



EDUCATION COUNCIL
NEW ZEALAND | Mātātū Aotearoa

Complaints Assessment Committee (CAC) v Teacher A

New Zealand Teachers Disciplinary Tribunal 2017/34

A teacher has been censured with conditions on her practising certificate for three years after receiving two convictions.

Within a three-month period, Teacher A received convictions for driving while suspended, possession of methamphetamine and for having a drug utensil for its use.

The matters were referred to the New Zealand Teachers Disciplinary Tribunal (Tribunal). The Tribunal agreed that Teacher A's conduct reflected adversely on her fitness to teach, it considered that, in the circumstances of this case, it was justified in imposing a penalty short of cancellation.

Teacher A has been diagnosed with bipolar disorder. Her offending occurred at a time when she was unwell with personal and work-related stress. Her condition is currently well-managed and her treatment providers advised that it is in her best interest to return to teaching.

The Education Council's Impairment Committee, together with Teacher A, devised measures to help the teacher return to the classroom; and to ensure that the circumstances that led to her offending would not reoccur.

The Tribunal largely adopted this recommended approach. The conditions on Teacher A's practising certificate include requiring Teacher A, for the next three years, to inform her employers of her convictions; the Tribunal's Decision; and to disclose her medical condition and the strategies for managing it.

Teacher A must also develop a comprehensive health plan, identifying her stressors and ways to manage these, as well as having one-on-one mentoring from an approved teacher at school. In respect of Teacher A's drug related convictions, the Tribunal ordered that for the next 18 months she undertake, at her own expense, random drug testing as directed by the Education Council.

Teacher A sought permanent name suppression, submitting a nurse's letter together with medical reports to support the application. The Tribunal ordered the teacher's name and identifying particulars permanently suppressed.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

IN THE MATTER of a conviction referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **TEACHER A**

Respondent

DECISION OF TRIBUNAL

Tribunal: Nicholas Chisnall (Deputy Chair), Susan Ngarimu and Tangi Utikere

Hearing: On the papers

Decision: 13 August 2018

Counsel: J Dawson for the Referrer
Respondent in person

[1] Teacher A was convicted in the Huntly District Court, on 16 February 2016, on a charge of driving while suspended.¹ She was sentenced to a fine of \$250, ordered to pay court costs and disqualified from driving for six months. On 13 May 2016, the respondent was convicted in the Hamilton District Court on charges of possessing methamphetamine and a utensil for its use.² On this occasion, the respondent was sentenced to nine months' supervision.

[2] The convictions were brought to the attention of the Education Council, and the Complaints Assessment Committee (CAC) resolved to refer the convictions to the Tribunal under s 397 of the Education Act 1989 (the Education Act).

[3] Teacher A agreed to this matter being heard on the papers and accepts that her offending entitles the Tribunal to make an adverse finding, and to exercise its disciplinary powers.

[4] We agree that an adverse finding is required. The respondent's conduct giving rise to the convictions reflects adversely on her fitness to teach. However, we accept that a penalty short of cancellation of the respondent's registration to teach is justified.

[5] We were provided with a thoughtful and thorough report prepared by the Education Council's Impairment Committee, as well as information from Teacher A herself. In brief, the report affirms that Teacher A has been diagnosed with bipolar disorder. The respondent's offending occurred during a phase when her mental well-being was destabilised by personal and work-related stress. It is not in dispute that the respondent's bipolar disorder is currently well-managed. Further, the respondent's treating clinicians opine that it is in her best interests that she returns to teaching. However, as the respondent recognises, it is necessary to put in place conditions that will

¹ Section 32 of the Land Transport Act 1998: maximum penalty of three months' imprisonment or a fine of \$4500 and a mandatory disqualification period of six months' or more.

² Under sections 9 and 13 of the Misuse of Drugs Act 1975. The maximum penalties are six months and one year respectively.

facilitate Teacher A's return to the classroom, and which will ensure that there is no repetition of the circumstances that resulted in her offending.

[6] The Impairment Committee recommended a series of conditions that the CAC proposes be imposed as conditions on the respondent's practising certificate for a period of three years. We intend to adopt the approach proposed by the parties, with two variations. The first relates to the proposed condition that the respondent is to identify a mentor-teacher who is aware of her health condition, and who can provide one-on-one support to her. We intend to vary this condition by requiring the Education Council to approve the respondent's choice of mentor. Second, we intend to impose a condition requiring the respondent to undertake random drug testing for a period of 18 months.

[7] Teacher A sought permanent name suppression, and the CAC recognised the finely-balanced nature of the application in its tempered submissions. The respondent provided us with a letter from the registered nurse who coordinates her medical appointments and administers her monthly medication. The nurse opines that the respondent's "mental health and her professional credibility would be adversely affected should her name suppression be lifted". This information, in isolation, is insufficiently detailed to satisfy us that name suppression is necessary.³ However, we are satisfied that suppression is proper when the nurse's letter is read in conjunction with the medical opinions expressed in the Impairment Committee's report. Given the respondent's susceptibility to stress, we are satisfied that there are real risks associated with publication of her name.

[8] In terms of the two-step approach to name suppression we described in *CAC v Finch*,⁴ we therefore consider that it is proper to order suppression of the respondent's name and identifying particulars and we accordingly exercise our discretion to do so.

³ In doing so, we acknowledge what we have said in previous decisions about the evidential requirement that rests on an applicant who says suppression should be ordered because of the risks associated with depression. We expect a detailed explanation regarding the nature of the condition, its likely duration and its associated risks: see NZTDT 2016/27, at [64].

⁴ *CAC v Finch* NZTDT 2016/11, at [14] to [18] and see, too, *CAC v McMillan* NZTDT 2016/52, at [40] to [48].

- [9] The Tribunal's formal orders under the Education Act are as follows:
- (a) Pursuant to s 404(1)(b), the respondent is censured.
 - (b) The register is annotated under section 404(1)(e).
 - (c) Pursuant to s 404(1)(c), we direct that the following conditions be imposed on the respondent's practicing certificate, and will expire three years after the date of this decision:
 - i. The respondent must inform her current employer and any prospective employer of her convictions, this disciplinary proceeding and the Tribunal's decision, and provide the current and prospective employer with a copy of this decision.
 - ii. The respondent is to remain compliant with all medical treatment and continue to engage with her medical providers, and to provide three-monthly updates to the Education Council's Senior Manager, Professional Responsibility.
 - iii. The respondent is to disclose her condition and strategies for managing it to her current employer, and any prospective employer, and provide confirmation that disclosure has occurred to the Senior Manager, Professional Responsibility.
 - iv. The respondent is to develop a comprehensive health plan, identifying her stressors and strategies for managing these; and provide a copy of the plan to the Senior Manager, Professional Responsibility.
 - v. The respondent is to identify a teacher, who is aware of her health condition, to provide one-on-one mentoring at school. The proposed mentor is to be approved by the Senior Manager, Professional Responsibility.
 - (d) Pursuant to s 404(1)(c), the respondent will not work in any senior or management role for at least 12 months, or until her health has stabilised to the satisfaction of her medical providers and the Senior Manager, Professional Responsibility.
 - (e) Pursuant to s 404(1)(c), for a period of 18 months after the date of this decision, the respondent is to make herself available, and to

undertake at her own expense, random testing for drugs at any time she is directed to do so by the Senior Manager, Professional Responsibility. She is to present herself for testing within 24 hours of receiving a notice to do so from the Education Council.

(f) Under 405(6)(c), there is an order permanently suppressing the name and identifying particulars of the respondent.



Nicholas Chisnall
Deputy Chair

NOTICE

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 409(2) or 404 of the Education Act 1989 may appeal to a District Court.
2. An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
3. Subsections (3)-(6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.