

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT2022/73

UNDER WĀHANGA	the Education and Training Act 2020 (the Act)
IN THE MATTER MŌ TE TAKE	of a charge referred to the Tribunal
BETWEEN I WAENGA I A	COMPLAINTS ASSESSMENT COMMITTEE (CAC) Kaiwhiu Prosecutor
AND ME	CARL RAWIRI HOUSTON (Registration 367197) Kaiurupare / Respondent

Nohoanga Hearing	6 December 2024
Representation Hei Māngai	R Scott, Harbour Chambers, for the CAC No appearance for the Respondent

DECISION
9 December 2024

Introduction

[1] The respondent, Carl Houston, was referred by the CAC to the Tribunal under s 497(4) of the Education and Training Act 2020 (**the Act**) following conviction for common assault in the Palmerston North District Court on 24 February 2022. The reasons for the referral are that the respondent has been convicted and sentenced (he was convicted and ordered to pay \$350 for emotional harm reparation) and the conviction was reported to the Teaching Council as required under s 493 of the Act. The respondent has previous convictions for driving with excess breath alcohol (973 micrograms) and operating a vehicle carelessly. He was convicted on 11 June 2017 in the Palmerston North District Court. These previous convictions had been considered by the Council. The CAC considers that the current conviction warrants action by the Tribunal under s 500 of the Act.

[2] The respondent initially engaged with the disciplinary process. He subsequently disengaged following attendance at a pre-hearing conference in July 2023 where timetabling orders were made for the filing of submissions.

[3] Since October 2023, the respondent has not responded to any further emails from the Tribunal co-ordinator or counsel for the CAC, and we have been provided evidence confirming the same. The CAC requested that the matter proceed by way of formal proof. Having considered the position, we determined that it was appropriate to deal with the matter on the papers given there is an agreed summary of facts.

[4] The summary of facts is set out below:

Background

1. Carl Rawiri Houston (**Mr Houston**) is a registered teacher, first registered and certificated with the Teaching Council of Aotearoa New Zealand (the Teaching Council) on 1 May 2018. His current practising certificate is valid until 31 May 2024.
2. On 19 December 2022, the Complaints Assessment Committee of the Teaching Council of Aotearoa New Zealand (the **CAC**) referred Mr Houston's conviction for common assault (pursuant to section 196 of the Crimes Act 1961) entered on 24 February 2022, by way of a notice of referral to the New Zealand Teachers Disciplinary Tribunal (the Tribunal).

Previous conduct considered by the Teaching Council in 2018

3. Mr Houston has previous convictions for:
 - a. driving with excess breath alcohol (973 mcgs); and for
 - b. operating a vehicle carelessly, for which he was convicted on 11 June 2017 in the Palmerston North District Court.

4. On 1 May 2018, the Teaching Council, in considering Mr Houston's application for registration and a practising certificate to teach, notified him that it viewed his previous convictions with concern. In reaching a decision to approve his application, the CAC advised him to *“exercise greater care in the future as further offences will be viewed very seriously and may call into question whether you continue to meet the criteria for certification”*.
5. Attached and marked "A" is a copy of the CAC letter sent to Mr Houston on 1 May 2018.

Mr Houston's common assault conviction 2022

6. Mr Houston's recent offending that is the subject of the Tribunal referral occurred on 22 October 2020.
7. On 24 February 2022, Mr Houston appeared in the Palmerston North District Court. He pleaded guilty to the charge and applied for a discharge without conviction under section 106 of the Sentencing Act 2002. His Honour Judge Smith considered the application but declined to grant a discharge without conviction. Attached marked "B" is a copy of the ruling of Judge D G Smith dated 24 February 2022 (*Police v Houston* [2022] NZDC 7693).
8. The facts of Mr Houston's offending were summarised in the ruling of Judge D G Smith as follows:

[2] The facts relating to this incident are agreed. At about 11 o'clock on 22 October 2020, the victim was at Human Movements Gym in Taonui Street here in Palmerston North. The defendant is a former employee of the gym. He entered the gym and yelled at the victim from the doorway as to why the victim was in a staff area of the premises. After words were spoken between the defendant and the victim, the defendant approached the victim and punched him in the left side of his face with a closed fist. The pair fell on the ground after the defendant grabbed the victim. The defendant pushed his hand into the face of the victim as he attempted to get up. The defendant got off the victim and proceeded to kick him once in the upper thigh/buttocks area.

[3] The victim suffered a swollen cheek, swelling on the elbow, a strained AC joint, sprained wrist, bruising on left knee and swelling on his backside.

9. Mr Houston was convicted and ordered to pay \$350 .00 for emotional harm in reparation.

CAC investigation and referral

10. On 2 March 2022, Mr Houston self-reported the conviction to the Teaching Council.
11. The CAC prepared a report, which was provided to Mr Houston for a response. Mr Houston provided references and an affidavit in support of the application for a discharge without conviction to the CAC but did not provide a response to the report.
12. The CAC met on 13 October 2022. Mr Houston attended the meeting via Microsoft Teams and explained that, at the time of the offending, he was at a low point in his life after losing his koro and uncle within a short space of time and that he was feeling daunted by the challenges presented by the COVID lockdown. He said his actions in the gym that day were due to jealousy and pride as he thought the victim had romantic feelings for his ex-partner (whom the victim was training with at the gym that day). He said that he was no longer driven by his

ego, as he had been in the past, and has since found Christian faith. He said he looked back on the offending with remorse and that, since the incident, his ex-partner and son have stayed with him again - which he says shows that she is not fearful of him acting in the same way again.

13. The CAC considered all matters and resolved to refer Mr Houston's conviction of 24 February 2022 to the Tribunal under s 497(4) of the Education and Training Act 2020.

[5] The summary of facts was signed by the respondent on 1 June 2023 and was filed with the Tribunal on 9 June 2023.

Legal principles

[6] Under s 497(4) of the Act, the CAC may refer a matter to the Tribunal for a hearing. Section 479(1)(m) of the Act requires the Teaching Council to perform the disciplinary functions set out in the Act relating to teacher misconduct and reports of teachers' convictions. It needs to decide whether the circumstances of the behaviour that resulted in the conviction reflect adversely on the teacher's fitness to practise as a teacher before the Tribunal may exercise its disciplinary powers. The test is whether the behaviour that resulted in the conviction reflects adversely on the fitness of the respondent to practise as a teacher.

[7] The Tribunal is not required to find the respondent guilty of serious misconduct before it can exercise the disciplinary powers available to it.

[8] Serious misconduct is defined in s 10(1) of the Act as conduct by a teacher:

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

[9] The conduct must have one of the consequences specified in s 10(a)(i) to (iii) and it must be of a character or severity that meets that Teaching Council's reporting criteria.

[10] The criteria for reporting serious misconduct are set out in r 9 of the Teaching Council Rules 2016 (**the Rules**) which require a teacher's employer to report serious breaches of the Code of Professional Responsibility (**the Code**). Those serious breaches relevantly include:

- (a) rule 9(1)(j): an act or omission that may be the subject of prosecution for an offence punishable by imprisonment for a term of three months or more; and
- (b) rule 9(1)(k): an act or omission that brings, or is likely to bring, the Teaching Profession into disrepute.

[11] Whether the conduct is likely to bring the teaching profession into disrepute, for the purposes of s 10 and r 9(1)(k), turns on whether “reasonable members of the public, informed and with knowledge of all the factual circumstances, could reasonably conclude that the reputation and good standing” of the teaching profession was lowered by the behaviour of the teacher concerned.¹

[12] If the Tribunal finds the conduct does not meet the test for serious misconduct, it may nevertheless exercise its disciplinary powers under s 500.

[13] The standards of behaviour expected of registered teachers are contained in the Code. The relevant provisions of the Code are:

- (a) clause 1.3, which provides that teachers will maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity; and
- (b) clause 1.5, requiring the maintenance of public trust and confidence in the teaching profession by contributing to a professional culture that supports and upholds the Code.

Discussion

[14] The CAC submits that the Tribunal is entitled to make an adverse finding as to the respondent’s fitness to be a teacher:

- (a) Not only because the teacher punched the victim in the face with a closed fist, but he also brought the victim to the ground and pushed his hand into his face as the victim attempted to get up, before finally kicking him in the upper thigh/buttocks area.
- (b) The offending occurred in a personal (rather than professional) setting, the respondent engaged in intentional violence against a person entitled to be in a place (the gym) when the respondent had no authority to exercise any

¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28].

control. There was no justification for the assault or the respondent's approach to dealing with that person.

- (c) The behaviour raises questions about the respondent's inability at the time to regulate his emotions.
- (d) The respondent has a previous earlier conviction in 2018 for driving with excess breath alcohol and operating a vehicle carelessly, which also reflects adversely on his fitness to be a teacher and his ability to adhere to the high standard of behaviour expected of teachers. The CAC also notes the respondent had previously received a discharge without conviction "for a violence offence".²

[15] The CAC accepts that there are mitigating factors:

- (a) The respondent was not teaching at the time of the offending. The conduct occurred outside of the professional setting and in the context of difficult and strained personal circumstances. There was no risk to children.
- (b) The respondent has co-operated with the Teaching Council and complied with his duty to self-report his conviction to the Council and had co-operated in the referral of his convictions to the Tribunal.
- (c) At the time of the offending, the respondent says he was at a low point in his life after losing his koro and uncle, feeling daunted by the challenges of the COVID lockdown and struggling with jealousy in relation to his ex-partner.
- (d) In 2021 (after the event but before he was sentenced), the respondent self-referred himself to Manline, an individual counselling service for men who are feeling unable to cope in their current situation. At the time of his sentencing in the criminal court, the Judge observed that the respondent had completed three one-to-one counselling sessions and expressed remorse.

² Referred to in Judge D G Smith's ruling on the respondent's application for a discharge without conviction: *Police v Houston* [2022] NZDC 763 at [21].

Authorities

[16] The CAC has referred us to a number of authorities: *CAC v Hyland*,³ *CAC v Teacher*,⁴ *CAC v Selby-Rickit*,⁵ *CAC v Teacher*,⁶ *CAC v Evans*,⁷ and *CAC v Teacher B*,⁸ where adverse findings were found by the Tribunal where teachers had been convicted of common assault.

[17] Having regard to those cases, we have no hesitation in making an adverse finding against the respondent in this case. For the reasons set out by the CAC above, the case is easily made out. The respondent's conduct occurred against a backdrop of the Teaching Council having previously expressed concern about his driving offences in 2018 when he was first registered.

[18] We are satisfied that the conduct does reflect adversely on the respondent's fitness to be a teacher and may bring the teaching profession into disrepute. It is also conduct that is of a character or severity that meets the Teaching Council's reporting criteria in terms of r 9(1)(j) and (k) of the Code.

[19] Section 500 of the Act provides for powers of the Tribunal following the hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the CAC. Having regard to the powers under that section, we agree with the CAC's submission that:

- (a) the respondent should be censured under s 500(1)(b) with annotation of the Register for two years under s 500(1)(e) to mark the seriousness with which the Tribunal regards the conduct; and
- (b) under s 500(1)(c), we impose a condition that the respondent be directed to inform any employer or prospective employer of the Tribunal's decision for a period of 12 months from the date of this decision. The requirement is to inform an employer or prospective employer so as to ensure the respondent receives adequate supervision and support in any teaching position.

³ *CAC v Hyland* NZTDT 2020/38 (14 December 2020).

⁴ *CAC v Teacher* NZTDT 2012/25 (7 November 2012).

⁵ *CAC v Selby-Rickit* NZTDT 2020/21 (8 December 2020).

⁶ *CAC v Teacher* NZTDT 2013/50 (23 September 2013).

⁷ *CAC v Evans* NZTDT 2018/68 (4 February 2019).

⁸ *CAC v Teacher B* NZTDT 2020/55 (26 October 2021).

[20] Whilst we do not impose any formal condition, we encourage the respondent to undertake some behavioural management training which might include mentoring before undertaking a full-time teaching role.

Costs

[21] The CAC does not seek a contribution to its costs from the respondent. On that basis, no costs orders are made.

Non-publication

[22] The respondent has not applied for non-publication orders. No non-publication orders are therefore made.



J S Gurnick
Deputy Chair, New Zealand Teachers
Disciplinary Tribunal