

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/64

UNDER
WĀHANGA

the Education and Training Act
2020

IN THE MATTER
MŌ TE TAKE

of a criminal conviction referred to
the Tribunal

BETWEEN
I WAENGA I A

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Prosecutor/Referrer | Kaiwhiu

AND
ME

[REDACTED]
Respondent | Kaiurupare

Hearing 13 August 2024 (on the papers)

Representation E McCaughan for the CAC
J Martin for the Respondent

Tribunal T J Mackenzie, L Evans, D Shaver

DECISION OF THE TRIBUNAL

16 October 2024

Introduction

[1] Mr ██████ has been a registered teacher since 2010.

[2] Mr ██████ was also working as a ██████ at licensed premises. In 2022 Mr ██████ was working in that role at a bar in Christchurch. Mr ██████ violently assaulted a patron at the bar. He pleaded guilty to one charge of injuring with intent to injure. That is an offence with a maximum penalty of five years imprisonment.

[3] Mr ██████ was sentenced in the ██████ on ██████¹ He applied for a discharge without conviction. This was refused by the sentencing judge, Judge M Crosbie. Mr ██████ was sentenced to five months of community detention, a fine, a 'stopping violence' course condition, and reparation payable to the victim.

[4] Attached to this decision are the agreed facts for this case, which also attach the agreed facts from the criminal case.

[5] As Mr ██████ was and is a registered teacher, his conviction is now referred to this Tribunal for consideration. We have been provided with agreed facts, incorporating the agreed facts from the criminal case. Both are attached to this decision.

[6] We wish to record at the outset that the purpose of our consideration is not to "punish" Mr ██████ again. That was a matter for the criminal law. Rather our consideration is as to whether the conduct he committed reflects adversely on Mr ██████ as a teacher, and if so whether we should impose any outcomes on Mr ██████. Those outcomes can range from cancellation of registration, to a range of other conditions.

[7] We also note that one of the grounds advanced by Mr ██████ in support of the discharge application in the District Court was that the consequences of a conviction may include de-registration as a teacher, i.e. the process we are now considering. Judge Crosbie did not accept that this was an inevitable consequence, stating:

[37] With respect to the Teachers Registration Council, the Crown takes the view that the Council will look at the assault, regardless of the conviction. The experience of the Court is that the Teaching Council makes an enquiry of the Court for records of charges laid and that can be at any time of the proceeding. The experience of the Court is such that I am not satisfied that de-registration by the Teaching Council would be a direct consequence of a conviction, as the Council will likely look at the matter in any event for itself and assess the offending. It will also likely look at the comments that I have to make as sentencing Judge. In that

¹ R v ██████ [2023] NZDC ██████.

regard, I would like to think that the Teaching Council, when it does look, will see the matters that I have noted in mitigation about your passion for your community, your passion for your roles in the community, your passion for your culture, your passion and dedication to your family and that this offending is a singular fall from grace.

[8] In the event that it may assist those in similar positions in the future, we observe that the presence or not of a conviction is immaterial to the Tribunal in considering the conduct of a teacher. That is because it is the actions and conduct of the teacher that we assess in determining whether they are fit to teach. Whilst mechanically the matter comes to us here as a conviction referral, had Mr ██████ been discharged without conviction then the matter would instead have come to the Tribunal as a charge of serious misconduct. Ultimately in either event we consider the conduct of the teacher and take the same approach to what that conduct means for their professional suitability.

Adverse finding

[9] Mr ██████ agrees with the CAC that his conduct justifies an adverse finding being made by the Tribunal.

[10] We also agree. This conduct would easily meet the serious misconduct tests if charged as such. We find that the conduct and conviction reflect adversely on Mr ██████ fitness to teach.

Outcome

[11] The parties are also in agreement as to outcome. The suggested course is a censure, annotation of the register for two years, and a condition to provide any teaching employer of this decision for a period of two years.

[12] We have considered various information which Mr ██████ has put before us. He has completed his sentence, and the stopping violence course that came with it. He has also completed a further related course voluntarily. He has paid the \$3500 reparation to the victim. Mr ██████ has the support of his teaching employer who he has kept updated as to this case.

[13] We have also reviewed Mr ██████ own statement to us and his overall response to his conduct.

[14] In total we consider that Mr ██████ has taken responsibility for his actions. That being said however, they remain at the more serious end of the scale for the type of convictions that a teacher might incur, particularly when wishing to continue in their teaching career.

[15] On the facts of the conviction alone, cancellation of registration may have been the outcome. However when all of the facts relating to Mr ██████ are taken into account, we are prepared to step back from that.

[16] We will impose the conditions that the parties suggested, save for one

amendment and one addition. The conditions will be:

1. Mr [REDACTED] is censured.
2. The Register is annotated for a period of three years.
3. A condition will be entered on Mr [REDACTED] practicing certificate that Mr [REDACTED] must provide this decision to his current teaching employer and any future other/new teaching employer for a period of three years.

Non Publication

[17] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[18] The conduct that we are dealing with does not involve a teaching matter. [REDACTED] We consider that this outweighs the public interest in open reporting in this case. We will make an order prohibiting from publication [REDACTED]' identity and any information which may lead to his identification. This will need to include the name of the school he works at and the name of the bar where the incident occurred. The reasons for non-publication will also be subject to this order.



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

IN THE MATTER OF

the Education Act 1989

AND

IN THE MATTER OF

an inquiry by the New Zealand Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand into the convictions of [REDACTED], of [REDACTED] Teacher (Registration No. [REDACTED]).

SUMMARY OF FACTS

Introduction

- 1 Mr [REDACTED] has been a fully registered teacher since 2010.¹ At the time of the offending discussed below, Mr [REDACTED] was working as a relief teacher at a high school in [REDACTED]
- 2 Mr [REDACTED] is currently employed as a permanent teacher at the same high school.
- 3 Mr [REDACTED]'s practising certificate expires on 12 December 2026.

The offending

- 4 On 7 March 2023 Mr [REDACTED] was sentenced to 5 months' community detention and 9 months' supervision after pleading guilty to the following charge:
 - (a) Injuring with intent to injure (pursuant to s 189(2) Crimes Act 1961 – maximum penalty 5 years' imprisonment).
- 5 Mr [REDACTED] was also ordered to pay \$3,500 in emotional harm payments, and \$1,000 in reparation.
- 6 A copy of the Police Summary of Facts which Mr [REDACTED] accepted as part of his guilty plea is attached, and forms part of this Summary of Facts.
- 7 Prior to sentencing Mr [REDACTED] attended a programme at He Waka Tapu, which involved 10 different sessions, each lasting more than 2 hours.²
- 8 The sentencing Judge's notes are attached, and also form part of this Summary of Facts. The sentencing Judge stated:

¹ Mr [REDACTED] was first provisionally registered on 11 May 2005.

² According to Mr [REDACTED] Certificate of Attendance, the programme included sessions with the following names – "The Rubbish Bin/Managing Emotions/Relationships Skills/Boundaries/Impact on Others/Mindfulness/Effective Communication/The Waka Korero/Te Whare Tapa Wha, and Core Beliefs/Values."

I first refer to the facts. The summary of facts says that you are heavily involved in mixed martial arts. You have been fighting and coaching for over 20 years.

At 1 am on Sunday 5 June 2022, the victim was in the ██████████ bar on Hereford Street. You work there employed by ██████████ to be a ██████████, or a ██████████ is the more colloquial term.

An unrelated fight broke out that you became involved in and you attempted to control one of the males involved in the fight. The victim involved himself and in an attempt to break up the fight, grabbed you and removed you from the fight, not knowing that you were working ██████████. As soon as he realised that you were in security he released you, held his hands up in the air and apologised. You asked him to leave. This took around three minutes. He attempted to finish his drink and he waited for his wife and friends to collect their belongings.

As he left he turned and talked to you. Without physical provocation you punched him in the face causing him to stumble backwards. You continued to punch him 16 times, all aimed at his face and head.

During the assault the victim put his hands in the air and around his head to protect himself. He eventually fell over where he covered his head and body with his arms. You grabbed him by the collar and attempted to drag him out of the bar. You stopped that and put the victim in an arm lock continuing to manhandle him, putting him in arm lock and head lock to get him out of the bar.

When he was brought to the top of the stairwell, the victim grabbed the banister to stop himself being dragged down the stairs. You grabbed him by the face from behind, pulled him to the ground where he was put in another arm restraint and the assault ended when the head of ██████████ security intervened and took the victim outside.

He suffered a laceration to his right eyelid and painful eye movement. He has had blurry vision since the attack. He has been unable to work. There is a victim impact statement detailing the injuries. He was 49 at the time and a truck driver. We know that he was out with his wife and others. He says the physical injuries were to the right eye, including a corneal abrasion and mydriasis, ongoing issues with blurred vision and double vision.

...

You have no previous criminal history of any kind.

...

You say in your affidavit that: "[t]he manner of the assault was a martial arts technique used to disorient a person and was used to assist in ejecting". It is submitted that the nature of the technique means that injury was likely, but that it was not gratuitous and nor was serious injury intended.

I have some difficulty accepting that submission because I have watched the video. As the summary itself points out, there was an earlier altercation. A period of time had passed. The victim was, at the time that you engaged with him, no threat to you - no threat at all. Watching the manner in which the assault occurred, particularly given the knowledge of your martial arts background and considerable expertise, it appears to me that the force was completely over the top and gratuitous.

...

[Mr [REDACTED] lawyer] submits that the actions, while violent, were not sufficiently serious to be regarded as extreme. I disagree. I believe, again from having seen the CCTV footage and the overall context, that there were a number of forceful punches and an undeniably significant effect on the victim. I also form the view that the degree and the force (again given because of your expertise but also because of other security being around) was gratuitous given the lack of provocation and several people asking you to stop. I accept that the violence was not at the most extreme end and that it was probably at the lower to moderate end of that classification. Again context is important, given the overall circumstances and your expertise.

...

I accept that to the extent there was pre-meditation. It must have been fleeting, however I come back to your position being an expert and trained in the martial arts. You knew and must have known that what you were doing would likely mean a not insignificant outcome for the victim - including that an injury was likely and that there were other options. Again, viewing the CCTV it is clear that there was no imminent threat to anyone. Rather than pre-meditated, perhaps "controlled and calculated" would be a better phrase.

...

I have also considered specific mitigating factors that decrease the gravity. They include your guilty plea. They include your full and frank responsibility for your actions. Despite what the victim says, as is his right, I believe that you have shown genuine remorse. In my view you appear to fully appreciate the serious implications of your actions. A further matter is that your conduct after the offending has included an offer to attend restorative justice and there is the previous good character. You are community minded. There is that education and cultural background and lack of criminal history. So overall those factors make my overall assessment of the offending as moderate.

...

With respect to the Teachers Registration Council, the Crown takes the view that the Council will look at the assault, regardless of the conviction. The experience of the Court is that the Teaching Council makes an enquiry of the Court for records of charges laid and that can be at any time of the proceeding. The experience of the Court is such that I am not satisfied that de-registration by the Teaching Council would be a direct consequence of a conviction, as the Council will likely look at the matter in any event for itself and assess the offending. It will also

likely look at the comments that I have to make as sentencing Judge. In that regard, I would like to think that the Teaching Council, when it does look, will see the matters that I have noted in mitigation about your passion for your community, your passion for your roles in the community, your passion for your culture, your passion and dedication to your family and that this offending is a singular fall from grace.

I have thought long and hard about the matter. On the one hand the Court should take a strong stance against serious violence and excessive use of violence on licensed premises, particularly by a person skilled in the use of force. On the other hand, I need to acknowledge and take into account a number of significant mitigating factors and consider the impact of a conviction on you.

Ultimately I am not satisfied the consequences of conviction on you outweigh the seriousness of the offending. I regard the assault as a serious one that occurred in a professional role where you had further and extensive training in martial arts. I do regard it overall as gratuitous and believe that there is a need for general deterrence. So I decline to grant the application.

...

I propose to adopt an overall starting point in excess of two years of two years and six months. The Crown believes the discount for plea should be less than the 20 percent advanced by Mr Brown for plea. The Crown says 15 percent. The Court is entitled to take a nuanced approach. I think in your case it lies somewhere between 15 and 20 percent. However, it is the other mitigating factors that account for more in this case, including: the expressions of remorse; the lack of previous convictions; and the way in which you have led your life until this point. I believe that you are entitled to discounts of 45 if not 50 per cent. That means that I am significantly below the point at which I can impose a non-custodial sentence. The Crown says that it is not opposed to home detention.

So I am going to sentence you to community detention. That is going to be for a period of five months with a daily curfew from 8 pm to 7 am. I am also going to put you on supervision for nine months and you will undertake a Stopping Violence programme and such treatment, counselling, programme or intervention as may be directed.

I should have said that the other reason that I got to 50 per cent was your offer to make amends through an emotional harm payment and reparation. The emotional harm payment directed is \$3,500 and I am going to fix a reparation figure of \$1,000.

Report to Teaching Council

9 On 14 March 2023 Mr [REDACTED] self-reported his conviction to the Teaching Council.

CAC meeting

- 10 The CAC met to consider the matter on 24 August 2023. Mr [REDACTED] attended the meeting and was supported by the Principal of his high school.
- 11 At the CAC meeting, Mr [REDACTED] was asked how he thought students and whānau would react if they heard about the incident. Mr [REDACTED] responded that those who were aware of the situation had been supportive and understanding that he had been put in a difficult situation. Mr [REDACTED] said that he believed that students have full trust and faith in him, and he believed that they would trust that he handled a difficult situation as best as he could have.
- 12 The CAC put to Mr [REDACTED] that his martial arts training indicated a level of control and asked him what it was that meant that he did not have control on that night. Mr [REDACTED] explained the circumstances leading up to the incident and said that he feared for his life as he was attacked. After he was attacked, he thought he would be attacked again. He said that on reflection, a second guard came up about 30 seconds after he threw his first strikes, and if he had waited, it could have all been avoided. Mr [REDACTED] was asked if he was in control in the moment and he responded that he was acting in fear.
- 13 Given the nature and circumstances of the offending, the CAC considered it appropriate to refer the conviction to the Tribunal.

On behalf of the respondent:



Jo Martin

Date: 15 March 2024

On behalf of the CAC:



Evan McCaughan

Date: 18 March 2024

CROWN SUMMARY OF FACTS

CROWN v [REDACTED]

DOB: 12/12/1981

PRN: 45589618

CHARGES: Injuring with intent to injure
Crimes Act 1961, Section 189(2)
Maximum penalty: 5 years imprisonment

INTRODUCTION

The defendant, [REDACTED], is heavily involved in mixed martial arts where he has been fighting and coaching for over 20 years.

CIRCUMSTANCES

At about 1.00am on Sunday 5 June 2022, the victim was in the [REDACTED] bar on Hereford St, [REDACTED].

The defendant was also in [REDACTED]. He was employed by [REDACTED] Services to be a [REDACTED].

An unrelated fight broke out that the defendant became involved in and attempted to control one of the males involved in the fight.

The victim involved himself and, in an attempt to break up the fight, grabbed the defendant and removed him from the fight. The victim did not know the defendant was a bouncer.

As soon as the victim realised the male he grabbed was a [REDACTED] he released him and held his hands up in the air and apologised.

The defendant asked the victim to leave the bar. This took around three minutes, with the victim attempting to finish his drink and waiting for his wife and friends to collect their belongings.

As the victim left, he turned and talked to the defendant.

Without physical provocation the defendant punched the victim in the face, causing the victim to stumble backwards. The defendant continued to punch the victim 16 times, all aimed at the victim's face and head.

During this assault, the victim put up his hands in the air and around his head to protect himself.

The victim eventually fell over, where he covered his head and body with his arms.

The defendant grabbed the victim by the collar and attempted to drag him out of the bar.

He stopped this and put the victim in an arm lock.

The defendant continued to manhandle the victim, putting him in an arm lock and head lock to get him out of the bar.

When the victim was brought to the top of stairwell, he grabbed the banister to stop himself being dragged down the steep stairs. The defendant grabbed the victim by the face from behind and pulled him to the ground, where he was put in another arm restraint.

The assault only ended when the head of [REDACTED] security intervened and took the victim outside.

INJURIES TO VICTIM

The victim suffered a laceration to his right eyelid, and painful eye movement. He has had blurry vision since the attack and has been unable to work.

DEFENDANT COMMENTS

In a DVD interview, the defendant stated that he feared for his life after being attacked from behind, so he used the minimum amount of force to remove the subject's strength. The defendant said he thought he heard a threat from the victim to "fuck him up".

The defendant has not previously appeared before the Court.