

**BEFORE THE NEW ZEALAND  
TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2019/96**

**COMPLAINTS ASSESSMENT  
COMMITTEE  
Prosecutor**

**V**

  
**Respondent**

Date of hearing: 15 February 2023 (on the papers)

Tribunal: T Mackenzie, L Arndt, M Johnson

Representatives: M Shaw for CAC, respondent in person

Date of decision: 21 February 2023

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**DECISION OF THE TRIBUNAL ON CHARGE**

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## Introduction

[1] This matter stems from a common assault charge in [REDACTED] in 2018 which saw a guilty plea and discharge without conviction.

[2] A referral initially occurred followed by amendment to a conduct charge given the lack of conviction.

[3] Various delays have occurred since the charge was laid in 2019.

[4] The matter has now been heard on the basis of an agreed summary of facts and the parties' submissions. This is the Tribunal's decision.

## Facts

[5] The summary of facts in this Tribunal states:

1. Ms [REDACTED] (the Respondent) completed a Bachelor of Teacher - Early Childhood through the University of Waikato in 2007 and completed the Teacher Education Refresh training in July 2018. The Respondent currently has provisional certification which expires on 18 July 2021.

2. On 24 May 2018 the Respondent assaulted [REDACTED] in her home. The New Zealand Police summary of facts stated that:

### CIRCUMSTANCES

At about 10.30pm on 24 May 2018, the victim was at her home address when the defendant arrived [REDACTED] and began yelling at the victim.

The victim was sitting on her recliner chair in the lounge when the defendant jumped on top of her, scratched the victim's neck and bit the top of her head.

The victim pushed her off and onto the ground.

The defendant then approached the victim and while only centimetres away, spat into her face and put her hand around her mouth while attempting to get a phone out of the victim's pocket to prevent her calling for help.

### INJURIES TO VICTIM

As a result of the assault, the victim received a scratch to her neck and swelling to the inside of her upper lip.

### DEFENDANT COMMENTS

In explanation the defendant stated that she was acting in self-defence after the victim bit her hand.

The defendant is a 46 year old female who has not previously appeared before the Court.

3. On 10 August 2018 [REDACTED] lodged a complaint with the Teaching Council in relation to the assault. This complaint was closed pending the outcome of the Court process.

4. The Respondent advised the Teaching Council that she was not currently teaching on 20 November 2018. The Respondent is currently employed at [REDACTED]

5. On 1 February 2019 the Respondent pleaded guilty in the District Court to Common Assault under s 196 of the Crimes Act 1961 and was discharged without conviction. In the decision Judge Saunders stated:

[6] I assess the risk of reoffending as being low and I accept there is genuine remorse. There are no other factors that are relevant to my assessment of the gravity of the offence. I do not assess the gravity of the offending as high as that urged on me by the Police. It is not the lowest end of this type of offence but I would put it at the low to moderate end. There were the different types of force used but it did not involve punching to the head or anything of that nature so low to moderate is my assessment of the gravity of the offence.

6. Judge Saunders concluded:

[ 17] As I have said, you are 46 years old. You have not previously appeared before the Court. I have assessed the gravity of the offending as being low to moderate and ultimately I am persuaded that the consequences of a conviction are out of proportion to what occurred on 24 May. That means that I will exercise my discretion and you are discharged without conviction.

7. On 2 February 2019 the Respondent reported the outcome of the District Court proceeding to the Teaching Council.

8. In the Respondent's interview with the CAC on 22 August 2019 she advised that she:

a. took full responsibility for her actions,

b. has completed two personal development programmes through Landmark Worldwide and is undertaking counselling and is engaged with her church, and

c. has been diagnosed with [REDACTED]

9. The Respondent has provided a hospital pre-admission email scheduling a further surgery date for 30 October 2019.

10. The CAC has requested an Impairment Committee report which will be provided to the Tribunal.

**Response from Teacher**

11. The Respondent has advised the Teaching Council that:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[6] Subsequent to the above facts, an Impairment Report of 16 May 2020 was received by the Tribunal. Notable findings are copied in below:

- Impairments are both current and ongoing: [REDACTED]  
[REDACTED]  
[REDACTED]
- There is little information about [REDACTED] in the records supplied. From what is present – this is a complex long term condition related to historical issues. From the information provided – [REDACTED]  
[REDACTED]
- [REDACTED] is still undergoing treatment of [REDACTED] the [REDACTED]

letter indicates that [REDACTED] is still to occur during 2020. Also she is experiencing a number of symptoms related to these and the surgery including [REDACTED]

- Currently the teacher is under the care of a range of health professionals. She is seeing a counsellor regarding [REDACTED] and it appears that this should be ongoing. She is under the care of a range of doctors regarding [REDACTED] and [REDACTED] and this should continue. In my opinion - once treatment for [REDACTED] is completed, the next step would be [REDACTED] to determine [REDACTED] fitness for work and work tasks.
- In summary [REDACTED] is currently impaired. She was likely to have been impaired at the time of the assault incident as well although there is not that much information in the file relating specifically to that time. It is difficult to assess how long the impairments will continue to affect [REDACTED]
- 05/06/2020 Addendum to report: Subsequent to this report a copy of medical letter from the [REDACTED] was received. This is a current medical report relating to an appointment 13 May 2020. The letter confirms that [REDACTED] was excised [REDACTED] in January 2017. The symptoms present after this surgery were [REDACTED] [REDACTED] [REDACTED] Subsequent to the October 2019 surgery there have been many more physical symptoms and the follow up MRI confirms [REDACTED]. This reinforces the opinion in the report above that there is current impairment, and that subsequent to future planned treatment and prior to a return to teaching further assessments would be required.

### **Law to be applied**

[7] Section s 378(1)(a) of the Education Act 1989 (in force at the time of this conduct and therefore applicable) provides three initial gateways into a conduct finding. These are behaviour by a teacher that:

- i) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; and/or
- ii) Reflects adversely on the teacher's fitness to be a teacher; and/or
- iii) May bring the teaching profession into disrepute.

[8] The first limb does not apply here.

[9] The second limb (fitness) has been described by the Tribunal as follows:<sup>1</sup>

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include

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<sup>1</sup> CAC v Crump NZTDT 2019-12, 9 April 2020.

pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[10] The third limb (disrepute) is assisted by reference to the High Court decision in *Collie v Nursing Council of New Zealand*.<sup>2</sup> The Court held that a disrepute test is an objective standard for deciding whether certain behaviour brings discredit to a profession. The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner.

[11] A finding of misconduct (or, misconduct "simpliciter") can lie if one of the above tests is established.<sup>3</sup>

[12] Elevation to serious misconduct requires s 378(1)(b) to also be established, as the serious misconduct test is conjunctive. This requires the conduct to be "of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct" (reporting rules).

[13] These rules make the following behaviour mandatory to report:

## 9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

- (a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:
- (b) emotional abuse that causes harm or is likely to cause harm to a child or young person:
- (c) neglecting a child or young person:
- (d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:
- (e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example,—
  - (i) engaging in an inappropriate relationship with the child or young person:
  - (ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:
- (f) viewing, accessing, creating, sharing, or possessing pornographic

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<sup>2</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

<sup>3</sup> *Evans v New Zealand Teachers Disciplinary Tribunal* [2020] NZDC 20062; leave declined in *Evans v Complaints Assessment Committee* [2021] NZCA 66.

material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:

(g) acting dishonestly in relation to the teacher's professional role, or committing theft or fraud:

(h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:

(i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:

(j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:

(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

[14] Here, the CAC relies on (j) and (k).

[15] Finally, the burden rests on the CAC to prove the charge. While the standard to which it must be proved is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.<sup>4</sup>

### **Discussion**

[16] The second and third limbs of the s 387 test are for consideration – adversely reflecting on fitness, and bringing the profession into disrepute.

[17] We must take all facts into account. That includes the conduct itself, the explanation and background to it, and the impairments that were operative at the time.

[18] As the explanations set out, this was a highly emotionally charged and upsetting time for the respondent. Her grievance, whether correct or not, was very real to her. In addition she was dealing with various medical issues herself. This information has not been challenged and we have no reason not to accept it.

[19] We consider that the matter is so divorced from the respondent's work as a teacher, and so isolated (on the evidence) that we cannot draw any inference or link that it adversely reflects on her fitness to be a teacher.

[20] We move then to the disrepute test. We find it difficult to say that a reasonable person, informed of all of the facts and background to this matter, would consider that the reputation and standing of the profession was lowered. Some reasonable persons might well say "give her a break", if they knew all of the information. Some on the other hand may be unsure, as are we. For the disrepute test to be met there must be certainty and indeed some substance and degree to the

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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

lowering of the profession. At worst we consider that some bystanders might consider a minimalistic lowering has occurred. Others may not. This is not enough.

[21] We therefore find that the charge has not been proven.

### **Costs**

[22] It appears that costs for the CAC have not been sought. We are minded to let costs be met by the parties that incurred them and to not make any order for Tribunal costs. If any party wishes to make submissions however, submissions of no more than five pages can be filed by each party within 10 working days of this decision.

### **Non Publication**

[23] The respondent sought non publication of her name. Given that the charge has been dismissed, the sensitive personal and domestic nature to them, and the various personal medical information through this decision, we consider it proper to make non publication orders of the respondent's name, any reference to who the victim was in the criminal case, and all references to medical and impairment information.



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**T J Mackenzie**

**Deputy Chair**