

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/39

RARO TE MANA O TE UNDER THE	the Education and Training Act 2020 (the Act)
MŌ TE TAKE IN THE MATTER OF	of a charge referred to the Tribunal
I WAENGA I A BETWEEN	COMPLAINTS ASSESSMENT COMMITTEE (CAC) Kaiwhiu Prosecutor
ME AND	NATASHA McCAUSLAND (Registration 311682) Kaiurupare / Respondent

Hei Māngai Appearance	L Van Der Lem/ B Kalach, Luke Cunningham Clere for the CAC. D Sutton, Resolutions Lawyers & Consultants for the respondent
Tribunal	C Garvey (Deputy Chair), J Ruge, S Walker

DECISION ON LIABILITY, PENALTY and NON-PUBLICATION ORDERS

27 February 2025

Introduction

- [1] The respondent Natasha McCausland is the subject of Notice of Referral following a conviction for driving with blood containing evidence of use of a controlled drug¹. Ms McCausland self-reported this conviction to the Teaching Council as required by s493 of the Education and Training Act 2020 (the Act).
- [2] The parties prepared an Agreed Summary of Facts (the summary of facts) dated 3 October 2024 and the Tribunal proceeded with a hearing on the papers on 20 January 2025².

¹ Section 58(1) Land Transport Act 1998, an offence of contravening s12 of that Act.
² The matter was originally intended to be scheduled for hearing on 2 December 2024 but for administrative reasons did not take place at that time.

The Notice of Referral

- [3] The Notice of Referral was made on 9 August 2024. The respondent was convicted in the District Court in Hawera on 28 June 2022 for the offending which occurred on 25 March 2022. The respondent self-reported the conviction on 8 July 2022³. The notice of referral also refers to an earlier conviction entered in February 2007 for operating a vehicle carelessly which was considered by the Council but not referred to the Tribunal. No details of this first conviction are provided in the evidence before the Tribunal.

The Facts

- [4] Ms McCausland was first registered in 2008. At the time of the offending, she was employed in a part-time relieving capacity at a secondary school. The accident caused significant injuries impacting her ability to work and Ms McCausland's practising certificate lapsed in February 2024.
- [5] Relevant details from the Police Summary of Facts are incorporated into the summary of facts. In short, the respondent was driving at 6.30am on the morning of Friday 25 March 2022 and crossed the double yellow centre line and crashed into another moving vehicle. The summary records that "*both vehicles were extensively damaged and the defendant was trapped in her motor vehicle and badly injured.*"⁴ A blood sample taken by the Police was found to contain methamphetamine. The respondent was sentenced to six months supervision and disqualified from driving, as well as being ordered to pay reparation. Ms McCausland was intending to work on the day of the accident.
- [6] Ms McCausland agreed to participate in the Teaching Council's Impairment Process which involved gathering health information and assessment by a clinical psychologist.⁵ She has also provided a Reflective Statement including the following information in relation to the offending, namely that she:
- (a) was struggling with her mental health prior to the motor vehicle accident.

³ The Act requires reporting within 7 days of a conviction however the CAC has quite properly not taken issue with the respondent reporting slightly outside that timeframe.

⁴ These injuries included multiple bone fractures requiring extensive surgery and impacting the respondent's ability to work.

⁵ Pursuant to s497(2)(c) of the Act the CAC may refer a person to an impairment process for assessment and/or assistance.

- (b) had visited her partner in the days prior to the offending and was offered a drug, which she consumed⁶.
 - (c) saw her GP and was prescribed antidepressants, anxiety medication and sleeping pills, which she took the day before the offending⁷;
 - (d) had little recollection of events prior to the crash including why she was driving in the location that she was.
 - (e) denies any illicit drug use since the motor vehicle accident.
- [7] The summary of facts records the respondent's intention to return to work in the education sector as a hostel supervisor and in an "*integrated classroom environment*". The submissions filed on behalf of Ms Causland in November 2024 included a reference from the Principal at Tipene, a Charter school| kura houora, identified as her current employer. Current information shown on the school website includes Ms McCausland as a Kaiako and Kāinga rua lead at the school.
- [8] The agreed bundle of documents contains a Sentence Completion Report⁸, the reference from Nathan Durie referred to above, the Teaching Council Impairment Report⁹ and the respondent's Reflective Statement.
- [9] Ms McCausland successfully completed her rehabilitative sentence which involved alcohol and drug counselling and she also submitted voluntarily to drug testing. The report refers to a need for reintegrative strategies and assistance with reinstating the respondent's drivers' licence. No matters of concern are identified in the report.
- [10] The Impairment Report outlines that Ms McCausland's presenting concerns were anxiety and associated substance use, with a significant mental health history in the 1990s and re-emerging issues in 2021. The report records that she has recovered well from the motor vehicle accident but "*requires some rehabilitation and focus on her health*", that she was receiving ongoing treatment for anxiety, remained abstinent from substances and has engaged in therapeutic work with a social worker/counsellor. The report recommends that Ms McCausland should seek

⁶ The submissions filed on behalf of Ms McCausland state "in clarification of the timeline...Ms McCausland consumed methamphetamine on the evening of Tuesday 22 March, several days prior to the accident."

⁷ The submissions on liability, penalty and non-publication filed on behalf of Ms McCausland state that this GP appointment and prescribing took place the day prior to the accident: at [9].

⁸ Sentence Completion Report for Rehabilitative Services dated 26 October 2024.

⁹ Impairment Report dated 19 March 2024, by Sally Thomas Consultant Clinical Psychologist/Neuropsychologist.

therapy with a suitably trained professional and that her return to teaching be contingent on this.

Liability - Principles

- [11] When considering a notice of referral the Tribunal is required to determine whether an adverse finding is warranted but is not required to find whether the relevant conduct amounts to “serious misconduct”. The pertinent question is whether it reflects adversely on the teacher’s fitness to be a teacher.¹⁰ Whether conduct reflects adversely involves assessing:¹¹

...whether the teacher’s conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher’s peers or by the community.

- [12] As counsel for the CAC submits, the purpose of referrals is not to punish a teacher who is convicted of an offence a second time but to allow the purposes of disciplinary proceedings to be met. The Tribunal functions within the Act, a key purpose of which is to provide an education system that supports the health, safety and wellbeing of New Zealanders and assures the quality of the educators who provide and support that system. The Tribunal’s role in this is to provide a mechanism to protect the public through ensuring standards are set and maintained and that appropriate steps are taken when an adverse disciplinary finding is made.

- [13] While the focus is on whether Ms McCausland’s conduct reflects adversely on her fitness, the Tribunal has consistently held that the test for misconduct and serious misconduct provides a helpful yardstick. This requires that one of the limbs of s10(1)(a) is engaged, and for serious misconduct that one or more of the criteria for reporting under r 9 of the Teaching Council Rules 2016 is also met.

- [14] Leaving aside reference to an adverse impact on learners (not pertinent in this case) ss10(1)(a)(ii) and (iii) refer to conduct that:

- (a) reflects adversely on the teacher’s fitness to be a teacher; or
- (b) is an act or omission that may bring the teaching profession into disrepute.

- [15] Fitness to teach is not confined to maintaining professional standards within the

¹⁰ *Complaints Assessment Committee v S District Court Auckland CIV 2008-004-001547*, 4 December 2008, frequently cited eg in *Complaints Assessment Committee v White* NZTDT 2017/29 at [17].

¹¹ See *Complaints Assessment Committee v Crump* NZTDT 2019/12 at [42].

classroom. The standards required of members of the profession are set out in the Code of Professional Responsibility| *Ngā Tikanga Matatika* which expects teachers to demonstrate a high standard of professional behaviour and integrity (clause 1.3). The Examples in Practice published as a guide to the Code includes, in relation to cl1.3:

- (a) behaving in ways that promote a culture of trust, respect and confidence in the teacher, as a teacher, and in the profession as a whole.
- (b) taking care that actions outside of work do not interfere with the teacher's performance as a teacher, affect the trust and confidence others have in the teacher or reflect badly on the integrity or standing of the teaching profession.

[16] Teachers are expected to conduct themselves within the law and the Tribunal has previously said:

Practitioners have an obligation to both teach and model positive values for their students, and driving while intoxicated does not mirror that expectation. Second, the respondent's commission of an offence with a public safety focus brings the teaching profession into disrepute when considered against the objective yardstick that applies.¹²

[17] With regard to whether conduct may bring the profession into disrepute the Tribunal considers the objective test set out in *Collie*¹³, assessing whether an objective member of the public informed of the relevant facts and circumstances would consider the conduct lowers the reputation or standing of the profession. An affirmative answer is frequently given on referrals of a criminal conviction because of the principles outlined above from the Code.

[18] The Tribunal has previously considered referrals for offending where a teacher has one or more convictions for driving with excess breath alcohol and the findings are transferrable to the present case. In *CAC v Fuli-Makaua*¹⁴ the Tribunal identified several factors to consider when assessing whether an adverse finding is warranted. These include the nature of driving, any associated offending, the level of alcohol involved and the presence of previous convictions.

[19] Counsel for the CAC also referred the Tribunal to *CAC v Teacher*¹⁵ in which the teacher was convicted of possession of methamphetamine and paraphernalia for

¹² *Complaints Assessment Committee v White* 2017/29 at [22].

¹³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

¹⁴ *Complaints Assessment Committee v Fuli-Makaua* NZTDT 2017/40, frequently cited as setting out the appropriate test.

¹⁵ *Complaints Assessment Committee v Teacher* [2014] NZTDT 38.

drug use and driving while impaired by a drug. The Tribunal took a firm stance on the teacher's use of methamphetamine as a class A controlled drug known to cause significant societal harm, and the need for the Tribunal to treat its use very seriously.

- [20] In considering whether an adverse finding is warranted it is also relevant that 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 comes within r9(1)(j) of the Teaching Council Rules 2016, being conduct which warrants reporting as serious misconduct to the Teaching Council. An offence under s58 of the Land Transport Act falls within r9(1)(j).
- [21] The CAC submits that an adverse finding is warranted in this case because the conduct is of a nature that will damage the trust and confidence members of the public would hold in the respondent as a teacher. The CAC submits that it is an exacerbating factor that Ms McCausland was to teach on the day of the accident and that this demonstrates "*a profound lack of judgment ...and calls into question Ms McCausland's fitness to teach.*"
- [22] On behalf of the respondent, counsel submits that the CAC's position as to liability is largely accepted. Some clarifications were provided (as noted in footnotes 6 and 7 above) together with confirmation that Ms McCausland was not at school on the two days prior to the accident and did not teach while under the influence of a drug. Based on the assertion that the drug was consumed on the Tuesday before the accident, counsel for Ms McCausland submits that it cannot be established that the level of methamphetamine in her blood was causative of the accident; and that it was reasonable for Ms McCausland to assume that she would not be impaired when she was due to teach on the Friday.
- [23] Counsel for Ms McCausland accepts that an adverse finding is warranted but seeks to distinguish the cases relied on by the CAC as being more serious than the present. Ms McCausland does not have multiple convictions for driving under the influence, has been fully cooperative, and her offending did not arise in the context of regular misuse of controlled drugs.¹⁶

Liability – Findings

- [24] The Tribunal agrees that Ms McCausland's conviction for driving while impaired with a Class A controlled drug and causing a significant motor vehicle accident warrants an adverse finding. The conduct is in breach of the clear expectation in the Code that

¹⁶ In addition to *CAC v Fuli Makaua* and *CAC v Teacher* referred to at n14 and n15 above the CAC also relied on *Complaints Assessment Committee v Korau* [2017] NZTDT 17.

teachers will act within the law, and will role model lawful and positive behaviour that retains public trust and confidence in the teacher and the profession.

- [25] In the absence of supporting evidence, we do not place any weight on counsel for the respondent's submissions that the drug may not have been a significant causative factor or that Ms McCausland should be given credit for not attending school while she was impaired by drugs. We do accept that Ms McCausland's mental health issues and the steps that she has taken to address that, including her successful completion of a rehabilitative sentence, are very relevant to penalty.

Penalty

- [26] The penalties available to the Tribunal once a charge is proved are set out under s500 of the Act. The principles of penalty are essentially as described above, to protect the public, and to set and maintain professional standards and public confidence in the profession. Further, the Tribunal should impose a penalty that is fair, reasonable and proportionate in the circumstances and is the least restrictive penalty that is appropriate. The penalty should be similar to those imposed in comparable cases, noting that each case does turn on its own facts.
- [27] Counsel for Ms McCausland submits that there are three key factors in our penalty decision, which we agree are appropriate:
- (a) protecting the welfare of students, staff and schools with whom the respondent may work.
 - (b) protecting the reputation and integrity of the profession.
 - (c) protecting Ms McCausland and ensuring that she has suitable supports in place to manage her ongoing mental health and prevent an "unchecked" relapse in health.
- [28] In the circumstances of this case the primary focus of the penalty we have considered is rehabilitative. While there are some aggravating features as identified by the CAC (the seriousness of the collision and resulting injuries to Ms McCausland and another driver; that she was under the influence of a "*particularly pernicious drug*" on a school day), there are mitigating factors that mean imposing a penalty to support Ms McCausland to maintain her wellbeing and to practise safely is appropriate. Ms McCausland has been co-operative throughout, having participated in the voluntary impairment process, engaged with treatment and indicated a willingness to engage with rehabilitative conditions. It is also noted that the offending was connected to a deterioration in her mental health rather than evidence of an

ongoing issue with substance abuse. Ms McCausland has no prior disciplinary history, and she met her statutory obligation to self-report the conviction¹⁷.

[29] The CAC submits that if the Tribunal is to step back from cancellation the following penalty would be appropriate:

(a) censure;

(b) annotation of the register;

(c) a condition that upon her return to teaching Ms McCausland is to undertake and complete counselling for a specific period of time including developing a prevention plan, with particular focus on managing her mental health stressors; and

(d) a condition that she is to disclose a copy of the Tribunal's decision to her current employer and any future or prospective employer for a period of two years.

[30] The Tribunal accepts the submissions as to the proposed conditions. Even if Ms McCausland's employer is aware of the proceedings it remains important that they receive a copy of the Tribunal's decision. The duration of counselling is a matter best addressed by the counsellor and Ms McCausland given the time that has passed since the offending, the counselling she has already undertaken and the need for this to reflect her current circumstances. It should be for a sufficient period to ensure her return to work is successful and the prevention plan is implemented.

[31] There is a further potential matter arising from the fact that Ms McCausland does not (at the time of writing this decision) hold a current practising certificate and is not listed on the Teaching Council website as holding a Limited Authority to Teach (LAT). In reliance on the reference from Mr Durie it appears that Ms McCausland is employed at a charter school, and this means there may be scope for her to either renew her certification or practise with a LAT. Mr Durie's letter of support dated 11 November 2024 states:

I have known Natasha for 30+ years and taught alongside her from 2015-2021. During that time we were well aware of previous mental health issues she had encountered but there were no such issues during her time with us, and she thrived in all aspects of teaching at our kura in a role very similar to the one she is about to embark on.

¹⁷ Meeting a statutory obligation is considered a neutral rather than a mitigating factor but it is important that teachers are encouraged to meet this obligation and that doing so is acknowledged as some assurance that the teacher has recognised their professional responsibility.

The wellbeing of staff and students is paramount to my role as Principal, and I am committed to ensuring that the wellbeing of Natasha is monitored and maintained.

...

I will ensure she is supported in her request to attend regular counselling and will provide the same support for any additional requirements stipulated by the Teaching Council.

- [32] The evidence does not disclose the exact nature of Ms McCausland's role or intentions with regard to certification. Nor does it state whether the recommendations in the Impairment Report were followed in terms of confirming ongoing therapy with a suitably qualified professional to support Ms McCausland's return to work.
- [33] Section 500 empowers the Tribunal to make orders in respect of registration, certification and authorisation. There is an exception for a teacher working in a charter school under a LAT in respect of whom orders as to competence cannot be made, however that does not have any bearing on this case. In circumstances where Ms McCausland has an offer of employment or has commenced employment we consider it important that confirmation of receipt of the decision and intention to meet the conditions is provided to the Teaching Council promptly.

Costs

- [34] Because this matter is a referral under s493 of the Act there is no issue as to costs, which the Tribunal might otherwise order under s500(1)(h) or (i). Section 500(2) provides:

Despite subsection (1), following a hearing that arises out of a report under section 493 of the conviction of a teacher, the Disciplinary Tribunal may not do anything specified in subsection 1(f), (h), or (i).

Non-Publication

- [35] An interim non-publication order was made ahead of the hearing. The respondent seeks an order under s501(6) for permanent non-publication of her name. Such an order may be made by the Tribunal if in its opinion it is "proper" to do so, having regard to the interest of any person and the public interest. This does not require exceptional circumstances, but the Tribunal must be satisfied that there are sound reasons for finding that the presumption in favour of openness is displaced.

[36] The grounds submitted in support of Ms McCausland's application are:

- (a) that she has "*been dealing with the fallout from her actions for over two years*", in circumstances where the subject offending arose from a rapid deterioration in mental health.
- (b) as she was working in a small community at the time she experienced shame, which contributed to her relocating. Publication "*may result in a backwards step as she will feel publicly shamed again...There is a real concern that this may negatively impact on her mental health, beyond that which would normally be expected from someone involved in such proceedings.*" Exacerbation of mental illness or adverse impact on recovery can be grounds for making an order. The respondent relies on *CAC v Teacher K*¹⁸ where publication was considered likely to have a significant impact on the teacher's mental health.
- (c) that she has remained engaged in counselling and recovered to the point where she is able to re-commence work.
- (d) the conditions to be imposed are sufficient to address the purposes of the disciplinary proceedings.

[37] The CAC opposes a non-publication order and distinguishes the present case from those relied on by the respondent, noting that in *Teacher K* the application was unopposed by the CAC and the teacher's application was supported by evidence from health professionals. The teacher was found guilty of serious misconduct for an inappropriate relationship with a vulnerable student, in circumstances where the teacher's good intentions were accepted. The Tribunal noted:

If the basis for an application for non-publication order is the particular and significant vulnerability of a respondent to more than the usual stress and anxiety which any teacher whose name is published in association with disciplinary proceedings will suffer, there must be appropriate evidence to support such an application. In this particular case the evidence from a clinical psychologist treating the respondent is clear that the respondent has been, for an extended period, and remains (at least at the time the reports were supplied), in a very vulnerable state, and that publication could have a significant impact on her mental health and the prospects for her recovery,

¹⁸ *Complaints Assessment Committee v Teacher K* NZTDT 2018/7. The submissions also footnote *Complaints Assessment Committee v Teacher H* [2021] NZTDT 9 at [127].

- [38] Relevantly, there was also concern that the student whom the case involved not be identified, and that naming Teacher K posed that risk. Likewise in *Teacher H* the Tribunal had significant concern supported by evidence from the school that non-publication of the teacher's name was an important factor for protection of the student. Evidence was also filed which separately supported Teacher H's application for personal reasons, but this is redacted from the published decision.
- [39] The CAC acknowledges the concerns raised on behalf of Ms McCausland but submits that there is a "*paucity of evidence*" to establish that publication of her name will have "*sufficient consequences*." By this the CAC means consequences beyond those which are ordinarily anticipated to accompany publication of an adverse finding. The CAC points to the lack of evidence as to how the respondent's mental conditions would be exacerbated by publication of her name. The CAC also notes that her conduct is a matter of public record because of the criminal proceedings.
- [40] The Impairment Report summarises Ms McCausland's mental health history so we do not accept the CAC's submission that there is insufficient evidence of a diagnosis. There is however no evidence directed at the likely consequences of publication. The available information supports that Ms McCausland has made excellent progress and that she has a very supportive employer who is well aware of her circumstances and committed to assisting her safe return to practice. These are positive and protective factors which we hope would mitigate the effects of publicity. In order to make a principled decision in each case and to strive for consistency, evidence that supports the privacy of a teacher or other persons over the public interest is an important factor and is absent in this case. Accordingly, the respondent's application is declined.

Orders

- [41] For the reasons set out above the Tribunal makes the following orders pursuant to s500 of the Act:
- (a) censure.
 - (b) conditions on a subsequent practising certificate issued to the respondent for a period of two years:

- (i) to undertake and complete counselling including developing a prevention plan, with particular focus on managing her mental health stressors; and
- (ii) to disclose a copy of the Tribunal's decision to her current employer and any future or prospective employer in a teaching capacity for a period of two years.
- (c) annotation of the register or list of authorised persons (as appropriate) with the conditions set out at (b) above for a period of two years.
- (d) the respondent is to notify the Teaching Council within two weeks of the date of this decision confirming it has been disclosed to her current employer.

[42] No permanent orders for non-publication are made however the interim order in favour of Ms McCausland will remain in place for the statutory appeal period and will then lapse.

Dated 27 February 2025.



Catherine Garvey
Deputy Chair of the New Zealand Teacher's Disciplinary Tribunal