

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2016/24C**

**IN THE MATTER** of the Education Act 1989

**AND**

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

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

**AND** **PETER WITANA**

**Respondent**

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**DECISION ON COSTS**

**DATE: 19 JUNE 2017**

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**Tribunal:** Theo Baker (Chair)

**Representation:** Ms R Scott for the Complaints Assessment Committee

Ms J Andrews for the respondent

1. In a decision dated 30 January 2017, the Tribunal found that a charge of serious misconduct against the respondent was made out, and orders were made as to penalty and costs. The respondent was ordered to pay 50% of the costs of the hearing under s404(1)(i). These were to be considered alongside the Tribunal's costs. The Tribunal delegated to the Chairperson the power to make orders as to costs.
2. In accordance with directions, the CAC submitted and served a schedule of costs totalling \$12,918.29, and for the Tribunal, the Secretary submitted a schedule of \$6,767. The total amount is therefore \$19,685.29, half of which is \$9,842.65.
3. For the respondent, Ms Andrews seeks a reduction of 50% on the basis of:
  - a) The respondent's financial circumstances
  - b) The CAC's failure to prove all the particulars.
4. Ms Andrews provided an affidavit of means from the respondent. As a result of losing his position as principal, his income reduced significantly over the previous 52 weeks. He had to sell two investment properties he had bought. He derived income from relief teaching, and from a superannuation payment. He has three loans totalling \$25,000. He has two cars, one of which is security for loan. He has had to borrow money from a friend to prevent repossession. He has recently had to cancel his insurances and has had his phone and internet disconnected.
5. Ms Andrews advises that seven of his ten children live at home. It is implied that they are dependent on him. She also says the respondent now has a teaching position and more regular income.
6. Ms Andrews referred to two cases where costs were reduced because of impecuniosity: *CAC v Allen*<sup>1</sup> and *CAC v Rangihau*.<sup>2</sup>
7. The respondent's second ground for reduction of costs was because not all the sub-particulars were proven.
8. Ms Andrews says that the first particular (*Viewed, accessed or possessed pornographic material on his School computer/computers, namely 1,522 inappropriate pictures or video attached or embedded inside 245 emails in Mr Witana's email account*) was proven and the respondent accepted it was serious misconduct.

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<sup>1</sup> 2015/24C

<sup>2</sup> 2016/18C

9. Although this statement is accurate, it overlooks the fact that the respondent did not acknowledge how offensive this material was until his evidence was led. Had the respondent and his representative made this concession earlier, the CAC's preparation costs would have been lower. In particular it would not have needed to collated spreadsheets and make arrangements for the Tribunal to view prior to the hearing. The Tribunal has already found that the description of these images as "raunchy" was not accurate.
10. Because the Tribunal did not uphold all the sub-particulars of the financial matters, Ms Andrews submits that because only 3 out of 6 particulars were upheld, only 25% of costs should be awarded.
11. There were two particulars:
  - 3.1 *Viewed, accessed or possessed pornographic material on his School computer/computers, namely 1,522 inappropriate pictures or video attached or embedded inside 245 emails in Mr Witana's email account;*
  - 3.2 *Exercised inappropriate financial practices for the day-to-day management of the School's finances by:*
12. Particular 3.2 was further particularised to provide examples. Particular 3.1 was upheld. Although three sub-particulars of particular 3.2 were not upheld, the Tribunal found that the respondent had exercised inappropriate financial practices for the day-to-day management in two respects. Particular 3.2 was therefore upheld.
13. Ms Andrews submitted that the Tribunal should send a message to the CAC that its particulars should be supported by robust evidence. This submission would have more weight if the Tribunal's conclusions about the evidence were based on the respondent's arguments at hearing.
14. The Tribunal's order for costs of 50% was based on its findings.
15. The respondent's financial circumstances are relevant to this determination. It is evident that he does have debt and that his drop in income would have had a significant impact on his ability to meet his day to day commitments. The CAC costs seem reasonable. Taking into account the respondent's means, I will reduce the proportion payable to 40%.

16. Therefore the order made in the decision of 30 January 2017 is varied and the respondent is ordered to pay costs of \$5,167.20 under s404(1)(h) and \$2,706.80 under s404(1)(i) of the Education Act 1989, making a total of \$7,874.



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Theodora Baker

Chair