

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL  
I TE RŌPŪ WHAKARAUPAPA O AOTEAROA

NZTDT 2024-30

UNDER | WĀHANGA

the Education and Training Act 2020  
(the Act)

IN THE MATTER | MŌ TE TAKE

of a charge referred to the Tribunal

BETWEEN | I WAENGA I A

COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)

Kaiwhiu | Prosecutor

AND | ME

JASON FORREST WILCOX  
Kaiurupare | Respondent

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TE WHAKATAUNGA Ā TARAIPUNARA DECISION OF  
TRIBUNAL ON CHARGES

5 May 2025

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NOHOANGA - HEARING:

Held on 14 April 2025 (on the papers)

TARAIPUNARA - TRIBUNAL:

B R Arapere (Deputy Chair), R Brown and  
M Johnson (Members)

HEI MĀNGAI - REPRESENTATION:

M Purcell, Meredith Connell, for the CAC  
E Tait, Barrister, for the Respondent

## **Hei Timatanga Kōrero – Introduction**

[1] Pursuant to s 497(5) of the Education and Training Act 2020 (the Act) the Complaints Assessment Committee (CAC) has determined to refer Jason Forrest Wilcox, registered teacher, to the Tribunal in respect of his 13 October 2023 conviction for the offence of driving with excess breath alcohol (3<sup>rd</sup> or subsequent).<sup>1</sup>

## **Ko te Hātepe Ture o tonono nei – Procedural History**

[2] A pre-hearing conference (PHC) was held on 16 October 2024 before the Chairperson of the Tribunal and various timetabling and other orders were subsequently issued.

[3] Before the hearing, the parties conferred and submitted an Agreed Summary of Facts (ASoF), signed by the respondent and counsel for the CAC.

## **Kōrero Taunaki - Evidence**

### ***Agreed Summary of Facts***

[4] The ASoF is set out below<sup>2</sup>:

#### ***Introduction***

*1. Jason Forrest Wilcox is a fully registered teacher with a practising certificate valid until 23 December 2024.*

*2. Mr Wilcox is employed as a teacher at St Peter's School Cambridge.*

#### ***Conviction for driving with excess breath alcohol***

*3. On 13 October 2023, Mr Wilcox was convicted and sentenced in respect of one charge of driving with excess breath alcohol (3<sup>rd</sup> or subsequent).*

*4. The offending occurred on 16 December 2022 at around 12.05am. Mr Wilcox was stopped at a Police checkpoint on Tristram Street in Hamilton and found to be driving with 543 micrograms of alcohol per litre of breath, after having been*

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<sup>1</sup> Sections 56(1) and 56(4) Land Transport Act 1998.

<sup>2</sup> The Tribunal notes that the Police Summary of Facts, Certified Copy or Extract of Permanent Court Record (under Rule 7.1(9) Criminal Procedure Act 2021) and NZTDT 2014/55 CAC v Wilcox dated 3 December 2014 were annexed to the Agreed Summary of Facts and formed part of it. For ease of reference those additional documents are not included in this decision.

*convicted at least twice previously for driving with excess breath alcohol. The legal breath alcohol limit is 250 micrograms of alcohol per litre of breath.*

*5. Mr Wilcox's explanation was that he was on his way home from having a few drinks in town and that he did not think he was over the limit....*

*6. Mr Wilcox was convicted, disqualified from driving for one year and two months, and ordered to complete nine months' supervision and 60 hours of community work. Mr Wilcox completed these post-sentencing requirements.*

*7. On 17 February 2023, Mr Wilcox emailed the Teaching Council to advise that he had been charged with an offence and was awaiting sentencing. Following sentencing, on 20 October 2023, Mr Wilcox self-reported the conviction to the Teaching Council.*

#### **Teacher's response**

*8. In his response to the Teaching Council in respect of his 13 October 2023 conviction, Mr Wilcox explained that he had gone out drinking on the evening of the offending and did not realise he was over the limit. He noted that it was around ten years since his last issues with drink driving, and that he believed this recent transgression was an honest mistake, not a wilful flouting of the rules. He expressed remorse and said he has sought ongoing counselling, participated in group work and attended two courses to address the causes of his offending.*

*9. At a Committee meeting on 2 May 2024, Mr Wilcox told the Committee that he no longer drinks alcohol and that he was confident he did not need to go back to drinking.*

#### **Previous convictions**

*10. Mr Wilcox has five previous convictions for driving with excess blood/breath alcohol arising between 2009 and 2013:*

- I. 7 December 2009 conviction: On 25 September 2009, Mr Wilcox was found driving with 112 milligrams of alcohol per 100 millilitres of blood. The legal limit is 80 milligrams of alcohol per 100 millilitres of blood. Mr Wilcox was fined \$600 and disqualified from driving for six months.*

- II. 24 February 2012 conviction: On 29 December 2011, Mr Wilcox was found driving with 495 micrograms of alcohol per litre of breath. He was fined \$750 and disqualified from driving for eight months.
- III. 10 May 2013 convictions:
  - i On 18 November 2012, Mr Wilcox was found driving with 762 micrograms of alcohol per litre of breath. He was sentenced to three months of community detention and disqualified from driving indefinitely. He was also ordered to apply for a zero alcohol licence and prohibited from acquiring any interest in a motor vehicle.
  - ii On 3 February 2013, Mr Wilcox was found driving with 601 micrograms of alcohol per litre of breath. He was sentenced to community detention for three months and disqualified from driving indefinitely. He was also ordered to apply for a zero alcohol licence and prohibited from acquiring any interest in a motor vehicle.
- IV. 25 November 2013 convictions: On 31 August 2013, Mr Wilcox was found driving with 625 micrograms of alcohol per litre of breath. He was sentenced to one year supervision, community detention for six months, and was disqualified from driving for one year. Mr Wilcox was also convicted of driving while disqualified.

11. The two convictions from 2009 and 2012 were considered by the Teaching Council on 12 October 2012 when Mr Wilcox was granted provisional registration as a teacher.

12. On 3 March 2014, Mr Wilcox applied for renewal of his practising certificate which had expired on 12 October 2012. A Police vet revealed he had received the four convictions referred to at paragraphs 10(c) and (d) above. The Complaints Assessment Committee referred the convictions to the Disciplinary Tribunal.

13. On 3 December 2014, the Tribunal determined that the convictions warranted an adverse finding and censured Mr Wilcox. He did not hold a current practising certificate or registration at the time, as his provisional registration had expired on 12 October 2014.

## Te Ture – Legal Principles

[5] The CAC has referred the respondent's conviction to the Tribunal under s 497(5) of the Act. It is not necessary to find serious misconduct on referral of a conviction. However, in previous cases the Tribunal has considered the conduct that resulted in a conviction against the test for serious misconduct.<sup>3</sup>

[6] Section 10(1) of the Act defines "serious misconduct":

***serious misconduct*** means conduct by a teacher— (a)  
*that—*

- (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or*
- (ii) reflects adversely on the teacher's fitness to be a teacher; or*
- (iii) may bring the teaching profession into disrepute; and*  
*(b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct.*

[7] The test for serious misconduct is conjunctive.<sup>4</sup> As well as being conduct that has one or more of the adverse professional effects or consequences described in subsection (a)(i)-(iii) the conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct. In other words, if any of the criteria under s 10(1)(a)-(c) are satisfied, but the criteria under s 10(1)(b) is not satisfied, then the conduct will amount to "misconduct" rather than "serious misconduct"

[8] The criteria for reporting serious misconduct are found in Part 3 of the Teaching Council Rules 2016. The Tribunal accepts that, if established, the respondent's conduct would fall within the following sub-rule of Rule 9(1):

- (j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more; or
- (k) an act or omission that that brings, or is likely to bring, the teaching profession into disrepute.

[9] The Tribunal also accepts that the test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably

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<sup>3</sup> CAC v Bird NZTDT 2017-5, 22 June 2017.

conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.<sup>3</sup>

## **Ngā Kōrero a te Kōmiti me te Kaiurupare – Submissions of the CAC and the Respondent**

### *CAC Submissions*

[10] In summary, the CAC submits:

- i* The respondent's conviction warrants an adverse finding allowing the Tribunal to exercise its disciplinary powers pursuant to s 500.
- ii* Ordinarily, given the nature of the offending and the respondent's history of drink driving offending, the CAC would be seeking cancellation of the respondent's registration as a teacher. However, this may be a case where the Tribunal may consider it can properly step back from cancellation.
- iii* The following penalty orders would be appropriate if the Tribunal decides to step back from cancellation:
  - a. censure;
  - b. annotation of the register for a period of three years; and
  - c. an order requiring the respondent to provide a copy of the Tribunal's decision to current and prospective employers in the teaching profession for a period of three years.

[11] The CAC submits that the respondent's conduct underlying his conviction is of a nature that requires an adverse finding and warrants the Tribunal exercising its disciplinary powers. The CAC relies on the following cases of the Tribunal:

- i* *CAC v Bird* – The Tribunal affirmed that referral of a criminal conviction 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 teacher's fitness to practise as a teacher before exercising its power to impose orders under s 139AW of the Education Act 1989 (now s 500 of the Act).<sup>6</sup> The Tribunal accepted that

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<sup>3</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZDT 2016/43, 24 March 2017. <sup>6</sup> *CAC v Bird* NZTDT 2017/5; *CAC v S Auckland* DC CIV-2008-00400-1547, 4 December 2008; *CAC v Teacher* NZTDT 2005/01.

assessing a teacher's conduct against the "serious misconduct yardstick" may be a useful tool in determining whether an adverse finding is warranted.<sup>4</sup>

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- ii CAC v Lyndon* – The Tribunal recognised that regardless of whether a matter reaches the Tribunal for adjudication by way of a notice of referral, or by notice of charge of serious misconduct the Tribunal's function is to decide if the behaviour of the teacher concerned reflects adversely on his or her fitness to teach.<sup>5</sup>

[12] The CAC submits that both parts of the statutory test for serious misconduct are met. The CAC submits the conviction reflects adversely on the respondent's fitness to be a teacher and risks bringing the profession into disrepute (limb one of the test). Secondly, the CAC submits the conduct meets the criteria for reporting serious misconduct in Rule 9, specifically subparts (j) and (k) (limb two of the test). Accordingly, the CAC submits the conduct warrants an adverse finding entitling the Tribunal to exercise its powers under s 500 of the Act.

### *Respondent Submissions*

[13] In summary, the respondent submits:

- i* He has accepted responsibility for his conduct and is remorseful for his actions.
- ii* He accepts that a disciplinary outcome is warranted and seeks an outcome short of cancellation or suspension that enables him to continue in his profession. Cancellation is not required to protect the public, taking into account that the conduct was not connected to his work as a teacher, and that there was no suggestion of past drinking and/or driving ever having created a risk to his students.
- iii* The Tribunal's important role in setting professional standards can be achieved by the imposition of a:
  - a. censure; and
  - b. condition requiring disclosure to his current/future employers for two years.

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<sup>4</sup> *CAC v Bird* at [18].

<sup>5</sup> *CAC v Lyndon* NZTDT 2016/61 at [18].<sup>9</sup>  
*CAC v Fuli-Makaua* NZDTD 2017/40.

[14] The respondent submits that the *CAC v Fuli-Makaua* case is not a good comparator to this case because the conduct under consideration in that case was the referral of a cluster of three convictions obtained within a six-month period (two drink drive and one driving while disqualified), which the respondent had failed to self-report to either the Teaching Council or her employer. In addition, in that case the Tribunal found that the respondent lacked insight, had not commenced rehabilitation, and had not changed her attitude.<sup>9</sup> By contrast, the conduct under consideration in this case is a single drink

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driving conviction, the conduct lacks the associated aggravating features of driving while disqualified or failure to report, and there are substantial mitigating factors.

### **Kupu Whakatau – Decision**

[15]The Tribunal is not required to make a finding of serious misconduct but needs to reach an adverse finding against the teacher. Before we can make an adverse finding we need to be satisfied that the conduct reflects adversely on the respondent's fitness to be a teacher.<sup>6</sup>

[16]While we are not required to make a formal finding of serious misconduct, the threshold for finding serious misconduct helps to inform our decision on whether to make the adverse finding. Viewing the respondent's conduct through the lens of the criteria for serious misconduct in s 10, we conclude that the drink driving conviction reflects adversely on the respondent's fitness to be a teacher. We are also satisfied that the respondent has been convicted of an offence with the maximum penalty of imprisonment and that his repeated drink driving is likely to bring the teaching profession into disrepute.

[17]Taking the submissions, evidence and case law into account, the Tribunal concludes the respondent's conduct as likely meeting the threshold for serious misconduct such that the Tribunal can exercise our disciplinary powers.

### **Utu Whiu – Penalty**

[18] Having determined that this case is one in which we consider serious misconduct is likely to be established, the Tribunal must now consider what an appropriate penalty is in the circumstances, pursuant to s 500:

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<sup>6</sup> *Complaints Assessment Committee v S*, Auckland DC, CIV 2008 004001547, 4 December 2008, Sharp J, at [47].



## **500 Powers of Disciplinary Tribunal**

*(1) Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*

- (a) any of the things that the Complaints Assessment Committee could have done under section 497(2):*
- (b) censure the teacher:*
- (c) impose conditions on the teacher's practising certificate or authority for a specified period:*
- (d) suspend the teacher's practising certificate or authority for a specified*

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*period, or until specified conditions are met:*

- (e) annotate the register or the list of authorised persons in a specified manner:*
  - (f) impose a fine on the teacher not exceeding \$3,000:*
  - (g) order that the teacher's registration or authority or practising certificate be cancelled:*
  - (h) require any party to the hearing to pay costs to any other party:*
  - (i) require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:*
  - (j) direct the teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) Despite subsection (1), following a hearing that arises out of a report under 493 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

[19] In determining penalty, the Tribunal must ensure that three overlapping principles are met, that is, protection of the public through the provision of a safe learning environment for students, maintenance of professional standards, and the public's confidence in the profession.<sup>7</sup> We note also decisions of the superior Courts which have emphasised that the purpose of professional disciplinary proceedings for various

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<sup>7</sup> CAC v McMillan NZTDT 2016/52.

occupations is not to punish the practitioner for misbehaviour, although it may have that effect.<sup>8</sup>

[20] In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers<sup>9</sup>:

- (a) Protecting the public;
- (b) Setting the standards for the profession;
- (c) Punishment;
- (d) Rehabilitation;
- (e) Consistency;
- (f) The range of sentencing options;
- (g) Least restrictive;

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(h) Fair, reasonable, and proportionate.

[21] The Tribunal does not repeat what it said in that decision but notes that we have turned our mind to these principles in reaching our decision on penalty. We must arrive at an outcome that is fair, reasonable, and proportionate in the circumstances.

[22] The legal principles for cases involving convictions for excess breath alcohol are set out in *CAC v Fuli-Makaua*.<sup>10</sup> The Tribunal in that case described factors that go towards the seriousness of the offending including the level of alcohol involved, the nature of the driving, whether there were passengers in the vehicle, the timing of the incident, whether there was any associated reoffending and any risk of harm to students. In addition, relevant prior convictions and any failure to report the conviction may be considered aggravating features.

[23] The CAC has acknowledged that the respondent's offending here was not the most serious kind of drink driving offending. There was no evidence that he was engaging in driving that created a risk to the public, he had no passengers in the vehicle, there was no risk to students, and no failure by the respondent to report.

[24] In terms of aggravating factors, the respondent has five prior drink drive convictions from the period between 2009 and 2013. The respondent explained in evidence that

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<sup>8</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

<sup>9</sup> *CAC v Mackay* NZTDT 2018/69 at [40]–[62].

<sup>10</sup> *CAC v Fuli-Makaua*, NZTDT 2017/40.

he was not working as a teacher and this was an unhappy time in his life, during which he developed an unhealthy relationship with alcohol. He was affected by a relationship breakdown and became a habitual drinker as a means of avoiding the stress and anxiety he was feeling. Following these convictions and his earlier referral to the Tribunal and censure, the respondent says that he took effective steps address his relationship with alcohol.

[25] In his evidence, the respondent explained that alcohol use crept back into his life during the Covid 19 epidemic and lockdown. On 16 December 2022, he made the decision to drive home after having been out drinking and listening to music. The respondent believed he had “closed the door” on the issues he had faced 10 years earlier. Following that event, the respondent realised that this had been a false sense of security and that he has a problem with alcohol.

[26] There is approximately 10 years between the last of the respondent’s earlier

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convictions, and his 2023 conviction. The Tribunal must have regard to the respondent’s prior convictions. The respondent recognises that his conduct reflects a departure from the standards expected of a teacher, including adherence to the law, and being a positive role model for students. He accepts that taking his prior convictions into account, an adverse finding is warranted.

[27] As noted above, the CAC submitted that ordinarily, given the nature of the offending and the respondent’s history of drink driving offending, the CAC would be seeking cancellation of the respondent’s registration as a teacher. However, this may be a case where the Tribunal may consider it can properly step back from cancellation.

[28] We agree that we can properly step back from cancellation in this case. Cancellation is not required to protect the public, particularly taking into account that the conduct was not connected with the respondent’s work as a teacher. There is also no suggestion of past drinking and/or driving having created any risk to the respondent’s students.

[29] The respondent self-reported the conviction to his employer and has shown remorse and insight into the seriousness of his offending. The Tribunal acknowledges the steps that the respondent has taken following this incident. He understands that he has a problem with alcohol and has provided evidence of the rehabilitative steps he has taken including participation in The Right Track programme, counselling with a

specialist alcohol counsellor, seeking support from friends and colleagues, and abstaining from alcohol. The respondent provided evidence of a strong network of support and the respect in which he is held as a teacher. The respondent is to be commended for this rehabilitative steps and we encourage him to stay vigilant to future pressures that could potentially trigger a relapse back to drinking alcohol.

- [30] The Tribunal has carefully considered all of the submissions and information provided by the CAC and respondent. On balance and bearing in mind the above, as well as the obligation on the Tribunal to impose the least restrictive penalty in the circumstances, pursuant to section 500(1) of the Act, we order:
- c. Censure;
  - d. Annotation of the register for a period of 2 years;
  - e. A condition requiring the respondent to provide a copy of the Tribunal's decision to any current and prospective employers in the teaching profession for a period of 2 years.

#### **He Rāhui Tuku Pānui - Non-Publication**

- [31] An interim suppression order was made at the PHC in respect of the respondent, but the respondent advised that he does not seek permanent non-publication orders. As a result, the interim order has now expired.

- [32] The CAC advised the Tribunal that the respondent's current employer also confirmed that it was not seeking a non-publication order. Accordingly, no non-publication orders are required.

#### **Utu Whakaea – Costs**

- [33] Section 500(2) provides that no cost orders may be made where, as here, the hearing arises out of a report under s 497. Therefore, no costs are ordered.



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**Mokotā - B R Arapere**

Deputy Chair of the New Zealand Teacher's Disciplinary  
Tribunal

**NOTICE - Right of Appeal under Section 504 Education and Training Act 2020**

1. The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under section 498(2) or 500 may appeal against that decision to the District Court.
2. The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under section 498(2) or 500.
3. An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
4. Clause 5(2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3