



EDUCATION COUNCIL
NEW ZEALAND | Mātātū Aotearoa

Complaints Assessment Committee (CAC) v Teacher B

NZ Disciplinary Tribunal Decision 2017/35

Teacher B, a registered teacher, was convicted in 2016 for drink driving while holding a zero-alcohol licence.

Police recorded a breath alcohol level of 943 mcg/litre of breath after Teacher B drove into the back of a parked car. Teacher B had two previous convictions from 2012 for drink driving and operating a motor vehicle carelessly.

The Education Council's Complaints Assessment Committee (CAC) investigated and referred the matter to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

The Tribunal considered Teacher B's history and stated "we must be satisfied that the circumstances of the behaviour that resulted in the conviction reflects adversely on the fitness of the respondent to practise as a teacher."

In determining penalty, the Tribunal took into account the three convictions and the fact that the teacher's driving was such that it caused damage to another person's vehicle. The Tribunal also noted that this teacher admitted that she had an alcohol dependency and was undergoing treatment and receiving medication to assist with this. The Tribunal also noted that the teacher had kept her principal informed, regained her driver's licence, attended a safe driving programme and was engaging in counselling.

Evidence was also provided that this teacher had remained sober for two years. The Tribunal was satisfied that the teacher had shown insight into her relationship with alcohol and had obtained specialist support to keep her safe.

Given these factors, the Tribunal considered a rehabilitative approach was appropriate, and censured the teacher with conditions for two years, including that she must inform current and future employers of her conviction and hearing proceedings. She must also provide four reports on her status at alcohol support programmes.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2017-35

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 **Teacher B**
Respondent

TRIBUNAL DECISION

25 JUNE 2018

HEARING: Held on 23 April 2018

TRIBUNAL: Theo Baker (Chair)
Patrick Walsh and Stuart King (members)

REPRESENTATION: Ms Mok for the Complaints Assessment Committee
Ms J Andrews for the respondent

Introduction

1. The Complaints Assessment Committee (CAC) has referred to the Tribunal the respondent's conviction for driving a motor vehicle while her breath alcohol level was 943 mcgs/litre of breath, when she was the holder of a zero alcohol licence.
2. The Tribunal heard the matter on 23 April 2018. On the same day as hearing this referral, we considered a referral of an EBA conviction for another teacher. Three similar referrals were also heard on 17 April 2018. Counsel for the CAC helpfully prepared a thorough review of the Tribunal's decisions on these types of referrals and this was presented for all five hearings. A Deputy Chair presided over the 17 April hearings and the Chair for the 23 April hearings. The two panel members were the same for all five hearings.
3. The evidence in support of the charge was contained in a Summary of Facts, signed on behalf of each party. The essence is that on 16 June 2016 the respondent pleaded guilty and was convicted of driving a motor vehicle while her breath alcohol level was 943 mcgs/litre of breath, when she was the holder of a zero alcohol licence and also of operating a motor vehicle carelessly. The respondent was sentenced to six months community detention, 100 hours community work, and twelve months supervision. The respondent also received an indefinite disqualification from driving.
4. The basis for the referral of this matter is therefore established. The issues for the Tribunal to determine are whether this referral warrants the exercise of any of our disciplinary powers under s 405 of the Education Act 1989 (**the Act**), and if so, an appropriate penalty. The respondent has also applied for name suppression.

Factual matters

5. According to the Police Summary of Facts, on 4 March 2016 at about 9.15pm the respondent drove into the back of a parked vehicle. The Police were called and when spoken to, the respondent showed signs of recent alcohol consumption. Evidential breath testing returned a positive reading of 943 mcg of alcohol per litre of breath.
6. In the Summary of Facts signed by the parties, we were told that the respondent has a previous conviction for driving with excess blood alcohol and a conviction for operating a motor vehicle carelessly in 2012. That matter was dealt with by the Complaints Assessment in 2013. In that instance, the CAC resolved to take no further action.
7. In April 2013 the respondent was charged with driving with excess breath alcohol.

According to this Summary of facts, in November 2013 she was discharged without conviction but was disqualified from driving and she subsequently received a zero alcohol licence. Because there was no conviction, this matter was not referred to the Complaints Assessment Committee. This account contrasts with the statements in the Police Summary of Facts, which states that the respondent was convicted in November 2013. We are unsure of the intricacies of the Transport Act which might allow a disqualification to be imposed in the absence of a conviction, but in any event, that offending was not considered by a Complaints Assessment Committee at the time.

8. The respondent is a registered teacher with a full practising certificate. She is working at a special school for children and young people with intellectual disabilities and/or complex special needs. She advised her employer, who has supported her throughout the Committee process. Her principal said that she had never seen the respondent drunk at school. She also said that she knows the school, relates well to the students and understands them; and that she works well with the support staff.
9. The respondent cooperated with the Complaints Assessment Committee, and appeared before it to apologise for her conduct. She provided evidence to confirm that she is alcohol dependant and has taken steps to deal with her alcohol addiction.

General legal principles

10. The Tribunal had the benefit of comprehensive submissions from the CAC on the general principles that the Tribunal has applied in its approach to referrals of EBA convictions. These were before the Tribunal for all five cases. We set the submissions out in full in another decision, *CAC v Fuli-Makaua*, NZTDT 2017/14 dated 5 June 2018.

The present case

Joint submissions

11. The parties filed a joint memorandum on the nature of the conduct, penalty, names suppression and costs.
12. The CAC referred the matter to the Tribunal on the basis of a conviction that requires an adverse finding, rather than as a charge of serious misconduct. In *CAC v Bird*, the Tribunal affirmed that a referral to the Tribunal does not need to be framed as a charge of serious misconduct, but that the Tribunal needs to reach an adverse finding as to the respondent's fitness to practise as a teacher before exercising its power to impose

orders under s 404 of the Act.¹ In *CAC v Lyndon*,² we noted that our function is to decide if the conduct reflects adversely on his or her fitness to teach, and so assessment against the “serious misconduct yardstick” may be a useful tool in determining whether an adverse finding is warranted.

13. The respondent did not dispute that she engaged in conduct that warrants an adverse finding.
14. The CAC noted the Tribunal’s decision in *NZTDT 2011/16*, where the Tribunal accepted that, depending on the circumstances of the individual case, even one conviction for a serious driving offence may call into question a professional person’s fitness to practise (s 378(a)(ii)), and that a series of convictions will certainly do so.³ Such conduct may also bring the teaching profession into disrepute (s 378(a)(iii)). Similarly, in *CAC v Reriti*, the Tribunal held that, although a conviction for a drink driving offence may not justify an adverse finding, where the conviction is against a background of a number of previous offences, an adverse conclusion will be warranted.⁴
15. The CAC noted that the respondent has a history of similar conduct, and that the respondent’s most recent convictions involved a high level of alcohol (while on a zero alcohol licence) and careless driving, carrying a potential risk to members of the public. Such conduct brings the teaching profession into disrepute and therefore reflects adversely on the respondent’s fitness to practice.
16. The parties agreed that a penalty with a rehabilitative focus was appropriate in the circumstances given that:
 - the respondent’s alcohol issues do not appear to have impacted on her professional life to date;
 - the respondent has cooperated with the Committee to date, and has apologised for her conduct;
 - the respondent has taken steps to address her alcoholism, has abstained from alcohol for approximately two years, and has the support of her employer.

¹ *CAC v Bird* 2017-5, 22 June 2017; *CAC v S Auckland DC CIV-2008-00400-1547*, 4 December 2008. See also *NZTDT 2005/01*, 4 November 2005.

² At [18].

³ *NZTDT 2011/16*, 21 July 2011.

⁴ *NZTDT 2014/19*, 26 August 2014.

17. Such an approach has been taken in previous cases involving similar conduct.⁵
18. Accordingly, the parties agreed that the following orders are appropriate in the present case:
- Censure;⁶
 - A requirement for the respondent to inform current and future employers of her conviction and these proceedings for two years;⁷
 - A requirement for the respondent to provide regular reports on her status at alcohol support programmes to the Education Council for two years;⁸ and
 - Annotation of the respondent's conviction on the Register for a period of two years.⁹

Adverse finding

19. We are grateful for the full submissions provided by the CAC. We acknowledge that the purpose of the Tribunal exercising its disciplinary powers in respect of a conviction is, of course, not to punish the teacher a second time.¹⁰
20. Disciplinary proceedings aim to protect the public through the provision of a safe learning environment for students and maintaining professional standards and the public's confidence in the profession.¹¹ This, as the Tribunal held in *CAC v Bird*, is achieved through holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required.¹²
21. As noted above, before exercising our disciplinary powers under s 404 of the Act, we must be satisfied that the circumstances of the behaviour that resulted in the conviction reflects adversely on the fitness of the respondent to practise as a teacher. We should be careful that in using the serious misconduct test as guidance, we do not limit ourselves in our disciplinary response. The wording of s 404 does not require a finding

⁵ See for example NZTDT 2013/46, 19 September 2013; NZTDT 2013/31, 8 July 2013; NZTDT 2013/56, 24 October 2013; *CAC v Campbell*, 3 October 2016.

⁶ Education Act 1989, s 404(1)(b).

⁷ Education Act 1989, s 404(1)(c).

⁸ Education Act 1989, s 404(1)(c).

⁹ Education Act 1989, s 404(1)(e).

¹⁰ *Ziderman v General Dental Council* [1976] 1 WLR 330; *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 ; *CAC v Campbell* at [15]; *CAC v White* NZTDT2017/29, 28 November 2017 at [19]; *CAC v Korau* NZTDT2017/17 26 August 2017 at [13].

¹¹ *CAC v McMillan* at [23] and *CAC v White* at [19]; *CAC v Korau* NZTDT2017/17 26 August 2017 at [13].

¹² *CAC v Bird* NZTDT2017/5, 3 July 2017 at [32].

of serious misconduct in order to impose a penalty. We simply must hear a “charge of serious misconduct or any matter referred to it by the Complaints Assessment Committee”.

22. Between 2012 and 2016 the respondent has appeared in court on three occasions facing charges of drink driving. On the most recent occasion, her breath alcohol reading was well above the legal limit of 250mcg/l, and she was on a zero alcohol licence. Her driving also caused damage to a parked vehicle. We are satisfied that such a history reflects adversely on her fitness to be a teacher and bring the teaching profession into disrepute. We have no doubt that we should make an adverse finding and exercise our disciplinary powers.

Penalty

23. We consider the respondent’s three drink driving appearances as well as her poor driving in 2016 put her registration at risk. It is fortunate that no one was injured. On the same day as we heard this case, we decided to cancel the registration of another teacher¹³ who had been convicted three times for drink driving between 2015 and 2017 and once for driving whilst disqualified in 2017. However, there are factors in the present case that persuade us that the respondent should retain her registration.
24. We were assisted by information provided by the respondent in support of her application of non-publication of her name. In an affidavit sworn in November 2017, the respondent told us that she knew she was dependent on alcohol. She first got help following her first conviction. She told us about the circumstances that led to her relapses. She has since re-engaged with Care NZ¹⁴ and AA. Because of the stress of the disciplinary proceedings, she requested an appointment for psychotherapy through Care NZ and had visited her doctor and got a prescription for Antabuse to prevent herself from drinking.
25. The respondent has kept her principal fully informed of all proceedings. She has recently regained her licence, having provided evidence of her healthy liver, as well as completing the practical and written test.
26. In a letter dated 29 August 2016 from Care NZ, a psychotherapist confirmed that the respondent had re-engaged with their service in April 2016 when she presented for a

¹³ CAC v Fuli-Makaua

¹⁴ An Alcohol and Drug addiction service.

reassessment. She had repeated the “Driving Forward” programme and met for five individual counselling sessions. She was described as committed to abstinence.

27. A further letter from this psychotherapist in 15 March 2017 confirmed that the respondent is physiologically dependent on alcohol and that she shows understanding of her risk factors. In a letter dated 14 February 2018, a clinician from Care NZ confirmed that the respondent had taken full responsibility for her actions and that she had been sober for two years.¹⁵
28. In summary the respondent has shown insight into her relationship with alcohol. She recognises that she is unable to drink. She has identified the factors that led to her relapse and has obtained appropriate specialist support including medication to help her with her commitment to remain alcohol-free. In her affidavit she provided an account of the stressors in her life which we acknowledge were significant. We consider this case has similar characteristics to *CAC v Campbell* NZTDT 2016-35.
29. We are satisfied that the proposed penalty is suitable. One proposed condition is that the respondent should provide “regular” reports on her status at alcohol support programmes. We have stipulated that there should be four reports over a two-year period.
30. We therefore impose the following penalty:
- 30.1 The respondent is censured under s 404(1)(b).
- 30.2 Under s 404(1)(c) the following conditions are placed on the respondent’s annual practising certificate for a period of two years:
- a) The respondent must inform current and future employers of her conviction and these proceedings.
 - b) The respondent must provide four reports at regular intervals to the Education Council on her status at alcohol support programmes, the first report to be provided by 30 September 2018.
- 30.3 Under s 404(1)(e) the register is to be annotated for a period of two years.

Non-publication orders

31. The respondent has applied for an order “permanently prohibiting publication of her name and identifying details such as the name of the school that she is a teacher at”.

¹⁵ On our calculations, her period of abstinence was shy of two years at that point, but we acknowledge that it appeared to have lasted 22 months.

The application is made under r 32(1)(c) of the New Zealand Teachers Council (Conduct) Rules 2004.

32. We are not sure that these rules apply. According to the joint memorandum the respondent was convicted on 16 June 2016, and the respondent's convictions were referred under s 397 of the Act. It therefore seems that the Education Council Rules 2016 and s 405(3) are the relevant provisions. We note that the cases referred to are those that apply the test in s 405(3).
33. Section 405(3) provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:
- (6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:*
- (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:*
- (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:*
- (c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*
34. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the school, as well as the public interest. If we think it is proper, we may make such an order.
35. The ground for the application is that publication of the respondent's name could adversely affect her rehabilitation and recovery from alcohol dependence. We were assisted by an affidavit and letter from the respondent along with the letters from Care NZ as outlined above. The respondent's clinician highlighted that publication will be detrimental and potentially be a catalyst for a relapse. The respondent's career and reputation are primary motivators for her recovery.
36. The respondent set out the factors which had led to her relapses. These are best summarised as [REDACTED] [REDACTED]

arises out of a report under s 397. Therefore no costs are ordered.



Theo Baker

Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).