

# TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

## Complaints Assessment Committee (CAC) v Taylor

NZ Disciplinary Tribunal Decision 2018/3

Teacher Gareth Hemi Taylor came before the New Zealand Teachers Disciplinary Tribunal (Tribunal) after receiving multiple drink driving convictions.

The Teaching Council's Complaints Assessment Committee (CAC) investigated Mr Taylor's conviction from November 2015 and noted that he had also come before the CAC in 2012, for drinking at a school camp. The CAC then referred Mr Taylor to the Impairment Committee to determine if he had an underlying issue with alcohol.

In 2017, while the Impairment Committee process was underway, Mr Taylor received a further conviction for drink driving, which he self-reported to the Council. The Impairment Committee advised the CAC that it determined that Mr Taylor suffered from problem drinking (high-risk drinking). The matter was referred to the Tribunal.

At the Tribunal when questioned Mr Taylor initially denied that he had a drinking problem, but later accepted he needed help and that his convictions were not positive role modelling for students.

The Tribunal restated what was said in its guideline decision (*CAC v Fuli-Makaua*), "the purpose .... is not to punish the teacher a second time. Rather, disciplinary proceedings are designed to further the Council's purpose of "ensur[ing] safe and high-quality leadership, teaching and learning" and "by protecting the public through the provision of a safe learning environment for students, and maintaining professional standards and the public's confidence in the profession."

The Tribunal noted that "this is achieved by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the environment when required."

The Tribunal found that Mr Taylor's conduct reflected adversely on his fitness to teach and was capable of bringing the profession into disrepute.

The Tribunal noted that there were no recent incidents indicating his teaching had been affected by alcohol.

The Tribunal considered the significant contribution Mr Taylor had made to his school and community, and his commitment to teaching, being at an early stage of his career. The Tribunal's view was that Mr Taylor's skills and experience meant that with appropriate rehabilitative conditions and support, it was in the "interests of the education community that he retains registration."

The Tribunal considered, by a slim margin, that a rehabilitative outcome was appropriate in the circumstances. The Tribunal noted it was Mr Taylor's "last chance to avoid cancellation."

The Tribunal censured Mr Taylor and suspended his practising certificate for a school term (to enable him to get appropriate counselling and treatment), referred him back to the Impairment Committee to assist him with counselling and treatment, imposed conditions that he undergo appropriate counselling and/or treatment for one year, and that he discloses this decision to any employer for three years. The register will be annotated for three years.



**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2018/3**

**UNDER** the Education Act 1989

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

**BETWEEN** **THE COMPLAINTS ASSESSMENT COMMITTEE**

**AND** **GARETH HEMI TAYLOR, registered teacher, teacher registration 310292**

**Respondent**

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**DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

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**HEARING:** 17 April 2018

**TRIBUNAL:** John Hannan (Deputy Chair), Stuart King, Patrick Walsh

**DECISION:** 21 August 2018

**COUNSEL:** PK Feltham/A van Echten for Complainant  
Dzintra King for Respondent

## **Introduction**

1. By a Notice of Referral dated 10 January 2018, the Complaints Assessment Committee (**CAC**) referred the respondent to the Disciplinary Tribunal under section 401 of the Education Act 1989 in relation to two convictions for driving with excess breath alcohol.
2. The respondent was referred to the CAC in 2012 as a result of a mandatory report resulting from drinking alcohol and becoming intoxicated at a school camp, while in charge of students. This matter was dealt with by the CAC by way of no further action.
3. On 10 November 2015 the respondent was convicted for driving with excess breath alcohol, sentenced to 6 months disqualification from driving and fined \$400. The level was 482mcg/l of breath.
4. On 23 March 2017 the respondent was convicted for driving with excess breath alcohol and sentenced to 7 months disqualification from driving, zero alcohol license, 90 hours of community work and fined \$130. The level was 719 mcg/l of breath.
5. The Tribunal heard the matter on 17 April 2018. On the same day as hearing this referral, it considered referrals of EBA convictions for two other teachers. Two similar referrals were also heard on 23 April 2018. Counsel for the CAC helpfully prepared a thorough review of the Tribunal's decisions on these types of referrals and this was presented for all five hearings. A Deputy Chair presided over the 17 April hearings and the Chair for the 23 April hearings. The two panel members were the same for all five hearings.

## **Facts**

6. A summary of facts has been agreed. This records that the Education Council received a notice of conviction from the Kaitaia District Court 16 November 2015. This related to the 10 November 2015 conviction. The respondent did not report this conviction to the Education Council. The summary of facts in the District Court was put before the Tribunal. The conviction resulted from a random stop. There was no report of any adverse aspect of the respondent's driving. No passengers were reported as present in the vehicle.
7. On 7 July 2016 the CAC decided to refer the respondent to the Council's impairment process. The impairment committee concluded that the respondent suffered from

problem drinking (high-risk drinking). The committee's report dated 31 October 2017 was provided to the Tribunal. More will be said about that report later in this decision.

8. On 28 March 2017, while still undergoing the impairment process, the respondent self-reported a conviction to the Education Council. This relates to the 23 March 2017 conviction noted above. The respondent had been apprehended on 25 January 2017 at a police checkpoint and was found to be driving with an excess breath alcohol level of 719 mcg/l of breath. The summary of facts in relation to this conviction was supplied to the Tribunal. No adverse statements are made about the respondent's driving. No passengers are reported.
9. In relation to the mandatory report in 2012, relating to drinking at a school camp with students in his charge, the respondent had advised the CAC that he was taking time out from teaching and would get help for his alcohol problem. He provided the CAC with written verification that he had satisfactorily attended counselling for over three months. The CAC therefore decided to take no further action. It did however state that "any repetition of behaviour inappropriate to the profession of teaching is likely to be dealt with more severely".
10. The respondent provided evidence by a witness statement but was also sworn and read a short brief of evidence. He was then cross examined.
11. The respondent is 35 years of age. He has been teaching since 2007. He has a BA degree, and a Diploma of Teaching obtained in 2006. His focus areas are history and geography.
12. He attached a reference from a local kaumatua and Te Aupori chief who was also a teacher at Kaitaia College. The reference giver had been a teacher at Kaitaia College for 22 years, a school with a roll of 940 students of whom 73% are Maori. He said that what he had seen from the respondent had all been positive. He noted that the respondent was making Kaitaia his home and played for a local rugby club. The respondent also managed under-15 and first XV rugby teams in the school. He organised community quiz evenings and staff competitions, was very good with digital technology, and part of the PLD team providing workshops after school for staff. He is said to be a friendly person, helpful to others in need, and a good teacher who cares about his students. He is described as a "passionate teacher who I believe will benefit our Maori students immensely".
13. He attached student feedback from his 2017 appraisal which was generally positive, with 2 entries describing him as a "great teacher" and others including "we all learn in

a loving and caring environment", "he's all good", and "Mr Taylor is a go I enjoy L1 Geography".

14. The respondent in evidence in chief said that he could go days or weeks without drinking. But he also said that he would drink 15 to 20 standard drinks per week, in particular on Friday night at social clubs or on Saturday night. He said he did not drink every night after school. He acknowledged that his intake of alcohol is higher than an average person but said that in the circles he moved in, it would be about average.
15. He made some somewhat concerning statements about his relationship with the principal of the school. He said that as he did not have the greatest relationship with the principal he did not want to take time off work to attempt to deal with getting help with his alcohol use. He had however had some counselling. He indicated that he would be prepared to get more counselling, or other help, to deal with his drinking if there was counselling locally available outside work times. But he also basically indicated that he has not recently taken any particular steps in that regard. He was concerned that some of the programs which had been offered to him were programs which can only be engaged in during work hours, and he would need to take time off work to attend.
16. When specifically asked in cross-examination whether he had an issue with alcohol use, he said that he did not believe that he did.
17. In response to a question from a member of the Tribunal he accepted that his behaviour was poor role modelling and would make it difficult for him to advance the message to senior students that it is unwise to drink and drive.
18. In response to other questions he stated on several occasions that he wanted help with his relationship with alcohol. He said he hoped that he could stop drinking altogether. He said he agreed with the impairment committee that he has a drinking problem. But there were other responses which somewhat backed away from these recognitions. He said the amount of his drinking has lessened. He said again that he wanted help with his drinking but said that it was difficult because counselling and other treatment would have to happen during work hours and he was concerned about the impact on his employment given that he did not have a good relationship with the principal of the school. As well he said that he thought he was over drinking, "it's no fun for me anymore", and he did not enjoy it as much anymore.
19. In response to a question indicating the Tribunal was looking for insight from him on whether he had an unhealthy relationship with alcohol, he responded that eventually

he hoped he could stop altogether but that he had been "around it (alcohol)" on an everyday basis since the age of 12-13.

20. He gave evidence that he loved teaching and felt that he could contribute significantly in particular with regard to his digital skills. He had been instrumental in setting up a computer suite in the school.
21. Counsel for the respondent, Ms King, submitted that the respondent recognises that he has a problem with alcohol but that his ability to get counselling or other assistance in the Kaitaia area is limited, for resources and geography reasons. She submitted that it is clear that he loves teaching and is dedicated to it. She submitted there was no evidence that alcohol has had any impact on his teaching.

### **General Legal Principles**

22. The Tribunal had the benefit of comprehensive submissions from the CAC on the general principles that the Tribunal has applied in its approach to referrals of EBA convictions. These were before the Tribunal for all five cases. The submissions are set out in full in another associated decision, *CAC v Fuli-Makaua* NZTDT 2017/40.
23. In *CAC v Bird*, the Tribunal affirmed that a referral to the Tribunal does not need to be framed as a charge of serious misconduct, but that the Tribunal needs to reach an adverse finding as to the respondent's fitness to practise as a teacher before exercising its power to impose orders under s 404 of the Act.<sup>1</sup> In *CAC v Lyndon*,<sup>2</sup> the Tribunal noted that its function is to decide if the conduct reflects adversely on his or her fitness to teach, and so assessment against the "serious misconduct yardstick" may be a useful tool in determining whether an adverse finding is warranted.
24. In NZTDT 2011/16, the Tribunal accepted that, depending on the circumstances of the individual case, even one conviction for a serious driving offence may call into question a professional person's fitness to practise (s 378(a)(ii)), and that a series of convictions will certainly do so.<sup>3</sup> Such conduct may also bring the teaching profession into disrepute (s 378(a)(iii)). Similarly, in *CAC v Reriti*, the Tribunal held that, although a single conviction for a drink driving offence may not justify an adverse finding (though it might, depending on other factors), where the conviction is against a

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<sup>1</sup> *CAC v Bird* 2017-5, 22 June 2017; *CAC v S Auckland DC CIV-2008-00400-1547*, 4 December 2008. See also NZTDT 2005/01, 4 November 2005.

<sup>2</sup> At [18].

<sup>3</sup> NZTDT 2011/16, 21 July 2011.

background of a number of previous offences, an adverse conclusion will be warranted.<sup>4</sup>

25. It is also worth restating what was said in *CAC v Fuli-Makaua*, that the purpose of the Tribunal exercising its disciplinary powers in respect of a conviction is not to punish the teacher a second time. Rather, disciplinary proceedings are designed to further the Education Council's overriding purpose of "ensure[ing] safe and high-quality leadership, teaching and learning" through raising the status of the profession.<sup>5</sup> Disciplinary proceedings must further this purpose by protecting the public through the provision of a safe learning environment for students, and maintaining professional standards and the public's confidence in the profession.<sup>6</sup> This, as the Tribunal held in *CAC v Bird*, is achieved through holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the environment when required.<sup>7</sup>

## Submissions

26. For the CAC, Ms Feltham outlined the various factors that would either increase the seriousness of the conduct, or provide a level of mitigation. Rather than reproduce those submissions the tribunal will structure its decision around those factors, which have been amply outlined in *CAC v Fuli-Makaua*.
27. Ms Feltham said that the circumstances here raise questions about fitness to teach. She submitted that the proximity in time of the convictions indicated a problematic relationship with alcohol. She observed that the respondent was still undergoing the impairment process when he drove with excess breath alcohol in 2017. She noted that his representative had reported to the impairment process that his alcohol consumption for a week in March 2017 had been three bottles of wine and a dozen beers.
28. She submitted that there was no indication that Mr Taylor has any meaningful insight into his behaviour. She referred to observations of the Impairment Committee to this effect.
29. She consequently submitted that cancellation of registration would be the appropriate outcome.

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<sup>4</sup> NZTDT 2014/19, 26 August 2014.

<sup>5</sup> Education Act 1989, s377

<sup>6</sup> *CAC v McMillan* NZTDT 2016/52 23 January 2017 at [23] and *CAC v White* NZTDT 2017/29, 28 November 2017 at [19]; *CAC v Korau* NZTDT 2017/17 26 August 2017 at [13]

<sup>7</sup> *CAC v Bird* NZTDT 2017/5, 3 July 2017 at [32].

30. Ms King for the respondent submitted that the respondent recognises that he has a problem with alcohol. She submitted that his somewhat faint engagement with counselling or other rehabilitative steps was the result of the limited facilities for such counselling available in the Kaitaia area, and the distance he would have to travel to get such assistance elsewhere.
31. Ms King further submitted that it was clear that the respondent loves teaching and that there was no evidence of adverse impacts from his use of alcohol on his teaching.
32. She also submitted that guidelines should not be the sole criterion for determining outcomes in cases such as this. The Tribunal should exercise independent judgement and not adopt a "tick box" approach. She noted that the respondent had been brought up in an environment where people drank heavily, and that he had not attended at school under the influence or effects of alcohol and that students had not been affected. She proposed that an appropriate outcome would be censure, and imposition of conditions.

## **Decision**

### ***Circumstances of offending***

33. The mcg/l reading with respect to the 2017 conviction was a relatively high but not a high reading. There were no adverse elements to the nature of the driving. There were no passengers. While there was a suggestion initially that the offending occurred on a school night, after enquiry it appeared that either this was a teacher only day or the term had not yet started. There was no associated offending.

### ***Prior relevant convictions, incidents***

34. There is one prior relevant conviction, from some 18 months previous. That must count against the respondent, suggesting an unhealthy relationship with alcohol. The level of breath alcohol was lower in that case.
35. There was no evidence of an adverse prior traffic history, or other convictions.
36. The incident at the school camp in 2012 is some other evidence of a harmful relationship with alcohol and provides material relevant to an assessment of the risk the respondent poses. It is however to be noted that there is no suggestion that there have been any school -related examples of respondent being adversely affected by alcohol consumption since then.

## ***Risk***

37. It could be said that students were put at risk to a minor degree in the 2012 incident but the two convictions do not involve students in any way.

## ***Failure to report***

38. The respondent failed to report his 2015 conviction. This is an aggravating feature. On the other hand he did report the 2017 conviction which suggests some increased level of insight into his responsibilities.

## ***Mitigating Features: remorse and accountability***

39. As to mitigating features, first, there was no particular evidence provided on the part of the respondent suggesting remorsefulness. Evidence was provided, although not particularly strong, that he accepts accountability for his actions.

## ***Insight, Prospect of Rehabilitation***

40. Although the respondent claimed to have insight into his behaviour, the degree of insight displayed was not great. But there are signs from his statements in giving evidence (and his self-reporting), and the comments from Dr Bakke (see below), that the respondent's level of insight is increasing, together with his maturity with regard to alcohol consumption, albeit the progression has been slow.
41. The respondent has taken some rehabilitative steps, but the practical steps with regard to active engagement with counselling were some years ago when he was located in Tauranga. He did however cooperate with the impairment committee in making arrangements for and undergoing an assessment and tests in early 2017. There appear to have been some difficulties in scheduling such an assessment but these may have been due to communication errors and the limited availability of facilities in the region.
42. A consultation with Dr Bakke in February 2017 resulted in a report from the doctor that "Mr Taylor understands that he has a drinking problem and agrees that he needs help to overcome it. I advised Mr Taylor that he needs to stop drinking. He was willing to engage either with the A & D program or the Bridge program and has contact information for both of them."

## ***Discussion***

43. As noted above, the purpose of the Tribunal exercising its disciplinary powers in respect of a conviction is not to punish the teacher a second time. Before exercising its disciplinary powers under section 404 of the Education Act 1989 the Tribunal must be satisfied that the circumstances of the behaviour that resulted in the conviction reflects adversely on the fitness of the respondent to practice as a teacher and/or that there is a risk to the public (and more specifically to students) which needs to be dealt with and/or that the profession may be brought into disrepute by the behaviour. Sometimes a rehabilitative result may be driven by one or more of these factors.
44. Clearly the respondent's behaviour reflects adversely on his fitness to teach. Drink driving is a serious matter and must reflect significantly upon the ability of the respondent to act as an appropriate role model for students. There have however been no recent incidents suggesting that his discharge of his teaching responsibilities has been adversely affected by the effects of alcohol consumption.
45. Clearly any driving with excess breath alcohol carries a risk to the public generally. The respondent's behaviour at the school camp denoted an element of risk to students but that was in 2012. There has been no repetition since. In this connection the Tribunal notes NZTDT 2013/46 at [36], referring to one dividing line as to the need to deregister being the level of apparent ongoing risk.
46. The respondent's conduct was well capable of bringing the teaching profession into disrepute. Most members of the public would regard such convictions as poor role modelling by a teacher, and as manifesting unconcern with appropriate role modelling.
47. Consideration must be given to what is said to be a significant contribution which the respondent has made to the school and to the local community, and his commitment to teaching. This has been outlined above. He professes to love teaching, and so far as the Tribunal is able to gauge he is genuine in this. He is at a relatively early stage in his career.
48. The contribution that the respondent makes to teaching, and potentially could make in the future, must be given some weight. He appears capable of making significant and worthwhile contributions, including in modern digital teaching resources. The Tribunal takes the view that the respondent's particular skills and experience mean that with appropriate conditions and support it is in the interests of the education community that he retains registration. We refer to *CAC v Fuli-Makaua* which

acknowledged<sup>8</sup> this as a mitigating feature which could result in the retention of registration.

49. The respondent has participated fully with the CAC and the Tribunal process.
50. The Tribunal said in *CAC v White*<sup>9</sup> that whether it 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 motivated the misconduct is a way in which to gauge the risk of a repetition. However, as well, every case will turn on its own facts in the sense that there are many gradations of seriousness of offending, and of mitigating circumstances. In *White* (where deregistration was ordered) the teacher failed to report two EBA convictions, and a conviction for cultivating cannabis which resulted in censure by the Tribunal. All convictions occurred within the space of four years. The teacher was reportedly dismissive of his obligation to report his convictions. The level of the breath test was 1026 for the second conviction and 841 for the first conviction. The erratic way in which the teacher was driving attracted the attention of a member of the public who followed him, and called the police; the vehicle was seen to fully cross the road centre-line three times. The respondent was said to be "barely able to walk" after he exited the car. There was no evidence of the potential capability of the teacher to make a significant positive contribution to the profession or the community.
51. While we have significant reservations about the degree to which the respondent truly understands the factors that have led to his offending, and the extent to which he has a real plan to avoid an ongoing problem with his use of alcohol, we have concluded – though only by a slim margin – that an outcome short of cancellation of the respondent's registration is appropriate.
52. This must however be an outcome which brings it home to the respondent very sharply that this is very much his last chance to avoid cancellation of registration, and that he will have to make a significant effort. To achieve that the Tribunal will suspend his practising certificate for a period. It may well be that a good outcome for him would be to remove himself from the context of Kaitaia during the period of suspension and move to a location where he can more readily get appropriate counselling and treatment. If he does indeed love teaching as he professes to do, this should probably be his program, with the intention of bringing himself to a state where he can give of his best and retain his career.

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<sup>8</sup> At para [72]

<sup>9</sup> At para [26]

53. The Tribunal therefore will among other penalty outcomes suspend the respondent's practising certificate under section 404(1)(d) of the Education Act from the end of term 3 of 2018 until the end of term 4 2018. The commencement is set some weeks in the future to give adequate notice to the school to enable it to make appropriate arrangements. It will also enable a start on the process of implementing one of the conditions that will be imposed, the setting of appropriate counselling and/or treatment after consultation with the Impairment Committee.
54. The Tribunal will also impose other controlling conditions to ensure appropriate monitoring of the respondent's status and progress.
55. The respondent will have significant work to do to satisfy these conditions. It is the Tribunal's hope that if he loves teaching as greatly as he professes to do, he will ensure that he puts in the work to satisfy these conditions.

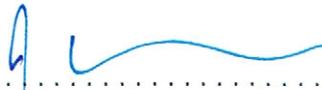
## **Orders**

56. The Tribunal orders as follows:
  - (a) The respondent is censured;
  - (b) The respondent's practising certificate is suspended under section 404(1)(d) of the Education Act from the end of term 3, Friday 28 September 2018, until the end of term 4, designated as Tuesday 18 December 2018;
  - (c) The respondent is referred back to the Impairment Committee under section 401(2)(c)(ii) for assistance with an impairment with the direction that he work with the Impairment Committee to assist him to obtain appropriate counselling and, as appropriate, treatment;
  - (d) After the conclusion of the respondent's suspension it will be a condition of his practising certificate for a period of one year after he resumes practice that he continues undergoing such appropriate counselling and/or treatment with respect to his alcohol use as the Manager Teacher Practice of the Education Council considers appropriate, after consulting with the Impairment Committee;
  - (e) It will be a condition of the respondent's practising certificate for a period of three years from the date of this decision that he discloses this decision to any employer proposing to employ him as a registered teacher, and

## Introduction

1. Counsel for the respondent has drawn to the Tribunal's attention that among the orders made in its decision 7 August 2018 it purported to suspend the registration of the respondent. The Education Act 1989 does not provide for suspension of registration, only for suspension of a teacher's practising certificate pursuant to section 404 (1) (d) of the Act.
2. The Tribunal's intention in its decision was to impose a penalty on the respondent short of cancellation of registration which nevertheless made it clear to him that he is in imminent danger of cancellation of registration if there is a repetition of the behaviour involved in the convictions for which the referral to the Tribunal was made.
3. The Tribunal sent a note to counsel advising it intended to recall its decision and correct it. Both counsel indicated they had no objection to this course.
4. Accordingly the decision is, by this minute, recalled. It is reissued, parallel with this minute, imposing a penalty of suspension of the respondent's practising certificate in accordance with the relevant section of the Act.
5. We thank Counsel for drawing this to our attention.

**Date:** 21 August 2018

  
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**JGH Hannan**  
Deputy Chairperson

**NOTICE - Right of Appeal under section 409 of the Education Act 1989**

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(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.