



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022-59

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

Walter Anthony Ashby
(Authorisation 358732)

Kaiurupare | Respondent

Nohoanga | Hearing

5 March 2025 (on the papers)

Hei Māngai | Appearances

J Ah Koy for the CAC

No appearance for the Respondent

Tribunal

T Mackenzie (Deputy-Chair), L Evans, L Arndt

Date of Decision

18 March 2025

DECISION OF THE TRIBUNAL

[1] The CAC has brought a charge of Serious Misconduct, as follows:

The CAC charges that Walter Anthony Ashby, registered teacher, of Auckland:

a. Was convicted on 14 December 2018 of driving a motor vehicle on 5 August 2018 with excess breath alcohol being 441 micrograms of alcohol per litre of breath (third or subsequent), an offence contrary to section 56(1) of the Land Transport Act 1998;

b. Was convicted on 19 June 2019 for driving a motor vehicle while disqualified on 5 March 2018, an offence contrary to sections 32(1)(a) and 32(3) of the Land Transport Act 1998; and

c. Between 13 May 2019 and 6 April 2021, taught without a practising certificate

Facts

[2] An agreed summary of facts is appended to this decision.

Serious Misconduct – law

[3] The test for serious misconduct is set out at s 10 of the Education and Training Act 2020. Section 10 defines “serious misconduct” as follows:

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

[4] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.¹ The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

¹ *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

[5] The second limb (fitness) has been described by the Tribunal as follows:²

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns 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. The views of the teachers on the panel inform the view taken by the Tribunal.

[6] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.³ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[7] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁴ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

Our findings

[8] We have no doubt that taken together the conduct here is serious misconduct. Particularly the breach of the court imposed disqualification, the fact of teaching without a practising certificate, and the length of time that Mr Ashby did this for (nearly two years) easily lead us to that conclusion.

[9] In terms of the test, such conduct adversely reflects on the respondent's fitness to be a teacher, and brings the profession into disrepute.

[10] We also consider that the conduct is of a nature and severity to meet the criteria for reporting misconduct in the Teaching Council Rules 2016. Particularly triggered here are:

- 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); and

² *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁴ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

- Rule 9(1)(k) (an act or omission that brings, or is likely to bring disrepute to the profession).

[11] We therefore find the charge proven.

Penalty

[12] The respondent has not engaged in the investigation or disciplinary process.

[13] The respondent no longer holds a practising certificate. The appropriate penalty may well have been a suspension if he did so. Cancellation on the other hand may be excessive here.

[14] The penalty we can impose is a censure⁵ and annotation of the register for 24 months.⁶

[15] We also make an order imposing conditions on any current or future practising certificates issued to the respondent over the next five years, requiring him to:

- (i) inform any prospective or current employers in the teaching profession of the Tribunal's decision; and
- (ii) provide any prospective or current employers in the teaching profession with a copy of the Tribunal's decision;

Costs

[16] Mr Ashby should pay a contribution to costs per s 500(1)(h) in the usual way.

[17] The CAC's total costs are \$9738. We consider those are reasonable. A 40% contribution is sought of \$3918.80. We so order.

[18] Mr Ashby is also directed to pay costs to the Teaching Council of \$1500, being a generous (to Mr Ashby) estimate of 40% of the costs for conducting this case.⁷

⁵ Section 500(1)(b) of the Act.

⁶ Section 500 (1)(e) of the Act.

⁷ Section 500(1)(i) of the Act.

Non-publication orders

[19] No orders are in place or have been sought.

A handwritten signature in blue ink, appearing to read 'Mackenzie', with a long horizontal flourish extending to the right.

Tim Mackenzie
Chair of the New Zealand Teacher's Disciplinary
Tribunal

IN THE MATTER OF the Education and Training Act 2020
AND
IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand into the conduct of **Walter Anthony Ashby**, of Auckland, Teacher (Registration Number 358732)

AGREED SUMMARY OF FACTS

Background

1. The respondent, Walter Anthony Ashby, is a registered teacher. Mr Ashby currently holds a full practising certificate, valid until 6 April 2024.
2. At all material times, Mr Ashby was employed as a kaiako at Te Kura Kaupapa Māori o Te Kotuku (**kura**), a school based in Ranui, Auckland.
3. At the date of this summary Mr Ashby is no longer working at the kura and is not currently employed in the education sector.

Criminal proceedings

4. On 14 December 2018, in the North Shore District Court before Judge P Sinclair, Mr Ashby pleaded guilty and was convicted and sentenced to 80 hours' community work and six months' supervision for one charge of driving with excess breath alcohol (third or subsequent), an offence under ss 56(1) and 56(4) the Land Transport Act 1998. The maximum penalty for this offence is two years' imprisonment or a fine not exceeding \$6,000. Mr Ashby's previous convictions for drink driving dated back to 2005 and 1995, prior to Mr Ashby being registered as a teacher.
5. Mr Ashby was also disqualified from driving for a period of one year and one day, as this was his third or subsequent conviction for drink-driving. Mr Ashby sought a discharge without conviction, but this application was declined.
6. A certified copy of the court extract recording Mr Ashby's conviction for this charge is attached at **Tab 1**. The police summary of facts and the sentencing notes of Judge P Sinclair

are attached at **Tab 2** and **3** respectively. These documents form part of this summary of facts. Mr Ashby did not self-report his conviction to the Teaching Council as required under s 493 of the Education and Training Act 2020 (**Act**).

7. On 19 June 2019, Mr Ashby pleaded guilty and was convicted and sentenced in the Waitakere District Court by Magistrate R Thomas to 80 hours' community work for one charge of driving while disqualified, an offence under ss 32(1)(a) and 32(3) of the Land Transport Act 1998 (for which the maximum penalty is three months' imprisonment or a fine of \$4,500, along with a mandatory six-month disqualification from driving). A certified copy of the court extract recording this conviction is attached at **Tab 4**, and a copy of the police summary of facts is attached at **Tab 5**. These documents also form part of this summary of facts.
8. These convictions were discovered through a Police vetting report obtained as part of Mr Ashby's application for full registration, the details of which are set out below.

Teaching without a practising certificate

9. On 25 September 2020, the Teaching Council | Te Matatū (**Council**) received an application from Mr Ashby to move from provisional registration to full registration.
10. When processing Mr Ashby's application, the Council's Registration Officer Sue Gregory (**Ms Gregory**) identified that Mr Ashby's practising certificate had expired on 13 May 2019. However, the documentation received as part of Mr Ashby's application for full registration recorded that Mr Ashby had continued to be employed in a permanent teaching role at the kura following the expiration of his practising certificate.
11. On 5 November 2020, Ms Gregory sent Mr Ashby and the kura an email asking for an explanation as to why Mr Ashby had been employed at the kura in an ongoing teaching position without a current practising certificate or authorisation to teach since May 2019.
12. On 30 March 2021, Ms Gregory received an email in response on behalf of the kura from, Hemi Tai Tin (**Mr Tai Tin**), apologising for his "tardiness on this issue". Mr Tai Tin noted that there was "no excusing my oversight in the issue" in terms of Mr Ashby's lack of practising certificate. He reiterated that this was an oversight on his part and that "we, as most kura are extremely busy and that we tend to miss the small but yet important things".

13. No further explanation was provided from Mr Ashby or Mr Tai Tin.
14. On 6 April 2021, Mr Ashby's application for full registration was processed and Mr Ashby was issued with a full practising certificate.
15. Mr Ashby continued to teach at the kura without a valid practising certificate from 13 May 2019 to 6 April 2021. This included for the period after November 2020, when Ms Gregory had alerted him that he should not be teaching without a practising certificate.

Own motion referral

16. On 2 October 2020, the Teaching Council received a Police vetting report as part of Mr Ashby's application for full registration. The report recorded that Mr Ashby had received two criminal convictions in December 2018 and June 2019 which he had not reported to the Teaching Council. It was also identified by Ms Gregory that Mr Ashby had been teaching without a valid practising certificate since May 2019. By its own motion, the Teaching Council referred these matters to a Complaints Assessment Committee (**Committee**) for investigation.

Teacher's response

17. On 12 May 2022, Mr Ashby was sent a draft copy of the investigation report via email. Mr Ashby did not provide a response to the matters detailed in the draft investigation report. The investigation report was subsequently referred to the Committee to consider without comment from Mr Ashby.
18. Mr Ashby was invited to attend the Committee's meeting on 6 October 2022. Despite indicating that he wished to attend, Mr Ashby did not attend the meeting, and did not provide any response to the matters referred.