

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTD 2022/68

UNDER  
WĀHANGA

the Education and Training Act  
2020

IN THE MATTER  
MŌ TE TAKE  
BETWEEN  
I WAENGA I A

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**

Prosecutor/Referrer | Kaiwhiu

AND  
ME

Respondent | Kaiurupare

Hearing | Te Rongonga

27 September 2023

Representation | Hei Māngai

E Mok for the CAC  
J Brown for the Respondent

Tribunal panel | Pae Taraipiunara

T J Mackenzie (Deputy Chair), W Flavell, L  
Evans

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**DECISION OF THE TRIBUNAL**

TE MENETI O TE RŪNANGA RONGONGA TŌMUA I WHAKATŪRIA  
30 October 2023

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## Background

[1] The Complaints Assessment Committee (CAC) has brought a charge of Serious Misconduct against [REDACTED]

[2] The charge is that Ms [REDACTED] attended school whilst under the influence of, and/or impaired by, alcohol.

[3] Ms [REDACTED] has accepted that this was serious misconduct. The parties are largely agreed on the appropriate outcomes, although these are ultimately a matter for the Tribunal.

[4] The Tribunal met to consider this matter on 27 September 2023. This is our decision on liability, penalty, publication and costs.

## Facts

[5] The agreed facts are as follows (we have not included the attachments referred to):

1. The respondent, [REDACTED] (Ms [REDACTED]), is a fully registered teacher with a practising certificate valid until January 2025. She was first fully registered as a teacher in January 2014.

2. At all material times, Ms [REDACTED] was working as a teacher at [REDACTED], a primary school for students in Years 1 to 6, located in [REDACTED] Auckland (school). She has worked at the school since 2014. She remains a teacher at the school as at the date of this summary of facts.

3. The school had an alcohol and drugs policy in place at the relevant time. The policy stated that the school was to be an alcohol and drug free workplace, except for at social events in designated areas, and with prior school board approval. The policy also encouraged staff to notify the school if they considered they had a drug or alcohol issue which might affect their work, so that the issue could be appropriately addressed by the school in collaboration with the relevant staff member.

### Conduct on 1 July 2021

4. Prior to 1 July 2021, Ms [REDACTED] had been attending counselling sessions to help address her alcoholism (which had been an issue over an extended period). Ms [REDACTED] informed the school of her alcohol issues, and was given leave to attend counselling sessions. The school had had a wellbeing plan in place for Ms [REDACTED] since 2019.

5. On 1 July 2021, Ms [REDACTED] had a scheduled counselling session, for which she had been given leave. Ms [REDACTED] informed the school principal that morning that she was feeling anxious and that she felt unable to cope in the classroom. Earlier that morning, she had been observed to be in a distressed state in front of students, teachers, and parents. The principal agreed to release Ms [REDACTED] from school for that morning, to return by 2pm, and advised that cover would be arranged for her class.

6. When Ms [REDACTED] returned to the school at approximately 2pm, she was impaired by alcohol. She had returned directly to her classroom upon returning to the school.

7. Shortly after Ms [REDACTED] returned to her classroom, she asked another teacher where her students were supposed to be going. She was seated at one of the desks in the classroom at the time and students were around her asking where to go (as part of a school rotation). The teacher approached Ms [REDACTED] and told the students to move along. The teacher immediately noticed that Ms [REDACTED] was shaking, crying, and appeared panicked. She was confused about the rotation, and had a shaky voice and red eyes.

8. The teacher guided Ms [REDACTED] out of the classroom to the back office a short distance away.

9. Other staff in the area noticed that Ms [REDACTED] was staggering and struggling when walking, that she appeared upset and was crying, and that she was slurring her speech.

10. [REDACTED], the Deputy Principal, then spoke with Ms [REDACTED] in the back office, and concluded that Ms [REDACTED] was intoxicated. Ms [REDACTED] observed that Miss [REDACTED] was distressed during the conversation with her. Ms [REDACTED] swore at Ms [REDACTED] during the conversation, and was slurring her speech and confused.

11. Ms [REDACTED] was then escorted to her parents' house by Ms [REDACTED], who also contacted Ms [REDACTED] husband.

#### **Prior alcohol-related issues**

12. Prior to the incident on 1 July 2021, Ms [REDACTED] was convicted of a charge of driving with excess breath alcohol on [REDACTED] the offending having occurred on [REDACTED]. She was fined \$600, ordered to pay court costs, and disqualified from driving for six months. The conviction was referred to the Teaching Council | Matatu, which in turn referred the conviction to a Complaints Assessment Committee (Committee) dealing with minor convictions. Committee determined to take no further action on the conviction, as this was Ms [REDACTED] first conviction. She had also informed her principal of the conviction at the time.

#### **The School process and mandatory report**

13. Following the incident on 1 July 2021, the school commenced a disciplinary investigation.

14. During a disciplinary meeting with the school board's disciplinary panel and the school principal on 12 July 2021, Ms [REDACTED] admitted that she had drunk alcohol after leaving her scheduled counselling session on 1 July 2021. She indicated that she had since sought further professional help, and expressed remorse for her actions, saying they had been an error of judgement.

15. The school board concluded that Ms [REDACTED] had breached the school's policy on alcohol and drugs and the staff conduct policy. Ms [REDACTED] was issued with a formal warning, to be held on her file for 12 months, as a result of the school's disciplinary process. She was given additional sick leave to allow her to attend her ongoing scheduled counselling sessions.

16. On 26 July 2021, the school principal, [REDACTED] submitted a mandatory report to the Teaching Council regarding Ms [REDACTED] conduct on 1 July 2021. The mandatory report indicated that the school board had imposed conditions on Ms [REDACTED] practice to allow her to continue in her teaching role at the school. This included regular reporting to senior leadership, ongoing

attendance at counselling sessions, and random breath testing at school. The mandatory report also stated that Ms [REDACTED] was an “extremely effective” teacher and that the 1 July 2021 incident was the first occasion when Ms [REDACTED] had been observed to be intoxicated while at work.

17. On 15 October 2021, the Teaching Council's Triage Committee referred the mandatory report to a Committee to investigate.

18. During the Committee's investigation, the school principal indicated that Ms [REDACTED] had complied with the conditions referred to above at paragraph 16 of this summary of facts for approximately one school term before she had gone on maternity leave.

### **Impairment process**

19. During the Committee's investigation, Ms [REDACTED] accepted an offer to undergo a voluntary impairment process.

20. The report prepared by the Impairment Committee indicated that Ms [REDACTED] suffered from anxiety and “associated problematic, alcohol use”. The report, in addition to identifying Ms [REDACTED] impairment, sets out the steps she has taken since the [REDACTED] incident to address her anxiety and alcohol use, as well as recommendations for addressing these issues going forward.

### **Teacher's comments**

21. In a written response to the mandatory report provided on 11 October 2021, Ms [REDACTED] stated that she accepted the account of her conduct on 1 July 2021 as set out in the mandatory report. She apologised for her lapse in behaviour and for the compromising impact that it had had on her colleagues. She expressed regret and embarrassment over her actions, and acknowledged that her poor decision-making had put herself, students, and others at risk, as well as being unprofessional. She indicated that she was seeking ongoing support to prevent similar incidents occurring in the future, and said that she highly valued her teaching career.

22. Ms [REDACTED] also attended a meeting with the Committee on 29 September 2022. During that meeting, Ms [REDACTED] said that she knew she had an issue with alcohol in the lead-up to the 1 July 2021 incident, and had been attending counselling for about a month directly before this. She said she had been nervous for the counselling session that day, and that the sessions were difficult and triggering. She said she chose to consume alcohol at her parents home after the session as a coping mechanism, before then taking an Uber back to school. She said she had been removed from the classroom within a very short time (less than a minute) after returning to the school.

23. Ms [REDACTED] also outlined the rehabilitative steps she had taken since the 1 July 2021 incident, including continuing her counselling for four months and abstaining from alcohol since the incident. She said she had a good support network around her and that her counselling had helped her develop better strategies for dealing with her anxiety. She said she was confident her drinking would not be an issue again. She said she understood the impact of her actions on the people around her, especially her students and colleagues, and accepted her behaviour had been unprofessional. She apologised to the Committee for her conduct.

## Liability for the charge

[6] Section 10 of the 2020 Act 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

[7] 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.<sup>1</sup> The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[8] The second limb (fitness) has been described by the Tribunal as follows:<sup>2</sup>

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.

[9] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.<sup>3</sup> 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.

[10] 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

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

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

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

for serious misconduct.<sup>4</sup> 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.

[11] The Teaching Council Rules 2016 describe the types of behaviour that must be reported by an employer as part of the serious misconduct test. The CAC relies on rule (9)(1)(k) as follows:

### **9 Criteria for reporting serious misconduct**

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

*(h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:*

*(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.*

(other sections omitted)

[12] Here, the CAC relies on (h) and (k) (which we have italicised above).

[13] As noted earlier, Ms [REDACTED] accepts that her actions constitute serious misconduct. We agree. Her actions meet all of the tests for serious misconduct. It matters very little if at all that she was only present in her class for a short period of time. The fact that she was present whilst clearly intoxicated and had engagement with students easily meets the serious misconduct test on all limbs.

### **Penalty**

[14] Penalty in a case like this hinges significantly on the position of the respondent. The Tribunal will consider what history of previous issues there is, if any? Has responsibility and insight been shown? What remedial steps have been and/or are being taken? What professional and personal safeguards are in place to minimise the risk of this occurring again?

[15] Whilst the Tribunal can take rehabilitation and the continuance of a teaching career as one purpose of issuing penalty, that must be balanced against the realities that we are a Tribunal with a statutory mandate and only a finite period to deal with this matter. It is not our role to engage in therapy and/or ongoing monitoring. The same set of facts could result in cancellation in some cases, and steps short of that in others.

[16] In the present case Ms [REDACTED] has put in place several steps that lend support to a rehabilitative approach. Ms [REDACTED] has identified and explained her

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

descent into alcohol dependency. She has been attending a number of counselling and professional services. She has since started a family and is maintaining a new healthy lifestyle physically and mentally. She has a number of personal supports in place. She has admitted all wrongdoing and engaged in the CAC process including undertaking an impairment assessment. Mr [REDACTED] is also returning to teaching work with the full support of her employer, who obviously is well aware of the issue that led to the present case.

[17] We accept that Ms [REDACTED] is remorseful and contrite for what occurred. She understands the position she put herself, the school and the learners in. She recognises that she must maintain her remedial steps.

[18] We are satisfied that this is one of those situations where we can have sufficient confidence that the issue is in hand as best as it can be. It would be a tragedy to end Ms [REDACTED] career over this incident if that can be avoided.

[19] We therefore agree with the outcomes suggested by the parties, which will be as follows:

- Ms [REDACTED] is censured.<sup>5</sup>
- The Register is annotated for two years.<sup>6</sup>
- That for three years from the date of this decision the following conditions are entered on Ms [REDACTED] practicing certificate:
  - i. Ms [REDACTED] inform any employers in the teaching profession of this decision and provide them with a copy of it.<sup>7</sup>
  - ii. Ms [REDACTED] agrees to undertake breath alcohol screening at any teaching role if requested by her employer.
  - iii. That within 20 working days of this decision Ms [REDACTED] (and/or any health professional assisting her) develops a relapse prevention plan to be agreed with any employer in the teaching profession, and a copy provided to the Teaching Council, to the satisfaction of the Teaching Council Manager of Professional Responsibility.

[20] Finally we note that despite reaching this position, any future similar issues may see a less rehabilitative view taken and possibly the end of Ms [REDACTED] teaching career.

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<sup>5</sup> Section 500(1)(b) Education and Training Act 2020.

<sup>6</sup> Section 500(1)(e).

<sup>7</sup> Section 500(1)(c).

## **Non Publication orders**

[21] It is common in situations such as the present for the respondent to seek non publication orders. They have been sought here.

[22] Ms [REDACTED] has provided us with her own views and moreover professional opinion from a psychiatrist who has seen her, regarding the detrimental health affects for her if her name was at risk of publication.

[23] Having considered that information and in the context of this case we consider that a permanent non publication order is appropriate, subject to a qualification which we will note below.

[24] We order non-publication of Ms [REDACTED] name and all details which might lead to identification of Ms [REDACTED]. In this case that will include the name of the school involved, its location (the city itself can be reported), and the names of any other staff mentioned in the summary of facts.

[25] The qualification noted above is as follows. This conduct at the school may well have been advised to parents, given Ms [REDACTED] attended her classroom on the day of the incident. Other staff were also involved. We consider that, to the extent that the school wishes to, it should be able to advise staff and parents who already know of what occurred of the outcome of this process i.e. that Ms [REDACTED] admitted a charge of serious misconduct and the penalties stated above were ordered by the Tribunal. This means that the CAC and/or Teaching Council can advise the result to the school (meaning the Principal and/or the Board) who in turn can discuss with any potentially affected parents. We consider that this dissemination falls within the 'genuine interest' category identified in *ASG v Hayne* [2017] NZSC 59, [2017] 1 NZLR 777.

## **Costs**

[26] Costs are agreed and we consider the CAC claim to be reasonable. A costs order of 40% of the CAC costs is made, meaning an order of \$2782.28.

[27] Tribunal costs are also set at \$2000. 40% of this is an order of \$800.



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**T J Mackenzie**  
**Deputy Chair**  
**New Zealand Teacher's Disciplinary Tribunal /**  
**Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa**