

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/61

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND
ME

TIMOTHY JOHN COSSON

Respondent | Kaiurupare

Representation | Hei Māngai

E McCaughan for the CAC

D King for the respondent

Tribunal

T J Mackenzie (Deputy Chair), N Coe, G
Ashworth

TRIBUNAL DECISION ON LIABILITY, PENALTY, PUBLICATION and COSTS

19 June 2024

Charge

[1] Mr Cosson is charged by the Complaints Assessment Committee (CAC) with serious misconduct per section 497 Education and Training Act 2020.

[2] The particulars of the charge are that:

(a) On 19 February 20██, the respondent used two hands to push the chest and/or shoulder of year 9 student, Student A, causing Student A to fall over and hurt/injure himself; and

(b) On 17 August 20██, the respondent slapped year 9 student, Student B, across the left side of his face.

[3] The Tribunal conducted a hearing on the papers on 18 June 2024 to determine liability, penalty, costs and publication. This is our decision.

Facts

[4] The parties have provided the following agreed facts:

SUMMARY OF FACTS

Introduction

- 1 Mr Cosson was first fully registered as a teacher on 9 May 2007. His most recent practising certificate expired on 12 April 2023.
- 2 At the time of the incidents discussed below Mr Cosson was teaching engineering, automotive engineering, woodcraft and graphic design at Ōtūmoetai College, a co-educational secondary school in Tauranga, with a roll of approximately 1900 students. Mr Cosson had been teaching at Ōtūmoetai College since approximately 2005.

Incident: On 19 February 20██, Mr Cosson used two hands to push the chest and/or shoulder of year 9 student, Student A, causing Student A to fall over and hurt/injure himself

- 3 On 19 February 20██, Mr Cosson was supervising a tramp during a school camp for Year 9 students.
- 4 During the tramp a Year 9 student, Student A, was (in his own words) mucking around and being a nuisance. Student A heard Mr Cosson counting down from 5 to 1. When Mr Cosson reached 1, he lunged towards Student A and pushed Student A with both hands (one hand on Student A's chest, and one hand on Student A's shoulder). Another student who observed the incident said it looked like Mr Cosson got angry and snapped.
- 5 As a result of Mr Cosson's actions, Student A fell over. As he fell, his leg hit a tree stump, causing pain to his right thigh. The pain made it hard for Student A to walk, but he carried on for the rest of the tramp with a limp.
- 6 Student A was shocked by what had happened. Nothing more was said between him and Mr Cosson. For the rest of the day Student A's leg ached, but there was no bruising or ongoing problems.
- 7 Student A and two other students subsequently told another staff member about what had happened after the tramp.

- 8 The Principal interviewed Mr Cosson 3 or 4 days later. Mr Cosson admitted that he had pushed Student A with some degree of force, and that Student A had fallen to the ground. Mr Cosson agreed that Student A was limping afterwards. Mr Cosson said he offered to carry Student A, but the student declined.
- 9 On 1 March 20██ the Principal and Deputy Principal met with Mr Cosson. They agreed:
- (a) Mr Cosson's actions were wrong, and he committed to ensuring they would not be repeated.
 - (b) Mr Cosson would engage in a restorative meeting with Student A and his parent, if Student A was willing.
 - (c) Mr Cosson would undergo anger management counselling as soon as a suitable option was available.
 - (d) A note of the agreed outcomes would be placed on Mr Cosson's personal file.
- 10 On 2 March 20██ the Principal filed a mandatory report. The Principal noted that "[t]his behaviour is out of character for this teacher. A propensity to anger is not his normal classroom default! I believe that this is the result of a poor night's sleep (he was on an over night Year 9 camp) and was at the end of a 3 hour tramp on the next day."
- 11 On 29 March 20██, Mr Cosson advised the Teaching Council's Triage Committee:
- (a) "I acknowledge that regardless of whatever happened prior to the event discussed in your report, I had no right to treat the student in the manner that I did. What I did was and always will be, totally unacceptable."
 - (b) He apologised to the student and his parent, and had been through a restorative meeting with them.
 - (c) He was undertaking an Anger Management course through EAP Services.
 - (d) "I regret and am deeply saddened, and sorry for my actions. I have learned a great deal from both this experience and the counselling I am receiving."
- 12 On 13 July 20██ EAP Services advised that Mr Cosson had completed his counselling programme (which included attending 6 appointments).

Incident: On 17 August 20██, Mr Cosson slapped year 9 student, Student B, across the left side of his face

- 13 On 17 August 20██ Mr Cosson was teaching a Year 9 class. He told one of the students, Student B, to sit on the other side of the classroom. Student B subsequently disobeyed Mr Cosson by moving back to his initial seat. Mr Cosson approached Student B and asked him what he was doing out of his seat. Mr Cosson then slapped Student B across the left side of his face. The incident was witnessed by a number of other students.
- 14 Student B subsequently went to the Dean's office and told a staff member about the slap.

- 15 Later that day the Deputy Principal received an email from Mr Cosson, where he admitted that he had slapped Student B in the face with "medium intensity" because the boy had not followed his instruction to sit on the other side of the class.
- 16 The school did not complete its investigation into the incident due to a Covid-19 lockdown, and because it received information regarding Mr Cosson's medical issues (discussed below).
- 17 On 21 September 20██ the Principal submitted a mandatory report to the Teaching Council regarding the second incident.

Subsequent events

- 18 On 23 September 20██, Mr Cosson's PPTA representative advised the CAC investigator that Mr Cosson had been granted medical retirement, and did not intend to return to teaching.
- 19 The PPTA representative advised that:
- (a) Mr Cosson had recently undergone psychiatric assessment following changes in mood, increased anxiety, and deterioration in general functioning over the past year.
 - (b) A psychiatrist had diagnosed Mr Cosson with "adjustment disorder with mixed disturbance of emotions and conduct."
 - (c) The psychiatrist considered that Mr Cosson was unfit for work and that he "will be unable to fulfil his duties as a teacher now and in the foreseeable future".
- 20 On 7 March 20██ the CAC investigator submitted the matter to the CAC.
- 21 On 3 November 2022, the CAC held an initial hearing and referred the matter back to the CAC investigator for further investigation.
- 22 On 12 January 2023, the CAC investigator sent an updated draft investigation report to Mr Cosson's PPTA representative.
- 23 On 1 February 2023 Mr Cosson's PPTA representative advised:
- (a) Mr Cosson remained medically retired from the profession.
 - (b) He did not intend to re-enter the profession at any stage.
 - (c) He was willing to voluntarily deregister.
- 24 On 21 July 2023 the CAC reconvened. Mr Cosson was invited, but did not attend.
- 25 The CAC considered that Mr Cosson's conduct may possibly constitute serious misconduct (as defined in s 10 of the Education and Training Act 2020). On that basis, the CAC had no option but to refer Mr Cosson's conduct to the Teachers Disciplinary Tribunal (the Tribunal) under s 497(5) of the Education and Training Act 2020.

Charge liability

[5] The parties have agreed that the conduct in the agreed facts proves the charge.

[6] On considering the facts, the charge, and the legal test for serious misconduct, the Tribunal agrees that serious misconduct have occurred. As has been said many times before, physical violence or assaults on learners will near invariably result in such a finding.

Penalty

[7] The CAC submits that cancellation of registration is appropriate. Mr Cosson does not contest this.

[8] In the Tribunal's view the combination of the two incidents takes this case to the more serious end of physical assaults. Even with a concerted attempt at rehabilitation and expressions of remorse it may have been difficult for Mr Cosson to resist cancellation.

[9] We consider that cancellation is the appropriate remedy and so order.

Costs

[10] The matter was inevitably referred to the Tribunal due to the nature of the conduct and the operation of the Act. Costs are then incurred. The costs have been heavily reduced due to the cooperation of Mr Cosson. But his cooperation is not in and of itself a reason to not award costs.

[11] We consider the costs claim by the CAC to be reasonable (indeed more than reasonable in the context of other costs claims that the Tribunal sees). We will award costs of \$1397.58 being 40% of CAC costs.

[12] Tribunal costs will be at least \$2000, of which we also order 40%, being \$800.

Non-publication applications

[13] We make an order that the names and any other identifying details of the two students are not to be published. To ensure that this order is not undermined, we will also order that the exact year of the misconduct is not to be published (associated year references will also be redacted to be consistent with this).

[14] Mr Cosson seeks a permanent order for non-publication. We are provided with information from 20[REDACTED]. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[15] In our view we have little foundation to make an assessment of what might occur on publication, and whether it is real and appreciable. The material is economic and historical. The presumption of open justice is not displaced on the information to hand. We decline to make a final non-publication order. Any interim orders are also now revoked. We will however order non-publication of the nature of the information in the description above in [14], including the year of its provision.

[16] The relevant high school, Otumoetai College, seeks a non-publication order. It appears the first basis for this is to ensure the respondent's identity was not revealed (if an order had been made in his favour). We do not see how publication of the school name might risk revealing Mr Cosson's identity (if it had been suppressed), but in any event an order has not been made in his favour. The second ground was to avoid speculation in the school community as to who committed this misconduct. Given an order has not been made, this issue also falls away. The application by the school must therefore be declined.



T J Mackenzie
Deputy Chair
New Zealand Teacher's Disciplinary Tribunal /
Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa