

# TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

## **Complaints Assessment Committee (CAC) v Basas** NZ Teachers Disciplinary Tribunal Decision 2018/39

Teachers have a commitment to maintain public trust and confidence in the profession by demonstrate a high standard of professional behaviour and integrity

In this case an early childhood teacher, George Basas, was given diversion by the Court on charges of possession of a knife and behaving threateningly.

The Teaching Council found out about this when Mr Basas applied for a practising certificate renewal and the Council received his Police vetting report. The case was referred to the Complaints Assessment Committee (CAC), who referred a charge of serious misconduct in the New Zealand Teachers Disciplinary Tribunal (Tribunal).

Mr Basas had been living in a boarding house with a number of other tenants. As a result of a long running conflict, Mr Basas retrieved a knife from his room, presented it to one of the tenants, and threatened to cut his throat. The Police were called, and Mr Basas was charged. Mr Basas qualified for Police diversion as it was his first offence. This meant that on completion of various conditions, the charge was diverted, and he was not convicted. These conditions included making an emotional harm payment, apologising to his victim, and undertaking counselling sessions.

Despite this, the Tribunal agreed with the CAC that his conduct amounted to serious misconduct, noting that practitioners have an obligation to their students to demonstrate a high standard of professional behaviour and integrity. Mr Basas' behaviour brought into question his fitness to teach and may bring the profession into disrepute.

In deciding penalty, the Tribunal noted that criminal offending involving the use or threat of violence is inherently serious, but also acknowledged that Mr Basas himself seemed to realise this at the time, as he removed himself from the situation before the Police were called. Mr Basas has since removed himself from the boarding house, he admitted to his behaviour, and he completed all conditions in his diversion agreement, and he acknowledged to the Tribunal that his behaviour was not professional.

The Tribunal considered the fact that Mr Basas had completed anger management counselling and that his circumstances favoured the least restrictive penalty. On that basis, he was censured with conditions and it was ordered that the register be annotated for two years. As Mr Basas was legally aided, the Tribunal did not order costs.



**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**UNDER** the Education Act 1989

**IN THE MATTER** of a charge of serious misconduct referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

**BETWEEN** **THE COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

**AND** **GEORGE CRUZ BASAS**

Respondent

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**DECISION OF THE TRIBUNAL**

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Tribunal: Nicholas Chisnall (Deputy Chair), Maria Johnson and Tangi Utikere

Hearing: On the papers

Decision: 13 March 2019

Counsel: R W Belcher for the referrer  
W C Pyke for the respondent

## **Introduction**

[1] The Complaints Assessment Committee (the CAC) charges George Basas with serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. Its notice of charge, which is dated 1 August 2018, alleges that the respondent on 29 April 2017:

(a) Approached a man at his boarding house and pointed a knife at him; and

(b) Threatened to cut the man with the knife.

[2] Following the events on 29 April, the respondent was charged by police with two criminal offences. Mr Basas was ultimately offered diversion by police. He fulfilled the terms of his diversion agreement and the charges were dismissed. However, Mr Basas applied to renew his provisional practising certificate while the charges were before the Court. As such, police disclosed the fact that Mr Basas was on active charges to the Teaching Council during the vetting process, which explains why the Tribunal is seized of the matter.

[3] Mr Basas agreed to this matter being heard on the papers and accepts that his behaviour amounts to serious misconduct.

## **The background**

[4] What follows is the agreed summary of facts provided by the parties:

### *Introduction*

1. **GEORGE BASAS** (Mr Basas) is a registered early childhood teacher with a provisional practising certificate. He completed the Teacher Education Refresh Programme in July 2017.
2. On 18 August 2017, the Education Council requested a police vet as part of an EC80 application to renew Mr Basas's provisional practising certificate.
3. The police vet advised that Mr Basas had two active charges pending related to an incident on 29 April 2017 (the incident):
  - a. Threatens to kill / do grievous bodily harm with a stabbing / cutting weapon;
  - b. Assaults a person with a stabbing / cutting weapon.
4. The charges carry maximum penalties of 7 and 5 years respectively.

### *Conduct*

5. In April 2017, Mr Basas resided in a hostel in central Auckland with several other tenants.
6. At approximately 5:30pm on 29 April 2017, Mr Basas took a knife from his room, presented it to one of the tenants and threatened to cut his throat and kill him.
7. Mr Basas was standing no more than half a meter from the victim at the time the threat was made.
8. Mr Basas then returned to his room and left the hostel. It is unclear what happened to the knife.
9. Upon his return to the hostel at approximately 8:30pm, Mr Basas was arrested and charged by police.

### *Court and diversion process*

10. Mr Basas appeared in court on 26 May 2017 and was remanded on bail.
11. Mr Basas reappeared in court on 6 September 2017 and plead not guilty.
12. On or about 28 August 2017, the charges against Mr Basas were amended to:
  - a. Possesses a knife in a public place; and
  - b. Behaves threateningly.
13. On 6 December 2017, Mr Basas attended a diversion hearing. A diversion agreement was entered into requiring Mr Basas to fulfil the following conditions by 20 February 2018:
  - a. Pay \$350 to the victim for emotional harm;
  - b. Provide a letter of apology;
  - c. Provide a note from a friend or family who has been made aware of the charges;
  - d. Provide a note from a general medical practitioner concerning anger and mental issues;
  - e. Provide a note from a counsellor confirming Mr Basas's attendance at 6 sessions on anger management and mental issues; and
  - f. Renew First Aid Certificate.
14. On 9 March 2018, police confirmed that Mr Basas had satisfied the conditions of the diversion agreement and avoided a criminal conviction. The charges were dismissed and no further action was taken.

15. Police described the diversion process as “a very formal warning from the courts”.

*Mr Basas’s response*

16. On the evening of the incident, in response to police questions, Mr Basas stated that his actions were a response to the victim (and other hostel residents) mocking and harassing him. Mr Basas stated that he wanted to make them stop.
17. In a statement stamped 5 May 2017, Mr Basas states:
  - a. He was humiliated, insulted, disrespected and bullied in the hostel;
  - b. On a number of occasions he was the subject of mischief at the hands of other residents, including stealing the key to his room and moving items from his room to the kitchen; and
  - c. The landlord ignored his complaints.

Further, in relation to the incident, Mr Basas’s statement records:

- a. On the morning on 29 April 2017, he came out of his room and was blocked in the hallway by a “Japanese” tenant. After getting passed, the Japanese tenant continued to make gestures toward him. The Japanese tenant was then joined by another tenant who joined in the “insulting and disrespecting” of Mr Basas.
- b. He contacted police and reported the “harassment”. Police did not attend.
- c. At approximately 5:30pm, he entered the kitchen. The Japanese tenant was cooking and two other “Sri Lankan” tenants were present. One tenant said, “here is the stupid teacher”.
- d. He said “... I am sick and tired of this disrespectful behaviour of yours. You young tenants don’t own the world.” The tenants then laughed at him.
- e. He erupted like a “volcano”, went to his room and grabbed a “sharp object to stop them”.
- f. While approaching the Japanese tenant he said “what do you want? You want me to cut your throat”.
- g. He pointed the knife at the Japanese tenant.
- h. He then removed himself from the hostel to “pacify” himself.
- i. He believes he is not guilty of the charges brought against him but rather was provoked because he was annoyed and irritated by the laughs and insults he received from the tenants at the hostel.

18. On 8 March 2018, Mr Basas sent the Education Council investigator an email informing him that the charges were “closed” and stating that “[t]hrough the process of law, I have achieved clearance of my name and reputation.”

*Further Relevant Background*

19. There is a discrepancy between the police report and Mr Basas’s account with regards to the length of the knife. The police summary of facts states that the knife was 20cm long. Mr Basas refers to a “small butter knife”.
20. Mr Basas is 64 years old and has no previous criminal or disciplinary history.
21. Mr Basas has read and agrees with this summary of facts.

**Our findings**

[5] Section 378 of the Education Act 1989 defines “serious misconduct” as behaviour by a teacher that has one or more of three outcomes; namely that which:

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

[6] The test under s 378 is conjunctive.<sup>1</sup> As such, as well as having one or more of the three adverse professional effects or consequences described, the conduct concerned must also be of a character and severity that meets the Teaching Council’s criteria for reporting serious misconduct. The Education Council Rules 2016 (the Rules) describe the types of behaviour that are of a prima facie character and severity to constitute serious misconduct.<sup>2</sup> The CAC asserted that the respondent’s behaviour contravened r 9(1)(o), which encompasses “any act or omission that brings, or is likely to bring, discredit to the profession” and r 9(1)(n), which describes

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<sup>1</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

<sup>2</sup> Now called the Teaching Council Rules 2016. Rule 9 was amended on 18 May 2018, but this decision refers to the preceding iteration, which applied when the respondent is alleged to have misconducted himself.

“any other act or omission that could be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more”.

[7] While the parties were agreed that the respondent’s behaviour constitutes serious misconduct, the Tribunal is required to reach its own view. However, we have no hesitation accepting that the parties have correctly assessed the gravity of the allegation.

[8] We are satisfied that the first limb of the test for serious misconduct is met. This is because the respondent’s presentation of the knife – and the associated threat to use it - adversely reflect on his fitness to teach. This is despite the fact that it happened in a personal rather than professional setting. Practitioners have an obligation to their students to both teach and model lawful behaviour.<sup>3</sup> Mr Basas’ resort to violence sends a very poor signal about the propriety of the use of force to resolve conflicts to those whose behaviour he is responsible for supervising and moderating.

[9] Further, we consider that the respondent’s threatened use of force undermines the high standard of professionalism and integrity the public expects of those in the teaching profession.<sup>4</sup>

[10] We are also satisfied that the second stage of the test for serious misconduct is met, as the respondent’s offending was of a character and severity that engages rr 9(1)(n) and (1)(o) of the Rules.

### **Penalty**

[11] Where a teacher has been convicted of a criminal offence, it is not the purpose of a professional disciplinary proceeding to punish him or her a second time for the same behaviour. While Mr Basas was not convicted in the criminal proceeding, he was “punished” in the sense that he was required to accept responsibility for his actions to access the Police Diversion Scheme. Here, our focus when assessing penalty is to ensure that three overlapping purposes are met. These are to protect the public through the

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<sup>3</sup> This obligation is contained in clause 3(c) of the Code of Ethics for Registered Teachers, which applied at the time the respondent offended.

<sup>4</sup> The test 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 respondent’s behaviour: per *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.<sup>5</sup> We are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.<sup>6</sup>

[12] We were not directed to any earlier decision with facts directly comparable to those here, or where a disciplinary proceeding has been initiated after a practitioner was diverted by police. However, we do not consider the latter factor to be of much moment. The situation is analogous to when a teacher is discharged without conviction, where the outcome in the criminal proceeding does not prohibit the behaviour being scrutinised by the Council. By way of example, in *CAC v Sami*<sup>7</sup> we found that a practitioner who was discharged without conviction after being charged with assault with a weapon had nonetheless committed serious misconduct, which enlivened our jurisdiction under s 404 of the Education Act.

[13] Criminal offending involving the use or threatened use of violence is inherently serious. In *CAC v Glazier*,<sup>8</sup> we recently referred to the review of six decisions involving the referral of violence convictions and endorsed the CAC's submission that:

[In] cases involving violent offending, cancellation, or at least suspension, will often be the appropriate starting point – depending on the circumstances of the case. This ensures that the purposes of the [Education] Act pursuant to s 377 are upheld, to ensure that students are provided with a safe learning environment. The CAC acknowledges the Tribunal's decision in NZTDT 2009/5 supports this approach.

[14] Mr Basas' decision to arm himself with a knife was exceptionally foolish and potentially catastrophic. Fortunately, it appears that he came to his senses quickly, and chose to deescalate the situation by "removing himself" from the hostel. While we accept that Mr Basas was provoked by those he confronted, his decision to arm himself was a gross overreaction. That being said – and while the outcome in the criminal proceeding cannot be a

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<sup>5</sup> The primary considerations regarding penalty were helpfully discussed in *CAC v McMillan* NZTDT 2016/52.

<sup>6</sup> See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

<sup>7</sup> *CAC v Sami* NZTDT 2017/14.

<sup>8</sup> *CAC v Glazier* NZTDT 2018/59, 29 January 2019.

dispositive factor regarding the penalty we impose, as different considerations are in play in this disciplinary proceeding - we acknowledge that it is apparent from police's decision to offer Mr Basas diversion that it assessed his risk of repetition to be low.

[15] Counsel for the CAC submitted that this was "an isolated incident which occurred in the context of toxic domestic arrangement where the respondent was subjected to bullying at the hands of the other tenants". Counsel relied upon the following factors, which they submitted mitigate the seriousness of the respondent's behaviour:

- (a) He "removed himself from the domestic arrangement and has found new accommodation";
- (b) Mr Basas assumedly admitted his behaviour to be offered diversion;
- (c) The respondent completed the conditions of his diversion agreement, including anger management; and
- (d) He accepted in this proceeding that his behaviour constitutes serious misconduct.

[16] In light of these factors – in particular that Mr Basas completed anger management - we agree with the parties that the least restrictive reasonable penalty comprises censure, annotation of the register and a candour condition. While the CAC submitted that the censure and condition should remain on the register for three years, we have decided that the annotation can be removed in two years' time, which is consistent with the outcome in a recent decision that involved an offence whose seriousness was relatively comparable.<sup>9</sup>

### **Costs**

[17] The respondent is legally aided. As such, the CAC does not seek a contribution from him towards its costs. This is because s 45(2) of the Legal Services Act 2011 provides that:

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<sup>9</sup> *CAC v Evans* NZTDT 2018/68.

No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.

[18] Section 45(5) of the Legal Services Act states that:

If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.

[19] For the purpose of s 45(5), we record that - had Mr Basas not been legally aided - we would have made a costs order taking into account his acceptance of responsibility and agreement to the matter being dealt with on the papers. Consistent with recent decisions, this would have seen us order the respondent to make a smaller contribution – 40 instead of the 50 per cent that tends to be imposed following a contested hearing.<sup>10</sup>

[20] But for Mr Basas' legal aid status, we would have also ordered him to contribute to the Tribunal's own costs, which are \$1,145. As such, we would have ordered the respondent to pay \$458.

### **Orders**

[21] The Tribunal's formal orders under the Education Act are as follows:

(a) The respondent is censured for his serious misconduct pursuant to s 404(1)(b).

(b) Pursuant to s 404(1)(c), we direct that the respondent must inform any employer or prospective employer of this proceeding and provide it with a copy of this decision.

(c) The matters referred to in (a) and (b) will be annotated on the register, under s 404(1)(e), for two years from the date of this decision.

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<sup>10</sup> See, for example, *CAC v Teacher* NZTDT2016/12, 10 August 2016.



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Nicholas Chisnall  
Deputy Chair

**NOTICE**

- 1 A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.
- 2 An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
- 3 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).