

[PERMANENT NON PUBLICATION ORDERS]

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/21

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

████████████████████  
(Authorisation ██████████)

Kaiurupare | Respondent

Nohoanga | Hearing  
Hei Māngai | Appearance

7 October 2024, (On the Papers). F  
Biggs, A Mitra for the CAC  
Respondent, self-represented

Tribunal

C Garvey (Deputy Chair), L Evans and W Flavell

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**DECISION ON LIABILITY, PENALTY and NON-PUBLICATION**

**14 OCTOBER 2024**

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**Introduction**

[1] ██████████ (the respondent)<sup>1</sup> faces a disciplinary charge arising from a notice of referral for convictions under the Land Transport Act 1998. The respondent is an experienced teacher, and while not currently teaching wishes to have the opportunity to contribute to the profession in the future. The respondent was employed as an

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<sup>1</sup> Because non-publication orders are made we refer throughout to 'the respondent' to avoid unnecessary redactions when this decision is published.

Senior Leader at an [REDACTED] secondary school at the time of her offending and conviction.

- [2] By consent, this matter was dealt with by way of a hearing on the papers on 7 October 2024. The Tribunal received an Agreed Summary of Facts (summary of facts), submissions from both parties and a bundle of documents. Following the hearing a Minute was issued to broadly indicate the Tribunal's findings.<sup>2</sup> This decision now sets out the reasons for those findings.

### The Notice of Referral

- [3] On receipt of notice of a conviction, either by self-report, notification from a Registrar of the Court or some other means such as the Police vetting process, the Teaching Council may refer the conviction to a Complaints Assessment Committee (CAC) for investigation. The respondent was convicted on 27 July 2023 and met her obligation to report this, which she did on 4 August 2023.<sup>3</sup>
- [4] The particulars of the Notice of Referral read:

TAKE NOTICE that a Complaints Assessment Committee (the CAC) has determined that in accordance with section 497(5) of the Education and Training Act 2020 (the Act), as amended by the Education and Training Amendment Act 2022, that it must refer [REDACTED] conviction to the New Zealand Teachers Disciplinary Tribunal (the Tribunal):

- a. Conviction entered on 27 July 2023 for contravening a zero alcohol licence, with breath contained alcohol over 250 micrograms of alcohol per litre of breath while driving vehicle on 13 June 2023 – sections 57AA(4) and 57AA(6) of the Land Transport Act 1998

#### Reasons for Referral

1. [REDACTED] has been convicted and sentenced in the [REDACTED] [REDACTED] for the offence outlined above.
2. [REDACTED] has previous convictions for:
  - a. Excess breath alcohol under section 56(1) Land Transport Act 1998 – offence date 22 June 2017
  - b. Excess breath alcohol under section 56(1) Land Transport Act 1998 – offence date 17 April 2021

<sup>2</sup> Minute 7 October 2024. The parties were clearly advised that the Minute was indicative only and the right of appeal would as usual, run from the issue of this written decision.

<sup>3</sup> Section 493 of the Education and Training Act 2020 requires a teacher to report a conviction within 7 days. Nothing practically turns on the timing in this case, being so proximate to the conviction.

3. The CAC considers that where the power to suspend a teacher's practising certificate or authority under section 500(1)(d) of the Act, or the power to cancel a teacher's registration or authority or practising certificate under section 500(1)(g) of the Act, is likely to be considered by the Tribunal, the conviction must be referred to the Tribunal by the CAC.

### **Agreed Summary of Facts**

- [5] The summary of facts states that the respondent's breath screening test had a reading of 328mcgs of alcohol per litre of breath. The Court imposed a sentence disqualifying the respondent from holding or obtaining a driver licence for 28 days and 9 months' supervision.<sup>4</sup>
- [6] The summary of facts summarises the respondent's previous convictions, which involved notably higher levels of alcohol per litre of breath, and more severe sentences imposed by the District Court. In both instances the respondent self-reported the convictions to the Teaching Council. The 2017 conviction was dealt with by the Council's Minor Convictions Panel which did not impose any particular requirements on the respondent. A CAC dealt with the 2021 conviction, and exercised its power to find misconduct and to impose a censure, being otherwise satisfied that "*the respondent had demonstrated awareness of her actions, and it was confident she would make better decisions in the future.*"<sup>5</sup>
- [7] The summary of facts goes on to record:
16. [The respondent] responded to the CAC investigation. She accepted all wrongdoing and stated she deeply regretted her actions on 13 June 2023. She advised she has left teaching to focus on her recovery and mental health.
  17. [The respondent] has engaged in rehabilitation since the conduct, including by completing an in-patient alcohol rehabilitation programme at Clinic 77 and a drink driving programme with Harmony Trust. She is a regular member of AA.
  18. [The respondent] did not attend the CAC meeting on 4 April 2024. [The respondent] has advised that she is seeking cancellation of her practising certificate but does not wish to have her registration cancelled after 23 years of teaching.
- [8] The summary of facts does not traverse the respondent's explanation of the

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<sup>4</sup> ASOF at [7].

<sup>5</sup> Above n4 at [15].

circumstances in which she committed her driving offences in June 2023. This was outlined by the respondent in support of her application for non-publication orders, in a statement dated 4 June 2024 and a further penalty-directed statement dated 29 August 2024. The respondent recognises that she should not have chosen to drive. She drove to collect a family member and was influenced in that decision by recent trauma and her related relapse with alcohol. Detailed and sensitive information has been provided by the respondent regarding the cause of her trauma, and the nature of treatment she is seeking.

- [9] The respondent has expressed remorse for her actions and shown insight into underlying causes. Within a short period of the offending, she entered residential alcohol treatment, and has persisted with out-patient treatment including attendance at relevant meetings and trauma counselling since that time.

### **Liability - Principles**

- [10] It is neither mandatory nor inevitable (as the respondent's two earlier reported convictions show) that a notifiable conviction will reach the Tribunal, but the cases show that a series of convictions has been considered to warrant this.
- [11] When considering whether to make an adverse finding on a notice of referral, the Tribunal is not required to find whether the relevant conduct amounts to "serious misconduct". The pertinent question is whether the conduct reflects adversely on the teacher's fitness as a teacher.<sup>6</sup> However, reference to the test for serious misconduct is helpful as a framework for assessing whether the conduct meets the threshold to warrant a disciplinary sanction.
- [12] There is ample guidance found in Tribunal cases involving referral of convictions relating to alcohol use, driving while intoxicated or in breach of an alcohol-related licence. The submissions for the CAC helpfully contain a discussion of several of these. *Ngā Tikanga Matatika* | Code expects teachers to demonstrate a high standard of professional behaviour and integrity, which includes being role models outside of the classroom and to conduct themselves within the law. The Tribunal has moved towards a consistent approach that a driving offence that occurs even in a teacher's personal time, and with no direct impact on students, will be viewed as reflecting adversely on the teacher's fitness because of the expectations in the Code. The CAC relies on clauses 1.3 and 1.5.

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<sup>6</sup> *Complaints Assessment Committee v S District Court* [redacted] CIV 2008-004-001547, 4 December 2008, frequently cited eg in *Complaints Assessment Committee v White* NZTDT 2017/29 at [17].

[13] The conjunctive test for serious misconduct under s10 is, as noted, a useful yardstick. This requires that one of the limbs of s10(1)(a) is engaged, and that the conduct is of a nature to require reporting under rule 9 of the Teaching Council Rules 2016. The CAC submits that the respondent's conduct engages ss10(1)(a)(ii) and (iii) which refer to conduct that:

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

[14] The CAC refers to r9(1)(j), being 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 (which captures s57AA of the Land Transport Act). The CAC also rely on the more general r9(1)(k), which refers to an act or omission that brings or is likely to bring the teaching profession into disrepute.

[15] In submitting that the conduct does warrant an adverse finding, the CAC refers to three main factors:

- (a) that the respondent's level of breath alcohol was above the level for a person on a standard licence, and the respondent held a zero-alcohol licence.
- (b) that the offending is one which inherently poses a risk to the wider public. (We also note the respondent's own explanation that she was pulled over by the police as she was driving at night with her headlights off).
- (c) the fact of two prior driving related convictions, one being only two years previously.

[16] The CAC refers to *CAC v Fuli-Makaua*<sup>7</sup>, from which case the principles relevant to alcohol and driving related offences were repeated in *CAC v Kopp*<sup>8</sup>, *CAC v Kereopa*<sup>9</sup> and *CAC v Goundar*<sup>10</sup>. The Tribunal in each case made adverse findings on the basis that:

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

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<sup>7</sup> *Complaints Assessment Committee v Fuli-Makaua* NZTDT 2017/40.

<sup>8</sup> *Complaints Assessment Committee v Kopp* NZTDT 2018/26. Ms Kopp has subsequently been the subject of further disciplinary proceedings relating to a driving conviction, resulting in cancellation of her registration: NZTDT 2023/65.

<sup>9</sup> *Complaints Assessment Committee v Kereopa* NZTDT 2018/13

<sup>10</sup> *Complaints Assessment Committee v Goundar* NZTDT 2018/57.

profession into disrepute when considered against the objective yardstick that applies.<sup>11</sup>

### **Liability - Findings**

- [17] We agree with the submissions from both parties that the respondent's conduct warrants an adverse finding. The conduct breaches the expectations set for all teachers under the Code and reflects on the respondent's fitness to teach, taking into account her two previous convictions. Section 10(1)(a)(iii) is also engaged as driving with excess alcohol has the potential to lower the standing of the profession, being an offence that poses risk to others. It is pertinent that the respondent held a senior management position at a secondary school at the time.
- [18] Under r9(1)(j) the respondent's convictions in July 2023 were reportable with both offences carrying a maximum term of two years imprisonment.
- [19] The respondent's self-report and remorse, the circumstances of the offending, and the respondent's rehabilitative steps and prospects are all matters that are relevant to our consideration of penalty rather than dissuading us that an adverse finding is warranted.

### **Penalty**

- [20] Having made an adverse finding, the Tribunal may impose penalties under s500, with the exception of a fine or an order for costs as s500(2) precludes this on referral of a conviction. 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. The Tribunal should impose the least restrictive penalty that is appropriate in the circumstances.
- [21] The CAC submits that cancellation is the starting point in this case. Cancellation of registration is reserved for the most serious disciplinary charges, based on these overlapping considerations:
- (a) that the offending is sufficiently serious such 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; and

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<sup>11</sup> *Complaints Assessment Committee v White* 2017/29 at [22].

- (b) the teacher has not taken adequate rehabilitative steps to address their conduct relevant to the offending, indicating an ongoing risk.<sup>12</sup>

[22] The CAC submits that if the Tribunal considers it can step back from cancellation, then an appropriate penalty is censure, annotation of the register and conditions. The CAC's proposed conditions are that the respondent:

- (a) must not return to teaching until she has provided a doctor's report that she is fit to do so;
- (b) prepares a health and relapse prevention plan;
- (c) will work with an in-school mentor for 12 months who is aware of the Tribunal's decision, the respondent's background and her health and relapse plan;
- (d) complies with reasonable requests by her employer for random drug and alcohol testing, and
- (e) discloses the Tribunal's decision to a current or future employer in the education sector for a period of three years.

[23] Following receipt of further submissions from the respondent, counsel for the CAC agreed that in-school mentoring may not be appropriate. The respondent opposed this on the basis that it would involve disclosure of highly sensitive information, an invasion of her privacy with no assurance that the mentor (proposed to be a colleague within her place of employment) was equipped to appropriately manage that information, and that it would preclude her from taking on a relief teaching role.

[24] The respondent submits that the following penalties are appropriate:

- (a) Censure.
- (b) Conditions:
  - (i) that she does not return to teaching until she has provided the Teaching Council with a report from her doctor attesting to her fitness (from a health perspective) together with follow up reports on a termly basis for one year.

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<sup>12</sup> In reliance on *CAC v Fuli-Makaua* NZTDT 2017/40.

(ii) that she provides the Council with a health and wellbeing plan at the time of return to teaching which supports her recovery.

(c) Annotation of the Register for two years.

[25] The cases referred to by the CAC (see [16] above), and there are many more, are examples where the Tribunal has imposed censure, annotation and conditions, with the exception of *Fuli-Makaua*. In that case, cancellation was considered the only appropriate penalty because of the teacher's lack of engagement in rehabilitation and insight, serious repeat offending and a failure to self-report. As this snapshot of cases shows, evidence of insight and rehabilitative steps with an ongoing commitment to minimise the risk of future offending is persuasive in allowing the Tribunal to consider it can meet the protective purpose of discipline with a lesser penalty than cancellation. The Tribunal observed in *CAC v White*<sup>13</sup>:

[26] We have said previously that whether we must cancel a teacher's registration almost inevitably turns on the practitioner's degree of insight into the cause of the behaviour concerned, and his or her rehabilitative prospects. Knowing what motivate the misconduct is a way in which to gauge the risk of repetition.

[26] The respondent's mitigating factors have been clearly articulated. Supporting evidence provided from health professionals confirms her commitment to rehabilitation. Letters were received from the Clinical Director of the drug and alcohol service where the respondent sought residential treatment and also from the clinician who continues to provide weekly therapy from that service; from the respondent's counsellor, and from a nurse practitioner on behalf of the respondent's GP. The respondent also engages in regular meetings (NA or AA).

[27] The Tribunal is very sympathetic to the sensitive and private circumstances outlined in detail by the respondent, and the emphasis in her submissions on these underlying medical issues. We accept to some degree that medical matters do not sit comfortably with judgment by a professional disciplinary tribunal, if the focus of penalty ignores those underlying issues. However, teaching is a public-facing profession. The Code sets high standards to reflect the important role teachers have as educators and role models with frequent and direct contact with ākonga. The fact that the Code does not clearly delineate between a teacher's personal and

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<sup>13</sup> Above n11, internal footnotes removed.

professional lives is deliberate, as conduct in a personal capacity may nonetheless have implications for fitness to teach.

[28] The subject conviction is the respondent's third offence. The respondent has now taken significant rehabilitative steps, including stepping back from teaching. We accept a penalty with a rehabilitative focus is appropriate. We also find that we cannot ignore the potential for significant health issues to encroach on professionalism, and the need to be alive to such a risk. We have chosen the duration of conditions and a restriction on the respondent working in a senior leadership position for this reason. We do not consider random drug and alcohol testing is justified in this case. The Tribunal has imposed such a condition in other cases, most often where a teacher's misconduct with drugs or alcohol directly impacted their actions during school hours and/or with students.<sup>14</sup>

[29] We consider the following penalties are appropriate:

- (a) Censure.
- (b) Annotation of the Register for three years.
- (c) Conditions on the respondent's current and any subsequent practising certificate:
  - (i) that the respondent provides the Teaching Council with evidence from a suitably qualified health professional that she is fit to return to teaching before commencing a teaching position.
  - (ii) that for the first 12 months after her return to teaching the respondent provide termly reports to the Teaching Council from a suitably qualified health professional confirming she is fit (in accordance with (i) above).
  - (iii) that the respondent discloses this decision to a current or future employer in the education sector (in a position that requires her to hold registration), for a period of three years.
  - (iv) that the respondent does not hold a senior leadership position in teaching for a period of three years.

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<sup>14</sup> See e.g. *Complaints Assessment Committee v Teacher* [2015] NZTDDT 44; *Complaints Assessment Committee v Campbell* [2016] NZTDT 35; *Complaints Assessment Committee v Teacher K* [2018] NZTDT 88; *Complaints Assessment Committee v Teacher* [2021] NZTDT 61.

- [30] We agree that a health and relapse prevention plan is important and should be an inevitable part of the respondent's engagement with her health professionals. We also encourage the respondent to consider a return to teaching plan to assist her transition back into an active role in the profession.

### **Non-Publication**

- [31] The starting point in disciplinary proceedings is the principle of open justice, and transparency of proceedings conducted by the Tribunal. The usual expectation is that the names of teachers who face a disciplinary charge will be published. Pursuant to s501(6) of the Act, the Tribunal may make orders to prohibit publication of names or any particulars of the case, and/or of the whole or part of any evidence that is produced at any hearing, including papers or documents. An order may be made if in the Tribunal's opinion, it is proper to do so.

- [32] Where a person relies on their mental or physical health (or that of another person) as a basis for seeking suppression, the Tribunal expects to receive sufficiently detailed evidence that supports an assertion that publication is likely to have an adverse impact. The Tribunal has referred often to the 'ordinary' consequences of upset, distress or embarrassment in the face of publication of a disciplinary finding for the teacher, and foreseeably, for those who are close to them. Such ordinary responses are not sufficient to make an order 'proper'.

- [33] The respondent applies for permanent non-publication orders. The CAC indicates that it will abide the decision of the Tribunal.

- [34] The respondent's application relies on her medical diagnoses including post traumatic stress disorder, anxiety, depression and alcoholism (in recovery), and supporting letters from her treating health professionals. The respondent states:

I am afraid that if my name is made public the shame that I already feel will become too much for me and my mental health and recovery will be at serious risk.

- [35] The respondent's alcohol and drug clinician states her professional opinion is that publicity will "*have a deleterious effect on [the respondent's] recovery from trauma, alcoholism and her mental health.*" The respondent's trauma counsellor writes:

It is my professional opinion that name suppression is a critical component in [the respondent's] ability to recover from trauma. Without it I believe that her recovery from trauma will be greatly and detrimentally affected.

[36] The respondent also describes significant changes in her living situation in order to focus on her recovery, which have impacted upon her children, including the sale of her home and loss of a fulltime income, and she also seeks suppression for their benefit.

[37] The respondent refers to *CAC v Teacher B*<sup>15</sup> and *CAC v Teacher*<sup>16</sup> as examples of cases in which the Tribunal has granted non-publication orders on the basis that to do otherwise would jeopardise the teacher's alcohol rehabilitation. In *B* the Tribunal considered that publication would not serve the interests of justice if the teacher's rehabilitative efforts were "*derailed*." Teacher B was not teaching and had no intention to return to teaching, requesting cancellation of her registration. In *P* the Tribunal granted orders notwithstanding the District Court had declined to do so in the related criminal proceedings. The Tribunal noted that it had received additional expert evidence and was satisfied that there was a real risk that publication would heighten the respondent's risk of anxiety and increase the prospect of relapse.

[38] We find it is proper to make an order in favour of the respondent taking into consideration:

- (a) the respondent's significant commitment to rehabilitation,
- (b) the clear statements of likely harm from publication of her name in relation to these proceedings that her treating health professionals have provided, and
- (c) the conditions that place protections around the respondent's return to practice.

## Orders

[39] Accordingly, the Tribunal orders:

- (a) Censure pursuant to section 500(1)(b).

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<sup>15</sup> *Complaints Assessment Committee v Teacher B* NZTDT 2022/57

<sup>16</sup> *Complaints Assessment Committee v Teacher P* 2018/63

- (b) Conditions pursuant to section 500(1)(c) and (j) imposed on the respondent's current and any subsequent practising certificate as follows:
  - (i) that the respondent provides the Teaching Council with evidence from a suitably qualified health professional that she is fit to return to teaching before commencing a teaching position.
  - (ii) that for the first 12 months after her return to teaching the respondent provide termly reports to the Council from a suitably qualified health professional confirming she is fit (in accordance with (i) above).
  - (iii) that the respondent discloses this decision to a current or future employer in the education sector (in a position that requires her to hold registration with the Teaching Council), for a period of three years.
  - (iv) that the respondent does not hold a senior leadership position in teaching for a period of three years.
- (c) Annotation of the register for a period of three years, pursuant to section 500(1)(e).

[40] Pursuant to section 501 the following orders for non-publication are made:

- (a) The name and identifying particulars of the respondent including the name of the secondary school at which she was employed at the time of the offending.
- (b) The details in the respondent's statements regarding the events in the months leading to her conviction, and other sensitive material regarding her background and mental health provided in the correspondence from the respondent's health professionals.



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