physical injury or degeneration, and the chance of future or hypothetical events occurring, the exercise of ‘disentanglement’ discussed in those cases is more easily achieved. That is because the court is required to evaluate possibilities in these situations – not proof on a balance of probabilities.

[106] Without intending to give an exhaustive list of possibilities, it may be that, had the defendant’s negligent act not occurred, a pre-existing condition might have given rise to the possibility that the plaintiff’s enjoyment of life and ability to work would have been reduced

and to a susceptibility to further injury; in addition, other causes entirely unrelated to the defendant's negligent act might have contributed to the plaintiff's ultimate condition.

[107] Appropriate allowances must be made for these contingencies. A proper assessment of damages requires the making of a judgment as to the economic and other consequences which might have been caused by a worsening of a pre-existing condition, had the plaintiff not been injured by the defendant's negligence. A pre-existing condition proved to have possible ongoing harmful consequences (capable of reasonable definition) to the plaintiff, even without any negligent conduct on the part of the defendant, cannot be disregarded in arriving at proper compensation.

...

[109] Of course, if the evidence does not adequately establish the preexisting condition or its possible consequences (as was the case in *Purkess v Crittenden*), it would not be possible to carry out such a comparison and assessment. In regard to the possible consequences, a scintilla of evidence would not suffice. The evidence must be such that a reasonable person could draw from it the inference that the possible consequences contended for by the defendant existed ...

44 The problem for Mount Arthur in the present case was its failure to lead any evidence permitting any "disentanglement" in accordance with the principles identified in *Watts v Rake*, *Purkess v Crittenden* and *Malec v Hutton* to occur. This is a case where the evidence does not adequately establish the possible consequences of the pre-existing condition relevant to all but one of the component parts of the award of future out of pocket expenses.

[445] The defendant's counsel did not appear to appreciate that the evidential onus was upon the defendant on this issue. His submissions were limited to those quoted above which made no reference at all to the evidence. Nevertheless, I considered the relevance of ODD to the plaintiff's disorders.

[446] Dr Evans and Dr Chalk acknowledged that childhood ODD did not necessarily evolve into an adult condition. When the plaintiff saw them, his ODD was in remission. Dr Evans thought it would likely remain so. Dr Chalk said that relationship and work difficulties attributable to ODD "would not be surprising". But there was virtually no evidence of ODD behaviours after the plaintiff left school. Rather, the evidence revealed the following –

- (a) The plaintiff's anger at his parents was clearly related to his relationship with the defendant and the school and his sense that they did not protect him.
- (b) The plaintiff's first relationship and his marriage ended because of his issues with intimacy – not ODD behaviours.
- (c) While the plaintiff spoke of difficulties with work colleagues in the UK, he reported some good relationships with fellow employees in Australia.⁴¹
- (d) There was no evidence that he struggled with his employment because he broke rules or had issues with his temper. With the exception of his job at Ritchie Brothers (and the issue with the Spanish medical certificate), the plaintiff's employment was never terminated by his employer. In any event, the issue with the Spanish medical certificate did not arise out of ODD behaviour.
- (e) When he confided in his employers, they were sympathetic to him and made generous allowances for him.

[447] The evidence did not persuade me of a link between the plaintiff's relationship and employment "difficulties" and ODD. I was not persuaded that the nominated *possible* consequences of ODD (relationship and employment difficulties) had in fact emerged in the 25-odd years since the abuse. And regardless, the evidence did not allow me to "disentangle" the possible effects of ODD from the effects of sexual abuse.

[448] Further, the defendant's own doctor's opinion was that there was a "greater than 50% chance" that the defendant's sexual abuse of the plaintiff led to an aggravation of his underlying difficulties; and that the defendant's sexual abuse and the plaintiff's ODD had a profound impact on his schooling and education.

[449] I was persuaded that the plaintiff suffered from the insidious and pervasive effects of the defendant's sexual abuse. I was further persuaded that the defendant's conduct materially contributed to the personal, psychological injuries the plaintiff described, which he will suffer from, to a greater or lesser degree, for the rest of his life.

PART K QUANTUM

[450] The plaintiff is 38 years old. There was no challenge to the assumptions made by the plaintiff that he had a life expectancy of another 45 years (5% multiplier 950.4) and a work-life expectancy of another 29 years (5% multiplier 809.6).

General damages

[451] With respect to general damages, the plaintiff sought an award of \$100,000. The defendant submitted that that was excessive and that the award should be limited to \$50,000. The plaintiff sought an additional award of \$50,000 for damages for "violation of personal integrity".

⁴¹ Although he was unsettled whilst at Peabody (and could not, for example, tolerate horseplay), that was in 2019, whilst he was in the throes of preparing for this litigation.

- [452] I was referred to *B v Reineker*, a case from New South Wales (by the plaintiff) and *P v R* [2010] QSC 139 (by the defendant).
- [453] The plaintiff in *Reineker* was sexually abused on countless occasions, over seven or so years, by a “church” family friend who became her teacher and swimming coach. The abuse began when she was in year 9. The defendant told her he wished she was his daughter and encouraged her to call him “dad”. He threatened to kill himself if she did not do as he wished. The plaintiff became isolated. She felt trapped in the relationship and guilty about it. She fell pregnant to the defendant twice. She terminated both pregnancies. She terminated the first under the defendant’s threat that he would kill himself if she did not. She suffered from PTSD, depression, and anxiety. Her capacity for work was substantially compromised. Her ability to form mature, intimate relationships was severely impaired. She was awarded \$350,000 in general damages, which included aggravated damages.
- [454] The plaintiff in *P v R* was sexually abused as an 8-year-old by her father’s friend. The abuse included six instances of sexual assault over a period of about 6 months. It included licking her vagina, digital penetration and simulated intercourse. The plaintiff suffered profoundly. She engaged in self-harming which left her with scars. She made three suicide attempts and was admitted to a mental health facility on four occasions. Her condition was unlikely to improve. She was awarded \$80,000 in general damages.
- [455] For obvious reasons, the award for general damages in *P v R* aligned with awards made in Queensland for sexual abuse/assaults (see for example the discussion of other awards in *BDT v BDG* [2019] QDC 74).
- [456] Bearing in mind the plaintiff’s age at the relevant time and his evidence about his suffering in the aftermath of the defendant’s abuse, I awarded him general damages of **\$65,000**. This amount takes into account the nature of the battery – that is, that it involved violation of his personal integrity.

Interest on general damages

- [457] The defendant made no submissions about the appropriate assessment of interest on any award of damages in the plaintiff’s favour.⁴² The plaintiff asked me to follow Daubney J’s approach in *P v R* and to allow interest on general damages at two per cent. I did so. I calculated interest on general damages at 2 per cent per annum for a period of 25 years (that is, from 1996): **\$32,500**.

Economic loss

- [458] The plaintiff submitted that he would have obtained a tertiary education were it not for the impact of the defendant’s sexual abuse.
- [459] The difficulty with that submission was that the only school results untarnished by the implications of the defendant’s sexual abuse were his primary school results and the results for his first semester of high school. Other evidence about his occupational aptitude was very limited. It consisted only of evidence that he was of

⁴² Even after the absence of a submission about interest had been pointed out to the defendant in the plaintiff’s closing submissions.

at least average intelligence; an SOI Learning Abilities Test, which assessed his abilities *in 1995* as between high average and above average; the evidence of Dr Evans and the very brief observation of Dr Chalk.

- [460] Common sense and life experience informed me that one cannot reliably predict much about occupational outcomes on the basis of primary school performance or too on the basis of first semester high school results. Also, common sense and life experience informed me that school results and intelligence alone are not always reliable predictors of employment prospects, employment success or otherwise. Family modelling, personal drive, interest and opportunity also come into play.
- [461] The defendant submitted that I would not be satisfied that the plaintiff suffered *any* economic loss attributable to the defendant. The defendant submitted that the plaintiff was struggling at high school before he was the subject of her inappropriate attention. She also submitted that “the plaintiff suffered from pre-existing oppositional defiance disorder and as a result of this condition, and his lower than average academic abilities ... the plaintiff was always destined not to achieve very remunerative employment and outcomes ... [H]e ... would never have achieved income near even average weekly earnings”.
- [462] The difficulty for the defendant with this submission was in its sweeping overstatement of the evidence. At best for the defendant, Dr Chalk said in one paragraph of his first report that, because of the plaintiff’s ODD, work difficulties would not be surprising. But in that same report Dr Chalk said, in effect, that the sexual abuse and the ODD had a profound impact on the plaintiff’s education and therefore his occupation.
- [463] The plaintiff described the difficulties he had over the years in finding the motivation to work and in maintaining employment. The plaintiff submitted that he would face similar problems for the rest of his working life. I noted that his problems with employment became acute *inter alia* whilst he was in the throes of this litigation.
- [464] I found that the plaintiff’s past inability to obtain employment, and to hold down a job for any length of time, were consequences of the psychological injury caused by the defendant’s sexual abuse. I found that the plaintiff would suffer a reduction in his earning capacity for the rest of his working life because the defendant sexually abused him as a child. Whilst the end of this litigation might reduce the plaintiff’s tendency to ruminate on the defendant’s treatment of him, it is likely that he will never be free of the consequences of her abuse. And there is a risk that any future therapy he receives might trigger discomfort or distress (at least in the short term) which will impact negatively on his ability to work.
- [465] The evidence persuaded me that, when not overwhelmed by the symptoms of his psychiatric injury, the plaintiff was driven to find work. I also noted that, in 2019, he had an earning capacity equivalent to that of a senior engineer (when he worked at the mines).
- [466] The plaintiff produced evidence which calculated his economic loss on various assumptions, that is, a forensic accountant’s report by Michael Lee CA of Vincents (exhibit 47).

- [467] The defendant's counsel initially objected to the admissibility of Mr Lee's report on what seemed to be a misapprehension about the way in which I might use it.⁴³ Ultimately, the defendant's counsel clarified that his position was that I was able to use Mr Lee's report in the calculations I was required to make at the end of the hearing⁴⁴ if I accepted the assumptions upon which his report was made
- [468] Counsel also suggested, at one point, that I would have to be satisfied of the veracity of "the statistical calculations" undertaken by Mr Lee and the "percentages et cetera" I in the report. I told the defendant's counsel that he could make any challenge he wished to make to Mr Lee's data. But the defendant's counsel did not cross-examine Mr Lee on any matter of substance. He asked nothing about Mr Lee's methodology or the source material upon which his calculations were based. Nor did the defendant's counsel cross-examine the plaintiff at all about any of the assumptions upon which Mr Lee's report was based.
- [469] Mr Lee proceeded on the assumption that Mr Brockhurst would not have been earning income until 1 January 2006, on the basis that he would have been, until then, engaged in tertiary education (which Mr Brockhurst would have paid for).
- [470] I was not prepared to proceed on the basis that Mr Brockhurst would have obtained a degree in engineering, but I considered it reasonable to proceed on the basis that (were it not for the sexual abuse) he would have undertaken some sort of additional study after leaving school. Mr Lee assumed that Mr Brockhurst would have undertaken further studies for four years. I considered that a reasonable assumption to make.
- [471] However, given the plaintiff's young age at the time of the abuse, and the limited evidence about his future prospects, I considered it appropriate to proceed on the basis that – were it not for the sexual abuse – the plaintiff's earnings would have been comparable to the average weekly earnings for males in Australia.
- [472] I considered whether it was reasonable to proceed on the basis that the plaintiff would have been fully employed since 2006 were it not for the defendant's sexual abuse. I considered it more probable than not that he would have been because –
- he was driven to find employment, as demonstrated by his actual employment record and his persistence in his attempts to join the defence force (which included working to overturn a finding that he was medically unfit);
 - he was prepared to travel for work;
 - he obtained work with relative ease – suggesting that he prepared well for, and presented well at, interview and was an attractive candidate;
 - he was willing to work in a variety of roles; and
 - with the exception of the issue involving the Spanish medical certificate, his employment was never terminated by his employer.

⁴³ He seemed concerned that I did not understand that I had to accept the factual foundations for Mr Lee's calculations before I could rely upon them. I understood that.

⁴⁴ Transcript 5 – 17 lines 14 – 28.

Past economic loss

- [473] On an average weekly earnings basis, I awarded the plaintiff:
- (a) **\$613,292.00** for past economic loss,
 - (b) interest, at 4 per cent per annum, (from 1 January 2006): **\$376,070.65**;
 - (c) loss of past superannuation: **\$64,599.00**; and
 - (d) interest on the loss of past superannuation: **\$39,612.10**.

Future economic loss

- [474] As to future economic loss, the plaintiff submitted that that he will continue to suffer a reduction of his earning capacity of about 50 per cent into the future.
- [475] The defendant said that there should be no award for future economic loss on the basis that the plaintiff had secured employment with Evolution Mining.
- [476] It is true that the plaintiff has demonstrated, commendably, as he has matured, an ability to stick at work that satisfies him. But as Dr Evans explained, his depressive symptoms are likely to wax and wane over time. He has demonstrated, relatively recently, his vulnerability to decline.
- [477] I considered it appropriate to proceed on the basis that, into the future, the plaintiff's earning capacity would be reduced by 30 per cent. On that basis, I awarded the plaintiff **\$305,984.00**.

Discount for vicissitudes

- [478] The plaintiff acknowledged that there ought to be a further discount for vicissitudes of 15%. The defendant made no contrary submission. A discount for vicissitudes of 15% is appropriate: **-\$45,897.60**.

Loss of future superannuation

- [479] For the loss of *future superannuation*, on the basis that the plaintiff would earn an average weekly wage, I awarded **\$36,614.00**.

Out of pocket expenses and future treatment.

- [480] The plaintiff claimed \$1,192.50 for past out-of-pocket expenses and \$42,900 for future treatment. The defendant submitted that there was no evidence of these matters and observed that Dr Evans noted that the plaintiff was unlikely to consider pharmacology.
- [481] Dr Evans suggested that the plaintiff was likely to need at least 12 months of psychotherapy intervention to achieve benefit – that is 26 sessions at \$275 per session. According to Dr Evans, he was also likely to benefit from a longer-term psychotherapeutic relationship, involving weekly sessions with a psychiatrist (also at \$275 per week) for two to five years.
- [482] On the strength of Dr Evan's opinion, the plaintiff sought an award for future "trauma therapy" for about 5 years.

[483] Bearing in mind the plaintiff's attitude to therapy in the past, I doubted whether he would engage in therapy at the intensity and for the duration recommended by Dr Evans. I considered it appropriate to make a global award in the sum of **\$10,000** for future therapy.

[484] I could not find evidence of the plaintiff's past out of pocket expenses.

Aggravated damages

[485] The plaintiff sought an award of \$50,000 for aggravated damages, referring to *P v R* [2010] QSC 139 as a benchmark. Aggravated damages may be awarded where the defendant has acted with contumelious disregard for the plaintiff's rights, in a high-handed way or with malice, in committing the tort or thereafter, and such conduct has increased the plaintiff's suffering. Aggravated damages compensate for intangible, as well as actual, injury caused by the defendant's wrongdoing.

[486] In support of his claim for aggravated damages, the plaintiff referred to matters such as the defendant's position of trust and power over him as well as her denial of sexual assault, particularly in the face of her correspondence to the plaintiff and with knowledge that TGS had accepted responsibility.

[487] The defendant submitted that there should be no award for aggravated damages. She submitted that "it could not be held that, in the present case, the manner or circumstances in which the defendant's actionable wrong was carried out increased the plaintiff's suffering".

[488] The defendant abused her position of trust over the plaintiff, who was particularly vulnerable as a 13-year-old boarder, living away from home. The defendant's maintaining of her innocence after the plaintiff's parents' complaint about her meant that neither the plaintiff's parents nor the school were able to provide him with the support he needed at a critical time.

[489] His difficult behaviour as a schoolboy was not properly and sympathetically understood as part of the fallout of his relationship with the defendant (on the assumption that TGS would have responded differently to the plaintiff had it known the truth). He was seen as the problem. I was also persuaded that this litigation exacerbated the plaintiff's distress. During this trial, he was accused of lies and fantasy and it was suggested that he suffered from an undisclosed mental illness which accounted for his symptoms. Indeed, it was seriously put to Mr Brockhurst that he suffered from a *delusion* that he was a commissioned officer in the Navy.⁴⁵ I accepted his evidence of his mental deterioration in the face of statements from the defendant and her witnesses and how difficult he found the failed attempt at mediation.

[490] I considered this an appropriate case for an award of aggravated damages, compensatory in nature, in the amount of \$35,000, with interest at 2 per cent for half of the award for 25 years: **\$43,750.00**.

⁴⁵ See transcript 4-76 (especially lines 43 – 45) – 4-78 (especially lines 1 – 7).

Exemplary damages

- [491] The plaintiff sought \$50,000 in exemplary damages. He submitted, by reference to *P v R*, that the defendant's sexual abuse of him as a vulnerable child called for an award of punitive damages. He also referred to the defendant's financial means.
- [492] Whilst aggravated damages are compensatory in nature, exemplary damages are punitive. They are awarded to punish a defendant; to provide retribution; to act as a deterrent to the defendant and others minded to conduct themselves similarly, and to demonstrate the Court's disapproval of a defendant's conduct.
- [493] The plaintiff chose not to pursue the defendant through the criminal courts. She has therefore suffered no penal sanction for her conduct.
- [494] The defendant noted that the "if but only if" test applied to the award of exemplary damages (see *WAQ v Di Pino* [2012] QCA 283). She submitted that the amount to be awarded to the plaintiff under the other heads of damages was not inadequate to punish her. The defendant submitted (without evidence) that I should "note" that the defendant "received significant publicity in the media during the trial, including her photograph and name being on the front page of the Toowoomba Chronicle as well as various social media sites so the defendant has suffered a significant amount of public shaming and will likely suffer significant economic consequences in the event of any adverse finding in these proceedings".
- [495] I considered it appropriate to make an additional award for exemplary damages to convey the Court's denunciation of the defendant's abusive conduct and to ensure that the plaintiff is adequately compensated. The defendant's utterly selfish conduct included her sexual pursuit of the plaintiff, even after she had been warned to keep away from him. Her conduct took from him the opportunity to develop, in his own time, as a mature, sexual adult.
- [496] I was however concerned to ensure that I did not compensate the plaintiff twice for the same elements of the defendant's conduct – such as the defendant's position of trust over him – and settled on an award of **\$15,000** in exemplary damages.

Set-off

- [497] The plaintiff's claim against TGS was compromised by way of the school's payment to him of \$150,000. The parties spent a long time in submissions about whether and how much my award of damages to the plaintiff ought to be reduced to take into account that payment.
- [498] The plaintiff submitted that, if I considered it appropriate to make a set off, it should be in the sum of approximately \$90,000 – that is, \$150,000 net of the plaintiff's legal fees. The defendant submitted that I should set off the whole of the \$150,000.
- [499] Guided by *Mark Bain Constructions Pty Ltd v Avis; Mark Bain Constructions Pty Ltd v Barnscape Pty Ltd* [2012] QCA 100, and doing the best I could to estimate the costs proportion of the settlement sum, I considered it appropriate to set off an amount of **\$100,000: -\$100,000.00**.

Total award

[500] Damages are payable to the plaintiff by the defendant in the sum of **\$1,456,524.15**.

Costs

[501] I will hear the parties as to costs.