

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-65

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

Kimberley Karlene Ann Kopp
(Authorisation 378959)

Kaiurupare / Respondent

Nohoanga | Hearing
Hei Māngai | Appearance

2 September 2024, AVL (Teams).
E Wilson, Govett Quilliam, for the CAC
Respondent, self-represented.

DECISION ON LIABILITY AND PENALTY

5 SEPTEMBER 2024

Tribunal

C Garvey (Deputy Chair), G Ashworth, R McInerney

Introduction

- [1] This matter concerns a referral of two driving-related convictions against the respondent Kimberley Kopp (Ms Kopp), and a failure to notify the Teaching Council of those convictions. Ms Kopp no longer holds a practising certificate and stopped teaching during 2020.
- [2] The hearing proceeded on the papers with an agreed summary of facts and an agreed bundle of documents on 2 September 2024.¹

The Notice of Referral

- [3] Pursuant to s493(1) of the Education and Training Act 2020 (the Act), a teacher convicted of an offence that carries a sentence of imprisonment for 3 months or more is required to notify the Teaching Council within 7 days of the conviction. The Registrar of the court also has a mandatory obligation to report.² The Registrar of Waitakere District Court notified the Council on or around 24 August 2022 that Ms Kopp was convicted on 23 August 2022 for driving contrary to an alcohol interlock condition on her driving licence.³
- [4] While investigating the notification, an earlier unreported conviction for driving under the influence of alcohol came to light and an own-motion referral was made to the CAC. Section 493(2) of the Act provides that failure to report a notifiable conviction *“is misconduct that may give rise to disciplinary proceedings.”*
- [5] The Notice of Referral states in relation to the above convictions that Ms Kopp:
 - (a) Drove contrary to an alcohol interlock licence-sections 32(1)(b) and 32(3) of the Land Transport Act 1998; and
 - (b) Drove with excess blood alcohol, being 118 milligrams of alcohol per 100

¹ The hearing was originally scheduled for 30 July 2024 but adjourned to provide Ms Kopp further time to liaise with the Complaints Assessment Committee to agree a bundle of documents, which was filed on 2 August 2024.

² Section 493(3) provides that the Registrar must report to the Teaching Council unless the court expressly orders otherwise.

³ Pursuant to s32(1)(b) it is an offence to drive a motor vehicle on a road contrary to an alcohol interlock licence; s32(3)(a) states that a first or second offence against s32(1) carries a maximum penalty of 3 months' imprisonment.

millilitres of blood-sections 56(2) and 56(4) of the Land Transport Act 1998.

[6] Ms Kopp pleaded guilty to both charges. She was convicted and discharged in relation to the first and convicted and sentenced in relation to the second. The CAC has discretion whether to refer convictions to the Tribunal and did so taking into account Ms Kopp's prior convictions for driving related offences. These are outlined in the Notice of Referral as follows:

Reasons for Referral

3. The teacher was, on 23 August 2022, convicted and sentenced in the District Court at Waitakere for the offence outlined above at paragraph 1.
4. The teacher was, on 13 April 2022, convicted and discharged in the District Court at Waitakere for the offence outlined above at paragraph 2.
5. The teacher did not report the convictions referred to in paragraphs 1 and 2 to the Teaching Council of Aotearoa as required by section 493 of the Act.
6. The teacher has previous convictions for:
 - a. 29 July 2017 – driving with excess breath alcohol.
 - b. 12 November 2009 – driving with excess breath alcohol.
 - c. 2 May 2007 - driving with excess blood alcohol.
7. The previous convictions have been considered by the Council. The teacher did not self-report the convictions at paragraph 6 to the Council.

The Summary of Facts

[7] Ms Kopp was first registered in 1993 and retired from teaching in 2020.⁴ No information is included about her teaching career. Ms Kopp's practising certificate expired on 15 April 2022.

⁴ The Charging Document dated 7 June 2022 in relation to the 13 April 2022 offence and the Charging Document dated 22 June 2020 in relation to the 6 June 2020 offence refer to Ms Kopp's occupation as "Teacher".

[8] Ms Kopp pleaded guilty on 19 April 2019 to a charge of a third or subsequent occasion of driving with excess breath alcohol. Her sentence included an alcohol interlock condition. Ms Kopp pleaded guilty to a breach of that condition on 23 August 2022, having been caught driving a vehicle not fitted with an interlock device on 13 April 2022.⁵

[9] Ms Kopp had minimal engagement with the CAC. The agreed bundle contains two emails confirming that she does not intend to return to teaching and wants to be deregistered. Ms Kopp states that she believed her registration had expired but does not specify when or how she thought this had happened.⁶ Deregistration only occurs if a teacher's registration is cancelled, or they voluntarily deregister.⁷ There is no evidence before the Tribunal that Ms Kopp sought voluntary de-registration.

[10] The summary of facts outlines Ms Kopp's involvement with a CAC in 2010, following referral of her 2007 and 2009 driving convictions. The CAC warned Ms Kopp that any further convictions may result in disciplinary proceedings⁸, as happened following the respondent's conviction in July 2017 (the first proceedings).⁹ In the first proceedings the Tribunal carefully considered cancellation and suspension, but ultimately imposed rehabilitative conditions and annotation of the Register.¹⁰ These rehabilitative conditions were to the effect that Ms Kopp must:

- (a) satisfy the Council that she undertook and completed a drug and alcohol assessment referred to in the Department of Corrections pre-sentencing report (on the 2017 offence);
- (b) provide to the Council evidence that satisfactorily explained the nature of treatment or counselling she received during her sentence of supervision;
- (c) if directed to do so by the Council, undertake and satisfactorily complete drug and alcohol counselling and develop a relapse prevention plan and provide this to the Council.

⁵ ASOF at [6] and Certified Copy or Extract of the Permanent Court Record.

⁶ Emails dated 9 February 2023 and 2 June 2023, pp 37-38 agreed bundle.

⁷ Clause 7 of Schedule 3 of the Act provides that a teacher's registration will only cease in one of two ways: cancellation, or voluntary deregistration on written request, if the Council is satisfied that the person is not the subject of an investigation under subpart 4 of Part 5 of the Act.

⁸ ASOF at [17].

⁹ *Complaints Assessment Committee v Kopp* [2018] NZTDT 26, 22 February 2019.

¹⁰ Above n9 at [32].

[11] Ms Kopp was released from those conditions in September 2022.¹¹

Liability

- [12] As noted, a failure to report a conviction is misconduct under s 493(2). The court Registrar promptly notified the Council of Ms Kopp's conviction in August 2022. Ms Kopp's prior conduct does not support a finding that she would have self-reported, and she did not report the conviction entered on 19 April 2021.
- [13] Clause 1.3 of the Code of Professional Responsibility expects registered teachers to maintain public trust and confidence in the profession by demonstrating a high standard of professional behaviour and integrity. The Examples in Practice that support the Code set out conduct which demonstrates, or does not demonstrate, standards which are required of the teaching profession. Specific reference is made to failing to meet the legal obligation to report a conviction for an offence punishable by a term of imprisonment of three months or more as conduct that falls short.¹²
- [14] Regardless of how the convictions came to the CAC's attention, they are themselves a basis for investigation. The Tribunal needs to consider whether the conviction reflects adversely on the teacher in their professional capacity.¹³
- [15] The threshold for misconduct is met given s493(2). The Tribunal must still consider whether the conduct warrants an adverse finding and may use the test for serious misconduct set out in s10 as a helpful framework.¹⁴ Section 500(1) provides that the Tribunal may do one or more of the matters set out in subsections (a) to (j) following a hearing into any matter referred by the CAC.¹⁵ Applying the s10 test for serious misconduct is also useful when determining an appropriate penalty.
- [16] The CAC's submissions set out the conjunctive test required under s10, being a breach of one of the limbs of s10(1)(a) and conduct that meets the requirement for reporting serious misconduct under rule 9 of the Teaching Council Rules 2016. The CAC then refers to other cases involving convictions for driving with excess breath

¹¹ Letter, Teaching Council Manager Professional Responsibility to Ms Kopp, 22 September 2022.

¹² Our Code: Examples in Practice, June 2017 at p7.

¹³ *Complaints Assessment Committee v S* District Court Auckland CIV 2008-004-001547, 4 December 2008, cited in *Complaints Assessment Committee v Prebble* NZTDT 2023/10, 6 October 2023 at [6].

¹⁴ See for example *Complaints Assessment Committee v Teacher B* NZTDT 2022/57 at [5] and *Complaints Assessment Committee v Prebble* NZTDT 2023/10, 6 October 2023.

¹⁵ This is subject to s500(2), which prohibits the Tribunal from imposing a fine or ordering costs following a hearing of a referral under s493.

alcohol¹⁶, and submits that Ms Kopp's conduct reflects adversely on her fitness to teach, citing the Tribunal's decision in her first proceedings:

Practitioners have an obligation to both teach and model positive values for their students, and driving while intoxicated does not mirror that expectation.¹⁷

- [17] The CAC goes on to submit that the conviction for an offence with a public safety focus brings the teaching profession into disrepute, reflecting the Tribunal's findings in *CAC v Fuli-Makaua* a case involving a series of alcohol-related driving convictions.¹⁸ In that case the Tribunal considered a number of factors in assessing the seriousness of the conduct. We have very brief details regarding the circumstances of Ms Kopp's offending from the Police summary of facts. Perhaps of most relevance is that the convictions were Ms Kopp's fourth and fifth, the level of alcohol was significant, and she was at the time under conditions imposed by the Tribunal. Those conditions were intended to provide mechanisms to support Ms Kopp not to reoffend and to meet the standards of conduct required of the profession.
- [18] We find that Ms Kopp's convictions and her failure to notify the Council, amount to serious misconduct, for the reasons set out by the CAC, and with further consideration of the rules:
 - (a) Ms Kopp's failure to meet her statutory obligation to report convictions. Particularly given the context of prior convictions, this reflects adversely on Ms Kopp's fitness to be a teacher. The Tribunal made clear in the first proceedings that it did not accept Ms Kopp was unaware of the mandatory reporting requirements.¹⁹ If she was not aware before those proceedings, there could be no doubt afterwards, or about the seriousness with which the statutory obligation to report is viewed.
 - (b) Rule 9(1)(j) is engaged. This rule refers to an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for 3 months or more. Ms Kopp pleaded guilty to offences under ss56(2) and 56(4), and ss 32(1)(b) and 32(3) of the Land Transport Act, which are covered by

¹⁶ Including *CAC v Teacher B* (above n14); *Complaints Assessment Committee v Korau NZTDT 2017/17*; *Complaints Assessment Committee v Ngata* [2020] NZTDT 50, 16 April 2021.

¹⁷ Above n9 at [19].

¹⁸ *Complaints Assessment Committee v Fuli-Makaua* NZTDT 2017/40.

¹⁹ Above n9 at [25].

this rule.

Penalty

[19] The Tribunal may impose penalties under s500, with the exception of a fine or order for costs because of the application of s500(2). The principles of penalty are well established, being to provide for the protection of the public, and the maintenance of professional standards and public confidence in the teaching profession. The penalty imposed should be fair, reasonable and proportionate, and comparable to those imposed in similar cases.

[20] Cancellation of registration is reserved for cases in which:

- (a) the offending is sufficiently serious that no outcome short of deregistration sufficiently reflects the adverse effect on the teacher's fitness to teach, or its tendency to lower the reputation of the profession;
- (b) the teacher has not taken adequate rehabilitative steps to address their conduct relevant to the offending, indicating an ongoing risk.

[21] It is usual to consider aggravating and mitigating factors. In the absence of evidence from Ms Kopp regarding the circumstances of the offending beyond what is contained in the brief Police Summary of Facts and as to any subsequent steps we have little to go on in mitigation. Ms Kopp has also made clear that she has no intention of teaching again, and wishes to be de-registered, meaning suspension, or rehabilitative and protective factors are, from a return-to-teaching perspective, not relevant.

[22] As noted, a raft of considerations are relevant to determining the seriousness of alcohol/driving related offences, which we do not need to traverse here. Cancellation is certainly not inevitable, and a lesser penalty has been imposed in many cases. However, we accept the CAC's submission that cancellation is available and is the appropriate penalty. We make this finding given that Ms Kopp now has five driving related convictions, has ignored her statutory and ethical obligations to report, and has not engaged with the Tribunal over a lesser penalty. This is also her second disciplinary charge.

[23] While the CAC seeks censure, given the evidence that Ms Kopp has not been teaching since 2020 we do not consider that this is required in the circumstances.

Costs and Non-Publication

[24] No order for costs can be made, in reliance on s500(2).

[25] Neither party has made an application for non-publication orders, and the Tribunal is not aware of any circumstances that would make any order proper.

Orders

[26] Accordingly, the Tribunal orders:

(a) Cancellation of Ms Kopp's registration pursuant to section 500(1)(g).



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