

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 144
ARC 55/2013
ARC 79/2013
ARC 48/2014
ARC 25/2014**

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	proceedings removed from the Employment Relations Authority
AND IN THE MATTER OF	an application to raise personal grievances out of time
BETWEEN	KATHLEEN CRONIN-LAMPE First Plaintiff
AND	RONALD CRONIN-LAMPE Second Plaintiff
AND	THE BOARD OF TRUSTEES OF MELVILLE HIGH SCHOOL Defendant
AND	ACCIDENT COMPENSATION CORPORATION Intervener

Hearing:	20–21, 23–24, 27 February–3 March, 6–10 March, 26–27 April and 20 July 2023 (Heard at Hamilton and Auckland and via VMR)
Appearances:	T Braun and E Anderson, counsel for plaintiffs PN White and L Fernandez, counsel for defendant S Bisley, counsel for intervener
Judgment:	30 August 2023

JUDGMENT OF JUDGE B A CORKILL

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Introduction

[1] The Court is required to resolve a complex range of issues arising from a tragic set of circumstances.

[2] Ronald and Kathleen Cronin-Lampe worked as counsellors at Melville High School (MHS) from 1996 (Mrs Cronin-Lampe)/1997 (Mr Cronin-Lampe) to late 2011, with their employment ending in late 2012 due to their medical circumstances.

[3] The evidence establishes that at all relevant times, MHS was a lower decile school situated in a predominantly lower socio-economic area. It is apparent that the student body faced an extensive range of issues, often linked to the inherent challenges of economic need.

[4] MHS suffered an extraordinary number of traumatic events in its student body, staff and wider community over the period. The evidence is that during the 15 and 16 years of Mr and Mrs Cronin-Lampe's employment respectively, there were approximately 32 deaths in the MHS community, many by suicide, some by other unexpected tragedy, and some from illness. Mr and Mrs Cronin-Lampe were actively involved in all these tragedies, both in the immediate aftermath and, usually, in relation to ongoing issues. They were also heavily involved in assisting students and staff in relation to a wide range of other very challenging situations.

[5] Mr and Mrs Cronin-Lampe were provisionally diagnosed with post traumatic stress disorder (PTSD) in late 2011/early 2012. Soon after, they each raised an unjustified action grievance asserting, in summary, that health and safety and/or workplace obligations had not been met. It was alleged that as well as having to deal with multiple traumatic circumstances over the years which led to PTSD, in 2010/2011 a number of unjustified employment-related actions on the part of MHS also impacted on their mental health.

[6] Contractual causes of action were also raised, in which it was alleged that a number of health and safety breaches occurred.

[7] Proceedings were subsequently issued which fleshed out both causes of action. Very substantial remedies are now sought. The serious allegations raised are all strongly denied by MHS. It also raises affirmative defences and counterclaims, the terms of which are rejected by Mr and Mrs Cronin-Lampe.

[8] MHS raised a question as to whether the statutory bar under the Accident Compensation Act 2001 (the AC Act) applies. So it could be heard on accident compensation issues, the Accident Compensation Corporation (ACC) was joined as an intervener.

[9] For reasons I will come to shortly, it is necessary to deal with only some of the wide range of pleaded issues in this judgment.

The history of the litigation

[10] Soon after the personal grievances were raised, Mr and Mrs Cronin-Lampe filed statements of problem in the Employment Relations Authority in January 2013. Those claims were unsuccessful.¹

[11] Challenges were subsequently brought to the Court. On 11 July 2013, Mr and Mrs Cronin-Lampe challenged the Authority's determination that their personal grievance was not made out on a de novo basis. MHS lodged a de novo challenge in relation to the costs determination because the Authority had ordered that costs in respect of its investigation should lie where they fall.²

[12] On 4 April 2014, Mr and Mrs Cronin-Lampe filed further statements of problem which raised contractual causes of action. These were removed to the Court by the Authority.³

[13] As a result of discussion with counsel in this Court, Mr and Mrs Cronin-Lampe subsequently filed a further relationship problem in the Authority, seeking leave to raise their personal grievances after the expiry of the statutory period for doing so on the grounds that exceptional circumstances existed.⁴ This proceeding was also removed to the Court.⁵

[14] On 6 August 2015, the Court ordered further particulars of Mr and Mrs Cronin-Lampe's claims to be provided.⁶

[15] In April 2017, Judge Perkins granted leave to Mr and Mrs Cronin-Lampe to bring their action in respect of alleged causes of action for bodily injury which accrued within the six-year period preceding 4 April 2014, which was the date on which the

¹ *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 249 (Member Crichton).

² *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 446 (Member Crichton).

³ *Cronin-Lampe v Board of Trustees of Melville High School* [2014] NZERA 146 (Member Crichton).

⁴ Employment Relations Act 2000, ss 114 and 115.

⁵ *Cronin-Lampe v Board of Trustees of Melville High School* [2014] NZERA 223 (Member Crichton).

⁶ *Cronin-Lampe v The Board of Trustees of Melville High School* [2015] NZEmpC 136 at [32].

applicable statement of problem had been filed in the Authority.⁷ The order was made under s 4(7) of the Limitation Act 1950, the limitation statute that applied at all relevant times.⁸

[16] Also before the Court was the application under ss 114 and 115 of the Employment Relations Act 2000 (the ER Act), seeking leave to raise the personal grievances out of time. Judge Perkins concluded that this issue should be resolved at trial.⁹

[17] In 2016, Mr and Mrs Cronin-Lampe also made applications to ACC for cover under s 21B of the AC Act for work-related mental injury. Ultimately, cover was declined. Mr and Mrs Cronin-Lampe then decided to resume the prosecution of their claims in this Court. That led to a preliminary issue as to the application of s 133(5) of the AC Act, which constrains remedies for injuries where an application for cover is before the Corporation. In November 2021, I determined that the section did not bar Mr and Mrs Cronin-Lampe from proceeding with their claims in this Court.¹⁰ The Court of Appeal declined an appeal which was then brought by MHS. That Court confirmed that s 133(5) did not bar Mr and Mrs Cronin-Lampe's claims from being heard by this Court.¹¹

Pleadings

[18] The pleadings are compendious. I begin by summarising the factual assertions before recording the multiple causes of action and claims, all as pleaded in the plaintiffs' second amended statement of claim. I will refer also to the defendant's position as outlined in its statement of defence and counterclaim. Finally, I will refer to the plaintiffs' reply to that document.

⁷ *Cronin-Lampe v The Board of Trustees of Melville High School* [2017] NZEmpC 41, [2017] ERNZ 191 at [42].

⁸ This has since been replaced by the Limitation Act 2010; however, the Limitation Act 1951 continues to apply despite its repeal to actions based on acts or omissions before 1 January 2011; Limitation Act 2010, s 61; and Limitation Act 1951, s 2A.

⁹ *Cronin-Lampe v The Board of Trustees of Melville High School*, above n 7, at [43]–45.

¹⁰ *Cronin-Lampe v The Board of Trustees of Melville High School* [2021] NZEmpC 201, [2021] ERNZ 1188.

¹¹ *The Board of Trustees of Melville High School v Cronin-Lampe* [2022] NZCA 407, [2022] ERNZ 751.

Factual assertions

[19] Mr and Mrs Cronin-Lampe allege that in the course of their employment they provided counselling, pastoral care, ongoing risk assessments and the provision of assistance to students, including a high number of at-risk students who required extensive support. They also provided assistance to teachers as well as members of the wider community.

[20] Mr and Mrs Cronin-Lampe say that they provided services in respect of numerous “incidents and stressors”, which were collectively “traumatic”. Particulars of each of the multiple deaths in respect of which they assisted during their employment were given, and of the interventions which followed. According to the pleadings, these included services in respect of 16 current or former student suicides and 16 other deaths, as well as for many other circumstances that did not result in death, from 1997 to 2011. I interpolate that reference was made in the plaintiffs’ evidence to several additional deaths not referred to in their pleading.

[21] Mr and Mrs Cronin-Lampe also allege that they provided counselling, pastoral care and assistance to students dealing with issues relating to sexual orientation and health, sexual and psychological abuse, eating disorders and self-harm, and to students and teachers relating to addiction and general mental health issues. The names of the persons to whom these services were provided are recorded in a confidential memorandum which accompanied the applicable statement of claim.

[22] Mr and Mrs Cronin-Lampe say that the “traumatic incidents” and the “traumatic services” they rendered were “hazards or harms” in the workplace causing an unmanageable workload. This led them to suffer from severe stress and exhaustion so that they were diagnosed with PTSD and/or a psychiatric illness. As a result, they were unable to return to employment at MHS in 2012.

[23] For its part, MHS admits the provision of guidance counselling, pastoral care and assistance to students and teachers, although it says Mr Cronin-Lampe was not employed by it in 1997 or early 1998, so it did not have employment responsibilities

in connection with the deaths that occurred in that period.¹² It admits the suicides that are pleaded from 1997 to 2011, but in respect of those involving former students says that neither Mr or Mrs Cronin-Lampe had employment responsibilities relating to those deaths. In respect of suicides from 2002, it denies that there were an unusual, exceptional or aggravating stress or trauma to Mr or Mrs Cronin-Lampe. In respect of services rendered to the wider community in 1996 to 2011, MHS says it has insufficient knowledge of the circumstances relating to the named persons, and that any services provided to members of the wider community were not within the scope of their employment and not known by MHS at the time the services were provided; it is asserted that such services were rendered by the plaintiffs at their own initiative.

[24] In respect of an overarching assertion made by Mr and Mrs Cronin-Lampe as to suicide-related services, MHS denies this in the absence of further particulars. With regard to specific instances of intervention following each suicide, defences are raised in relation to each such example, the effect of which is to deny the allegations.

[25] The next topic covered by the pleadings relates to the asserted knowledge of the school's Board of Trustees. Mr and Mrs Cronin-Lampe allege that the Board knew, or ought to have known, of the context they describe, including the circumstances surrounding "at risk" students at the school, the demanding nature of Mr and Mrs Cronin-Lampe's workload, and the intrinsic stress of their counselling roles.

[26] In a related series of assertions, Mr and Mrs Cronin-Lampe allege it was reasonably foreseeable that the collective traumatic incidents, the provision of traumatic services, the existence of harm in the workplace and an unmanageable workload would cause them injury.

[27] Each of these allegations is denied by MHS. Responses are given to individual allegations to support the denial. In summary, MHS says that some of Mr and Mrs

¹² Paragraphs 47.3 and 47.4 of the amended statement of claim refer to two deaths that occurred in late January 1998. However, para 31 alleges that Mr Cronin-Lampe commenced a 0.6 FTE position in January 1998.

Cronin-Lampe's assertions are correct to a limited extent, but it was not reasonably foreseeable that their work would cause them harm.

[28] Mr and Mrs Cronin-Lampe then allege that in 2011 the working relationship between them, and the Principal and members of the Board, broke down for a range of reasons. MHS says the breakdown occurred when the Principal attempted to have Mr and Mrs Cronin-Lampe conform to MHS's employment-related expectations of all staff.

Legal assertions: personal grievances

[29] Mr and Mrs Cronin-Lampe then say that they raised personal grievances on 26 January 2012, concerning incidents dating back to 1996, as pleaded earlier. I interpolate that confusion subsequently arose in the course of these proceedings as to the correct timeline. The plaintiffs pleaded that from 22 September 2011,¹³ there were health and safety breaches as well as related failures to manage workload; further, workplace conditions were not adequately maintained as from that date.

[30] Mr and Mrs Cronin-Lampe also say they were so badly affected and traumatised by the matters giving rise to their personal grievance, they were unable to properly consider raising it within the 90-day period they had referred to in the statement of claim.

[31] Accordingly, they apply for a finding under ss 114(4) and 115(a) of the ER Act of exceptional circumstances as a result of exposure to traumatic incidents; the provision of traumatic services including on a 24-hour per day/seven-day per week basis; the imposition of an unmanageable workload; and exposure to hazards and harm in the workplace.

¹³ Both parties erroneously pleaded that 22 September 2011 was the 90-day date for the purposes of s 114 of the Employment Relations Act 2000. In fact that date, as counsel later accepted, was a miscalculation. It was agreed 28 October 2011 was the correct 90-day date. In any event, since the focus for present purposes is exceptional circumstances, the Court's analysis relies upon the identification of a date the grievance was said to have arisen and the 90-day period runs from that date. This was later identified as 2 December 2010, meaning the 90-day date was 2 March 2011.

[32] In closing, it was clarified that 2 December 2010 was the date from which an exceptional circumstances finding was sought.

[33] Mr and Mrs Cronin-Lampe also allege there was a continuous course of conduct in respect of the matters giving rise to their personal grievance.

[34] For the purposes of their grievance claims, Mr and Mrs Cronin-Lampe seek financial and non-financial compensation, reimbursement of wages, medical and qualifying expenses, and loss of income.

[35] MHS admits that Mr and Mrs Cronin-Lampe raised their personal grievances on 26 January 2012, but denies all other allegations. It says there are no grounds entitling them to raise personal grievances outside the 90-day time limit; that the alleged grievances could not have been reasonably foreseen by the Board; and that the steps taken by MHS were justified.

Contractual causes of action

[36] Three contractual causes of action are raised by Mr and Mrs Cronin-Lampe. These are for breach of terms implied by common law, by the Health and Safety in Employment Act 1992 (the HSE Act), and for breaches of implied and express terms derived from the Secondary Teachers' Collective Agreement (STCA). Although the pleaded legal foundation for each cause of action is different, the alleged breaches are common. That is, it is contended the Board failed to meet its health and safety obligations and failed to manage workload and workplace conditions adequately.

[37] In each instance, it is alleged Mr and Mrs Cronin-Lampe suffered foreseeable losses including that they were unable to return to work at MHS, or to work as guidance counsellors and that they suffered substantial financial losses and harm. They accordingly seek relief by way of general, special and exemplary damages.

[38] In closing, it was clarified for the plaintiff that there were various accrual dates from 4 April 2008, being the six-year limitation date identified in Judge Perkin's judgment, up until the end of their employment.

[39] MHS admits the implied terms at common law, under the HSE Act, and as to certain provisions of the STCA. It denies the asserted breaches and any liability for damages.

[40] MHS also raised several affirmative defences including:

- (a) Any alleged unjustifiable actions were not raised within the required 90-day statutory time period, meaning they are historical and not justiciable.
- (b) The claim based on the provisions of the HSE Act is an action in tort for which the Court does not have jurisdiction.
- (c) Any breaches of duty/causes of action, if established, occurred/accrued more than six years before the plaintiffs' claims were brought.
- (d) If MHS were to be found liable to compensate each of the plaintiffs, which is denied, the plaintiffs contributed to their own losses.
- (e) The plaintiffs' claims were for damages arising through mental injury and, as such, are barred under s 317 of the AC Act.
- (f) Each of Mr and Mrs Cronin-Lampe failed to mitigate their losses by a failure to obtain both professional intervention and then further work.

[41] Finally, MHS brings a counterclaim against each of Mr and Mrs Cronin-Lampe on the basis that they breached their contractual, loyalty and fidelity duties. It is asserted that Mrs Cronin-Lampe failed to inform MHS about Mr Cronin-Lampe's health as from 2010 after he had suffered a head injury at work, that he may have been suffering adverse effects from his employment and that her statements and actions conveyed misleading information as to the state of his health. It is asserted that Mr Cronin-Lampe failed to inform MHS as to the state of Mrs Cronin-Lampe's health as from 2010 when he knew that she may have been suffering adversely from her employment. In each instance, it is pleaded that if MHS is liable to pay compensation to either plaintiff, an equivalent sum should be paid by them to MHS.

[42] Mr and Mrs Cronin-Lampe deny each of the affirmative defences and deny liability for the counterclaims brought against them.

Issues

[43] From the parties' pleadings, the following issues arise:

- (a) With regard to the plaintiffs' personal grievances:
 - (i) Should Mr and Mrs Cronin-Lampe be granted leave to bring their grievances outside the 90-day time limit?
 - (ii) Were Mr and Mrs Cronin-Lampe unjustifiably disadvantaged by the actions of MHS?
- (b) Are Mr and Mrs Cronin-Lampe's claims for damages barred by s 317 of the AC Act?
- (c) With regard to Mr and Mrs Cronin-Lampe's contractual causes of action:
 - (i) Are the causes of action justiciable?
 - (ii) When did they accrue?
 - (iii) Are there foreseeability issues?
- (d) If the ACC bar does not apply:
 - (i) What are Mr and Mrs Cronin-Lampe's losses?
 - (ii) Did they contribute to their own losses?
 - (iii) Did they fail to mitigate their losses?
 - (iv) Did they breach any duties owed to MHS?

The scope of the hearing

[44] At the hearing, the Court received evidence from 19 witnesses for the plaintiffs and six witnesses for the defendant, over 14 sitting days. I received comprehensive documentary evidence, mainly contained in 14 bundles of documents, although there were additional documentary exhibits; and I undertook a view of MHS current school premises in the company of counsel which focused on the location of the Guidance Department (Guidance) in the final years of Mr and Mrs Cronin-Lampe's employment. Subsequently, I received very detailed submissions from all counsel over three days.

Summary of issues addressed in this judgment

[45] I referred earlier to the fact that the application for leave to bring the personal grievances out of time was originally considered on an interlocutory basis. Judge Perkins concluded, however, that the complexity of that limitation issue was such that the final findings under ss 114 and 115 of the ER Act should be resolved at trial. I respectfully agree with that conclusion, which was appropriate given the long and complicated chronology it is necessary to traverse for the purposes of resolving many factual disputes.

[46] Section 114(5) of the ER Act states that where leave is granted under subs (4), there must be a direction that the employer and employee "use mediation to seek to mutually resolve the grievance." Counsel did not refer to this provision at the hearing. Subsequently I sought submissions as to whether they considered it to be mandatory. It was common ground that it is, with counsel also submitting that if the Court were to conclude that time should be extended, it would need to issue a judgment on the leave point only and direct the parties to attend mediation. They said the substantive issues would have to be dealt with in a second judgment if a settlement of the outstanding issues was not achieved at mediation.

[47] In his interlocutory judgment, Judge Perkins considered that in view of what had already transpired in the proceeding, further mediation should be dispensed with under s 188(2) of the ER Act.¹⁴ I have concluded that the general discretion in s 188(2)

¹⁴ *Cronin-Lampe v The Board of Trustees of Melville High School*, above n 7, at [3].

could not override the mandatory provisions of s 114(5), were the Court to make an exceptional circumstances finding. In this case, such a conclusion was not made at the interlocutory stage. It follows that, if an exceptional circumstances finding is made at trial, the parties must be directed to attend mediation.

[48] In this judgment, therefore, I summarise the evidence, both non-medical and medical, before going on to consider whether time should be extended. For reasons I will come to, leave is granted under s 114, meaning I will direct the parties to attend mediation. To the extent that there are outstanding issues between the parties after that opportunity has been provided, they will be resolved in a second judgment. If that eventuality arises, I will not be repeating factual matters covered in this judgment. I intend that the two judgments would be complementary.

Credibility

[49] There were numerous credibility issues raised. To resolve these, I have used conventional decision-making techniques such as:¹⁵

- (a) noting, unless conceded, that each party must prove the factual constituents of the causes of action they raise;
- (b) testing individual pieces of evidence against the whole of the evidence given;
- (c) comparing accounts of events given at trial with evidence, especially documentary evidence, compiled at or about the time of the events and before the spectre of litigation arose;
- (d) assessing, as a matter of common sense, the inherent probability of opposing accounts; and

¹⁵ See *Lawson v New Zealand Transport Agency* [2016] NZEmpC 165 at [303]–[304]; *Xu v McIntosh* [2004] 2 ERNZ 448 (EmpC) at [23]–[26]; and *French v Chief Executive of the Department of Corrections* [2002] 1 ERNZ 325 (EmpC) at [25].

- (e) exercising caution as to assessing credibility through the demeanour of witnesses when giving evidence.

[50] In applying these techniques, I have been mindful of the passage of time since the events occurred, as well as the breadth of a chronology which spans approximately 16 years of Mr and Mrs Cronin-Lampe's employment, and the 10 years since while the parties have been involved in the litigation. MHS has made allegations to the effect that some of the evidence given, and allegations made, by Mr and Mrs Cronin-Lampe lack credibility, who in turn reject this proposition. Given the timespan it is unsurprising that the many witnesses have different recollections of the spectrum of events.

[51] Such a long lapse of time presents two problems. The first and obvious one is difficulty of recall. The second is that it is natural for parties over time to emphasise the validity and respectability of their particular positions. One of the expert witnesses, Dr Justin Barry-Walsh, described this problem in respect of the plaintiffs as the "reinforcing nature of litigation"; in fact, this observation is apt for the key witnesses on both sides.

[52] The result is that this is not a case where it is possible to conclude that one party's account is completely correct, so that the other party's account must be rejected, as counsel for each party urged in their respective submissions on credibility. A considerably more nuanced approach is necessary given the substantial range of material which has been placed before the Court, and the complexity of the events.

[53] In the end, the evidence of key witnesses has been accepted for some purposes, but rejected for other purposes. In some instances, there is no clear answer, in which case the assertion is unproved.

[54] I make the following particular points as to the accuracy and reliability of the parties' evidence:

- (a) Mr and Mrs Cronin-Lampe gave detailed evidence as to the extent of their workload, and the pressures of it, from 1996/1997 until 2011. That

evidence is credible. Significantly, it is corroborated by a wide range of contemporaneous documents and by those secondary witnesses who were in a position to observe the challenges they faced. I will refer later to particular instances where witnesses were able to observe the activities and workload of Guidance. Particularly helpful were David Randell (a former Principal), Aimie Cronin-Taylor (daughter of Mrs Cronin-Lampe who worked at the school from time to time), Michelle Frank (a relief counsellor in 2010 to 2011, previously on placement at MHS in 2008), BH (a student from 2007 to 2011) and BI (a student from 2007 to 2011). On this issue, witnesses called for the defendant were less helpful. William Russell (a teacher who was Head of Department (HoD) at various times and a member of the Board) and David McNulty (Assistant Principal, then Deputy Principal) were, because of their particular duties and the fact that they worked away from the remote location of Guidance, less able to assess workload issues. Clive Hamill (Principal from late 2005) initially denied Mrs Cronin-Lampe suffered workload pressure, but later accepted that she was under pressure although he thought she was managing it. It is evident he attended the Guidance location rarely. These perspectives will be traversed more fully later.

- (b) Another related issue, and point of divergence, was the impact of the multiple deaths on the student body. Again I consider the detailed evidence on this point is well proved, not only by Mr and Mrs Cronin-Lampe, but also by others who were in a position to observe the impact on particular students, including their use of counselling services as well as their reasons for doing so. By contrast, the witnesses called by MHS gave evidence from a different perspective. Mr Russell and Mr McNulty were not directly involved in the work of Guidance, and were less well placed to assess the mental health and wellbeing of individuals directly affected by tragedy. Unsurprisingly, they were unable to recall some of the deaths which occurred in the earlier years at all. For his part Mr Hamill relied heavily on Mrs Cronin-Lampe to lead the counselling services; he too was not as well placed as she and Mr Cronin-Lampe were to assess in detail the mental health issues of students, staff and others.

- (c) MHS said that particular aspects of Mr and Mrs Cronin-Lampe's evidence demonstrated unreliability or deliberate exaggeration. It was submitted Mr Cronin-Lampe had "manipulated the narrative" on some matters. One example related to a particular event that was said to be relevant to the application of the ACC bar; however, in closing, it was confirmed this issue would not be pursued against Mr Cronin-Lampe. Criticisms were also made of Mrs Cronin-Lampe, it being claimed she had attempted to damage Mr Hamill's credibility by inventing facts pertaining to a 2010 performance appraisal, as well as the extent of meetings she had had with Mr Hamill when she said she had conveyed details of at-risk students to him. Inconsistencies of the accounts given by them as to the impact of trauma over the years were highlighted. At this stage I observe that, to the extent that there are valid criticisms, they do not lead to a conclusion that Mr and Mrs Cronin-Lampe's evidence is accordingly unreliable in its entirety. To the extent their evidence contains inaccuracies, that is an aspect of the debilitating focus on their plight which they have endured for at least 10 years. These issues are most relevant when considering the reliability of reports made to health professionals in those years, and in relation to the evidential basis for the financial remedies claimed.
- (d) At times, Mr Hamill's evidence was vague with a tendency to reconstruct events on the basis of documents to which he now has access, rather than actually recalling particular events in their entirety.

Terms and conditions of employment

Core arrangements

[55] Mrs Cronin-Lampe commenced employment at MHS as a long-term relief counsellor on 13 October 1996. At the time, she was in the final stages of completing a Masters in Guidance and Counselling at Waikato University. She was appointed to a permanent full-time position on 8 August 1997, and HoD soon thereafter. Mrs Cronin-Lampe has said there was no pre-existing job description for the HoD role, so Mr Randell asked her to create one. She did so, aided by New Zealand Association of

Counsellors (NZAC) guidelines. She remained employed at MHS as HoD until her employment ended by way of medical retirement on 14 November 2012.

[56] On 21 July 1997, Mr Cronin-Lampe was engaged as a volunteer under what Mrs Cronin-Lampe described as a “memorandum of understanding” (MoU), to work one day per week as cover for Mrs Cronin-Lampe so she could complete her studies. The confirmation of appointment stated he would be employed as if on the terms and conditions set out in the current Secondary Teachers’ Collective Employment Contract (STCEC). At the time, he was a youth justice coordinator and social work supervisor for the Child, Youth and Family Service. He was completing a Diploma in Social Work and had recently been accepted for study towards a Masters of Guidance and Counselling which he subsequently completed.

[57] On 18 November 1997, Mr Cronin-Lampe was appointed as a guidance counsellor in a part-time position of 0.6 FTE. His role was to take effect from January 1998, on the terms and conditions set out in the current STCEC. On 10 March 1998, he was appointed to a full-time position because the MHS community had suffered four student suicides over the previous six months, as I will describe shortly.

[58] On 8 December 2001, Mr Cronin-Lampe’s role was altered to 1.5 days careers guidance and 3.5 days guidance counselling per week.

[59] On 1 February 2005, the (then) Principal, Margot Crate, asked Mr Cronin-Lampe to work the Careers role on a different time split – 2.5 days for careers guidance and 2.5 days for guidance counselling. She also asked him to sign an updated job description regarding the Careers component of his work. He did so.

[60] On 11 February 2008, Mr Cronin-Lampe’s position was amended to remove the career guidance role. Mr Cronin-Lampe agreed with Mr Hamill, the (then) Principal, that he would work 0.6 FTE guidance counselling only. He said that in negotiating this reduced role, he also agreed with Mr Hamill that he would continue to work additional hours above the 0.6 FTE for which he was paid, and that these additional hours would be taken as time in lieu. I will discuss the terms of this agreement more fully later because in late 2010 and during 2011, it became very

controversial. Mr Hamill accepted that the intention was for Mr Cronin-Lampe to be present at the school each day, but would be engaged in other work for two afternoons each week.

Job descriptions

[61] In April 1997, a job description was agreed for Mrs Cronin-Lampe. The version before the Court had “draft” endorsed on it, but the parties accepted it was the operative job description for the duration of her employment. It provided that Mrs Cronin-Lampe would be directly responsible to the Principal. There would be functional relationships with a senior management group, guidance staff, Deans, other staff, parents/guardians, community groups, outside support agencies and students.

[62] I accept the submission that the job description provided a wide range of duties that extended beyond counselling of the student body. Support for staff and for a range of other individuals associated with the school community was required.

[63] A key theme of the job description related to confidential counselling, guidance and support for parents and guardians, as well as MHS staff. One element of the job description required Mrs Cronin-Lampe to assist with the Pastoral Care Team, liaise with outside agencies and ensure at-risk students were given appropriate support. Another stated that she “be available for after hour urgent referrals and to assist families/outside agencies in crisis”.

[64] A more general provision was that Mrs Cronin-Lampe would attend to other duties as directed by the Principal. An example of such a direction related to the unstructured use of a cell phone so she could be contacted at any time.

[65] Although no separate document for Mr Cronin-Lampe’s initial employment was produced, he said his job description would have “matched” that of Mrs Cronin-Lampe. I accept this evidence since at least initially, they were job-sharing and it was therefore necessary for him to adhere to the same expectations.

[66] In February 2001, a job description was developed for Mr Cronin-Lampe. He said this was at the request of Ms Crate.

[67] The document commenced with the statement that the primary objective of a guidance counsellor was “to provide a counselling/guidance service for students, parents and staff who seek this regarding educational, personal and vocational matters, following the NZAC Code of Ethics.”

[68] In his evidence, Mr Cronin-Lampe said the updated document was prepared by him and Mrs Cronin-Lampe. It was said to be based on NZAC and Post Primary Teachers’ Association (PPTA) material about the guidance counsellor role.

[69] During the hearing, an unsigned job description was produced for Mr Cronin-Lampe; the document bore the date “2008”. This document was produced by Mr Braun, counsel for Mr and Mrs Cronin-Lampe, via Mr Hamill after Mr Cronin-Lampe had given his evidence. Mr Braun told the Court that it was a document disclosed by MHS.

[70] Mr Hamill thought that it then became the operative job description but he was not entirely sure. Mr Cronin-Lampe was not recalled to deal with the issue. Mr Braun acknowledged, on behalf of the plaintiffs, that this was Mr Cronin-Lampe’s operative job description from 2008. It referred to Mr Cronin-Lampe as being employed as a guidance counsellor on a 0.6 FTE basis. I find it was prepared after the 2008 variation was agreed.

[71] The content of Mr Cronin-Lampe’s 2008 job description was similar to his 2001 job description. Under the 2008 document, Mr Cronin-Lampe was to report to HOD Guidance and to the Principal. The 2008 document emphasised the same key tasks, to provide a confidential counselling/guidance service for students, parents and staff members who sought this. Referrals could be made by the person themselves, a caregiver, a friend, a staff member or an agency.

[72] With regard to Guidance administration, the job description noted that counsellors should exercise self-care by taking an hour off during the day and negotiating time in lieu if out-of-hours work had been demanding.

[73] The job description also recorded that confidentiality was important. This would maintain client safety by providing a safe counselling environment, unless the safety of a client or others was compromised. Adherence to the Code of Ethics outlined by the NZAC and cited in Appendix 2 of the MHS Guidance Policy was required. I will come to these documents shortly.

[74] Mr Cronin-Lampe was to identify, support and ensure the safety of abused and other at-risk students.

[75] External professional supervision was to be undertaken 10 times per year. In-service training courses to help keep up with current professional practice were to be undertaken. So too was “active membership” of PPTA and NZAC.

[76] Crisis intervention meant that the counsellors would be available to participate in the school’s Traumatic Incident/Crisis Team as required. It was also recorded that it was accepted by senior leadership and the MHS community that the counsellors would be available on call for out-of-hours contact when appropriate. They would carry a mobile phone.

Collective employment contracts/agreements, and relevant statutory instruments

[77] Mr and Mrs Cronin-Lampe were told that their individual employment contracts/agreements were supported by the collective employment contracts/agreements that were in place from time to time, with all necessary modifications. These provided for good employer obligations including the provision by the employer of good and safe working conditions. All relevant collective documents were placed before the Court.

[78] The statutory context is also relevant to the terms and conditions of Mr and Mrs Cronin-Lampe’s employment. The HSE Act was amended in 2002.¹⁶ The Ministry of Education (MoE) produced guidelines so Boards of Trustees could understand the relevant obligations. They highlighted that work-related stress and

¹⁶ Health and Safety in Employment Amendment Act 2002.

fatigue were now to be regarded as harms or hazards that needed to be managed.¹⁷ A Board of Trustees was required to have systems in place to identify hazards and take all practicable steps to eliminate a hazard if it is significant.¹⁸ It was suggested that if a significant hazard could not be eliminated or isolated, a hazard management plan was to be developed.

[79] Supplementing these obligations, Health and Safety Codes of Practice were issued by the MoE from time to time. By 2003, these were formally gazetted under s 70 of the Education Act 1989. The 2007 version of the Code of Practice was introduced in evidence. It confirmed that a Board of Trustees was bound to comply with the Codes of Practice as well as the HSE Act.

[80] By 2007, the health and safety provisions of the collective employment agreements had become more elaborate. Thus, the 2007–2010 collective employment agreement drew the attention of employers and employees to the health and safety legislation, as well as relevant “codes of practice and guidelines” as being reference points for “... gaining a common understanding of what those obligations are, what will assist in meeting those mutual obligations and also in promoting best practice.” Where an employee was shown to be at risk when carrying out their duties, the employer was required to take all reasonable steps as were necessary to remove or minimise the identified risk and, if appropriate, to do so in consultation with the relevant health and safety authorities.

Relevant policies

[81] There are several policies relevant to Mr and Mrs Cronin-Lampe’s employment terms and conditions. I mention three.

[82] First, the school’s Guidance & Counselling Policy, as referred to in the job descriptions. The version placed before the Court was dated August 2007 although it appears there was a previous version in 2000. An objective of the document was to outline for staff, students and families within the MHS community the aims and

¹⁷ See Health and Safety in Employment Act 1992, s 2 definition of “harm”, para (b) and “hazard”, para (b)(ii).

¹⁸ Health and Safety in Employment Act 1992, ss 7 and 8.

objectives of counselling as described by the NZAC, and to make available a copy of the NZAC Code of Ethics to that community. The importance of confidentiality of communications between counsellor and client was emphasised. This policy was to be reviewed in August 2011. Attached to it was first a document entitled “The Counselling Relationship and Client Rights”, and second the NZAC Code of Ethics.

[83] Second, I refer to the Traumatic Incident Response Policy which was issued in 2005. I have already noted that Mr and Mrs Cronin-Lampe’s job descriptions recorded the obligation to participate and assist with the coordination of the school’s Traumatic Incident/Crisis Team. Thus, the policy provided detail of the requirements established previously by the previous job descriptions.

[84] Third, I refer to the Pastoral Care Policy of August 2008. No prior policy was produced. At this stage I note that both job descriptions required pastoral support of students.

The School Guidance Counsellor document

[85] The final document to which I refer at this stage is the “School Guidance Counsellor” document prepared by NZAC and PPTA. The version placed before the Court was undated, although it may be inferred that it post-dated 2007.¹⁹ The only direct evidence about this document is that part of it was attached to a letter sent to senior management by Mrs Cronin-Lampe, which Mr Hamill saw, in October 2011. He said he had been unaware of the existence of the document before then. That said, Mr Hamill also stated he had a copy of a guideline resource published by NZAC as to the role of counsellors that “used to sit in my bookcase”. He confirmed it referred to a supervision requirement for counsellors. A copy of this particular document was not produced.

¹⁹ That is because it contained references to the New Zealand Suicide Prevention Strategy 2006–2016, and the New Zealand Curriculum of 2007.

[86] As noted previously, Mr and Mrs Cronin-Lampe referred to NZAC guidelines,²⁰ and to NZAC and PPTA material in 2001,²¹ when developing their job descriptions but these earlier documents were not produced.

[87] The document which was produced has limited legal significance, but it is nonetheless relevant because it provides a useful description of the role of a school counsellor which appears to have guided Mr and Mrs Cronin-Lampe, at least, in the discharge of their duties. Its contents reflected, to a large extent, how Mr and Mrs Cronin-Lampe envisaged their counselling roles should work.

[88] The document states that the guidance counsellor role is very complex, because the counsellor needed to build and maintain professional relationships with a wide range of people. A counsellor would be bound by ethics of confidentiality that could be both a privilege and isolating. It noted there would be tensions between different aspects of the role; for example, advocacy for students, supporting staff, supporting parents and ensuring a safe environment for all.

[89] It went on to describe the expectations of engagement with various members of the school community. With regard to students, it was noted that the counsellor should not discipline or punish students as this could compromise the counselling relationship.

[90] A professional and confidential counselling service for all staff may be included. A major task for the counsellor was the sharing of expertise to support all staff in their guidance and teaching roles. A counsellor would also be well placed to be a resource person for families, and should be available to them in both a counselling and consultative role. The diversity and complexity of the issues that clients could bring to a school guidance counsellor meant that outside agencies and community groups may need to be contacted.

[91] A detailed outline of the relationship between Principal and counsellor was set out, which included a Principal's expectation that a counsellor would have their

²⁰ See above at [55].

²¹ See above at [68].

practice regularly supervised by a person who was a member of a relevant professional association, have well thought out boundaries in their case work, keep an appointment system for clients, be prepared to counsel staff, advise of suicidal students at an agreed risk level and how their management at the school would be planned, keep notes, and be able to account for their practice by reporting analysed statistical data, details of programme delivery and so on. It was also expected that counsellors attend further training opportunities.

[92] The expectations of a Principal by a counsellor mirrored these obligations. This included the counsellor expecting the Principal to meet regularly and communicate openly within the bounds of ethical considerations, make available a budget for such guidance matters as supervision, association subscriptions, and provide counsellor rooms and waiting areas conducive to the protection of client privacy.

Key events

[93] The evidence and submissions focused on trauma caused by the multiple deaths. However, Mr and Mrs Cronin-Lampe's claims involve many other events which impacted significantly on them, and on their workload – not only the suicides and deaths, but also attempted suicides, as well as attendances on students and others for a range of troubling issues.

[94] Any description of key events must therefore focus on all factors that contributed to the challenging work they were required to perform across the many years of their employment.

Background context

[95] Mr Randell was Principal of MHS from 1995 to 2000. He said that the challenges he faced in that period included raising academic standards for under-achieving young people, changing the culture of intimidation and bullying, pacifying a small group of challenging staff, fundraising, and coping with a chaotic time characterised by death and tragedy which involved young people, as well as staff in management roles who were stressed and overburdened. He said Mr and Mrs Cronin-

Lampe were thrust into chaotic times for which they were totally unprepared, untrained and unskilled.

1997

[96] In September 1997, the first group of suicides occurred with the death of AA. He was a student with whom Mrs Cronin-Lampe had worked. He was aged 15. AA had been accused of stealing someone's jersey. It was found in his bag, and he had been accused of theft and called a liar in his class. On the day of his suicide, he had been given a detention. He was about to undertake the detention as Mrs Cronin-Lampe departed for a professional development course in Auckland.

[97] The next day, Mrs Cronin-Lampe was contacted at the location of the course she was attending, and requested to return to MHS to manage the immediate needs of AA's family and the student community. She was very upset upon learning of the circumstances. On her arrival at MHS, she was asked by the Principal to visit the family, and to manage the anger they had towards the school in light of the precipitating circumstances.

[98] It was at this stage that she was told by Mr Randell she needed to carry a cell phone so that she could be readily contacted at all times. One was provided immediately.

[99] A second aspect of the event involved attending the student's family home, and what Mrs Cronin-Lampe experienced and witnessed when seated beside an open casket. Obvious rope marks were visible around AA's neck.

[100] On a second and subsequent visit that day, when arriving at the house, two of AA's older brothers, both intoxicated, lunged towards Mrs Cronin-Lampe yelling abuse. They had to be carried away by whānau.

[101] The consequences of these visits will be reviewed in more detail later for the purposes of the question as to whether the ACC bar applies to Mrs Cronin-Lampe's claims.

[102] Soon after, on 12 October 1997, a second suicide occurred. AB was 16 years old and had left MHS only a month earlier. Many of his friends were students at MHS, as was his younger brother. Both Mr and Mrs Cronin-Lampe worked with immediate family and fellow students. They say their cell phone number was circulated in the aftermath of this death.

1998

[103] In 1998, three traumatic events occurred. On 29 January 1998, AC, a 15-year old student died by suicide. He had a twin sister at MHS. The next day, AD, also a 15-year old student, also lost his life to suicide.

[104] Mr and Mrs Cronin-Lampe were heavily involved in supporting the families involved, students and staff. They attended the funerals of both.

[105] An incident occurred at the funeral of AD. He had been placed in an open casket, despite Mr Cronin-Lampe having requested otherwise due to various concerns for the students in attendance. Mr Cronin-Lampe found the way this issue had been dealt with was very distressing. MHS originally argued there was ACC cover on the basis of this event but as noted earlier, in closing it was confirmed that assertion would not be maintained.

[106] Soon after, in February 1998, a long-serving staff member, AE, who had been diagnosed with brain cancer died. His wife was a member of staff and, prior to his death, she had asked Mr Randell to allow Mr Cronin-Lampe to provide grief counselling and to help prepare her, her husband and family members for his passing. This happened.

[107] At this point, following the suicides of four young persons in close succession, the student body was in a state of what Mr Randell described as “extreme unrest”. Multiple suicide threats or attempts were reported to him weekly in 1998. This was the context within which Mr Cronin-Lampe was appointed to a fulltime position in February 1998.

[108] In March 1998 Mrs Cronin-Lampe referred to the nature of the counsellors' workload in a letter to the Assistant Principal, referring to the "odd hours" of work due to emergency situations over the previous six months and working with suicide related issues every day, all of which led to a "sense of exhaustion". A copy of the letter was also provided to the Principal.

[109] A trauma expert from Group Special Education (GSE) attended the school to ensure it was complying with MoE guidelines, and that the student body was safe. Mr Randell said that the trauma expert involved offered to talk with students after the first attempted suicide, but reported that she believed that students wanted to work with counsellors they knew and had existing relationships with.

[110] Then, Mr and Mrs Cronin-Lampe were requested by MoE to work with a "Postvention Team" for an extended period. There are varying accounts as to who comprised this team, but as recorded in 1998 it included two GSE psychologists, one of which specialised in suicide, the MHS public health nurse, a youth worker, a psychiatrist from Child and Adolescent Mental Health Services (CAMHS), the school Chaplin, a team member from Te Rūnanga o Kirikiriroa and the Assistant Principal (for a short time prior to absence for illness).

[111] By April 1998, the Postvention Team had been meeting on a weekly basis for two months. In a document produced to support a request for funding to meet relevant needs at MHS, which was addressed to Mr Randell and also sent to the MoE, it was noted that the purpose of the meetings had been to carry out the directives of an MoE document, "The prevention, recognition and management of Young People at Risk of Suicide".

[112] A range of requests were made. Funding for all the recommendations was declined by MoE. I mention three which are of some significance for present purposes:

- (a) Funding for external supervision for Mr and Mrs Cronin-Lampe, and the Principal, with a professional supervisor with expertise in the area of suicides;

- (b) funding for the employment of an advocate for the counsellors in order to make their positions, needs, limitations and job requirements/descriptions known to staff;
- (c) funding for a qualified psychologist for one day per week until the end of the year to provide therapeutic intervention for the “medium”, “high” and “at risk” students.

[113] Although Mr and Mrs Cronin-Lampe were supported by the Principal and Assistant Principal, they were required to deal with numerous referrals for students and others. The Postvention Team had told them they should see all persons who were at risk. They were not permitted to say they were unable to assist an individual who was referred or presented to them.

[114] Throughout 1998, Mr and Mrs Cronin-Lampe were required to deal with multiple at-risk students. There were serious threats of suicide, or attempted suicide, each week for the duration of the year. Mrs Cronin-Lampe said one student attempted suicide 32 times in that and the following year. Many of these students did not meet the CAMHS referral criteria because the students did not have a diagnosable mental illness. Although they could be referred for assessment, they were declined entry for ongoing mental health support. They were directed back to Guidance.

[115] At some stage, after the direction from Mr Randell that the counsellors were to be contactable at all times by cell phone, business cards were prepared so that management and Deans were able to provide families with contact details, including cell phone numbers. This fact was confirmed by several witnesses, including a student at the time, Rachel Alexander. Ms Alexander said she kept a copy of the card in her wallet for many years. Julie Small, Deputy Principal, also described these arrangements, stating that in her time there was a requirement for evening and weekend calls, which extended to the ability to contact the counsellors during these times.

[116] Alongside these challenges, Mr and Mrs Cronin-Lampe were required to deal with other significant concerns, both in the student body and with regard to staff

members. A Senior Leadership Team (SLT) member attempted suicide after their marriage ended, this event taking place at the school.

[117] Mr and Mrs Cronin-Lampe said – and I accept – that their workload in 1998 escalated significantly; it was particularly challenging due to a lack of training and experience in critical intervention.

1999

[118] In 1999, Dr Narelle Dawson-Wells, who had maintained informal contact with Mr and Mrs Cronin-Lampe since her involvement in the Postvention Team at MHS, organised three joint one-hour sessions for Mr and Mrs Cronin-Lampe with a clinical psychologist, Dianne Cameron. Mrs Cronin-Lampe described this as “trauma debriefing”. Whilst Mr and Mrs Cronin-Lampe felt this was worthwhile, they also considered it was insufficient. So, too, did Mr Randell, though the school itself did not offer to fund further such sessions notwithstanding the requirements of NZAC for regular supervision. Mrs Cronin-Lampe said trauma debriefing should have occurred after each suicide but did not.

[119] From statistics presented to the Board by Mr and Mrs Cronin-Lampe at the time, it is clear that they were seeing many students for a broad range of challenging problems.

[120] Mr Randell said that at this time, the threat of suicide within the school community persisted. The topic of suicide was taboo amongst the community, many of whom did not want to discuss the issue, even although they were terrified by what had occurred.

[121] Mr Randell said that in 1999, he recalled discussing with Mr Cronin-Lampe several times that he and Mrs Cronin-Lampe were stressed out by what had happened, and that they were overworked and overburdened; they were enduring a lot of pressure. These pressures were not relieved at the time.

[122] Mr Randell also said that in early 1999, he and Mr and Mrs Cronin-Lampe explored a University of Waikato restorative practices pilot project, agreeing that

MHS would become a trial school. The project was part of an MoE suspension reduction initiative. He said it was an attempt to change the punitive culture which had existed in the school, with a view to reducing at-risk behaviours. Under the pilot, Mr and Mrs Cronin-Lampe were expected to facilitate restorative conferences, as well as visit families after hours and follow up on agreed plans. Mr Randell noted that these initiatives, although positive, also impacted on Mr and Mrs Cronin-Lampe's workload.

[123] On 28 July 1999, a 15-year old female student died by suicide. AF had been a counselling client of Mr Cronin-Lampe. Her body was placed on the school marae before being taken elsewhere for the tangi. Mr Cronin-Lampe was involved in preparing students for their participation. A Deputy Principal at the time, Ms Small, said that, as was often the case, Mr Cronin-Lampe was professional, caring and placed student and staff welfare ahead of his own. At the time she asked him how he was, and recalled him saying that he was tired, and that the events were "really hard".

[124] On 3 September 1999, Mrs Cronin-Lampe wrote at length to Mr Randell, outlining her view that, in essence, there was a lack of understanding held by staff as to the nature of the counselling role, including the significant after-hours component of their work, and the perceived lack of support provided to the counsellors.

[125] Mr Randell said that by 2000, Mr and Mrs Cronin-Lampe were run down by the demands of their jobs, a lack of proper supervision, and the needs of the MHS community. It was his assessment that in the years he was Principal, "their development as school counsellors had been shaped by long-term crisis intervention and assessment", particularly in regard to students. This was required by the Postvention Team. He said that the work that was generated resulted in an unrealistic and unsustainable responsibility. He had hoped that this would cease when the school returned to a state of calm, but acknowledged in his evidence that he gave more work to Mrs Cronin-Lampe than he should have.

[126] In 1999, the Deputy Principal, David Cooke, approached Mr and Mrs Cronin-Lampe to see if Mr Cronin-Lampe would consider teaching a curriculum subject, even

although he was not a registered teacher. Mr and Mrs Cronin-Lampe understood the suggestion was made because it was believed Guidance was overstaffed.

[127] Mrs Cronin-Lampe responded in a letter dated 27 January 2000, stating that she understood that MoE funded schools for one counsellor per 500 students, and that for the last several years, since 1997, the school had a roll of some 900 students, which remained the position in 2000.

[128] Attached to the letter was a list outlining the onerous duties/contributions that Mrs Cronin-Lampe told Mr Cooke the two counsellors were undertaking, apparently in addition to pre-existing counselling duties. She specifically referred to 24-hour cell phone on-call responsibilities; home visiting; assisting students in emergencies, for example after domestic violence, locating emergency placements and supporting them through terminations if necessary; attending family group conferences; supporting students in court; and supervising external professionals to generate funds for the Guidance budget. She referred to attendance at relevant meetings in the community which she said were always held out of hours and in spite of leave arrangements. She also summarised involvement in various groups of students and/or teachers which they oversaw or coordinated.

2000

[129] In 2000, there were no deaths, or other traumatic incidents, involving the school community. It appears MHS may have been moving towards the state of calm Mr Randell had hoped for. Mr and Mrs Cronin-Lampe were able to be involved in a range of activities as well as counselling, including the initiation of a young mothers' group for former students, as well as other programmes to assist young people facing challenges such as mental health, violence, and substance abuse issues. They were also able to take stock by updating relevant policies such as the drug and alcohol, contraception and Guidance policies. Work on an update of Mr Cronin-Lampe's job description commenced in that year.

2001

[130] In 2001, Ms Crate was appointed Principal. She requested that all HoDs provide an overview of their positions. Mrs Cronin-Lampe prepared such a document, summarising the history of events and Guidance's responses since 1997.

[131] Regrettably, however, there was then a further series of deaths.

[132] On 21 February 2001, the mother of a senior student holding a senior role, AG, was lost due to a terminal illness. Mrs Cronin-Lampe was asked to support AG and her family through their loss. The student was influential and prominent in the MHS community and these circumstances impacted not only on her, but also on her friends.

[133] In March 2001, a staff member, AH, suffered the loss of her only child. Although the death was not sudden or unexpected, Mr Cronin-Lampe said that the decline of the child was traumatic. He and Mrs Cronin-Lampe were asked to be with the parents prior to the death. They said the circumstances meant this death was significant, not only for family members whom Mr and Mrs Cronin-Lampe counselled, but also the staff community.

[134] A third tragedy occurred a few days later when a student, AI, was struck by a vehicle tyre whilst walking to school. Mr and Mrs Cronin-Lampe counselled the student's father, mother (who assisted at the school) and sister (who was a student at the school), along with other students who were trying to support her.

[135] Mr and Mrs Cronin-Lampe say that this spate of deaths affected them as did all the deaths that occurred, and impacted on what had previously become a workload which they considered was unmanageable.

2002

[136] There was agreement among the witnesses that in the following year, the school leadership became somewhat punitive under Ms Crate's leadership. The focus on restorative practices was abandoned. That meant that previous approaches to the disciplining of students, including suspensions of students, prevailed. Mr and Mrs

Cronin-Lampe were concerned that this development would result in a return to a negative culture, and attempted to take steps to mitigate the possibility of this happening by providing support systems for students where possible.

[137] On 20 January 2002, a recent school leaver, AJ, was murdered by another recent former student, AK. The incident occurred during an argument in which the latter struck the deceased with a large plank of wood, causing his death. Both men had siblings, whānau and friends at MHS who were affected by the tragedy. There were issues associated with the gang affiliations of their families, which contributed to unrest in the student body. There were complex flow-on consequences both for Mr and Mrs Cronin-Lampe in their work, and the school generally.

[138] Mrs Cronin-Lampe had provided support to AJ prior to his death, and afterwards to his family, staff, students and the wider community. Mr Cronin-Lampe provided support to AK, both prior to and after the incident, working with him and his family as he moved through the court system.

[139] On 9 May 2002, a student, AL, died in a car accident. The vehicle was being driven by another MHS student who was one of Mr Cronin-Lampe's clients. That student was subsequently charged with manslaughter. Ongoing support from Guidance was necessary, as it also was for the relatives and friends of the deceased. Mr and Mrs Cronin-Lampe attended AL's funeral which, by this time, they regarded as being an aspect of their role.

[140] On 7 June 2002, AM died suddenly enroute to the school to pick up two of his sons who were students at MHS. Ms Crate asked Mrs Cronin-Lampe to inform the boys as to what had occurred. At the request of the family and Ms Crate, Mr Cronin-Lampe officiated at AM's funeral.

[141] On 22 July 2002, a student, AN, died by suicide. Mrs Cronin-Lampe had been working with her for approximately three years prior to her death. I accept her evidence that she was deeply saddened by this event.

[142] The five deaths in that year led to a substantial requirement for grief counselling and support of students involved. A renewed concern as to copycat suicides arose, which required assessment of at-risk students, a step which had been emphasised by the Postvention Team as being necessary following a suicide.

2003

[143] In the first half of 2003, there was an exchange between Mr and Mrs Cronin-Lampe on the one hand, and Ms Crate and the SLT on the other. This centred on Mr and Mrs Cronin-Lampe's attempt to have Guidance moved to what was perceived as being a more suitable location. They wrote to Ms Crate and to the SLT on 26 May 2003 about this issue. In their letter, they confirmed that their workload had increased dramatically and that they were increasingly seeing people who attended Guidance without appointments, including a growing number of parents who had either seen a member of the SLT and been referred, or not been seen by SLT members but referred by others; social workers/truancy officers/police arriving without notice; students waiting for SLT intervention; staff who had become distressed on site; students involved in conflict or who were being threatened where there was a risk of violence; students waiting for mediation; and students who had been given permission to have/seek time out.

[144] Mr and Mrs Cronin-Lampe proposed that a centre be established that would provide a suitable waiting/reception room and locations for persons working in Guidance, as well as the appointment of an assistant who could supervise or screen those waiting for assistance. This was rejected by Ms Crate. A second communication was sent to her and to the SLT, which referred again to the workload issues, including increased stand-downs, teachers' stress loads and disgruntlement. Mrs Cronin-Lampe said that her efforts gained no traction. I accept this is correct since there is no evidence that the issues she raised were addressed.

[145] Also in 2003, another group of suicides occurred. On 24 October 2003, a student, AO, died by suicide. Her home background was troubled. AO and her younger sister, also a student at MHS, had both attempted suicide previously. Mrs

Cronin-Lampe had worked with both, as they required intensive support and high levels of intervention. Other agencies were also involved.

[146] AO was found by her sister following an overdose; Mrs Cronin-Lampe was a second responder. She and Mr Cronin-Lampe then managed the crisis response and grief that followed this tragedy. They assisted with funeral preparations. Mrs Cronin-Lampe continued to work with the deceased's sibling for some time.

[147] Three days later, a senior student, AP, died by suicide. He had just left school, and his peers were about to sit external examinations. Mr Cronin-Lampe had been working with AP prior to his death, and also worked with his family afterwards. Both Mr and Mrs Cronin-Lampe counselled the student's peer group.

[148] Mr and Mrs Cronin-Lampe said that because of impending external examinations, the school would not allow time off for students to attend the funeral or a memorial service which they attempted to organise. These caused a negative reaction in the peer group; Mr and Mrs Cronin-Lampe were required to manage this issue.

[149] On 1 December 2003, a senior student, AQ, died by suicide following the breakdown of a personal relationship with another student. His brother also attended MHS. Students were on study leave, but Mrs Cronin-Lampe organised a meeting for them and families, with mental health agencies attending. There were discussions about relevant issues, warning signs and how to contact those agencies. The Acting Principal at the time handed out Mrs Cronin-Lampe's business card on which her cell phone number was endorsed, and encouraged students to contact her or Mr Cronin-Lampe over the break if they had any concerns. Mr Cronin-Lampe, at the request of the school and family, officiated at the funeral.

[150] Mr and Mrs Cronin-Lampe were again required to undertake numerous risk assessments to identify at-risk students following the suicides in that year. Support was also given to friends and family.

2004

[151] Evidence was given about a close friend of AQ, who was regarded as severely at risk following the suicide of a person with whom she had previously had a relationship. She initially contacted Mrs Cronin-Lampe over the 2003/2004 holiday period. An attempt was made to refer her to CAMHS but the agency took the view that self-harm and suicidal ideation was not within its area of responsibility. Her family was understandably concerned about her, to the point where Mrs Cronin-Lampe was asked to maintain surveillance of the student when she was at the school. Mrs Cronin-Lampe was unable to do this, so refused.

[152] Mrs Cronin-Lampe raised these challenges initially with senior management, and then Ms Crate, who agreed to meet with the family to indicate that the school in general, and Mrs Cronin-Lampe in particular, could not give the student the support that was needed. Mrs Cronin-Lampe felt that the responsibility for this development was placed on her and, as a result, the student and peers became angry with her. They thought that the student was being unfairly treated.

[153] Mrs Cronin-Lampe said that these circumstances also impacted on the trust held in members of Guidance. She felt that it should have been conveyed that she was supported by school management, and that it should have been made clear that the school as a whole did not have the resources for this particular student, or to undertake what the family was asking for in terms of surveillance.

[154] In the course of 2004, tensions between staff and management escalated. Mr Cronin-Lampe, as a union representative, became involved. However, his efforts were ultimately resented by those involved, including the Board Chair. The Deputy Chair, Alan Campbell, explained to the Court that during this period he told Mr and Mrs Cronin-Lampe how the Board was trying to improve the culture in the school at all levels. He said that at the time, management and staff were constantly in conflict, and that the Board had been told it was unclear to staff who they could turn to for advice without getting into trouble. Due to their professional skills, Mr and Mrs Cronin-Lampe had become a de facto source of support for struggling staff.

[155] Mr Campbell said that Mr and Mrs Cronin-Lampe also spoke to him in confidence. They referred to the workload they were carrying and the impact it was having on them. He said they felt the professional and emotional load was unsustainable, and that they were not only unsupported by school management, but that they were under threat of disciplinary action if they complained or sought help. There is no evidence that these issues were addressed at the time.

[156] In the early afternoon of 11 June 2004, an incident occurred during a session with a student Mrs Cronin-Lampe was counselling. The student had previously attempted to harm herself and was threatening to do so again. Mrs Cronin-Lampe spoke with the student for a period. She then left the room to ring the student's mother and another support person. Upon her return to the room Mrs Cronin-Lampe found the student attempting to strangle herself with an item of clothing. Unable to free the student alone, she called for help. She and Mr Cronin-Lampe managed to free the student, after a struggle. Mr McNulty, Deputy Principal at the time, provided positive assistance soon after. He was asked to inform staff not to send students to the Guidance area in the circumstances.

[157] A reference to an emergency crisis team was made, but Mr and Mrs Cronin-Lampe had to support the young woman and her mother until assistance was available in the early evening. Mrs Cronin-Lampe said that no member of the SLT, or the Principal, contacted either of the counsellors to see if they needed support. Mrs Cronin-Lampe cited this as an example of the challenges faced by the counsellors in respect of their own pastoral care and safety, saying they were left in isolation with substantial responsibility for a student known to be seriously at risk.

[158] Also in June 2004, Mrs Cronin-Lampe prepared a document entitled "our journey". She said it had been written at the suggestion of the MoE/GSE psychologist, Dr Dawson-Wells, who had kept in contact following the disestablishment of the Postvention Team. It outlined the deaths, to that date, of students, former students and staff to whom Mr and Mrs Cronin-Lampe had provided guidance; other instances of attempted suicide they responded to in their roles; and briefly described the toll these various events had taken on them. It also referred to the significant change in personnel of the SLT as existing staff members left the school. She referred to the

subsequent relationship issues that arose within the school. Dissatisfaction was expressed as to much of the SLT's lack of recognition of, and inexperience in dealing with, the types of issues facing the school and its students. In sum, she said this resulted in both her and Mr Cronin-Lampe feeling isolated, tired, that they had sole responsibility for student safety and that they were required to do work that was beyond their role without the support of management.

[159] Mrs Cronin-Lampe said she provided a copy of the document to the then Chair of the Board, Paul Dunn. Mr Campbell said he recalled the meeting when the document was provided. He also said that since Mr Cronin-Lampe was a union representative attempting to deal with the issues between staff and management, he was viewed by Mr Dunn as being part of the problem. Mr Campbell said that as a consequence, the challenges that were described in the document were downplayed and "viewed as a distraction from the job of getting the school back on track." He also said that, by virtue of being on the Board, he was aware Mr and Mrs Cronin-Lampe were discouraged by Ms Crate from bringing employment issues to the Board.

[160] By the second half of 2004, Mr and Mrs Cronin-Lampe were counselling a significant number of students. Then two suicides occurred late in the year in an environment where it is apparent the counsellors did not feel well supported.

[161] On 18 September 2004, AR, a senior student, died by suicide shortly after senior students departed on examination leave. Mr Cronin-Lampe had worked with him, from the time of his arrival at MHS from another school where he had suffered very distressing experiences until his death. He worked with the student's family, peers and teachers for a lengthy period after his death. He also conducted the funeral.

[162] AS, a former student who had left MHS three years previously, died by suicide on 14 October 2004. She had had a particular disorder that was life-threatening and needed intensive support, including supervision by Guidance or her peers at all times while she was at school. Mr and Mrs Cronin-Lampe were tasked with overseeing her care and integration at MHS and as a result had extensive contact with the student. Mrs Cronin-Lampe said that this was another example of a student who the counsellors were expected to rehabilitate, so that they could attend school.

[163] Mrs Cronin-Lampe said that the deaths of AR and AS, with whom she and Mr Cronin-Lampe had worked closely, hit them hard. I accept this evidence.

[164] In 2004, after attending an NZAC workshop where a presentation was given by a grief counsellor, Mr and Mrs Cronin-Lampe jointly attended the counsellor once per term, amounting to three or four sessions. This was funded on a one-off basis by MoE. Mrs Cronin-Lampe described these sessions as “grief learning”, or how to work with people experiencing severe grief. Early in the following year, a request was made for more supervision of grief work, but this was ruled out as being too costly.

2005

[165] In early 2005, Mr and Mrs Cronin-Lampe referred, in an email to the Personnel Manager and Board Chair, to their entitlement to a one-hour daily lunch break, which was intended to provide non-contact time, and that it was not possible for them to take this entitlement given their responsibilities which were, by this time, plainly onerous. It was suggested that this be amalgamated into one day off per month, which they could take together.

[166] Ms Crate approved this for a period of one year, when she said the arrangement was to be reviewed. It is unclear whether the arrangement was reviewed, or whether it continued, but it was a recognition of necessary flexibility given the particular responsibilities of the two counsellors.

[167] More deaths followed. On 5 February 2005, the mother of a younger student, AT, died by suicide. The student was a client of Mrs Cronin-Lampe’s, as a result of his father’s earlier suicide, and was considered at high risk of suicide or self-harm in these circumstances. Grief counselling for the student and other family members was provided. Mrs Cronin-Lampe said that whilst the death was not that of a student, the event still had an impact, particularly on the junior school. Guidance accordingly had many junior students needing support and reassurance. Guidance continued to support the family, both while the student and his brother were at MHS, and later.

[168] A few days later, on 12 February 2005, a car accident occurred in which two current MHS students, AU and AV, and one recent student leaver, AW, were killed. All

of them had previously attended Guidance. They were passengers in a car driven by another student of MHS who survived the crash. Mr and Mrs Cronin-Lampe cared for the families of the deceased students, and the driver who faced criminal charges. Mrs Cronin-Lampe said that “devastation, shock and disbelief left the school reeling”. I accept this was likely to have been the case.

[169] On 2 May 2005, a recent former student, AX, died by suicide. The event occurred a short time after her suspension, which was the reason for her leaving the school. She had siblings at MHS at the time.

[170] Mrs Cronin-Lampe said that the MHS community was angry that the student had been excluded from the school, and was upset at the news of her death. She said this was a feeling which she shared. She had worked with AX, as well as some of her siblings. Mr Cronin-Lampe had worked with another sibling. Counselling for these family members continued for several years.

[171] On 30 July 2005, a former student, AY, who had been prominent in student leadership and who still had family attending MHS, died of leukaemia. Mr Cronin-Lampe helped to prepare him for his death. Both Mr and Mrs Cronin-Lampe visited him in hospital prior to his passing, worked with his family and attended his funeral. Mrs Cronin-Lampe continued to work with a particular family member, as well as staff who were affected by the death.

[172] It is common ground that Ms Crate’s tenure descended into what several witnesses on both sides described as “chaos”, at least in 2004 and into 2005. For his part, Mr Russell said that the period when Ms Crate was Principal involved heightened emotions where there was a “mixture of incompetence and chaos”.

[173] Mr Cronin-Lampe described this period as frightening. His view was that the SLT had insufficient regard to the extent to which the student body was at risk. From his perspective, management demonstrated a lack of care and insight shown, for example, through the exclusion of Guidance from the Student Welfare Committee, a sub-committee of the Board to which they reported. He said all of this contributed to a “loss of voice and advocacy for ourselves, and our students.” I interpolate that

advocacy for students was a specific responsibility in Mr and Mrs Cronin-Lampe's job descriptions.

[174] Mr McNulty did not necessarily agree that the circumstances were as dire as those outlined by Mr and Mrs Cronin-Lampe, but I am satisfied Mr Cronin-Lampe's evidence should be relied on. In part, this is because in the course of 2005, MoE appointed a limited statutory manager to assist in the governance of the school, which was said to be due to issues relating to "personnel management", as it was put in a subsequent report issued by the Education Review Office (ERO) in 2006. In 2005, an Acting Principal was also appointed for a period of eight months.

2006

[175] Mr Hamill was appointed as Principal of MHS on 9 December 2005, but his leadership was directed to the upcoming school year of 2006 as he focused on staff appointments. He continued to hold the role as at the time of the Court's hearing. At the time of giving his evidence, he had over 37 years' experience as a school Principal and a total of 44 years' experience working in the New Zealand education system.

[176] Mr Hamill was vague about his awareness, at the time he was appointed, of the multiple tragedies the school had faced in recent years. He said he knew there had been issues with suicides and deaths, but not the details. He said he learned of what had happened by a gradual process, most probably in the first 12 months of his appointment.

[177] His appointment was seen as a sign of hope for an improved culture following the difficulties which occurred under his predecessor, as was confirmed in an ERO report of November 2006.

[178] Mr and Mrs Cronin-Lampe had previously met Mr Hamill in 2004 when undertaking a restorative practices course over several days, at Raglan Area School where he was previously Principal. Mrs Cronin-Lampe said that during the course, she would have referred to the recent tragedies at MHS. I accept this evidence, as it is apparent from documents she had written to this point that she made regular reference to the many tragic circumstances suffered at the school.

[179] Following his arrival at MHS, Mr Hamill requested Mr and Mrs Cronin-Lampe to prepare a relational and restorative practices package designed to meet the needs of MHS. It is likely this initiative was a recognition of the turmoil and tragedy that the school had faced. They did so, sharing it with the leadership team, and undertaking staff training. They then assisted staff by having restorative conversations on their behalf with students until they could manage the process themselves. This was the first such package with which they had been associated, and its details were developed in a series of meetings in which Mr and Mrs Cronin-Lampe, Mr Hamill and others were involved as a team. The process of introducing the restorative practices was iterative and developed under the oversight of the team across 2006.

[180] Mrs Cronin-Lampe said these steps created significant additional responsibilities, but they considered it a necessary initiative that they were prepared to support fully. Mr Hamill was positive about and appreciative of their efforts, acknowledging it created extra work for them. He said that Mr and Mrs Cronin-Lampe – as well as others – were particularly busy when introducing this initiative.

[181] In January 2006, AZ died of a terminal illness. Although 20 years old, she was still enrolled at MHS because she had missed previous schooling. Mr and Mrs Cronin-Lampe had worked with her for about seven years. She had a complex personal background. She became embedded in the school community as a well-liked individual, including by Mr and Mrs Cronin-Lampe. Towards the end of her life, they returned from holiday so Mrs Cronin-Lampe could stay with AZ at the hospital. Mr Cronin-Lampe conducted her funeral. Grief counselling was provided for her friends, family and others.

[182] On 6 September 2006, BA, a former student to whom Mrs Cronin-Lampe had provided counselling, died by suicide. He was one of three brothers who had all attended MHS, the youngest of whom was still at the school in 2006. Both Mr and Mrs Cronin-Lampe had worked with the three of them. Mr Hamill said he had no recollection of this event, including whether Mrs Cronin-Lampe mentioned it to him or others.

[183] Following BA's death, Mrs Cronin-Lampe continued to work with the youngest sibling and provided grief counselling to his family, whilst Mr Cronin-Lampe worked with the other surviving sibling. Mrs Cronin-Lampe visited the family, attended the funeral, and checked on other students who had also attended.

2007/2008

[184] From Mr and Mrs Cronin-Lampe's perspective, there were no notable deaths in the school community in 2007–2008.

[185] The introduction of restorative practices in 2006 was regarded by some – including the ERO – as having contributed to a more positive culture for the school because students were being placed in a less vulnerable position. However, as Mr Hamill acknowledged, there was resistance from some members of staff – to the point it was necessary to address this problem by having those staff members undergo competency processes.

[186] A further perspective was given in evidence by a former student, Susan Partington, who attended the school from early 2003 until late 2008. She said that the impact of the deaths that occurred during her time as a student had been significant. She said that while Mr and Mrs Cronin-Lampe had enthusiastically encouraged restorative practices, her experience of staff treatment of students remained unchanged.

[187] Mr Cronin-Lampe was also asked by Mr Hamill to create individual education plans for students who were not achieving. He subsequently did so. It is worth noting that the Board later acknowledged the time he had devoted to this successful initiative, especially when the demands on his time were “already high”.

[188] On 7 August 2007, Mrs Cronin-Lampe wrote to Mr Hamill at length, seeking approval for a professional development conference. She stated that Mr Hamill had, in 2006, told Mr and Mrs Cronin-Lampe that any request for professional development should be sent to him to deal with, as a Professional Development Committee was not equipped to know about the necessary professional development requirements of counsellors or people who had trained

in the area of restorative practices. I interpolate that the job descriptions advanced the expectation for them to attend in-service training courses.

[189] In her letter, Mrs Cronin-Lampe said a registration fee (only) had been sought a month prior. They had already booked flights and accommodation. In evidence, Mr Hamill said that he did not recall any issue regarding late responses to professional development requests or any resulting disadvantage being raised with him. However, it is clear the 2007 letter raised in some detail the issue of delayed responses to support professional development opportunities.

[190] That letter also recorded that Mrs Cronin-Lampe had, that year, been told to take every afternoon off on sick leave because of chronic fatigue which followed glandular fever, but she had not done so. Mr Hamill said he was not told Mrs Cronin-Lampe was suffering chronic fatigue, only that she was a “little tired” following her glandular fever. The terms of the letter suggest otherwise. Mr Hamill also said he did not notice Mrs Cronin-Lampe having any physical reaction to her glandular fever condition. I interpolate that others, such as Timoti Harris who worked alongside Mrs Cronin-Lampe in 2006 and 2007, observed that she had become noticeably fatigued.

[191] The letter also recorded Mrs Cronin-Lampe’s statement that for the previous 11 years both she and her husband had been working outside their job descriptions and time expectations. This included the provision of training sessions to staff on top of their Guidance responsibilities and seeing students in their breaks or outside of working hours. There is no record of a response being given at the time to the concerns raised.

[192] It was Mr Hamill’s evidence that issues as to the counsellors’ workload, level of responsibility or health-related concerns were not raised with him until Mrs Cronin-Lampe ceased working at the school.

[193] In 2007, the school introduced a revised Traumatic Incident Response Policy. The original had been created in 2005.

[194] The policy confirmed the counsellors' significant role with regard to crises and trauma management at the school, as required under Mr and Mrs Cronin-Lampe's job descriptions. It provided for the school's response in the event of a "fatal crisis". This included when an incident was to be declared "traumatic" such as where there was a significant threat to life or property, or as decided by the Principal. As mentioned earlier, it identified a Crisis Team with various responsibilities including carrying out the "Traumatic Incident Postvention Plan".

[195] The Crisis Team consisted of the Principal, Deputy Principal, Assistant Principals, guidance counsellors, and Dean or appropriate senior teacher. Included in the various responsibilities of the Crisis Team was the obligation on counsellors to advise on resource and backup needs and to potentially provide support for staff prior to students being informed of the incident.

[196] Later in the document, it was recorded that the Principal needed to monitor the impact on high profile Crisis Team members, for example the Crisis Co-ordinator and counsellors, and "ensure they have adequate support, time-out, and regular nourishment."

[197] Counsellors were to have a key role in a Traumatic Incident Postvention Plan. Students at risk were to be identified and assessed, with information recorded by counsellors, and referrals then made to appropriate agencies. At-risk students were also to be identified at pastoral care meetings. A needs-based plan was developed for each student. Caregivers of any student who may threaten/attempt suicide were to be informed, in consultation with the counsellors and the SLT.

[198] Although it appears declarations of a traumatic incident were made infrequently, the terms of the policy confirmed the importance attributed to the counsellors' skills and experience, and their vital role in circumstances where members of the school community faced a crisis. The evidence is clear that Mr and Mrs Cronin-Lampe were routinely relied on in such events to undertake counselling activities as described in the policy, whether or not there was a formal declaration, both before and after the creation of this policy.

Pastoral care

[199] Mr McNulty described the processes of the Pastoral Care Team which had been instituted for the school, and of which he was a member as Deputy Principal. He said that in general terms, the framework involved Deans for each year level being in regular contact with teachers and, through that contact, being made aware of any student issues that needed to be addressed from a pastoral perspective. Those who were identified as possibly needing support were referred to a pastoral care team, which included the counsellors.

[200] As mentioned previously, in 2008 a Pastoral Care Policy was developed, which codified pre-existing pastoral practices.

[201] Stated objectives included ensuring a pastoral care strategy was in place that enabled students to access pastoral care, to deliver pastoral care that was reactive and proactive, to provide a confidential counselling service, and to provide a non-denominational chaplaincy service. A further objective was to ensure that the school met all its legal obligations in terms of privacy and confidentiality.

[202] Under the policy, a Pastoral Care Team was established, made up of a similar membership as had previously informally undertaken this role. The Guidance department was explicitly included. Pastoral care meetings would include a focus on individuals, groups, and classes identified as “at risk” within the school.

[203] Details of the counselling service were outlined. Appointments to see the counsellors were to be made; communication between the counsellor and client was to be understood by all within the school community as being confidential and treated as privileged unless consent to the contrary was given. An exception to that principle might occur when, in the professional judgement of the counsellor, there was a clear or imminent danger to the client or others. Counsellors would work alongside other staff, accepting referrals through appropriate channels, facilitating groups where possible and undertaking family meetings.

[204] The restorative practices regime was referred to as an aspect of pastoral work. This was described as being a strategy for managing the behaviour of students and

repairing relationships between student and teacher. This would continue to be implemented, reviewed and refined.

[205] Minutes of some of the pastoral care meetings were placed before the Court – one from 2008 and several from 2010. It is plain that the focus of the meetings related to student welfare. Mr Hamill said that issues of the counsellors being stressed, overloaded with work, or not meeting responsibilities were not raised at these meetings, but there is no evidence that counsellors' personal welfare was intended to be discussed at pastoral care meetings, which I find focused on the wellbeing of students.

Variation to Mr Cronin-Lampe's terms and conditions

[206] I referred earlier to the variation of Mr Cronin-Lampe's terms and conditions. On 11 February 2008, Mr Hamill wrote to Mr Cronin-Lampe saying his role would revert to part-time guidance counsellor for 0.6 FTE at the beginning of the academic year as another employee was taking over Careers. As noted earlier, Mr Cronin-Lampe's role became the subject of a fresh job description.²²

[207] About this time agreement was also reached on a time in lieu arrangement, which Mr and Mrs Cronin-Lampe said was recorded in a MoU. Since the existence of the arrangement subsequently became significant, it is necessary to consider its genesis in some detail.

[208] The document which Mrs Cronin-Lampe drafted stated:

Ron holds a part-time (.6) position at Melville High School. However because it is beneficial to have the services of two counsellors at many times throughout the year, it is agreed that Ron will accrue the hours necessary so that over the course of a year Ron and Kath may take the equivalent of 10 each days [sic] per term, throughout the year, paid leave to pursue their own training work.

This agreement began at the commencement of Ron's part-time position and it will continue until revised.

[209] This document was the subject of evidence in the Authority. There, Mr Hamill said he was unaware of a MoU existing in 2008, and could not recall seeing the

²² See above at [69]–[76].

document. He repeated this point on several occasions when giving his evidence to the Court.

[210] I make the following findings regarding this document and the agreed arrangement:

- (a) “Memorandum of Understanding” is a term that had previously been used by Mrs Cronin-Lampe to describe the somewhat informal arrangement reached in 1997 for Mr Cronin-Lampe to assist her as a volunteer, so that she could complete her Master’s degree.
- (b) It is plainly a document prepared by Mrs Cronin-Lampe, and typical of other documents she prepared.
- (c) On its face, the document suggests it was prepared after the 0.6 FTE variation had been agreed with Mr Hamill.
- (d) There is no reason for Mrs Cronin-Lampe not to have given the document to Mr Hamill; their relationship at the time was, for the most part, positive.
- (e) Mr Hamill was vague on a number of matters pertaining to the early stage of his tenure as Principal; the fact that he says he is unable to recall seeing the document is unsurprising.
- (f) The document was unsigned and neither party has presented any evidence as to why it had not been signed. The important point is that Mr Hamill was aware of the arrangement. Moreover, he said he was willing to support it because he felt Mr and Mrs Cronin-Lampe had been generous with their time in setting up the restorative practices project which he had asked them to focus on.

[211] In summary, I find it was prepared by Mrs Cronin-Lampe and provided to Mr Hamill. I also find that Mr and Mrs Cronin-Lampe understood its terms had been agreed, and proceeded accordingly. That it was not signed by either party is not significant as its terms were common ground.

[212] It is also clear that the flexible time in lieu arrangement was linked to the formal reduction of Mr Cronin-Lampe's hours. Mr Hamill understood he would work more than the prescribed hours so as to accrue time in lieu. He would attend the school every day with the intention he would take two afternoons off when he could attend to his private work. 0.2 FTE hours would then be available as time in lieu. These arrangements were to allow Mr Cronin-Lampe, assisted from time to time by Mrs Cronin-Lampe, to provide restorative practice workshops to other schools, an objective which Mr Hamill felt was worthwhile.

[213] The arrangement operated in 2008 and 2009. It did not operate in 2010 due to incapacity, or in 2011 when Mr Hamill determined it should not continue part-way through the year.

[214] In her evidence, Mrs Cronin-Lampe said that in practice the understanding allowed her to be away with Mr Cronin-Lampe to deliver a three-day restorative practices package to other schools. Mr Hamill's secretary was notified of the intended dates for these at the start of each term, as had been requested by Mr Hamill.²³ This arrangement enabled the Principal to know when she was not going to be present at Guidance.

[215] Earnings details for Mr and Mrs Cronin-Lampe for the period 2008 to 2010 show funds being derived, not only from MoE for MHS work, but from what was described as "self-employment", which I find related to the private work which they were able to undertake due to the time in lieu arrangement. That work was very significant, particularly for Mr Cronin-Lampe. For example, his recorded income for the 12 months to March 2010, was less for his 0.6 FTE role at MHS than for his private work.²⁴

Deans' meetings

[216] Next, I refer to an issue which affected the frequency of Mr and Mrs Cronin-Lampe's attendances at Deans' meetings from about 2009. Mr Cronin-Lampe said

²³ For example, Mr Cronin-Lampe made such a request via email dated 9 February 2009.

²⁴ MoE \$44,167.48; self-employment \$48,802.

that at about this time, Mr Hamill took up an initiative which saw the Police positioning a community police officer at the school. It had also been decided that this campus police officer would attend Deans' meetings, which Mr and Mrs Cronin-Lampe had been attending.

[217] Mr Cronin-Lampe said he organised a meeting with the Deans and members of the SLT to express the counsellors' concerns about this arrangement. He said the practice could give the impression to students that Guidance was sharing information with the Police and, I infer, that this would damage the students' trust in Guidance and discourage their use of counselling. A senior sergeant attended the meeting, but not the Deans or SLT members. The senior sergeant confirmed that the campus police officer would be required to act on information that might be of interest to the Police, for example with regard to criminal activities.

[218] Mr Cronin-Lampe said that when he attempted to raise his concerns against the background of the sergeant's confirmation, it was not well received by those involved. The campus police officer was reported as being a former MHS student who could be relied on. Mr and Mrs Cronin-Lampe were criticised for not working with him.

[219] As a result, they felt unable to attend Deans' meetings. They considered they had an ethical obligation to the students not to attend or share information at the meetings in these circumstances. Mr Hamill was aware of the issue but did not think at the time that it was significant. He considered Mr and Mrs Cronin-Lampe were working hard to advocate for students. However, the issue of their more limited attendance at Deans' meetings festered and became a more significant issue in 2011.

Meetings with Mr Hamill

[220] The frequency of meetings between Mr and Mrs Cronin-Lampe and Mr Hamill has also emerged as an issue. Mr Hamill said he regularly met with both Mr and Mrs Cronin-Lampe at pastoral care meetings which he routinely attended up until 2009. He described regular catchup meetings with Mrs Cronin-Lampe as HoD. He also confirmed Mrs Cronin-Lampe's practice of utilising his open-door policy, particularly if she wished him to know promptly about a particular issue affecting an at-risk

student. Mr Hamill said that Mrs Cronin-Lampe utilised the ability to speak with him at short notice with greater frequency than other staff, and that she was a strong advocate for students who she believed needed help.

[221] For her part, Mrs Cronin-Lampe said her job description referred to weekly meetings with the Principal. She said that the structured meetings required under the job description did not occur, either weekly or, as Mr Hamill had asserted, once per term.

[222] Both referred to the annual performance appraisals which were conducted either at the end of the third term or the start of the fourth term. Mr Hamill said this provided an opportunity for any workload issues or stress in undertaking the role to be raised. In fact, the appraisals show that the focus was on discussing additional responsibilities, for instance with regard to the restorative practice projects. Mr Hamill said these tasks did not represent a significant increase in workload. However, it is clear these were in addition to already onerous representations. MHS had a Performance Appraisal Policy, a key component of which was the employee's job description. There is no evidence that Mrs Cronin-Lampe's job description was available or discussed with her at the appraisals.

[223] She also said she was never asked by Mr Hamill about her workload, or as to how she was coping after she had been ill with glandular fever.

[224] As noted earlier, Mr Hamill said the issues of Mr and Mrs Cronin-Lampe being stressed, overloaded with work or not being able to meet their responsibilities were never raised with him.

[225] That said, he acknowledged he was aware Mrs Cronin-Lampe was working under pressure. Having regard to what he thought was her positive demeanour, she appeared to be able to manage her workload. He also agreed he had no basis for saying she was wrong when she said Guidance was overloaded.

[226] Mrs Cronin-Lampe agreed that she utilised Mr Hamill's open-door policy when she could, although he was very busy. She said she would call in and hurriedly advise him about student welfare issues.

[227] I find that the conversations between Mr Hamill and Mrs Cronin-Lampe primarily focused on students' needs, and not the counsellors' needs. The meetings were mainly forward looking and focused on issues that Mrs Cronin-Lampe considered were of current significance.

Supervision and budget constraints

[228] An issue that surfaced in 2009 related to the adequacy of clinical supervision.

[229] Mrs Cronin-Lampe said that when Mr Randell was Principal, Guidance held a reasonable budget for routine supervision, though not for trauma supervision. She was able to attend the required fortnightly supervision under NZAC guidelines. However, she said the budget was reduced in 2001 and again in 2007. By then, supervision was no longer available fortnightly.

[230] In February 2009, Mrs Cronin-Lampe wrote to Mr Hamill and the Deputy Principal, stating that budget requirements had resulted in the cutting back of supervision, so that she and Mr Cronin-Lampe were jointly attending such an event only twice per term, rather than separately attending every fortnight as recommended by NZAC. Alongside the issue of reduced supervision, she also raised other issues associated with the diminished budget, such as personally paying for Guidance resources. There is no evidence of a response being given to this concern.

[231] Mrs Cronin-Lampe said she and Mr Cronin-Lampe attended supervision only four times in 2009. This was a 50 per cent reduction from the level of supervision she had reported in the previous year. In 2010, Mrs Cronin-Lampe says she attended supervision three times – one per term on her own for the three terms she worked that year, Mr Cronin-Lampe being off work for reasons I will come to. She also received some informal counselling that year from Ms Manson

while her normal supervisor at the time, Mr Jewkes, was ill; there was no charge for this service.

Deaths in 2009

[232] In 2009, a student, BB, died suddenly in a car accident. The evidence is that he was a popular and prominent student who was involved in the school's kapa haka group, and came from a large whānau. Mr and Mrs Cronin-Lampe said this event impacted on their workload, as many of BB's whānua and friends struggled with grief issues following his passing. One student, an extended whānau member of BB, made numerous suicide threats and needed significant support for the following two years while at MHS. Mr Hamill said he was unaware of any upswing in counselling workload, but would not have been surprised by this development. He did not, however, check at the time whether this occurred.

[233] On 19 December 2009 a former student, BC, died by electrocution. The former student had worked with Mr Cronin-Lampe, as did his younger brother who, at the time of his brother's death, was a student of MHS. Mr Cronin-Lampe facilitated the funeral. He also provided ongoing support to the younger brother; both Mr and Mrs Cronin-Lampe provided wider support to the family and school community. Mr Hamill said he did not know this individual and was unaware these services were provided, saying this response was not initiated by the school. It appears BC's time at the school preceded Mr Hamill's tenure.

2010

[234] In 2010, Mr and Mrs Cronin-Lampe both became incapacitated. Mr Cronin-Lampe suffered a brain injury following an accident at a leadership training camp with year 13 students. As a result, he was absent from MHS for the remainder of the school year, and obtained ACC cover for the injury.

[235] For her part, Mrs Cronin-Lampe was incapacitated with a serious back injury during term one.

[236] During that period, Mr Hamill appointed Ms Frank, a first-year counsellor, to provide full-time counselling relief. She rang Mrs Cronin-Lampe frequently to discuss students who had made appointments to see her.

[237] When Mrs Cronin-Lampe returned to work in term two, Ms Frank's employment was maintained to cover Mr Cronin-Lampe's 0.6 FTE position, an arrangement which continued for the remainder of the year due to his absence.

[238] Upon her return in term two, Mrs Cronin-Lampe considered there was a considerable volume of work to catch up on. She continued to manage Guidance as HoD. She supervised Ms Frank as a new counsellor, as well as the school chaplain, Mr Nigel Rowling, who had been appointed in 2009 and attended the school once a week on a voluntary basis. She also supervised a drug and alcohol counsellor. She undertook peer support training and a full counselling load. She said she was not able to undertake any professional development, and very few supervision sessions, having regard to budgetary constraints.

[239] She said that her workload and responsibility was accordingly huge. She said that as well as having a sick family member at home to worry about, she did not have time to worry about her own health.

[240] That said, she felt supported by Mr Hamill, with whom she shared the challenges she had at work, as well as her concern for Mr Cronin-Lampe.

[241] Mr Rowling said he attended Pastoral Care Team meetings in 2010 and became concerned at the intensity of student issues which were being discussed, and about the implications this had for Guidance workload. He sent an email to colleagues in the team proposing a traffic light system, which was discussed on 6 May 2010. His proposal was that students of concern be categorised by their level of risk, with those at the red end of the spectrum being targeted for action, particularly by Guidance. The minutes of the meeting record his concern that Guidance could not fix all student problems, that creative steps needed to be taken at the Deans/SLT level before issues were brought to the Pastoral Care Team, and that staff had moved away from the restorative philosophy. It was agreed a meeting should be held to

continue the debate, but it is unclear if this occurred. This exchange is relevant as similar concerns were raised at Deans' meetings in the following year, as will be described shortly.

[242] Mrs Cronin-Lampe said, that in September 2010, an appraisal took place which concerned her. First, Mr Hamill said that the SLT wanted a peer support programme which she had introduced to the school, that he anticipated would have been completed in term one and not later. She was astonished, she said, as she had been away on sick leave in term one of that year. She felt this was feedback which was critical of her.

[243] Mrs Cronin-Lampe also referred to an incident that she felt was inappropriate, which happened at about this time. I am unassisted by the details as to what each party says occurred. More to the point is the fact that the incident had not previously been mentioned in the longstanding history of this litigation. It is strongly denied by MHS. I do not regard a record of the incident made by Mrs Cronin-Lampe as being a reliable account as to what occurred, since it was created well after the event.

Staff concerns as to Mr and Mrs Cronin-Lampe's availability

[244] Mr Hamill said that towards the end of 2010, some teaching and leadership staff expressed frustration that Mr and Mrs Cronin-Lampe were not complying with the requirements of various school processes that other staff had to meet. He referred to several areas of concern which included not signing in and out of school so that no-one knew where they were if needed for a referral, and not following the appropriate channels when applying for leave. Mr Hamill said this issue had first emerged in 2009 but became more pronounced in late 2010. It was perceived as being unfair and impacting on collegial relationships. An aspect of the problem was that notification of absences – for instance, when Mr and Mrs Cronin-Lampe were taking time in lieu – was not published in a fortnightly bulletin which made provision for “staff absences”.

[245] Mr Hamill agreed the remarks being made to him could be described as grumbling comments, rather than formal complaints. He said that in light of these concerns, he wished to obtain certainty as to when Mr and Mrs Cronin-Lampe would be available in the school.

[246] Mrs Cronin-Lampe acknowledged that taking leave in the period following 2008 had become more complex than previously, due to the agreed time in lieu arrangement. No formal leave application would be made unless it was for professional development, or a workshop they intended to hold, if Mr and Mrs Cronin-Lampe had insufficient time in lieu available to them. In such a case, a formal application would be made. There is evidence of this having occurred in 2008 for an overseas restorative practices conference.

[247] Mrs Cronin-Lampe said that it had long been the practice that they would separately advise the Principal's personal assistant as to their whereabouts instead of using the logbook used by teaching staff when they were leaving the school, since Guidance had particular confidentiality concerns; for instance, if a student was being accompanied to an agency away from the school precincts.

[248] I will later discuss the extent to which Mr Hamill either knew or should have known of these arrangements. At this stage, I find that the informal time in lieu arrangement which he had permitted until that point contributed to the negative comments which had been made to Mr Hamill by some staff. Mr Hamill said, and I accept, that he told those who were disaffected that he would take steps to work the issues through with Mr and Mrs Cronin-Lampe.

[249] At about this time, Mr and Mrs Cronin-Lampe met with Mr Hamill to discuss how Mr Cronin-Lampe would work on his return in 2011. Mr Cronin-Lampe said Mr Hamill suggested that a MoU be drawn up. Mr Hamill said it was Mr and Mrs Cronin-Lampe who brought up the idea of drafting a MoU. I accept this is more likely the case, since they had adopted such a descriptor when describing their working arrangements on previous occasions.

Late 2010–2011

[250] The events from late 2010 to late 2011 are important because they relate to the period for which the plaintiffs say leave should be granted to bring their unjustified action grievances and/or this was when the key causes of action in contract accrued. It is necessary, therefore, to analyse these events in some detail. However, they have to be understood against the detailed background I have reviewed to this point.

[251] On 2 December 2010, a senior student, BD, died by suicide. It is this date which subsequently became central to the plaintiffs' personal grievance claim. At the time, Mr and Mrs Cronin-Lampe were en route to a neurological appointment for Mr Cronin-Lampe in Auckland. Before reaching the location for the appointment, Mr Hamill telephoned Mrs Cronin-Lampe on her cell phone to advise that the death had occurred. Mrs Cronin-Lampe said Mr Hamill considered the school chaplain, Mr Rowling, was not equipped to be dealing with the situation on his own. In fact Mr McNulty and BG, a HoD/Dean, were managing the overall situation, assisted by Mr Rowling. Mrs Cronin-Lampe was asked to return to the school to prepare a booklet for students about persons and agencies they could contact. This would be distributed to students the next day, before the conclusion of the school term.

[252] Later, controversy arose as a result of different understandings as to what activity Mrs Cronin-Lampe was engaged in while absent from the school on this date, a point to which I will return.

[253] Mrs Cronin-Lampe said that she returned immediately to the school, working on the booklet with Ms Frank until late into the night. When she returned home, she received a call from a distressed member of staff at a funeral parlour where BD's body was sited. A number of students were there, distressed, and not wanting to leave BD alone as it was against their cultural practices. Those students would not give the staff member their family phone numbers, so Mr and Mrs Cronin-Lampe were contacted. They collected the group and took each student home.

[254] Mr Cronin-Lampe visited BD's family the next evening. Mr and Mrs Cronin-Lampe both attended BD's funeral.

[255] Mrs Cronin-Lampe also said she and Mr Cronin-Lampe were then contacted each second day by three of BD's close friends who needed support. They were concerned as to the risk of copycat suicides.

[256] On 13 January 2011, BE, a junior student, died by suicide. Again there is controversy as to the extent of communications between Mrs Cronin-Lampe and Mr Hamill at the time, but it is common ground she indicated that she would not be

returning to the school in the circumstances. That was because she and members of her family had just reached Ohope when Mr Hamill called. She was strongly urged by family members not to return to the school; accordingly, she reluctantly indicated she would not. However, contact was made with appropriate mental health support services to alert them to the circumstances. The intention was that Mr Hamill could then refer people to support without delay. Mr Hamill said there was in fact no need to refer anyone to such mental health support services, although he accepted he did require this information. In a subsequent communication to Mr Hamill, Mrs Cronin-Lampe said she was aware he had informed people he was dealing with as to the details of agency access, and that she considered he had acted in a caring and humane way.

[257] Mrs Cronin-Lampe said that when she and Mr Cronin-Lampe subsequently returned to MHS for a teacher only day ahead of term one, some staff made pointed and direct comments as to their absence at BE's funeral. Mrs Cronin-Lampe was troubled by this reaction.

[258] Mr Cronin-Lampe was concerned that on this occasion he was not asked to talk to staff about strategies for dealing with the two suicides, including how to identify at-risk students as they re-gathered for the commencement of the new school year. This was an expectation under the protocols which had been developed for such circumstances.

[259] Mrs Cronin-Lampe said that both these deaths led to a significant increase in students and teachers seeking support. There was also particular concern regarding the risk of copycat suicides, in light of the multiple suicides which had occurred. Many risk assessments had to be completed, as well as extensive grief counselling. Mrs Cronin-Lampe said that as an aspect of dealing with these challenges, she and Mr Cronin-Lampe visited students and their families at their homes for counselling.

[260] Mr McNulty and Mr Russell said that the two deaths did not have an ongoing impact on students. However, the evidence of additional work was confirmed by other witnesses. For example, BH, a friend of BD, confirmed she had regular contact with Mrs Cronin-Lampe as a result of the suicide. In the following months she became

very concerned about many of her friends. BH said there were several threats of suicide which she had reported to Mrs Cronin-Lampe.

[261] Another former student, BI, told the Court that he and three others had also been personally affected by BD's death. He himself frequently experienced thoughts of ending his life. He saw Mrs Cronin-Lampe once a week over several months for counselling.

[262] On the issue of ongoing impact on students, I therefore prefer the detailed evidence given by the plaintiffs and the witnesses they called.

[263] On 21 January 2011, Mrs Cronin-Lampe sent an email to Mr Hamill. After making some supportive remarks to him, she referred to the fact that when she and her husband had met with him in the previous year, he had asked them to write up a MoU as to how they would work their positions, complete trainings, and attend funerals. She said they had always identified their training times for the term at its commencement and would continue this practice. Mr Cronin-Lampe would attend the school each day and manage his times so that hours required for training and celebrancy between them both would be compensated for. She said this was how "we have always done things". She referred to an upcoming period in March 2011 when they hoped to be in Samoa, proposing they would deduct Mr Cronin-Lampe's pay for the dates in question, so that Ms Frank could be a paid reliever.

[264] On 2 February 2011, Mr Hamill happened to meet Mr Cronin-Lampe informally. They discussed Mr Cronin-Lampe's head injury. Mr Cronin-Lampe said that a year of illness had given him time to reflect and that he could not continue working in the way that he had previously. He told Mr Hamill he needed more structure, which Mr Hamill took to be a reference to the organisation of his school commitments alongside his private commitments.

[265] Mr Cronin-Lampe also said he told Mr Hamill he would adhere to the existing MoU, a statement Mr Hamill denies because he said he was unaware of an existing MoU. There was also discussion as to the possibility of Mr and Mrs Cronin-Lampe

attending overseas workshops later in the year in Samoa and Canada in relation to their restorative practices work.

[266] As a result of this discussion, on 16 February 2011, Mr Hamill met with Mrs Cronin-Lampe. They discussed how Mr Cronin-Lampe was faring after his absence, and how their Guidance hours would be organised for the upcoming year. There was discussion about two particular students who Mr Hamill wanted Mrs Cronin-Lampe to see. Mrs Cronin-Lampe says she told him how busy Guidance was, and that she could not have coped without Mr Cronin-Lampe's assistance.

[267] There is a dispute as to whether, as Mrs Cronin-Lampe says, Mr Hamill expressed concern about "Ron's MoU", a reference to the 2008 document. In this context, Mr Hamill repeated his recollection that in 2011 he had no knowledge that a MoU existed. However, as recorded earlier, he acknowledged there had been "a time in lieu" arrangement which he had been willing to support and he had, in late 2010, agreed Mr Cronin-Lampe should draft such a document. On this occasion he again asked Mrs Cronin-Lampe to draft a MoU which would provide certainty and include ideas as to how the upcoming trip to Samoa in mid-March 2011 would work.

[268] Mrs Cronin-Lampe forwarded a fresh MoU on 21 February 2011. This document referred to the possibility of Mr Cronin-Lampe, who was still working 0.6 FTE for MHS, attending the school each day to ensure there were two counsellors at work. He would work a total of four days so as to accrue 10 days' leave for them both per term. Restorative practices work could be undertaken during the leave period without any alteration of wages. This arrangement would also cover the Samoan conference in March 2011. The draft document noted that Ms Frank would be employed in Guidance so as to provide counselling cover.

[269] Mrs Cronin-Lampe said this approach was consistent with the understanding which had in fact operated since 2008. On the basis of the evidence reviewed earlier, I accept this was the case.

[270] Mr Hamill then sought advice from the School Trustees Association about the proposal. He was told it would be unlawful to enter into a MoU where Mr Cronin-Lampe was accruing leave for Mrs Cronin-Lampe.

Continuing MoU and related leave issues

[271] On 1 March 2011, Mr Hamill emailed Mrs Cronin-Lampe saying he had spoken to the Chairman of the Board, Bruce Tocker, at length, and they were reluctant to enter into the proposed MoU. He said the arrangement would be an inappropriate employment practice. They would, however, be prepared to discuss this decision.

[272] Mr Tocker was unavailable to give evidence through illness. However, his witness statement as filed in the Authority was received by the Court. He said that his concern regarding an MoU was two-fold. First, there may have been no control as to when time in lieu could be taken, so that the school could be left, at short notice, with no guidance counsellors for a period. Secondly, no records were being kept by the school and there was an unknown potential for the school being required to provide cover.

[273] Mrs Cronin-Lampe responded immediately, plainly concerned that bookings had been made to travel to Samoa the following week. Since Mr Cronin-Lampe had accrued eight days which it had been intended would be utilised by Mrs Cronin-Lampe for the upcoming trip, she asked whether Mr Hamill would now agree that she take four days' leave, with or without pay, and that Ms Frank provide cover for this period.

[274] Shortly before Mr and Mrs Cronin-Lampe were scheduled to travel to Samoa, they met with Mr Tocker and Mr Hamill. The parties were able to reach agreement regarding the proposed trip because it was accepted that the proposed time off was genuinely in lieu as far as Mr Cronin-Lampe was concerned. He had in fact been working full-time to meet the heavy workload Guidance was carrying.

BF's death

[275] On 4 March 2011, BF, to whom Mrs Cronin-Lampe was close, passed away. Both Mr and Mrs Cronin-Lampe had supported her, and worked with her, for many years in her role as one of the pastoral care Deans.

[276] Mrs Cronin-Lampe had visited BF regularly when she became too ill to teach and continued to work with her family after she passed away, with Mr Cronin-Lampe conducting the funeral.

[277] BF had many friends on the teaching staff, and students who mourned her loss, some of whom were counselled by Mr and Mrs Cronin-Lampe.

[278] Mrs Cronin-Lampe said that the three tragedies in close succession, being the two student suicides and the death of a teacher, evoked a significant sense of isolation because there was no-one supporting the counsellors. They were working hard against “a tide of suicide and grief”.

Presentation at Board meeting

[279] Alongside these events, other issues arose.

[280] I have referred to Mr Hamill's evidence that some staff had made comments about Mr and Mrs Cronin-Lampe's availability and responsiveness.

[281] Mr Russell also said one or two people, who he was unable to identify, raised concerns with him regarding Mr and Mrs Cronin-Lampe's leave arrangements. He was a member of the Board as a staff trustee. He reported this concern to other Board members, as well as to Mr Hamill. However, he felt that the issues that had been reported to him had been raised in confidence, so he did not discuss them with Mr and Mrs Cronin-Lampe themselves. He said that on reflection, he perhaps should have.

[282] This issue, and the concerns which Mr Hamill and Mr Tocker had been discussing with Mr and Mrs Cronin-Lampe, formed the context for a Board meeting

held on 22 March 2011 where members of Guidance were asked to present a short report about the department and its work.

Workload as at March 2011

[283] Before discussing what occurred at the Board meeting, it is necessary to analyse the information which was prepared in advance for the Board, with a view to assessing whether the workload had become more onerous, particularly after the two suicides in late 2010/early 2011, as Mr and Mrs Cronin-Lampe said was the case.

[284] Included in the presentation for the Board were Guidance statistics relating to two terms in late 2010 and the first term of 2011.

[285] The late 2010 figures recorded that Mrs Cronin-Lampe and Ms Frank, as relief counsellor, had seen 74 students and nine staff over, I infer, 20 weeks. There was no reference to the existence of at-risk students.

[286] For February and March 2011, Mrs Cronin-Lampe, and Mr Cronin-Lampe who by now had resumed work, had seen 65 students and 10 staff. Included in the student numbers were nine at-risk students. In addition, they had attended a staff mediation, and undertaken five home visits and family meetings. Moreover, there was 18 students on the waiting list for risk assessments. I infer this was over a period of eight weeks.

[287] Mrs Cronin-Lampe told the Court that a student classified as “at risk” had expressed either suicidal ideation or self-harm concerns. The document also set out a broad range of other issues which related to persons who were not regarded as being at risk in this way.²⁵

²⁵ Examples of the presenting issues given for at-risk students included cutting, depression, relationship breakdowns, anxiety, grief, self-worth, sexual identity, home issues and suicidal ideation. Other issues for persons who were not regarded as being at risk included conflict at home, isolation, sexual health, adoption, identity, weight, living apart from family, bullying, name-calling, ‘don’t like school’, teacher conflict, not achieving, friendship issues, reconstituted family issues, eating-food concerns, anger, aggression and violence, ADHD, parents ill/died/lost, study and life balance issues, and life coaching.

[288] The statistics did not state how many times any particular individual was seen. In his submissions, Mr White, counsel for MHS, referred to counselling statistics for the school in 2012 and 2013, submitting that on average, students in those particular years had been seen between two and three times. Applying that conclusion to the 2010 and 2011 statistics, he submitted the workload had not been unmanageable.

[289] No doubt the statistics at any particular time reflect the then circumstances. In 2012 and 2013, Mr and Mrs Cronin-Lampe were no longer involved in counselling at MHS. A full-time counsellor was employed in 2012, but no detailed information was provided as to her practices or the then circumstances at MHS except for Mr Hamill's observation that there was a new system to address bullying. Mrs Cronin-Lampe said there was a suicide in that year, but the Court has no information as to what challenges then arose. In short, I do not consider that assistance can be gained from attempting to compare later statistics with earlier statistics to assess workload. Rather, it is necessary to focus on the direct evidence as to the circumstances of the school in 2010 and 2011.

[290] As mentioned, Mrs Cronin-Lampe described early 2011 as a period where Guidance was dealing with increased numbers of students and teachers seeking support; a concern as to copycat suicides, a phenomenon which the Postvention Team in 1998 had emphasised was to be taken seriously; more risk assessments; and grief counselling.

[291] In my view, the comparison of the 2010 and 2011 figures, which she prepared for the Board, confirm an increased workload. The number of people who had to be seen had risen. That is confirmed by the fact that there were now 18 persons awaiting "at risk" assessments.

[292] Mrs Cronin-Lampe said she could not have coped without Mr Cronin-Lampe's help. He was required to work full-time. That too suggests an increased workload.

[293] Mrs Cronin-Lampe also alerted the Pastoral Care Team and Mr Hamill on 6 April 2011, in writing, that there were at least 15 at-risk students in early 2011, a fact which was accepted by Mr Hamill. In the first half of 2011, Mrs Cronin-Lampe

continued to utilise Mr Hamill's open-door availability on such matters, seeking to advocate for at-risk students. These facts suggest he at least must have been aware of the significant number of at-risk students in the school, and the implications this would likely have for Guidance workload.

[294] That there were many at-risk students in 2011 is also supported by the evidence of BH and BI, to which I referred earlier.²⁶

[295] I also note BI's evidence that he made appointments to see Mrs Cronin-Lampe "once a week" for several months, which does not support the inference that students would be seen two or three times only.

[296] In summary, I find that Mr and Mrs Cronin-Lampe's evidence is supported by the statistics prepared for the Board and the witnesses they called. There is no basis for concluding that the evidence is exaggerated. I find that the counselling workload escalated significantly as a result of the two suicides.

The Board meeting

[297] Mrs Cronin-Lampe said that Mr Hamill had told her prior to the Board meeting that the presentation should be brief and positive.

[298] Mr and Mrs Cronin-Lampe's presentation was given over approximately 40 minutes. It was not suggested in evidence that the minutes are inaccurate. They appear to summarise key themes. They record a brief explanation being given as to the personnel involved in Guidance. Then it was stated that the "tabled statistics were discussed." It was noted that MHS does "care of students" well. Also recorded was an observation made by Mr and Mrs Cronin-Lampe that the "issues" were the same as they had been 15 years previously when they started at the school. That statement was likely a reference to the suicides that occurred in 1997 and 1998, and the significant challenges the school faced as a result. The "handling of suicides" was also minuted as having been discussed.

²⁶ See above [260]–[261].

[299] The tone of the presentation appears to have been positive, as requested. There is no evidence of discussion of the more troubling topics which had been discussed directly between Mr and Mrs Cronin-Lampe, and Messrs Hamill and Tocker, or as reported to the Board by Mr Russell. Although there is no express reference in the minutes to the impact of suicides on workload, the information conveyed in the presentation and orally could not, properly understood, have left any doubt as to the impact of the recent deaths.

[300] After Mr and Mrs Cronin-Lampe left the meeting, Mr Rowling, as school chaplain, spoke for a short time. Although not recorded in the minutes, the role he had played on 2 December 2010 was referred to by Mr Hamill, it being noted that he was the only member of Guidance present at MHS that day. Mr Rowling said Mr and Mrs Cronin-Lampe were “away on business” in response to queries about why they were not available to take a more prominent role in dealing with the crises. This statement was likely the source of the understanding held by some that Mrs Cronin-Lampe was at a training event, as opposed to a medical appointment, on 2 December 2010.

Concerns arise due to behaviour of a staff colleague

[301] On 29 and 30 March 2011, there was an email exchange between Mrs Cronin-Lampe and BG.

[302] Mrs Cronin-Lampe became concerned about an approach proposed to be taken in respect of two female students who were said to be disruptive, but who had previously been identified at a pastoral care meeting as being “at risk”. One had been a close friend of BD.

[303] In the course of the email exchange, BG said “some sort of punitive course of action” would have to be adopted in respect of these disruptive students, as nothing else was working. Mrs Cronin-Lampe was fearful of the consequences for the students were such an approach to be adopted. BG said she felt “told off” by Mrs Cronin-Lampe’s responses. The email exchange was copied to Mr Hamill.

[304] Mrs Cronin-Lampe felt that from this time onwards, a pattern of bullying behaviour by BG against her emerged, catalysed by insufficient support from Mr Hamill.

Issues with the Deans

[305] On 4 April 2011, there was a meeting involving the Deans and John Ledson, Assistant Principal. Mr Hamill was not in attendance. An outline of discussions at the meeting was relayed to him by Mr Ledson. The original minutes included concerns that the Deans wanted closer ties with Guidance staff and that they wanted more communication initiated by Guidance. It was recorded that Guidance used to be more effective than it now was, that its members seemed to be in conflict with the campus constable, and that the Principal needed to discuss these issues with Guidance. The minutes were subsequently amended at Mr Hamill's request because he considered, in light of what he was told by Mr Ledson about the meeting, they did not accurately convey what had occurred. The amended version stated the Deans would like closer ties with Guidance, and that there was a reduced degree of responsiveness from the department. Mr Hamill established a further meeting of the Deans and Guidance for 12 April 2011 to discuss the issue.

[306] Mr and Mrs Cronin-Lampe were to undertake staff training as to counselling practices on 6 April 2011. The training did not proceed. Mr Ledson told Mrs Cronin-Lampe that Mr Hamill had decided no-one should attend. Mr Ledson said this was due to what he characterised as a "dodgy reason" to do with Mr and Mrs Cronin-Lampe's MoU.

[307] On the same day, Mrs Cronin-Lampe wrote an email to Mr Hamill in response to the advice that there was to be a meeting with the Deans on 12 April 2011. She said it was necessary to clarify the suggestion that Guidance was providing a "reduced degree of responsiveness". She provided data as to the department's workload for the Deans to consider. She referred to the fact that in February and March 2011 she and Mr Cronin-Lampe had seen 15 students who had presented with suicidal ideation. She emphasised that the 15 at-risk students were being seen/monitored weekly, some daily and some twice weekly; while other students were assessed and prioritised

accordingly. She also said they had appointments interrupted seven times in the previous three weeks by teachers requiring urgent intervention for students who they believed were at risk. This was yet further confirmation that the counsellors were working in challenging circumstances, particularly with regard to potential issues of suicide. Mrs Cronin-Lampe also said it was not efficient to attend Deans' meetings, as they attended pastoral care meetings where students of concern could be referred to them.

[308] The meeting proceeded on 12 April 2011. No minutes are available, but on the evidence it is apparent the meeting did not go well. Present were Mr Hamill, seven Deans, and Mr and Mrs Cronin-Lampe.

[309] In evidence, Mr Hamill said that an issue was raised by a staff member, Mr Gay, who had taught at the school for only three months. He sought clarification from Mr and Mrs Cronin-Lampe about their roles and responsibilities. Then he asked for clarification as to how he could know of the counsellors' whereabouts at any given time. Mr Hamill saw this query as being symptomatic of concerns which had been raised with him previously as to the availability of the counsellors.

[310] During the meeting, BG, who arrived late, was angry and hostile. It is apparent her reaction arose from the earlier email exchange as to the adoption of a punitive approach for disruptive students. She was described as sulking as she did not want to attend the meeting. I accept that she spoke loudly and with hostility. Mrs Cronin-Lampe spoke about workload, critical intervention checks, and the ethical problem of counsellors advocating adequately for students if the campus police officer was present. There was a robust exchange between Mrs Cronin-Lampe and BG about management of one of the students who had been the subject of the previous email exchange.

[311] Eventually, Mr Hamill confirmed that BG should leave the meeting. In his evidence, Mr Hamill accepted that Mrs Cronin-Lampe was verbally abused and that she had not provoked the attack by BG. BG had behaved disgracefully. He believed he had attempted to restrain BG, unsuccessfully. In the event, the hoped-for restoration of relations with the various parties was not achieved. Mr Hamill

also said he considered BG was “challenging” the work of the Deans’ group, and he was disappointed the SLT had not previously ensured that she act more professionally.

The aftermath of the Deans’ meeting

[312] The next day, BG posted a message on her Facebook page. The message did not name Mr or Mrs Cronin-Lampe but it was clear from the context that a very derogatory term she used applied to Mrs Cronin-Lampe. Mrs Cronin-Lampe learned about the posting from her daughter.

[313] The issue came to the attention of Mr Hamill. Mrs Cronin-Lampe expressed willingness to attend a mediation with BG to resolve the issue, but it was later decided that BG would instead make direct contact with Mrs Cronin-Lampe as she did not wish to attend mediation. This eventually happened on 15 July 2011, with BG sending an email to Mr and Mrs Cronin-Lampe referring to the entry on her Facebook page, and the fact that they had taken offence to it. She said she felt terrible that Mrs Cronin-Lampe may have been hurt or offended by something she wrote, as “this was not the intent”. She apologised “if this was the case”.

[314] Mrs Cronin-Lampe, in the face of these issues, ceased attending the staff room during breaks. Mr Hamill told her she should resume attendances. Contrary to previous practice, she was also asked her to attend HoD meetings where BG was also present. Mrs Cronin-Lampe felt that she was intimidated and unsupported at such meetings, and that this was a bullying matter.

Further exchanges as to leave and related issues

[315] On 6 May 2011, Mr Hamill wrote to Mr and Mrs Cronin-Lampe about the MoU issue. He said he had asked Peter Murphy from the New Zealand School Trustees Association (NZSTA) and Bill Harris from the PPTA to attend a meeting which he would arrange. He acknowledged that the previous few weeks had been challenging, but that he needed to affirm earlier requests; leave should be formally requested, and these requests needed to be dealt with in a timely manner so the

implications of leave could be managed. They were also to attend Wednesday afternoon professional learning sessions.

[316] Mrs Cronin-Lampe said the email was hurtful because it demonstrated that she and Mr Cronin-Lampe, who had been trustworthy throughout, were no longer regarded as being compliant with school expectations.

[317] On 8 May 2011, Mrs Cronin-Lampe responded at length. She referred to the history of Mr Cronin-Lampe's part-time work which included the time in lieu arrangement so as to undertake training work. She referred to problems that had occurred in the obtaining of leave for the trip they had taken to Samoa. She queried how a formal application would work given the previous understandings. She said she and Mr Cronin-Lampe had endeavoured to be clear as to their intentions. She referred to other issues that had arisen over the course of 2011. She had endured what she described as a "shocking holiday", following "the huge fright" of being abused in a meeting and on a public Facebook page. She said she felt bullied.

[318] Accepting that leave was now required to be dealt with formally, on 9 May 2011, Mrs Cronin-Lampe lodged a formal request for her and Mr Cronin-Lampe to be given leave to attend conference events in Canada. This request was made even though, at that stage, their sponsorship for the trip had yet to be confirmed. Mrs Cronin-Lampe said that Guidance cover would be available. These details were fleshed out in further communications sent by Mr and Mrs Cronin-Lampe to Mr Hamill on 18 and 23 May 2011, and in an amended leave application on 24 May 2011.

A further suicide

[319] In May 2011, the partner of a staff member, BK, died by suicide. Mr and Mrs Cronin-Lampe were called at their home by the staff member who had discovered her partner. Mr and Mrs Cronin-Lampe responded immediately, with Mr Cronin-Lampe assisting with the handling of BK's body in the immediate aftermath, a circumstance I find was very disturbing. Mrs Cronin-Lampe said the event was deeply traumatising for all concerned. I accept this assessment.

Formal meetings and exchanges as to employment matters, May to July 2011

[320] On 23 May 2011, Mr and Mrs Cronin-Lampe attended the arranged meeting with Mr Hamill, Mr Murphy from NZSTA and Mr Harris from the PPTA. This was in light of the difficulties which had arisen as to Mr Cronin-Lampe's employment arrangements. This was the first of two significant meetings.

[321] Mr Hamill began the meeting by honouring Mr and Mrs Cronin-Lampe's work and acknowledging their service to the community over a 16-year period. He said that the meeting was not to address any competency issues but, rather, was to discuss expectations concerning their compliance with school policies and procedures.

[322] The history as to Mr and Mrs Cronin-Lampe's time away from the school was discussed. Reference was made to their availability at a time of crisis, including the mistaken impression that they were undertaking training on 2 December 2010. Mrs Cronin-Lampe repeated a clarification she had made previously as to the inaccuracy of this statement. Mr Hamill said he would investigate the matter by looking at the applicable leave form.

[323] In this context, Mr Harris (PPTA) asked how Mr Cronin-Lampe's hours had changed from what was agreed in 2008, whether he had signed a new contract, and whether his reduced hours position or a Careers position had been advertised. On being informed that there was no such new contract, Mr Harris said that if what Mr and Mrs Cronin-Lampe understood was a MoU was to be revoked, it followed that Mr Cronin-Lampe would still be employed full-time. Mr Hamill later confirmed that Mr Cronin-Lampe would be employed full-time as a result.

[324] During the meeting, Mrs Cronin-Lampe referred to their cell phones having to be monitored out of hours, and that they worked out of hours. Mrs Cronin-Lampe said that Mr Hamill then commented that their need to serve the community to this extent came from their own "pathology", and that their job descriptions needed to be reviewed. Mr Hamill did not recall using this word but says if he did, it was not intended to be a reference to a "pathological condition" as such. He also acknowledged saying at this meeting that Mr and Mrs Cronin-

Lampe were not responsible for world peace. It was his position that Mr and Mrs Cronin-Lampe needed to be more aware of their boundaries, and that they needed to turn their cell phone off and be unavailable to the community out of school hours, contrary to previous practices.

[325] Mrs Cronin-Lampe said that these comments were deeply concerning. She said they had always been expected to be available via cell phone 24/7, with the availability of business cards facilitating this possibility for families.

[326] I interpolate that there was a dispute between the parties as to whether business cards continued to be available in the office area, as had been the practice much earlier. Mr Hamill confirmed that staff had business cards for distribution. He said they would be reprinted as necessary. I find that the counsellors' business cards were available and were distributed to students and families, albeit these were not in latter years on display at the school's office. The main point is that the cell phone number had become widely known and used by students, families and staff, often after school hours.

[327] Returning to the meeting of 23 May 2011, Mrs Cronin-Lampe said she was very concerned about the potential consequences of removing support for students in crisis, and that no further support was being offered to Guidance to address the issue of after hours contact with students.

[328] Mr and Mrs Cronin-Lampe's upcoming leave requirements for attendance at a conference in Canada were also discussed. So too were their concerns as to the inadequacy of professional supervision in light of a constrained budget for Guidance.

[329] Mrs Cronin-Lampe said she was shocked and disillusioned by Mr Hamill's treatment of these issues, as she would be unable to continue performing her role properly were his directions implemented.

[330] For his part, Mr Cronin-Lampe said he felt abandoned and unsupported by the "unilateral" revocation of the historical time in lieu practice which had been applied consistently up until that time.

[331] The parties exchanged letters as to outcomes of these discussions. In a letter of 25 May 2011, Mr Hamill said that Mr Cronin-Lampe would be employed full-time as from 1 August 2011 under the provisions of the current STCA. Second, he would recommend to the Board that the leave sought from 30 May to 21 June 2011 – without pay for Mrs Cronin-Lampe and on pay for Mr Cronin-Lampe for nine days – be granted. Third, he agreed to investigate the provision of resourcing, especially the provision of the cell phone, with a view to establishing an equitable budget for Guidance. He told the Court he wanted to consider whether the budget that had been set was insufficient, and that it may have needed to be doubled.

[332] On the same day, Mr Cronin-Lampe wrote to Mr Hamill about the intended leave. He noted that no professional development had been undertaken since 2008. Paid leave and payment for the upcoming four-day conference in Canada was requested. He also said it was his understanding that there was now no MoU, and that as from the start of term three, he would be employed on a full-time basis.

[333] Mr Hamill replied on the same day, stating that the issues raised had been referred to the Board's Personnel Subcommittee. The terms of Mr Hamill's letter of 25 May 2011 had been affirmed, but the additional requests made by Mr Cronin-Lampe had not. It was requested that the Board be provided, however, with a report on findings and new learnings obtained during the leave activities, which was to be provided to the Board in July. Mr Hamill also said that he had become aware that the school's facilities were being utilised by Mr Cronin-Lampe for his private practice; he requested that this cease immediately.

[334] Mrs Cronin-Lampe said that shortly after the meeting, she told Mr Hamill that one of the most at-risk students at MHS had been locked out of their home one weekend, with nowhere to go. She had been called to negotiate with the family in the middle of the night. Mr Hamill said someone else should have dealt with it. Mrs Cronin-Lampe said, however, that there was no-one else. Moreover, neither the student nor the family called the Police; they called her.

[335] She said she did not understand how, given the availability of business cards and the cell phone number endorsed on it, and years of after-hours support to students, contact could suddenly be discontinued. She told Mr Hamill that Mr Harris (PPTA) had advised that if custom and practice were to change, there needed to be a period for this to be introduced so that the community would be informed as to alternatives. Mr Hamill said he would look into this. There is no evidence of this occurring.

[336] Mr and Mrs Cronin-Lampe were on leave in Canada for the period previously mentioned. Prior to their departure, Mrs Cronin-Lampe established detailed arrangements for cover.

[337] On 28 June 2011, Mr Hamill received a letter from a representative of the New Zealand Teachers' Council (NZTC) regarding Mr Cronin-Lampe's position in light of a recent amendment to the Education Act 1989 which authorised information matching between MoE and NZTC as to who were employed as teachers. The letter stated that Mr Cronin-Lampe had been employed in a teaching position at the school without a current practising certificate or authorisation from NZCT. Mr Hamill was advised it was unlawful for the school to continue to employ a person in a teaching position in these circumstances.

[338] Mr Hamill replied on the same day, stating that Mr Cronin-Lampe was not employed in a teaching position and was not a qualified teacher. This issue, however, was subsequently of considerable concern to Mr Cronin-Lampe when he learned of it, as will become evident.

[339] Also on 28 June 2011, Mr Hamill wrote to Mr and Mrs Cronin-Lampe requesting a meeting so that they could work through the current employment issues, including relationships with staff. He said that they could attend with a representative.

[340] Eventually, a meeting took place on 6 July 2011 involving, again, Mr Hamill and Mr Murphy, as well as Mr and Mrs Cronin-Lampe and Mr Harris (PPTA).

[341] Several issues were then discussed and recorded in a letter Mr Hamill wrote to Mr and Mrs Cronin-Lampe on 11 July 2011. First, reference was made to an intended clarification to be given to the Board as to where Mr and Mrs Cronin-Lampe had been on 2 December 2010. A draft letter was provided for comment. By this time, Mr Hamill had accepted Mr and Mrs Cronin-Lampe had not been engaged in training activities on that date.

[342] Second, Mr Hamill said he had reminded BG of her commitment to apologise to Mrs Cronin-Lampe. As mentioned, this apology was sent by email a few days later on 15 July 2011.

[343] Third, reference was made to the nature of Mr Cronin-Lampe's responsibilities from the commencement of term three. He said it did not necessarily mean he would be engaged in full-time guidance counselling, as his original full-time position was for only 60 per cent counselling – an apparent reference to Mr Cronin-Lampe's 0.6 FTE position from 2008. Mr Hamill said he had begun to draft an outline of position responsibilities, which would be a platform for clarifying further expectations and responsibilities for both Mr and Mrs Cronin-Lampe as guidance counsellors. He would share this draft before the end of the following week. Mr Cronin-Lampe's role as a part-time counsellor would be maintained until these matters were resolved.

[344] Fourth, he also asked for a proposal of budgetary needs and management of resourcing, including as to the management of the Guidance cell phone. He affirmed that provision would be made for access to the school facilities out of school hours on an occasional basis, on the basis that there "would be a charge for this", apparently to Mr Cronin-Lampe.

[345] On 20 July 2011, Mr Hamill wrote to Mr and Mrs Cronin-Lampe attaching copies of documents from Mr Cronin-Lampe's personal file. These included copies of letters sent to him by Mr Randell in 1997/1998, and Ms Crate in 2005. A job description relating to the Careers role of 2005 was attached. No other job descriptions were attached. Mr Hamill also provided a draft job description for the role of guidance counsellor, as well as one from another school for comparison.

Mr Cronin-Lampe's increased hours in term three

[346] Prior to the start of term three, Mr Cronin-Lampe received a letter from Mr Hamill to advise he was to work in the Deanery in his extra two-day reinstated capacity, counselling students who had been sent from class as part of an exit disciplinary strategy.

[347] Mr Cronin-Lampe considered this was inappropriate since the counselling he was employed to undertake needed to be voluntary and confidential. This concern was raised soon after term three started. Mr Hamill said he would contact NZAC to clarify whether there was such an ethical issue.

[348] Mr and Mrs Cronin-Lampe received no further feedback from Mr Hamill on this particular point. However, Mr Hamill wrote to Mr Cronin-Lampe on 18 August 2011, three weeks into the new term, confirming that from 1 August he had been employed on a full-time basis, and that this would be under the current provisions of the STCA. In the letter he said he would need to alter some of his responsibilities as the previous role of Careers had been allocated to another permanent staff member.

Budget issues

[349] On 8 August 2011, Mrs Cronin-Lampe submitted a proposed budget to Mr Hamill, requesting more than \$8,000 per annum. This included \$4,000 for supervision alone, in order to meet the frequency of supervision recommended by NZAC. Mr Hamill said it was his recollection that at the end of November 2011, the Guidance budget was increased from the pre-existing amount of \$3,000 to \$4,500.

Issues relating to another staff colleague

[350] On 5 August 2011, an incident occurred between Mr Cronin-Lampe and an HoD, BJ. A robust conversation occurred between the two, after Mr Cronin-Lampe had approached her to discuss one of her students whom he regarded as being seriously at risk. The student was one of those who had been discussed with BG by Mrs Cronin-Lampe in late March 2011.

[351] BJ was of the view that the student needed to be respectful, co-operative and punctual before she could receive assistance for internal academic standard credits. In the course of the conversation, BJ made comments reflecting negatively on the student, to which Mr Cronin-Lampe reacted strongly, apparently wishing to shut down the conversation. He said he was not proud of this reaction. BJ said that Mr Cronin-Lampe's tone was rude and unprofessional.

[352] On 9 August 2011, Mr Hamill wrote to Mr Cronin-Lampe saying he had received a complaint from BJ. He wished to discuss the matter with him.

[353] Mr Cronin-Lampe then referred to a discussion he had with Mr Ledson, with whom he had a friendly relationship. Mr Ledson informed Mr Cronin-Lampe that he had been instructed to undertake mediation between himself and BJ. Mr Hamill later said Mr Ledson had jumped the gun in initiating this conversation.

[354] On 12 August, Mr Hamill wrote to Mr Cronin-Lampe formally, stating that the allegations in the complaint were serious, and that he required a written response within seven days. He was reminded of his right to seek representation. No reference to the possibility of mediation was made.

[355] Later that day, Mr Cronin-Lampe prepared a detailed response to the complaint from BJ, recording also his informal discussions with Mr Ledson. Mr Hamill then asked Mr Ledson for his account as to what had occurred. Mr Ledson provided two emails to Mr Hamill, the first of which was as to his observations at the time of the incident, and the second as to what had occurred in his conversations with Mr Cronin-Lampe about the possibility of mediation, including that Mr Cronin-Lampe allegedly said BJ was a "bitch".

[356] Subsequently, on 23 September 2011, Mr Hamill wrote to Mr Cronin-Lampe, copying Mr Ledson's two emails, and stating that he had decided to refer the matter to the Board, who would appoint a discipline subcommittee to hear and determine the complaint. He said the allegations were of a serious nature and if proven, could result in disciplinary action up to and including dismissal.

[357] In his evidence, Mr Hamill agreed that Mr Cronin-Lampe had behaved in an uncharacteristic manner. Initially, he had hoped to meet with Mr Cronin-Lampe but that did not happen. He was not sure why. Then the matter progressed to a disciplinary process. He also said that by jumping the gun, Mr Ledson had alienated Mr Cronin-Lampe. Mr Cronin-Lampe said that following this event his relationship with Mr Ledson deteriorated.

[358] When Mr Hamill met Mrs Cronin-Lampe to hand over his letter of 23 September 2011, he asked after Mr Cronin-Lampe's health because he accepted his behaviour had been atypical. In her evidence Mrs Cronin-Lampe said there was a mismatch between this concern and the decision to forward the matter to the Board for discipline.

[359] Ultimately, on 19 December 2011, the Board Chair and two other trustees, all forming a disciplinary committee, met Mr Cronin-Lampe. Also present were representatives of NZSTA and the PPTA.

[360] The minutes of the occasion record that correspondence from the Principal, together with statements from both parties, had been circulated in advance and submitted for the record. Questions were asked to the satisfaction of the committee.

[361] Mr Cronin-Lampe said that an aspect of the process which troubled him was the production of information to discredit the student in question. This was unfair because not only could he not advocate for the student who had worked mainly with Mrs Cronin-Lampe, but he was also conscious of maintaining the student's confidentiality. He felt powerless to defend the student.

[362] In the event, he apologised. The committee found that his behaviour had been inappropriate and that a restoration meeting should be held between him and BJ prior to the start of the next school year.

Property and retention issues

[363] Parallel to these events, the school was undertaking a rationalisation programme which involved MHS reducing its property footprint. The Guidance building was identified as a transportable building that could be removed from the site. It was proposed the department could be relocated to what Mrs Cronin-Lampe described as a small room in a teaching building under a stairwell.

[364] Mr and Mrs Cronin-Lampe provided submissions opposing replacement options for the Guidance building. In the first of these, sent on 22 September 2011, Mrs Cronin-Lampe wrote strongly of the need for a Guidance building to be sited separately from other school buildings, as was the case at the time. She stressed it was necessary to have an accessible but discreet site to enhance privacy, safety and confidentiality for students.

[365] A second submission was forwarded on 5 October 2011. Attached was a copy of the “School Guidance Counsellor” document mentioned earlier. Mrs Cronin-Lampe pointed out that it stated counsellors could expect the Principal and Board to “provide counselling rooms and waiting areas conducive to the protection of client privacy”, which echoed a point as to the importance of confidentiality that had been made many times.

[366] Mrs Cronin-Lampe felt that these steps would be the death knell of Guidance, as well as her ability to keep going.

[367] In November 2011, MoE initiated a staff reduction exercise, according to the Curriculum and Pastoral Needs Analysis (CAPNA), of the STCA. MHS was required to consider this given a declining roll.

[368] Mr Cronin-Lampe discussed this issue with Mr Hamill, who said that if the process did have to be implemented, there was a high chance he could be affected since he was not a registered teacher.

[369] The difficulty was that Mr Cronin-Lampe was employed under the STCA, which covered work undertaken by teachers. Although he understood he was a

permanent employee under the STCA, he was not in fact a registered teacher, as he acknowledged to Mr Hamill.

[370] There is an issue as to whether he could have been employed pursuant to a Limited Authority to Teach. Even if this had been possible, he could not have been appointed by this means to a permanent position.

[371] According to Mr Cronin-Lampe, this issue had been raised with Mr Hamill at one of the meetings attended by Mr Harris (PPTA). Despite Mr Hamill telling the NZTC in June 2011 that Mr Cronin-Lampe was not a teacher – which plainly had implications as to the terms of his employment – Mr Hamill had not reverted to him on the issue of his legal status. Mr Cronin-Lampe said he sought Mr Harris’s advice, who had also cautioned him that he could, in the circumstances, be dismissed.

[372] Accordingly, on 10 November 2011 Mr Cronin-Lampe said he would consider voluntary redundancy in light of the CAPNA process. Then, on 24 November 2011, Mr Hamill wrote to all affected staff who had volunteered, including Mr Cronin-Lampe, advising that the Board now considered there were no grounds for applying the CAPNA process.

[373] Mr Cronin-Lampe remained acutely concerned because he felt his position was precarious. He also felt, in light of the incident involving BJ, that his responsibility as a counsellor to advocate for students was becoming increasingly compromised.

Incident at school prizegiving

[374] On 14 November 2011, Mr Cronin-Lampe wrote to Mr Hamill making him aware of an incident that had occurred at the school’s prizegiving. The details were that in the line-up list for staff, it was noticed Mrs Cronin-Lampe had been placed next to BG. Whilst waiting in the corridor to proceed into the hall for the prizegiving event, BG said she was not sitting next to “that fucking bitch”. Mrs Cronin-Lampe said she was unwilling to lodge a formal complaint because she was too fearful of repercussions. Mr Cronin-Lampe, however, felt Mr Hamill should be aware of the circumstances and emailed him accordingly.

[375] According to a handwritten note he made on Mr Cronin-Lampe's email, Mr Hamill cautioned BG about verbal abuse. He noted that a further allegation of such a nature would be viewed as serious and, if proven, could result in disciplinary action up to and including dismissal.

[376] Mrs Cronin-Lampe told Mr Hamill that if he was to mediate a conversation between the two, he was not to allow BG to yell and threaten her. Mr Hamill said he could not guarantee that. She therefore asked somebody else to mediate the situation. She said she wanted a safe environment and not to be subjected to more hostility.

Mr and Mrs Cronin-Lampe's wellbeing in 2011

[377] There is a substantial volume of evidence before the Court relating to Mr and Mrs Cronin-Lampe's wellbeing in 2011. In summary, they both endured increasing stress as the year progressed.

[378] In her evidence, Mrs Cronin-Lampe said that from May 2011 onwards, she considered Mr Hamill had ramped up the pressure on her and Mr Cronin-Lampe. She said his emails became more demanding and implied that she had not been doing things correctly, such as the submission of leave requests on appropriate forms. She considered she had not changed the way she had been operating, but the way he was relating to her had. She felt vulnerable and singled out.

[379] Mrs Cronin-Lampe said that following the meetings that took place, particularly those involving representatives of the STA and PPTA, Mr Cronin-Lampe's migraines which he had suffered previously returned, incapacitating him for days on end. This concerned Mrs Cronin-Lampe. She felt they were both "unravelling", and that she was "starting to shut down". She dreaded having to counsel new students and was worried that they would require advocacy that she could not give. The trust and goodwill which had existed previously was no longer present. She felt unfair accusations were being made against her, particularly by Mr Hamill.

[380] Mr Cronin-Lampe echoed these developments in his evidence. He said that from the time of the Deans' meeting on 12 April 2011, his relationship with Mr Hamill

and the SLT deteriorated. This was catalysed by the fact that his wife was becoming fragile and shaky, and losing her confidence. He noted that from then on, she did not wish to go to the staffroom. Progressively during the year, he felt his ability to advocate for students in a restorative context had been compromised.

[381] Mr and Mrs Cronin-Lampe's views are confirmed by the evidence of the secondary witnesses, both as to the state of mind they were in, and as to the extent of their workload. In evaluating this evidence, I have taken into account the issue of the strong allegiances they had towards Mr and Mrs Cronin-Lampe. However, there is a striking consistency in the impressions held by those witnesses. Moreover, the various accounts of those impacts are plausible.

[382] Mr Hamill says he was completely unaware of these issues because he was not advised of them. I will return to this point in due course.

The taking of advice and undergoing medical assessments

[383] In her evidence, Ms Cronin-Taylor said that events which occurred in 2011 took a visible toll on Mr and Mrs Cronin-Lampe. On one occasion, she came home in the middle of the day to find her mother in the bath, frozen. At some stage, she insisted that they both see a psychologist.

[384] Mr Jewkes, who had been their supervisor for many years, wrote a detailed letter of 16 November 2011, outlining various concerns Mr and Mrs Cronin-Lampe had raised in supervision, particularly those which had occurred in 2011. Reference was made to the fact that Mr Cronin-Lampe's employment status was arguably illegal.

[385] Mrs Cronin-Lampe then prepared a detailed history of events, to provide to a lawyer, Mary Wilson. She recorded that their supervisor had suggested they provide a historical overview of their positions, which would be pertinent if further action was deemed necessary.

[386] On 16 and 22 November 2011, Mr and Mrs Cronin-Lampe attended their general practitioner (GP), Dr Margaret Muir. The possibility that they both had PTSD was noted. Dr Muir's notes also recorded that they were unsupported with a high

stress workload, with many suicides, deaths and violence; there had also been recent bullying and stress at school with the “headmaster and management”. They were in the course of being referred to Ruth Arcus, a clinical psychologist, on the basis that they may need time off work, and a letter of support for mediation. In the meantime, they wished to continue at the school and not react to bullying from one particular staff member.

[387] They saw Ms Arcus the next day, who prepared a report on 24 November 2011, addressed to their GP. It was her view that Mr and Mrs Cronin-Lampe were suffering emotionally, mentally and physically from the effects of prolonged stress. Mrs Cronin-Lampe’s symptoms also suggested she had PTSD. Further assessment would, however, be required to confirm the position of each. She recommended that they take time away from their jobs to heal and recover. She was concerned about their level of distress.

[388] On 7 December 2011, Dr Muir prepared a summary of her medical records for each of Mr and Mrs Cronin-Lampe and enclosed Ms Arcus’s report; the summary was addressed “To whom it may concern”.

[389] It can be inferred that these materials were provided to Ms Wilson, and that she advised Mr and Mrs Cronin-Lampe that personal grievances should be raised. Ms Wilson arranged to meet with Mr Hamill on 19 January 2012 to discuss Mr and Mrs Cronin-Lampe’s situation. On 23 January 2012, he confirmed, on a without prejudice basis, that they would be on paid leave for four weeks from 27 January 2012. In that period, the school would meet the cost of four individual sessions with Ms Arcus.

[390] On 26 January 2012, Ms Wilson formally raised unjustified disadvantage grievances on the basis of an unsafe workplace, that there had been a breach of an implied term to take all reasonable practical steps to provide a safe workplace, as well as HSE Act breaches. Ms Wilson referred to the advice which had been received from Ms Arcus about Mr and Mrs Cronin-Lampe’s wellbeing, the health and safety obligations MHS held as a good employer, and the additional issue of Mr and Mrs Cronin-Lampe discovering that Mr Cronin-Lampe’s employment was not provided for

under the STCA so that he was effectively in limbo. The letter went on to describe in detail the chronology of events from the inception of their employment.

[391] Mr Hamill responded in detail on 15 March 2012. Liability was denied. He said that at no time had either Mr or Mrs Cronin-Lampe informed him that they were not managing their responsibilities, and that they were severely stressed. He described their tenure, the steps taken to clarify the employment relationship over the past 15 months, and the response given in late January 2012 to the raising of the personal grievance.

[392] On 1 August 2012, Dianne Farrell, a psychologist, prepared an assessment and report in relation to Mr and Mrs Cronin-Lampe. I will refer in more detail later to the findings she made. It suffices at this stage to record her opinion that both met the criteria for a PTSD diagnosis and were experiencing traumatic symptoms for a range of reasons. She said that as a result of that diagnosis, they were unable to engage in other similar work for which they were trained and experienced. They were facing the prospect of retraining at a late stage in their employment career.

[393] On 13 November 2012, MoE confirmed that Mrs Cronin-Lampe met the criteria for medical retirement, as provided for in the STCA, which would apply as from that date.

[394] Although a similar application was made for Mr Cronin-Lampe, supported by the PPTA, the school's legal adviser said Mr Hamill was not in a position to sign the necessary declaration for Mr Cronin-Lampe because his employment was not covered by the terms and conditions of a collective agreement, being the STCA. The PPTA contested this by letter of 1 November 2012 in which his "unusual employment status with the school" was described.

[395] The parties have proceeded on the basis that Mr Cronin-Lampe's employment ended at approximately the same time as Mrs Cronin-Lampe's retirement, when he sought a similar entitlement.

The mental harm issue

[396] A central aspect of Mr and Mrs Cronin-Lampe's claim is that the events at MHS resulted in them suffering trauma, stress and exhaustion, and that this caused their PTSD. This assertion is relevant to the limitation issues; as well as the date of accrual of the various causes of action; to the ACC bar; and to remedies/damages since Mr and Mrs Cronin-Lampe claim the diagnosis has impacted significantly on their ability to work, and on their financial circumstances.

[397] They say the condition was provisionally diagnosed in 2011, and formalised for litigation purposes in mid-2012. They claim the diagnosed PTSD was the result of cumulative trauma, compounded by a lack of support from MHS.

[398] The expert witness called for MHS, Dr Barry-Walsh, says a better description of the mental health problems suffered by Mr and Mrs Cronin-Lampe is that of anxiety disorder. But he did not rule out PTSD, saying the diagnosis appeared to be reasonable despite his own preference. If the correct characterisation is PTSD, MHS says the diagnostic criteria were met early in their employment, and that events which occurred in late 2010 and in 2011 were a triggering of a pre-existing PTSD condition.

The expert evidence in detail

[399] The Court heard from three expert witnesses, a psychologist and two psychiatrists. Several reports from other assessors were also before the Court and were referred to the witnesses who gave evidence.

[400] I begin by summarising the reports of the other assessors. I have already mentioned Ms Arcus's report.

[401] Four reports were introduced from Dr Peter Dean, a psychiatrist – two in 2012 were apparently to support the medical retirement applications for each of Mr and Mrs Cronin-Lampe, and for the Authority's investigation meeting in 2012; and two in 2014 apparently for the purposes of the interlocutory application in this Court. He expressed reservations about the PTSD diagnoses given by other medical practitioners, preferring "anxiety disorder, not otherwise specified".

[402] Also produced were reports prepared for Mr and Mrs Cronin-Lampe's ACC claims. In 2017, Dr Jim Bierman, a psychologist, undertook a mental injury assessment in which he concluded that both Mr and Mrs Cronin-Lampe were suffering from PTSD. In 2018, a psychiatrist, Dr Patrick Daniels, also reported to ACC. He concluded that Mr and Mrs Cronin-Lampe had PTSD and adjustment disorders as a result of cumulative exposure to suicides and their aftermath. Contrary to Dr Bierman's assessment, he said this was not a response to a single event.

[403] Turning to the three experts who gave evidence, I refer first to Ms Farrell's conclusions. She prepared a witness statement in 2012 for the Authority, having interviewed Mr and Mrs Cronin-Lampe once jointly and once separately in 2012. In 2014, she provided an affidavit and psychological report for the purposes of the interlocutory hearing as to limitation issues.

[404] In her first report, Ms Farrell recorded the background, and then her assessments. She also referred to a Trauma Symptom Inventory test which she had administered to each. This is a self-report test of post-traumatic stress and related psychological symptomology designed for use with adults who have experienced traumatic events. In each instance, the results indicated a level of symptomology sufficient to warrant a diagnosis of PTSD. While acknowledging the limitations of the testing, she said the test results were then analysed in the context of other information, and found to be consistent.

[405] Ms Farrell used the criteria for PTSD in DSM-IV, which described the current Diagnostic and Statistical of Mental Health Disorders (DSM) methodology used at the time.²⁷ She said Mr and Mrs Cronin-Lampe were both re-experiencing trauma through recurrent, intrusive and distressing recollections of the events they suffered. They were having nightmares which had resulted in intense psychological distress and physiological reactivity. They were avoiding stimuli associated with the trauma. They had symptoms of increased arousal including sleep impairment, hypervigilance and irritability. She said Mrs Cronin-Lampe also had an exaggerated startle response.

²⁷ The fourth edition of the series is correctly described as DSM-IV, published by the American Psychiatric Association; the fifth edition to which reference will be made shortly is correctly described as DSM-5.

These symptoms had been present for more than one month, and had caused clinically significant distress in their occupational and social functioning.

[406] Ms Farrell said the identified psychological deterioration was described by Mr and Mrs Cronin-Lampe as having begun after commencing work at MHS. The timing was supported by Mr and Mrs Cronin-Lampe's medical records; neither had any pre-existing conditions or personal factors that may account for their PTSD. The fact that Mr Cronin-Lampe was able to recover from his post-concussion syndrome or transient global amnesia (the two conditions that had been identified by medical practitioners who had prepared reports for ACC), whilst on leave from work at MHS, led to the conclusion that the circumstances that led to his diagnosis of PTSD existed in the MHS workplace rather than in other areas of his life.

[407] Later in her report, Ms Farrell stated that until the PTSD symptomology was resolved by treatment, Mr and Mrs Cronin-Lampe should not be involved in providing clinical treatment to any individual in circumstances involving psychological distress. Neither would be fit to return to full-time employment until treatment was completed. This was estimated to take at least a further 18 months. Any part-time or casual counselling work would need to be monitored. The nature of PTSD, she said, even if treated, is that re-exposure to similar traumatic events may lead to relapse. It was recommended they consider other career options.

[408] Ms Farrell confirmed her views in her oral evidence, including that she was unable to conclude that early events could be said to have caused the PTSD she observed.

[409] The second expert called by the plaintiffs was Dr Ian Goodwin, a qualified consultation liaison and forensic psychiatrist. He prepared a report on 8 December 2022, having jointly interviewed Mr and Mrs Cronin-Lampe on several dates from December 2021 to 13 September 2022. He was provided with a range of materials including GP notes and previous reports.

[410] Dr Goodwin recorded the background events as described to him by Mr and Mrs Cronin-Lampe, and as set out in the other materials he considered. He noted that

there was no shortage of prior psychiatric and psychological assessments. He said Mr and Mrs Cronin-Lampe had been previously diagnosed with PTSD by other assessors, a diagnosis with which he agreed.

[411] He outlined the symptoms he observed on examination under the relevant criteria. He concluded that the PTSD had resulted from exposure to a high number of suicidal events and attempts over a prolonged period of time during the course of employment at MHS. He said that the ongoing experience of such events, or an accumulation of traumatic incidents, was likely to have exacerbated their trauma symptomology. The events towards the end of Mr and Mrs Cronin-Lampe's employment with the school were the final straw. The two suicides which occurred in a one-month period in late 2011 to early 2012 appeared to act as a catalyst for further deterioration in their mental health, via an exacerbation of pre-existing PTSD.

[412] Dr Goodwin referred to other diagnoses that had been made, such as anxiety disorder or adjustment disorder with mixed anxiety and depressed mood. He said that in his view, the primary diagnosis was PTSD, and that the anxiety and depressive symptoms would best be seen as the result of the PTSD.

[413] His opinion was that the number of suicides and attempted suicides that Mr and Mrs Cronin-Lampe appeared to have dealt with over a 16-year period far exceeded what would be seen as reasonable for non-professionally trained mental health staff. Dr Goodwin had never previously encountered a situation where any individuals delivering mental health services were expected to be on call 24 hours per day/seven days per week to deal with such crises. He said that suicide is a rare event statistically. To have multiple suicides occurring in clusters in a small community was statistically significant.

[414] He said that normally, in such situations, workload would be shared amongst a large team and individual practitioners would also have access to mechanisms to debrief on their own experiences when dealing with traumatic situations. He was unaware of any such assistance being given on a regular basis in this instance, or that it was sufficient to process the scope and depth of their individual trauma.

[415] In addition, the extreme emotional workload and the lack of resources and training that Mr and Mrs Cronin-Lampe had in their roles added to the harm they experienced. He noted that PTSD is a disorder whereby traumatic responses could be felt constantly, and others are acute and brought on by a trigger of sorts. When reviewing the information provided by Mr and Mrs Cronin-Lampe, it stood out to him that they were likely to have experienced many possible triggers due to the number of traumatic events, the compounding pressures of the role, and the relentless weight of expectation and responsibility.

[416] He considered Mr and Mrs Cronin-Lampe's cumulative experience during their period of employment culminating in the two suicides of late 2010 and early 2011 would have resulted in significant psychological harm to most – if not all – people. It was likely they would never be able to return to their previous work.

[417] Dr Goodwin filed a reply brief which commented on observations made by Dr Barry-Walsh who had stated that there was a lack of clarity as to when the PTSD symptoms, such as re-experiencing phenomena and avoidance, emerged. Dr Goodwin confirmed it would be difficult to be certain exactly when PTSD symptoms emerged. He acknowledged in his oral evidence the early events were traumatic, but was unable to say that in and of themselves, they caused PTSD.

[418] He also said most people, when in stressful situations, tend to employ coping mechanisms. It is not until those coping resources are exhausted that other symptoms appear. He also expressed the view that at the time of his head injury in 2010, Mr Cronin-Lampe was already suffering from (untreated) PTSD. It was not unusual that both Mr and Mrs Cronin-Lampe had reported ongoing intense symptoms since 2010/2011.

[419] MHS called Dr Barry-Walsh, a consultant forensic psychiatrist. He first commented on the circumstances of this case in November 2018. He provided two subsequent reports in January 2023. He said he did not examine either Mr or Mrs Cronin-Lampe; rather, his role was to comment on the numerous other reports that had been obtained. He said he was uncertain that reassessment by him would shed further light on the detail of their mental health issues given the passage of time since their

employment ended. He was also provided with a broad range of materials including witness statements.

[420] He considered there was evidence that both Mr and Mrs Cronin-Lampe had developed mental health problems which, as noted earlier, he thought were best described as anxiety disorders. He also acknowledged difficulties in the use of classificatory systems for diagnosis within psychiatry, a matter which had been commented on by Dr Dean. When giving his evidence, Dr Barry-Walsh said such systems often involve arbitrary criteria and an undue preoccupation with what the diagnosis is in reliance on those criteria, as opposed to focusing on the condition of the individual. As a result, he was hesitant to use the DSM-5 classification system.

[421] Dr Barry-Walsh said there seemed to be no dispute that Mr and Mrs Cronin-Lampe may have been exposed to incidents that were sufficiently traumatic as to lead to the development of a subsequent mental illness. The materials also described events that were better characterised as life events or other negative experiences, such as the expected death of someone from a terminal illness. Although these were not traumas, they may have contributed to subsequent psychiatric illness.

[422] He considered the materials painted a picture of both Mr and Mrs Cronin-Lampe struggling with the burden of anxiety and disturbance of mood, especially since 2011, and which may have been accompanied by substantial impact on their psychosocial functioning. There was little dispute they had an active mental illness, but he had some reservations about the validity and appropriateness of the diagnoses made, saying these may be resolved during the Court's fact-finding process. For example, he expressed reservations as to the reliability of aspects of Mr and Mrs Cronin-Lampe's account, saying that corroborating evidence would provide a more definitive view of their history.

[423] While acknowledging that there was a good argument to be made for a contribution from the work environment, uncertainty as to cause remained. There were similar issues with regard to the time of onset. Dr Barry-Walsh considered there may be two alternatives: that there was pre-existing PTSD prior to 2011, which Mr and Mrs Cronin-Lampe were managing with limited impact on their functioning, and

which was worsened by events of 2011; or that, although distressed and disturbed by those previous traumatic experiences, but coping, it was the events around 2011 which had driven their subsequent distress and suffering.

[424] In a final report of 26 January 2023, he agreed with a suggestion which had been put to him by counsel for MHS that it was “plausible” there had been significant traumatic events in 1997 and 1998, and that subsequent events in 2010 and 2011 may have retriggered those traumas precipitating a decline in their mental state.

[425] He also observed that if the evidence of Mr Hamill, Mr Russell and Mr McNulty were to be accepted in part or in full, this might raise credibility issues, including as to the accuracy of psychiatric symptoms provided by Mr and Mrs Cronin-Lampe, as well as the diagnoses and formulations advanced by other assessors based on that information.

[426] Lastly, referring again to Dr Dean’s report of 2012, he commented on the debate surrounding classification systems, which could detract from a focus on symptoms, and on the overlap between PTSD and other disorders. He felt the appropriate categorisation in respect of both was “anxiety disorder not otherwise specified” but acknowledged that they both showed symptoms that were “otherwise identical to those of PTSD”.

[427] It is convenient at this point to consider the several medical topics which arise as follows:

- (a) the reliability of the accounts given to the assessors by Mr and Mrs Cronin-Lampe;
- (b) whether PTSD is the correct diagnosis;
- (c) the extent of Mr and Mrs Cronin-Lampe’s conditions from late 2010 until late 2011; and
- (d) other issues in respect of which the expert evidence is relevant.

Reliability of the accounts given by the plaintiffs

[428] The first issue concerns the accuracy of Mr and Mrs Cronin-Lampe's descriptions given to the experts as to the impact of the various events on them. It is necessary to consider this issue in light of Dr Barry-Walsh's observations as to the reliability of their evidence.

[429] First, each of the three health practitioners who gave evidence plainly had multiple sources for their opinions.

[430] As noted, Mr and Mrs Cronin-Lampe were interviewed by Ms Farrell (once jointly and once each separately) and by Dr Goodwin (jointly on three occasions). They were thereby able to obtain information directly from Mr and Mrs Cronin-Lampe, and also undertake clinical assessments. Dr Barry-Walsh was not asked to interview them and freely accepted this was a limitation.

[431] As well as receiving information directly from Mr and Mrs Cronin-Lampe, all three practitioners considered a wide range of written materials. These included GP notes, multiple reports of other assessors, and other documents recording the views of persons who had attended or observed Mr and Mrs Cronin-Lampe from time to time.

[432] I particularly refer to the detailed records maintained by Mr and Mrs Cronin-Lampe's GP, Dr Muir. These provide a reliable record of contemporaneous accounts given by Mr and Mrs Cronin-Lampe. There is no suggestion that what the GP was told was inaccurate.

[433] Ms Farrell received a summary of the GP notes, as prepared by Dr Muir. She expressly referred to these in her report; she did not suggest that they contained any particular red flags. Dr Goodwin received a copy of Dr Muir's notes. He did not expressly refer to these records. If he had considered they contained any relevant entries, it is probable he would have done so. It is plainly the case that neither expert considered there were any particular references which indicated that inaccurate information had been conveyed by Mr or Mrs Cronin-Lampe, or that there were matters being raised at those various stages relevant to a diagnosis of mental harm.

[434] Whilst the weight to be placed on the GP notes is a matter for clinical judgement, it is worth commenting on one matter recorded in Mrs Cronin-Lampe's records. On several occasions between late February 2007 and May 2008, Dr Muir recorded that Mrs Cronin-Lampe felt "burnt out" or had referred to "burnout". Those entries all appear to adopt Mrs Cronin-Lampe's own description and language, as distinct from being a term selected by Dr Muir, since most of these references are recorded with quotation marks; on one occasion it was also noted – again with quotation marks – that she was "*feeling* burnt out".²⁸ These particular entries were made after several months of having suffered glandular fever and age-related physical symptoms.

[435] None of the medical practitioners drew the Court's attention, nor did I understand them to assign any particular significance, to the use of the term "burnout" for the purposes of establishing mental injury. While Dr Barry-Walsh also received a copy of Dr Muir's notes regarding Mrs Cronin-Lampe, he cautioned that GP notes can be prone to ambiguity when interpreted out of context. I did not take him to suggest the language was significant from a diagnostic perspective. As already mentioned, nor did the other two health practitioners.

[436] Returning to the notes, it is not apparent that Dr Muir herself regarded these words as being a reference to a mental health condition, or that she considered such a condition should be treated. Mrs Cronin-Lampe was not, for example, referred to a psychologist or psychiatrist. I find it was a turn of phrase used by Mrs Cronin-Lampe herself to explain that she was feeling extremely tired, in part due to workload issues.

[437] Ultimately, in late 2011, as already noted, Mr and Mrs Cronin-Lampe saw Dr Muir jointly. On that occasion, it was noted that they had referred to ongoing stress issues at work.²⁹ It was only then that a mental injury, PTSD, was noted for the first time.

[438] I turn to other sources of contemporaneous evidence. There is evidence that members of the MoE Postvention Team, including the clinical psychologist Dr

²⁸ Emphasis added.

²⁹ See above at [386].

Dawson-Wells, considered in 1998 that Mr and Mrs Cronin-Lampe needed support by way of professional supervision. I have already noted that although a request to fund this was made of MoE, it was declined, as were a number of other recommendations. There is no evidence members of the team considered either of Mr or Mrs Cronin-Lampe was suffering mental injury at that time.

[439] Letters sent by Mrs Cronin-Lampe to senior management on 12 March 1998 and 3 September 1999 referred to workload issues. However, the emphasis was on a lack of support and not on the state of their health.

[440] As mentioned, Ms Farrell recorded that in 1999 Mr and Mrs Cronin-Lampe had been provided with three one-hour joint trauma debriefing sessions with a clinical psychologist, Ms Cameron. Ms Farrell said she consulted Ms Cameron but the psychologist no longer had records of the interaction and was unable to comment. It is apparent that Ms Farrell did not draw any particular significance from the fact of those sessions.

[441] Impacts were also observed by some secondary witnesses, whose evidence I regard as reliable. Mr Randell said Mr and Mrs Cronin-Lampe were run-down by 2000. Ms Small, the then Deputy Principal, said that from 2000 to 2003 there were signs of Mrs Cronin-Lampe being exhausted and that Mr Cronin-Lampe, a mild-tempered man, was flaring to anger more quickly. However, neither these nor other witness suggested that Mr and Mrs Cronin-Lampe were displaying signs of a mental injury.

[442] Next I return to reliability of the information conveyed to the experts by Mr and Mrs Cronin-Lampe themselves.

[443] As is evident from the earlier review of evidence, they gave detailed evidence to the Court about what they experienced over the course of time. The Court has also had the advantage of hearing from multiple other witnesses and has considered a wide range of contemporaneous documents. The accounts given to the various report writers may therefore be assessed against this evidence.

[444] I am satisfied, in light of the detailed chronology set out earlier, that Mr and Mrs Cronin-Lampe did deal with multiple traumatic events over the many years of their employment at MHS, that they carried a significant workload, and that in the later stages there was considerable workplace stress.

[445] I return to Mrs Cronin-Lampe's reference to an "avalanche of trauma" having occurred between 1996 and 2012. She said this meant that each death was traumatic, and that the compounding pressure on both her and Mr Cronin-Lampe was created by the expectations and responsibilities "loaded onto us by the school". She described how her resilience was worn away over time and she said she was "hanging on by a thread" up until late 2010. In the period 2010 to 2012, the compounding trauma was no longer able to be bottled up and ignored. She said this was the period that "finally broke" her.

[446] Mr Cronin-Lampe also described the trauma he said he suffered as a result of student and community suicides, a heavy workload, and dissatisfaction with senior managers. He said that by the end of the 2011 school year, he was "exhausted, panicky, anxious, full of despair, and frightened about our future".

[447] Standing back, I am satisfied that the evidence presented to the Court is broadly consistent with what the report writers were told by Mr and Mrs Cronin-Lampe during various interviews, particularly Ms Farrell and Dr Goodwin. Mr and Mrs Cronin-Lampe's descriptions of impacts, as conveyed to these practitioners, are reliable. I also find that, although the report writers did not have the advantage of the in-depth description of events which the Court has received over many days of testimony, their understanding of background events was satisfactory for the purpose of the exercise in which they were engaged, which was to assess the state of Mr and Mrs Cronin-Lampe's mental wellbeing at the time of examination in light of the history of events.

Was PTSD the correct diagnosis?

[448] As noted, Ms Farrell reached her diagnosis in reliance on PTSD criteria in DSM-IV. Dr Goodwin reached his diagnosis of PTSD criteria in DSM-5.

[449] The Court was not advised that there was any material difference in the two DSM descriptions, for present purposes. Significantly, each of the two assessments resulted in the same diagnosis.

[450] Despite his well-reasoned reservations as to the use of DSM classifications, Dr Barry-Walsh properly accepted that these are used widely in New Zealand, including by ACC. Dr Barry-Walsh said that the DSM criteria were for guidance. He acknowledged that in the end, an assessor must make a clinical judgement.

[451] Dr Goodwin, on this point, said that all psychiatric classification systems are imperfect, but it was important that they be used so that practitioners could communicate in a common language about psychiatric disorders. The DSM system, he said, is accepted internationally and is the most commonly used system in clinical practice. He went on to note that Dr Barry-Walsh did not dispute that Mr and Mrs Cronin-Lampe each had an active mental illness, which was consistent with the findings of all the clinicians who had examined them.

[452] I accept this evidence since, in the case of both Dr Goodwin himself and Ms Farrell, DSM-IV and DSM-5 provided a well recognised method of evaluating a significant range of material pertaining to many years of traumatic activity in a logical way, which assisted in the exercise of their clinical judgements.

[453] I am also satisfied that the assessments of Ms Farrell and Dr Goodwin involve not only the obtaining of information from Mr and Mrs Cronin-Lampe themselves in detail, but an appropriate evaluation of that information against other sources. I have found that the information they considered was accurate for diagnostic purposes. Each was well placed to make a clinical judgement as to the mental impacts of the given history. On the basis of the evidence, I am satisfied PTSD is a correct diagnosis for present purposes.

Mr and Mrs Cronin-Lampe's condition from late 2010 to late 2011

[454] Mr Braun submitted that the two suicides of late 2010 and early 2011, the first of which occurred on 2 December 2010, was the identifiable point of time at which the plaintiffs became so affected by the cumulative trauma they had sustained, that

they were unable to properly consider raising their personal grievance. Accordingly, that date is significant in respect of the present application for leave to raise a personal grievance out of time. The December date is also relied on for some aspects of the contractual causes of action.

[455] Mr and Mrs Cronin-Lampe described the circumstances they faced at the time of BD's death on 2 December 2010, and of BE's death on 13 January 2011, as being very traumatising, in part because they were reminded of multiple previous examples of such tragedies, and because of concern that they would have to deal with the risk of copycat suicides as they had before.

[456] Ms Farrell said that the 2010/2011 events were significantly retraumatising for the Cronin-Lampes and drew direct parallels with their experiences, as from 1997. Dr Goodwin said that their mental states in 2010/2011 were the product of multiple traumatic experiences over time.

[457] Dr Goodwin was also clear that the events of late 2010 and early 2011 exacerbated their pre-existing PTSD. He did not and could not identify an earlier point in time when PTSD could be said to have been established.

[458] Both Ms Farrell and Dr Goodwin concluded that given the multiple traumatic events, it was necessary to look at the totality of them; in effect it was not possible to say which event or events caused the PTSD conditions.

[459] Dr Barry-Walsh said it was hard to assess the extent to which symptoms emerged over time. He considered, on the basis of the materials he read, there was a lack of clarity as to when post traumatic symptoms such as re-experiencing phenomena and avoidance emerged. He also said that his view that the mental health problems were best described as anxiety disorders did not allow him to usefully comment on the timing of onset.

[460] Standing back, I find that PTSD had arisen by at least 2 December 2010, and subsequent events compounded this condition in each instance.

The relevance of expert evidence/other mental harm issues

[461] The experts provided opinion evidence that is or may be relevant to a range of other issues including:

- (a) the assessment of exceptional circumstances for the leave application;
- (b) the foreseeability of mental harm given the work the plaintiffs carried out, if the Court gets to that point;
- (c) whether certain 1997 events caused PTSD for the purposes of the issue concerning the ACC bar;
- (d) the extent to which the established condition may impact on the various remedies and/or damages that have been claimed; and
- (e) the relevance of mental harm, contributory conduct and/or mitigation issues.

[462] I will return to what the expert witnesses said on these topics later.

Personal grievance – application for leave to extend time

[463] On 31 October 2014, Mr and Mrs Cronin-Lampe made an application under s 114(3) of the ER Act for leave to raise their grievances out of time.

[464] The essence of the plaintiffs' case is that they were so affected by their PTSD that they were in effect paralysed during their final year at MHS. This was as a result of the suicides of late 2010/early 2011, excessive workload, removal of what limited support had previously existed, the breakdown in their relationship with Mr Hamill, excessive disciplinary action against Mr Cronin-Lampe, unaddressed bullying of Mrs Cronin-Lampe throughout 2011, and the unilateral changes made to, and uncertainty of, Mr Cronin-Lampe's terms and conditions of employment.

[465] They say they were so affected or traumatised by the matters giving rise to their grievances that they were unable to properly consider raising them within the 90-day

period of their disadvantage grievance, that is from 2 December 2010.³⁰ Thus, there were exceptional circumstances for the purposes of ss 114(4)(a) and 115(a) of the ER Act from 2 December 2010 until 26 January 2012, and it is just to grant leave.

[466] MHS's position is that there are no exceptional circumstances to justify granting leave. Furthermore, the asserted exceptional circumstances could have no causal relationship with the delay that occurred.

Legal framework

[467] It is convenient to reproduce the two relevant sections of the ER Act which were in force at the time. Section 114 stated:³¹

114 Raising personal grievance

- (1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.
- ...
- (3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.
- (4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority—
 - (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and
 - (b) considers it just to do so.
- (5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance.

...

[468] The second relevant provision is s 115(a) which stated:

³⁰ Employment Relations Act 2000, s 115(a).

³¹ Sections 114 and 115(a) were recently amended by the Employment Relations (Extended Time for Personal Grievances for Sexual Harassment) Amendment Act 2023. The provisions considered were not materially altered.

115 Further provision regarding exceptional circumstances under section 114

For the purposes of section 114(4)(a), exceptional circumstances include—

- (a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1); ...

...

[469] The Supreme Court decision in *Creedy v Commissioner of Police* is the leading authority as to “exceptional circumstances”.³² The Court found that such circumstances had to be the “exception to the rule”, as opposed to a more stringent interpretation of somewhere between special and ordinary.³³ Amongst the several reasons for adopting this interpretation was the point that 90 days is a “short limit” with potentially serious consequences for an employee who is not able to bring a grievance within that period. The Supreme Court said this supported an interpretation which does not unduly limit the power to extend time.³⁴

[470] It is necessary for present purposes to consider the interface between ss 114(4) and 115(a).

[471] Section 114(4) is the starting point because it is the primary provision. It requires two matters to be considered. The first of those is described in s 114(4)(a). The Authority, and now the Court, must be satisfied that “the delay in raising the personal grievance was occasioned by exceptional circumstances”. It is then clarified that this “may include any 1 or more of the circumstances set out in section 115”.

[472] Section 115 sets out four particular examples of exceptional circumstances but, as has been held previously, these are non-exhaustive.³⁵ Under s 115(a), an applicant must establish:

³² *Creedy v Commissioner of Police* [2008] NZSC 31, [2008] 3 NZLR 7.

³³ At [31].

³⁴ At [32].

³⁵ At [26]; and *Roy v Board of Trustees of Tamaki College* [2014] NZEmpC 153, [2014] ERNZ 332 at [30].

- (a) that they were so “affected” or “traumatised”;
- (b) by the “matter giving rise to the grievance”;
- (c) that they were “unable to properly consider raising the grievance”;
- (d) within “the period specified in section 114(1)”; this is the 90-day period beginning on the date when the action alleged to amount to the personal grievance occurred.

[473] Whilst s 115(a) implies that these circumstances, as outlined in (a)-(d) above, must exist during the 90-day period, that requirement must be read within the context of s 114(4)(a) which requires a grievant to satisfy the decision maker that the delay, in its entirety, in raising the grievance was occasioned by exceptional circumstances. Here, I consider exceptional circumstances must therefore exist from 2 December 2010 until the lapse of the 90-day period on 2 March 2011, and continue on until 26 January 2012.

[474] The second matter which must be considered is referred to in s 114(4)(b). The Authority, and now the Court, must consider that it just to grant leave.

Further limitation under Limitation Act 1950?

[475] Mr White submitted that, since mental harm is alleged for the purposes of the grievances, it would also be necessary for the requirements of the Limitation Act 1950 to be met, which regulates claims for bodily injury. However, s 33 of the Limitation Act states that the statute does not apply to any action for which a period of limitation is prescribed by any other enactment. Since ss 114 and 115 of the ER Act prescribe a limitation period, this saving applies. In any event, the plaintiffs’ case is based on events within the two-year period within which a bodily injury claim may be brought under the Limitation Act,³⁶ so counsel’s submission that no application was made under the Limitation Act to extend time with respect to the personal grievance claim, could not be a bar to the claim, even if that statute applied.

³⁶ Limitation Act 1950, s 4(7).

Relevance of historical events

[476] Before considering the application for leave, it is appropriate to comment on the relevance of the events about which the parties led extensive evidence. Many of these events pre-dated the start of the justiciable period – whether or not leave is granted – by very many years.

[477] In *Ale v Kids at Home Ltd*, Judge Inglis (as she then was) held that pre-90 day events can provide relevant background context in terms of understanding the events that followed and the grievances that are in issue.³⁷ Thus, the events which took place from the start of the employment period up until the start of the justiciable period, provide relevant background. Evidence has been led, and extensive submissions given, on that basis. I proceed accordingly.

Context for the s 114 application – background

[478] In this and the next section, I analyse the factual circumstances which provide context for the leave application. In doing so, I will consider the impact of events on Mr and Mrs Cronin-Lampe that may also be relevant to their disadvantage grievances once leave is granted. I am not, in these sections, making formal findings as to whether any such grievances are in fact made out under ss 103 or 103A of the ER Act.

[479] By early December 2010, there were a wide range of significant pre-existing issues that had impacted on Mr and Mrs Cronin-Lampe.

[480] Throughout their employment to that point, they had provided extensive counselling services for a wide range of traumatic circumstances, including in connection with many suicides and other deaths. These included assessments of students flagged as potentially “at risk” for presenting with serious issues, as well as grief and suicide counselling of the family members of the deceased, students and staff. Additionally, they had dealt with multiple other difficult issues relating to topics such as sexual and psychological abuse, eating disorders, self-harm, addiction, and mental health including depression and anxiety issues. A broad range of services were

³⁷ *Ale v Kids at Home Ltd* [2015] NZEmpC 209, [2015] ERNZ 1021 at [25]–[29]; considering *Davis v Commissioner of Police* [2013] NZEmpC 226.

required, including the provision of counselling, family support, liaising with relevant health professionals and agencies, as well as representing students and providing advice at relevant meetings within the school.

[481] There is no evidence of a formal health and safety plan being in place so as to identify the hazards of Mr and Mrs Cronin-Lampe's work, to provide for debriefing following a traumatic incident or to confirm that regular supervision should be undertaken. As I will elaborate in due course, this was contrary to the health and safety obligations described earlier.³⁸

[482] It suffices at this stage to refer to a health and safety work group which Mr Hamill said was established in 2007/2008. He was a member of the group which met two or three times a term. It identified workload stress as being a general hazard for staff. Mr Hamill acknowledged that the potentially traumatic nature of the counselling roles, and what they had to deal with, was not identified. He said the school now has a policy that deals with the situation experienced by Mr and Mrs Cronin-Lampe, and acknowledged the need for this should have been identified earlier.

[483] As noted earlier, funding for the supervision which was allowed for in the job description had been constrained since 2007. By 2009 the frequency of supervision had significantly reduced.³⁹ In 2010, Mrs Cronin-Lampe had to resort to informal supervision arrangements with Ms Manson, which proceeded on an unpaid basis.

[484] Additionally, Mr and Mrs Cronin-Lampe had been required to carry a significant workload, particularly after individual traumatic events occurred. From 2006, this was alongside their heavy work involved in introducing and participating in restorative practices at MHS.

[485] In 2010, after returning from her own medical absence, Mrs Cronin-Lampe bore the brunt of organising Guidance duties. She had to manage the absence of Mr Cronin-Lampe, monitor a young relief counsellor to whom she was providing

³⁸ At [78]–[80].

³⁹ See above at [231].

supervision each fortnight, oversee two other members of Guidance, as well as carry her own significant caseload.

[486] In light of the lack of support as just summarised and the events just referred to, both Mr and Mrs Cronin-Lampe were, by late 2010, very vulnerable.

Context for the s 114 application – 2011 events

[487] I turn now from the pre-existing issues which affected Mr and Mrs Cronin-Lampe up to late 2010, to the series of events that occurred subsequently which aggravated their existing vulnerabilities.

[488] Their workload increased following the two suicides of BD and BE, as well as the death of BF as described earlier. Additionally, Mr and Mrs Cronin-Lampe had to deal with the traumatic circumstances of the suicide of a staff member's partner. No formal debriefing was offered for any of these events. I have found these traumatic events caused an increased workload.

[489] For his part, Mr Cronin-Lampe was, in the circumstances, required to work full-time hours, despite being employed on a 0.6 FTE basis, at least for the first half of the year.

[490] Mr and Mrs Cronin-Lampe continued to be significantly concerned about the inadequacy of their arrangements for supervision. Following prompting from their supervisor, Mr Jewkes, they exceeded the Guidance budget so as to attend – separately or together – supervision on 15 occasions. This was still less than that recommended by NZAC. Nor was specific non-contact time available, as provided for in their job descriptions, and as allowed for other staff.

[491] They had problems taking time off in lieu, which had been accrued in the first months of 2011 under an arrangement they reasonably believed gave them an entitlement to do so. An allied issue which concerned Mr and Mrs Cronin-Lampe related to professional development activities not being properly supported. Mr Hamill thought they could attend professional development designed for teachers, but it was Mrs Cronin-Lampe's opinion, as HoD Guidance, that these options were not

relevant for a counsellor. They accordingly attended professional development in Canada at their own cost when on leave.

[492] Mr and Mrs Cronin-Lampe say all these circumstances contributed to their very significant frustrations. As the year developed, dealings with Mr Hamill became formal and even adversarial.

[493] An example of this is evident from the way in which the time in lieu arrangement was altered. It was an arrangement which had proceeded on the basis of trust between Mr and Mrs Cronin-Lampe and Mr Hamill, but this was no longer considered appropriate by Mr Hamill. This led to uncertainty as to Mr Cronin-Lampe's employment arrangements, which likely aggravated the relationship issues.

[494] Another example concerned out-of-hours cell phone use, a practice which was well established and provided for in the operative job descriptions. As has been mentioned, it was not as straightforward as suggesting that this pre-existing expectation should cease, without first establishing transitional arrangements and/or the introduction of proper backup if Mr and Mrs Cronin-Lampe were not on duty. A failure in this regard left Mr and Mrs Cronin-Lampe in a difficult situation and with the impression that their concerns were not being heard or understood.

[495] A yet further example which demonstrated a deteriorating employment relationship was the manner in which the issues between Mr Cronin-Lampe and BJ were addressed. Mr and Mrs Cronin-Lampe felt the instituting of disciplinary action against Mr Cronin-Lampe reflected a disparity in treatment when compared to the way in which BG's misconduct was handled.

[496] With regard to Mrs Cronin-Lampe, there was a noticeable decline in support of her as HoD. As well as the breakdown in the relationship with Mr Hamill from March 2011, budgetary constraints increased, were not well explained to her, and catalysed deep concern on her part as to the viability of the current Guidance operation.

[497] In addition, she felt she was not well supported in her relationships with other staff. She felt the complex responsibilities of school counsellors were not properly understood. Restorative practices were not being utilised. She also felt bullied.

[498] Throughout this period, the particular issues which Mr Hamill said he would investigate and consider, such as cell phone use, adequacy of supervision, and as to how Mr Cronin-Lampe would work after he was directed to return to a 1 FTE role, were not dealt with in a timely way.

[499] All these factors contributed to Mr and Mrs Cronin-Lampe's vulnerabilities, and fall for consideration when making an exceptional circumstances assessment.

Ms Farrell's report of 26 November 2014

[500] For the purposes of the application for leave, Ms Farrell was asked to prepare a supplementary report addressing the impact of trauma on Mr and Mrs Cronin-Lampe in the period preceding the raising of their personal grievances.

[501] She began her report of 26 November 2014 by stating that it needed to be read in conjunction with her previous detailed report. In that report, she had noted particular aspects of events which had occurred in 2011. She recorded that the breakdown of working relationships with management and colleagues in 2011 led to Mr and Mrs Cronin-Lampe feeling "invalidated and discarded". They both reported to her that management's concern with discipline, and lack of support and regard for their counselling/advocacy role left them feeling "isolated and afraid for the student body". Mr Cronin-Lampe's contract with MHS was also, she said, declared invalid, leading to further feelings of alienation. Requests for clarification, mediation and other support had not been responded to.

[502] Ms Farrell stated she did not believe Mr and Mrs Cronin-Lampe were able to turn their minds, individually or jointly, to the issue of raising a personal grievance earlier than they did. This was partly because the stressors each of them experienced impaired their ability to objectively assess their situation or develop and implement an effective plan, and partly because their shared mindset was one of resolving the

problems and maintaining their employment. Overall, the psychological impact was such that they were unable to logically and rationally analyse or act on the situation.

[503] Ms Farrell referred to academic research that suggested key post-traumatic symptoms would contribute to an inability to view the situation objectively; reduced problem-solving abilities; impaired sleep and mood; irritable and angry inter-personal behaviour; as well as impaired concentration. In addition, an absence of external reference points (for example, through an uninvolved spouse or supervision) would also diminish capacity to deal with problems.

[504] She concluded that the psychological effect of stressors upon Mr and Mrs Cronin-Lampe would likely have affected their individual abilities to verbalise their circumstances.

[505] She noted that both had a diminished ability to rationally consider and manage their roles, due in part to poor boundaries and guidance provided by MHS management and in part to deficits arising due to Mr and Mrs Cronin-Lampe's post-traumatic symptoms. Both had strong beliefs about being responsible for the wellbeing of young people in their community, and the tragic consequences that would result if they had stepped aside from this. She recorded that Mr and Mrs Cronin-Lampe had spoken of their loyalty to the school and belief that they had always done what was asked of them. Thus they soldiered on, focusing on the needs of the student body rather than their own needs.

[506] She considered that as a result of their post traumatic symptoms, they were so preoccupied with their focus on the students, at a cost to themselves, that at the interview neither was able to advise how they would have responded if they had been relieved of some of that responsibility. Despite evidence to the contrary, they had also hoped managerial support would be forthcoming to address their concerns and, even once receiving legal support, that the issues would be resolved and they would return to their employment.

[507] Ms Farrell also cited academic research to support her opinion that the legal processes may cause additional psychological injury. Consistent with that research,

Mr and Mrs Cronin-Lampe both described an intensification of their post traumatic symptoms as they sought to engage with management about a solution to their difficulties. At that stage, they met with an increasingly negative response, not just from MHS but also from co-workers.

Analysis of leave application – exceptional circumstances

[508] I accept the evidence of Ms Farrell as to the psychological impacts of the circumstances she described. Her findings are consistent with the extensive factual evidence placed before the Court.

[509] Those findings are also consistent with evidence given by the two psychiatrists.

[510] Dr Goodwin said that the events from late 2010 appeared to act as a catalyst for further deterioration in Mr and Mrs Cronin-Lampe's mental health, via an exacerbation of their pre-existing PTSD.

[511] Dr Barry-Walsh accepted that it may be the case that Mr and Mrs Cronin-Lampe had pre-existing PTSD which they managed, with limited impact on their functioning, which was worsened by the events of 2011. He said the various symptoms, whether associated with PTSD or anxiety and disturbance of mood, intensified from 2010 to 2011.

[512] An issue which was discussed at the hearing related to Mr and Mrs Cronin-Lampe's apparent ability to carry on with daily tasks and their ability to seek advice during this period. I have already referred to Dr Goodwin's evidence that most people in stressful situations attempt to employ some form of coping mechanism, even when suffering.

[513] However, I must consider the extent of their apparently 'normal functioning'. In her relatively contemporaneous report of 24 November 2011, Ms Arcus recorded that Mrs Cronin-Lampe had spoken of feeling battered, emotionally numb and having heightened anxiety. At interview, she had become increasingly cold and shivery as she recalled past traumatic events, in spite of the room temperature being relatively warm – an observation which was consistent with what her daughter had observed

earlier in the year. Ms Arcus recorded that despite Mrs Cronin-Lampe presenting to the outside world as calm and in control, internally she felt fragile and vulnerable.

[514] Ms Arcus said Mr Cronin-Lampe was constantly fatigued and woke in the mornings feeling exhausted. He tended to use sleep as an escape from stress. He had a sense of feeling emotionally detached from those around him, and had lost motivation to engage in pleasurable or relaxing activities. He had migraines following difficult interactions with others. If a staff member spoke negatively about a student, he experienced feelings of excessive anger and outrage; his tolerance for others was significantly diminished.

[515] I find that Mr and Mrs Cronin-Lampe's reactions to the events of 2011 show that they were significantly affected by the circumstances. They were already in a vulnerable state. Although they carried on working, they showed a limited ability to confront or objectively assess personal problems, including employment relationship problems. I find these impacts were related to their pre-existing PTSD.

[516] There is one further relevant consideration. I have noted the expert evidence that Mr and Mrs Cronin-Lampe were afflicted by pre-existing PTSD prior to December 2010. However, they did not know this was the case until late 2011. Even in light of that diagnosis, their symptomology continued to affect them throughout the short and understandable passage of time until their personal grievances were able to be framed and raised. Their lack of knowledge as to the extent of their mental health condition also constitutes an extraordinary circumstance, since earlier identification of it might well have resulted in them seeking earlier advice and taking the steps they ultimately took.

[517] In summary, their trauma-related conditions, which escalated from late 2010 due to the events they suffered, precluded them from being able to properly consider raising a personal grievance until early 2012.

Analysis of leave application – causation

[518] Mr White submitted that, even if exceptional circumstances were established, there was no causal relationship between those circumstances and the delay in raising the grievance. Attention was drawn to an apparent ability to undertake other tasks in late 2011, such as consulting an employment lawyer and seeking medical assistance from Ms Arcus. In summary, it was submitted that the plaintiffs were able to consider raising a personal grievance but elected not to do so.

[519] I have touched on this already. These activities must be viewed in the overall context. The pre-existing PTSD, of which Mr and Mrs Cronin-Lampe were unaware, and the escalating circumstances across late 2010 to 2011, meant they were increasingly unable to analyse their complex circumstances with a view to raising grievances – this is clearly causative. While they soldiered on, functioning to a point, each ultimately reached the stage in late 2011 where they could no longer continue.

Analysis of leave application – conclusion

[520] Dealing with the first step as provided for in ss 114(4)(a) and 115(a), I am satisfied that each of the limbs I identified earlier is made out. The delay in raising the grievances was occasioned by exceptional circumstances, not only for the initial 90 days from 2 December 2010 until 2 March 2011, but through to 26 January 2012. It is most unusual to sanction such a long period of delay, but the present circumstances are highly unusual. They warrant the Court making these findings.

[521] Turning to the second requirement of s 114(4)(b), I consider that having regard to the surrounding circumstances, including Mr and Mrs Cronin-Lampe's long years of service to the school involving numerous traumatic events at significant personal cost, it is just to grant leave.

[522] I have considered whether undue prejudice would be suffered by MHS, were leave to be granted. I am not persuaded such a problem arises, particularly in light of the clear reference to the 2010/2011 events in the personal grievance letter sent on 26 January 2012. The school was clearly on notice, soon after the subject events

occurred, that Mr and Mrs Cronin-Lampe were challenging the school's handling of them. I note that Mr Tocker subsequently became unavailable, but he prepared evidence for the Authority's investigation meeting, which I have been able to consider.

[523] In these circumstances, I have concluded that the ss 114/115 tests have been met, and that leave should be granted under s 114(4).

Non-publication

[524] At the request of the parties, permanent non-publication orders have been made. I now record the basis for making those orders.

[525] Clause 12 of sch 3 to the ER Act states that the Court may order that "all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published", subject to such conditions as the Court thinks fit.

[526] It is well established that the discretion is broad, but the principle of open justice is one of fundamental importance. It is a starting point for determining when the circumstances of a particular case justify making an order of non-publication.⁴⁰ Sound reasons must exist for the making of an order of non-publication so as to displace the open justice presumption.⁴¹

[527] There are three aspects of the evidence which require consideration. The first relates to the names and identifying details of persons who died, and their family members. Additionally, those who interacted with Mr and Mrs Cronin-Lampe for confidential counselling purposes should not be identified.

[528] Counsel applied for a consent order. I considered it appropriate to approve the making of orders. I took the view that in this first category, publication of names and details would not add anything to the Court's analysis and would serve only to draw attention to individuals and families who have already suffered tragedy, or to those who received confidential counselling.

⁴⁰ *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2]–[3].

⁴¹ At [13]; and *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511 at [90].

[529] The order I made was in these terms:

Any information in respect of people who interacted with the plaintiffs in their capacity of counsellors, and any information about any events that led to those persons interacting with the plaintiffs, which could identify those persons or members of their families, is prohibited from being published or reported by any person. For the avoidance of doubt, this order includes the names and identifying details of deceased persons and their families, as referred to in the evidence.

[530] Where persons covered by this order are referred to, their names have been anonymised by reference to a system of alphabetical identification, the details of which are now being provided to the parties.

[531] Secondly, there was one aspect of the evidence which was initially the subject of an interim order, and then a permanent order. The evidence concerned Mr and Mrs Hamill. I did not regard it as assisting me on any of the issues I was required to consider. On that basis, I made the following order:

Any details of the allegations made by Mrs Cronin-Lampe relating to Mr and Mrs Hamill's personal circumstances are prohibited from being published or being reported by any person.

[532] The third matter concerns two persons whose conduct was reviewed in the evidence but who were not called. In the circumstances, I consider natural justice considerations outweigh open justice considerations, and that it is appropriate to anonymise the names of those individuals. They too are referred to by the system of alphabetical identification.

Result

[533] In this judgment I have found that leave should be granted to Mr and Mrs Cronin-Lampe to raise their disadvantage grievances as from 2 December 2010, there being exceptional circumstances occasioning the delay which occurred in raising the personal grievances; further, it is just to grant leave.

[534] Permanent non-publication orders, as just discussed, have been made.

[535] I direct the parties to attend mediation as soon as possible. It is my expectation that such an event will take place within six weeks of the date of this judgment. The Registrar is to provide a copy of this judgment to Mediation Services so mediation may be arranged promptly. I ask counsel to advise the Court as soon as a mediation date is established, and as to the result of that event.

[536] If the issues raised in this proceeding have not been resolved within six weeks, I will consider and issue a second judgment, which will deal with the causes of action raised by both sides, the ACC bar and, subject to that issue, remedies.

[537] Costs will be dealt with at a later stage.

BA Corkill
Judge

Judgment signed at 3.45 pm on 30 August 2023