

IN THE MATTER

of The Education Act 1989

AND

IN THE MATTER

of disciplinary proceedings brought by
the Complaints Assessment Committee
of the New Zealand Teachers Council

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Complainant

AND

[REDACTED]
Respondent

DECISION OF TRIBUNAL

Tribunal:

Kenneth Johnston (Chair)

Megan Cassidy

Susan Ngarium-Goldsmith

Patrick Walsh

David Turnbull

Hearing:

On the papers

Decision:

[] April 2013

Counsel:

Adam Lewis for Complainant

No appearance by or for Respondent

Introduction

The New Zealand Teachers Council's Complaints Assessment Committee refers to the Tribunal the Respondent's convictions on two assault-related charges.

The Notice of Referral which is dated "2011" identifies the reasons for referral in these terms:

"2. Reasons for referral

- 2.1 *The respondent was convicted on 14 December 2010 of two charges of assault, one of which was against a child of approximately 11 years of age, using a weapon (i.e. a pint glass);*
- 2.2 *The respondent was convicted and sentenced to supervision for 12 months on 14 December 2010 with special conditions to attend and complete anger management counselling and any other course or programme directed to the offending, e.g. a parenting course to the satisfaction of the probation officer.*
- 2.3 *The convictions adversely reflect on the respondent's fitness to act as a teacher.*

The Chairman convened pre-hearing telephone conferences on 22 August and 19 December 2011. At the conclusion of the second conference, the matter was set down for hearing and directions were made relating to the filing and service of evidence and synopses of submissions.

Evidence

The Complainant's evidence was in the form of an affidavit made by one of the New Zealand Teachers Council's Case Co-ordinators, Catalina Olmos.

Ms Olmos deposed first as to her position and authority to swear her affidavit on the Complainant's behalf.

She then produced copies of:

- The oral judgement and sentencing notes of District Court Judge Susan Thomas; and
- A certified copy of the relevant Entry in the Criminal Record confirming the Respondent's conviction on charges of assault contrary to section 9 of the Summary Offences Act 1981 and assault contrary to section 202(c) of the Crimes Act 1961 (these involving different incidents in October and November 2009) on which charges she was sentenced to twelve months supervision with a special condition requiring her to attend an complete anger management counselling.

The details of the assaults emerge from the District Court Judge's decision and are conveniently summarised by Mr Lewis in his submissions as follows:

"(a) On 20 October 2009, the Respondent assaulted her son, ... using a pint glass as a weapon, constituting an offence under section 202(c) of the Crimes Act 1061; and

(b) On 2 November 2009, the Respondent assaulted ... pursuant to section 9 of the Summary Offences Act 1981."

The Respondent pleaded guilty to the Summary Offences Act assault and not guilty to the Crimes Act assault. She also pleaded not guilty to other charges, and a defended hearing was held on 13 December 2010.

In his submissions Mr Lewis submitted first that the convictions all fell within the mandatory reporting requirement because the Respondent was convicted of offences punishable by imprisonment of 3 months or more.

He then went on to remind us that whilst, in the case of a referral such as this, it is unnecessary for the Tribunal to reach a finding of serious misconduct before the imposition of a penalty, the Tribunal has accepted (see NZTDT 2005/1) that, before it can exercise any of the powers conferred on it by s.139AW of the Education Act 1989, it is necessary first to reach an adverse finding.

Mr Lewis's submission was that in this case the Tribunal could reach an adverse finding. In relation to this submission he referred us to aspects of the District Court Judge's decision. As to this, in *Complaints Assessments Committee v S* (unreported) District Court, Auckland District Court Judge M-E Sharpe, 4 December 2008, the District Court appears to have held that a Judge's observations as to the factual background made in sentencing notes can be regarded as evidence.

A curiosity of that case was that the Judge's observations on which the Complaints Assessment Committee relied were made without hearing the full case. Nevertheless, in this case, a plea of not guilty was entered to one of the charges and the District Court Judge heard and determined a number of charges. The Tribunal has no difficulty in those circumstances in having regard to the District Court Judge's factual findings.

We have reviewed the District Court Judges decision in detail and accept that these findings justify us in reaching an adverse conclusion in relation to both of the convictions.

Mr Lewis's concluding submission on this point was as follows:

16. *It is submitted that the respondent's actions reflect adversely on her fitness to be a teacher, and were of a character and severity that meets the Council's criteria for reporting serious misconduct. Although not determinative, the convictions will breach Rule 9(1)(a) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (see NZTDT 2008/16).*
17. *The conduct breaches NZTC code of ethics as well, by failing to honour the expectation that teachers have a commitment to the public to prepare students for life in society in the broader sense. In discharging that obligation, teachers must (3)(c) "strive to teach and model positive values widely accepted in society and encourage learners, to apply them and critically appreciate their significance" (see NZTDT 2006/09) (emphasis added).*

We agree.

As to penalty, Mr Lewis reminded us of the primary purposes of disciplinary proceedings, those being the protection of the public, the maintenance of professional standards and punishment (bearing in mind that the punishment must reflect the conduct and that where appropriate rehabilitation must be considered). He then referred us to two recent decisions (NZTDT 2006/6 and NZTDT 2011/12), both of which involved teachers who had been convicted of assault on children in which the Tribunal ordered the cancellation of the teacher's registration.

Finally, Mr Lewis observed that the Respondent had taken no part in the CAC's investigative process.

Service

Service is an issue in this case because as far as the Tribunal is aware the Respondent has not responded to the CAC's attempts to serve papers on her. The fact that service is a live issue in this case was drawn to the Complainant's attention in a Memorandum from the Chairman dated 26 October 2012. In response the Complainant filed a further affidavit made by Ms Olmos. Without going into any detail, the Tribunal has reviewed the circumstances and is satisfied that the Respondent has received proper notice of the initiation of this investigation and at all subsequent stages and has elected not to participate in the process.

Discussion

The Respondent has been convicted of serious assaults, one of which involved a school aged child.

In the absence of any explanation whatsoever from the Respondent, the Tribunal takes the view that it would not be discharging its responsibilities to the public and the profession if this Respondent were allowed to maintain her right to teach. That is not to say that there might not be circumstances in which a teacher convicted of a serious assault on a child could not maintain his or her right to teach (though it is certainly difficult to conceive of such circumstances). But the short point here is that no explanatory material has been put forward. In those circumstances, the Tribunal takes the view that "de-registration" is inevitable. In reaching that conclusion we have not been blind to our responsibility to consider all available options, and to arrive at the least punitive outcome consistent with our responsibilities. But, in the end, we take the view that safety of children is paramount and, as we say, in the absence of any explanation whatsoever, we cannot see any other outcome here.

This being a case of the referral of convictions, no costs issues arise.

Decision

The Tribunal's formal decision is as follows:

- (a) Pursuant to S139AW(1)(b) of the Education Act 1989, the Tribunal formally censures the Respondent;
- (b) Pursuant to S139AW(1)(g) the Tribunal orders the cancellation of the Respondent's registration or other right to teach.

Kenneth Johnston
Chairman

NOTICE

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 139AU (2) or 139AW 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) – (7) of section 126 apply to every appeal as if it were an appeal under subsection (1) of section 126.