

# TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

## Complaints Assessment Committee (CAC) v Human

### NZTDT 2018-35

*Registered teacher Carel Human was referred to the Disciplinary Tribunal for allegedly completing work for students and awarding students credits for work that was not completed or not up to an achieved standard.*

*The result: the Tribunal agreed that the conduct had occurred and imposed a censure, annotation of the register and conditions (that Mr Human undergo mentoring, undertake a course covering assessment, moderation, professional boundaries and curriculum planning and delivery, show the decision to employers, and not apply for management roles within 3 years). He was also ordered to contribute to the CAC and Tribunal's costs. There are no non-publication orders in this case.*

On 30 July 2019 the Tribunal released its decision following a hearing on the papers. It was alleged Mr Human

- a) *completed work for students in his level 1 engineering class; and*
- b) *awarded students credits for work that was not completed or was of a standard which did not justify an achieved grade.*

Mr Human was a technology teacher at Tauranga Boys College (the School). He was the teacher of a Year 11 engineering class for the majority of 2016.

During term two of 2016, Mr Human received treatment for cancer and took sick leave. While Mr Human was on leave, the class was taught by three relief teachers. He returned in term three.

On 11 October 2016 (day two of term four), Mr Human updated the School's grading database to record the grades of the 19 students who sat Unit Standard 22923 (Unit Standard). All but one of the 19 students who undertook the Unit Standard were awarded an "Achieved" grade by Mr Human.

On 13 October 2016, a student reported to another teacher at the School that he had received credits for work in Mr Human's engineering class that he had not yet completed. A review of the work of five students in Mr Human's class revealed that, despite being awarded an achieved grade for the Unit Standard by Mr Human, all five students had not completed the minimum number of responses required to be awarded that grade. None met the achieved standard when remarked by another teacher.

On 26 October 2016, during an internal moderation of all Level 1 engineering work, it was discovered that some of the answers contained in various students' work had been completed by Mr Human. The majority of the work in question was dated February and March 2016.

When Mr Human was initially confronted about his writing on the student's work during the School's internal moderation process he said that perhaps the student didn't have a pen. After meeting with the Principal Mr Human responded that upon his return to teaching the class, he discovered that the class was behind in their work, and told the students *"if they try their best, I will be generous in marking their folders"*. Mr Human accepted he wrote answers in the booklets *"to simplify explaining."*

In relation to the awarding of credits, Mr Human claimed that he was told by the Head of Department (HOD) that, *"[y]ou can award credits for the work done and we can always change the results if there are any discrepancies later."* The HOD denied this.



The CAC submitted (and Mr Human accepted) that Mr Human's conduct amounted to serious misconduct, and referred to previous Tribunal decisions, including where the Tribunal reinforced the concept that a teacher who falsifies records of student work is not only acting fraudulently but in a way which undermines the student's schooling and therefore their educational welfare. The Tribunal held that acting in such a way calls into very serious doubt a teacher's fitness to remain in the profession.

Mr Human's lawyer emphasised that the conduct occurred during a period of stress and illness. The motivation of the respondent was to assist the pupils who he felt had been disadvantaged both by his own illness, and the issues they faced as a result of the relief teacher who had been responsible the class while the respondent was ill.

The Tribunal agreed with the CAC that there have been adverse consequences for students. It also agreed that this conduct reflects adversely on the respondent's fitness to be a teacher, given the central importance of the need for integrity in student assessment.

The Tribunal had sympathy for the position in which the respondent found himself given the context of his diagnosis with a serious illness and concern for the educational impact of that on his students but stated that that could not excuse a failure to observe the integrity of the qualifications system.

The Tribunal imposed a censure, conditions and the register was annotated to reflect this. Mr Human was also ordered to contribute to the CAC and Tribunal's costs.



**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2018 / 35**

**UNDER** the Education Act 1989

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

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

**AND** **Carel Human, registered teacher, teacher registration 202936**

**Respondent**

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**DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

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**HEARING:** 24 October 2018 (on the papers)

**TRIBUNAL:** John Hannan (Deputy Chair), Stuart King, David Spraggs

**DECISION:** 30 July 2019

**COUNSEL:** Richie Belcher for Complaints Assessment Committee  
Nick Elsmore for Respondent

## Introduction

1. By notice of charge dated 19 July 2018 the Complaints Assessment Committee (CAC) charged that the respondent engaged in serious misconduct/and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers. The particulars of the charge are that the respondent:
  - (a) completed work for students in his level I engineering class; and
  - (b) awarded students credits for work that was not completed or was of a standard which did not justify an achieved grade.
2. The CAC alleges that this conduct either separately or cumulatively amounts to serious misconduct under section 378 of the Education Act 1989, and Rule 9 (1) (o) of the Education Council rules 2016 (as drafted prior to amendment in May 2018), breaches the Code of Ethics in place at the time, or alternatively amounts to conduct otherwise entitling the Tribunal to expose its powers under section 404 of the Education Act.

## Facts

3. A summary of facts has been prepared, as follows.

### *Introduction*

1. CAREL HUMAN (Mr Human) is a registered teacher with a full practising certificate.
2. At the relevant time Mr Human was employed as a technology teacher at Tauranga Boys College (School).
3. Mr Human resigned from the School on 29 January 2017 following the commencement of the external investigation into the conduct described below.
4. Mr Human was the teacher of a Year 11 engineering class for the majority of 2016.
5. Mr Human was diagnosed with kidney cancer in April 2016. During term two of 2016, Mr Human received treatment for cancer. He returned in term three. While Mr Human was on leave, the class was taught by three relief teachers.
6. On 11 October 2016 (day two of term four), Mr Human updated the School's grading database to record the grades of the 19 students who sat Unit Standard 22923 (Unit Standard). The entries were made during a five minute window between 12:35pm and 12:40pm.
7. All but one of the 19 students who undertook the Unit Standard were awarded an "Achieved" grade by Mr Human.

*Issue one - student work completed by Mr Human*

8. On 26 October 2016, during an internal moderation of all Level 1 engineering work, it was discovered that some of the answers contained in various students' work had been completed by Mr Human.

9. The majority of the work in question was dated February and March 2016.

10. During interviews with five students from the engineering class conducted by investigator Lex Hamill (Investigator), all confirmed that Mr Human had written answers on their work.

11. One student remarked that, "I didn't really know what to write so he did it for me." When asked whether Mr Human had both told the student the answer and wrote it down for him, the student responded, "Yes".

12. Mr Human recorded between 3% - 21% of the answers contained in the five students' workbooks.

13. Mr Human had written on the work of 28% of the students in the class.

*Issue two - Mr Human awarded NCEA credits for work that was not completed*

14. On 13 October 2016, a student reported to another teacher at the School that he had received credits for work in Mr Human's engineering class that he had not yet completed.

15. A review of the work of five students in Mr Human's class revealed that, despite being awarded an achieved grade for the Unit Standard by Mr Human, all five students had not completed the minimum number of responses required to be awarded that grade.

16. The five pieces of work were re-marked by another teacher in the technology department with experience of the Unit Standard. None met the achieved standard. It was noted by that teacher that the answers marked were, "so far off the mark I couldn't believe it."

*Teacher's Response Issue One*

17. Mr Human was initially confronted about his writing on the student's work during the internal moderation process on 26 October 2016 by the Teacher in Charge of Engineering, Mr Lawrence. In response to Mr Lawrence's questions, Mr Human said that perhaps the student didn't have a pen.

18. After meeting with the Principal of the School on 8 November 2016, Mr Human provided a written response to the concerns raised. In the response, Mr Human stated that, upon his return to teaching the class, he discovered that the class was behind in their work. He stated that he told the students that, "if they try their best, I will be generous in marking their folders." However, Mr Human noted that whenever he wrote

*an answer for a student, that student was in front of him and had provided the information.*

19. *On or about 24 November 2016, after the Principal requested further information, Mr Human clarified that:*

*when a student found it hard to keep up with the work or due to prolonged absenteeism I saw it as my responsibility to help my students ... getting the work that was done on the board onto paper.*

20. *On 12 March 2018, in response to questions from the Education Council investigator, Mr Human said (by email), "Yes, I did write answers in their booklets to simplify explaining."*

#### *Issue Two*

21. *As noted above, when asked about his marking practices by the Principal, Mr Human stated that he had told the students that, "if they try their best, I will be generous in marking their folders."*

22. *On 23 April 2018, in response to questions from the Education Council investigator, Mr Human stated (through counsel) that he was told by the Head of Department, Mr Lawrence, that, "[y]ou can award credits for the work done and we can always change the results if there are any discrepancies later." Mr Lawrence denies saying this.*

23. *Further, Mr Human stated to the Education Council investigator that he provided extra work done by students in an A3 portfolio during the moderation process. However, he was told that student work completed but not recorded in the student's work books was of no value.*

24. *Mr Lawrence acknowledges that Mr Human was told that the particular extra work produced did not add to the evidence required by the Unit Standard.*

25. *During the course of the investigation, Mr Human emphasised that the students had made little or no progress during the time he was away from school receiving treatment.*

#### *Further relevant background*

26. *Mr Human has taught at Tauranga Boys College for 10 years. Prior to coming to New Zealand in 2006, he was employed as a senior lecturer of mechanical engineering in the tertiary sector in South Africa. He has over 30 years teaching experience.*

27. *In 2013, Mr Human admitted mistakenly entering grades for a unit standard which had not yet been taught. The mistake was realised later in the year (once the unit standard had been taught) and corrected. A subsequent meeting regarding the*

*mistake was held with Steve Ronowicz (Head of Department for Graphics and Technology) and no further action was taken.*

## **Submissions for CAC**

4. The CAC noted that although the respondent has acknowledged his actions amounted to serious misconduct, the Tribunal must nevertheless undertake its own assessment of whether it considers the respondent's conduct amounted to serious misconduct.
5. The CAC submitted the respondent's conduct meets each limb of the definition of serious misconduct in section 378 of the Education Act 1989. It submits that the respondent's conduct adversely affected the educational well-being of students, reflects adversely on his fitness to be a teacher, and risks bringing the teaching profession into disrepute.
6. The CAC also submitted that the conduct was of a character and severity meeting the criteria for reporting serious misconduct in Rule 9 of the Education Council Rules 2016. In particular it referred to rule 9 (1) (o), being conduct that would bring or be likely to bring discredit to the teaching profession.
7. The CAC referred to NZTDT 2013/12 where the Tribunal reinforced the concept that a teacher who falsifies records of student work is not only acting fraudulently but in a way which undermines the student's schooling and therefore their educational welfare. Acting in such a way calls into very serious doubt a teacher's fitness to remain in the profession.
8. The CAC also referred to NZTDT 2014/40 where the Tribunal emphasised the extent to which New Zealand qualifications system is dependent upon teachers acting honestly and fairly in relation to student assessment. The New Zealand public and government are entitled to expect that teachers will act with the utmost integrity in respect of student assessment.
9. As to penalty, the CAC suggested an appropriate outcome would be censure, annotation of the register, a requirement that the respondent have an approved mentor to provide quarterly reports to the senior manager – Professional Responsibility of the Teaching Council for 12 months, that the respondent be required to complete an appropriate course covering assessment, moderation, professional boundaries and curriculum planning and delivery within 12 months, that the

respondent be required to show a copy of the Tribunal's decision to his current and any future employer for the next 2 years, and that the respondent not apply for or accept any principalship, head of department position, or position with management responsibility, for 3 years.

### **Submissions for respondent**

10. Submissions from counsel for the respondent acknowledged that the particulars of charge amount to serious misconduct and that the elements of the definition of serious misconduct were fulfilled. Counsel went on to outline the background to the respondent's acts.
11. Counsel emphasised that the conduct occurred during a period of stress and illness. The motivation of the respondent was to assist the pupils who he felt had been disadvantaged both by his own illness, and the issues they faced as a result of the relief teacher who had been responsible the class while the respondent was ill.
12. Counsel submitted that the respondent has had a long-standing teaching career and this is his first involvement in a disciplinary issue. It has had a major effect upon him and his family including the loss of his job. He has subsequently been reemployed at another school but this has a significant travel component.
13. Counsel submitted that the respondent has been completely open and honest in his dealings with his new principal who is aware of the issues. The respondent has support in the new school environment.
14. Counsel also acknowledged the CAC's submissions in relation to penalty and accepted that, if imposed, the proposed orders would be appropriate. He advises that the respondent believes he can comply with the requirements.
15. The respondent no longer wishes to pursue an application for permanent name suppression, and acknowledges that the embarrassment that may be caused to him by publication of the decision is part of accepting responsibility for his actions.

### **Decision**

16. The Tribunal finds serious misconduct established. While the respondent has conceded the matter amounts to serious misconduct, the Tribunal must nevertheless reach its own conclusions. It agrees with the CAC that there have been adverse consequences for students so their well-being or learning has been adversely affected. It also agrees that this conduct reflects adversely on the respondent's fitness to be a teacher, given the central importance of the need for integrity in student

assessment. For similar reasons the conduct brings the teaching profession into disrepute and has the potential to undermine public confidence in the profession. And it is of a sufficient severity and character as to meet the criteria for reporting serious misconduct.

17. Placing the respondent's conduct against the conduct that occurred in the decisions cited by the CAC (referred above) this conduct cannot be regarded as being at the lowest end of the scale of serious misconduct, given the vital importance of integrity in awarding credits to students and in administering the New Zealand qualifications system.
18. On the other hand the Tribunal accepts that this was not dishonest conduct at the most serious end of the spectrum. The CAC submitted, and the Tribunal accepts, that it related to a single unit standard and cannot be said to form part of a pattern of behaviour. Neither was there any forging of another teacher's signature or anything of that nature. The context of having been off work for a period to receive cancer treatment, and concern for the educational well-being of students, is noted by the Tribunal.
19. The Tribunal has sympathy for the position in which the respondent found himself given the context of his diagnosis with a serious illness, but that cannot excuse a failure to observe the integrity of the qualifications system.
20. The primary purposes of professional disciplinary proceedings are the protection of the public and the maintenance of professional standards. In discharging its responsibilities to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances. It also must seek to apply the least punitive sanction which is appropriate in the particular circumstances. If rehabilitation appears a reasonable possibility that will be a highly relevant consideration. In the present case the respondent is a clear candidate for a rehabilitative approach and the outcomes suggested by the CAC should facilitate that.
21. The Tribunal accepts that it should impose the penalties proposed by the CAC.

### **Orders**

22. The Tribunal orders as follows:
  - (a) the respondent is censured;
  - (b) the register is to be annotated;

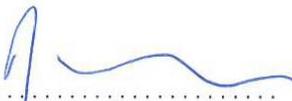
- (c) the respondent is to undergo mentoring by a mentor who has seen a copy of the Tribunal's decision and is approved by the Manager – Professional Responsibility, Teaching Council. The mentor or is required to provide quarterly reports to the Senior Manager – Teacher Practice for a period of 12 months, or such lesser time as is agreed with the Senior Manager- Professional Responsibility;
- (d) the respondent is to undergo an appropriate course covering assessment, moderation, professional boundaries and curriculum planning and delivery within 12 months of the date of this decision;
- (e) the respondent must show a copy of this decision to his current employer and any future employer within the next 2 years following the date of this decision;
- (f) the respondent is not to apply for or accept any principalship or head of Department position or any position with management responsibility for 3 years from the date of this decision.

## **Costs**

- 23. It is appropriate that in a professional disciplinary system the costs of carrying out professional disciplinary procedures be borne at least to a significant extent by teachers who are found to have engaged in professional misconduct, to avoid an inappropriate burden being placed upon the balance of the teaching profession. The Tribunal normally requires teachers found to have engaged in serious misconduct to pay 50% of the costs of both the CAC, and of the Tribunal itself. In situations where the teacher has cooperated with the process and in particular has avoided the need for an in-person hearing by agreeing a summary of facts, the Tribunal will reduce the costs to 40%, and sometimes to a lesser percentage in cases involving proven hardship or other particular circumstances.
- 24. No particular evidence has been provided of financial hardship or inability to pay. The respondent has cooperated with the process.
- 25. The Tribunal orders that the respondent pay 40% of the CAC's actual and reasonable costs. No costs schedule has yet been received from the CAC. In the event that the parties cannot agree the actual and reasonable costs, the Tribunal delegates to the Deputy Chair the task of fixing the amount of those costs.
- 26. The costs of the Tribunal have been submitted in a schedule and are shown as

\$1145. 40% of that sum is \$458 and the respondent is ordered to pay that sum.

**Date:** 30 July 2019



JGH Hannan  
Deputy Chairperson

**NOTICE - Right of Appeal under section 409 of the Education Act 1989**

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. Subsections (3) – (6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.