

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v John Taryn Andrews

NZTDT 2018/42

Teacher John Andrew was referred to the Tribunal as a result of four driving convictions. The offending occurred on two separate occasions in 2015 and on each occasion Mr Andrews was driving with excess breath alcohol and either dangerous driving or operating a vehicle carelessly.

The result: Mr Andrews was censured and the register was annotated for a period of 18 months. There are no non-publication orders in this case.

In May 2017 the Teaching Council was made aware of the convictions following a Police vet. Mr Andrews was convicted on 15 December 2015 of two charges of driving with excess breath alcohol, one charge of operating a vehicle carelessly and one charge of driving in a dangerous manner

The charges relate to two separate occasions as outlined below.

On 18 July 2015 Mr Andrews was driving with a blood alcohol level of 330mls of alcohol per 100mls of blood. He had parked his car in a carpark and then reversed into a power box at the edge of the carpark at a speed which caused significant damage to the power box.

On 3 August 2015 Mr Andrews was driving in excess of the 50km per hour speed limit with passengers in his car. He crossed the centre line and crashed into a parked car. The car was shunted back and damaged two cars behind. Mr Andrews had an excess breath alcohol level of 1,445 micrograms of alcohol per litre of breath.

The facts were agreed by Mr Andrews who noted that during this period he was not teaching full time due to his depression, anxiety and panic attacks for which he is now being medicated. He also advised that he was attending counselling sessions and has coping mechanisms in place. Mr Andrews did not report these convictions to the Teaching Council.

The CAC submitted that Mr Andrews' behaviour failed to model positive values for his students, including a basic adherence to the law and that he has brought the teaching profession into disrepute. The CAC submitted that the following should be aggravating factors:

- The high levels of alcohol involved,
- The associated offending – crashing into the power box and the parked car,
- The failure to report his convictions.

The CAC submitted that the appropriate penalty in this case would be censure, annotation and conditions relating to counselling and disclosure to future employers.

Mr Andrews submitted he was experiencing depression and anxiety at the time but told the Tribunal what he recalled of the incidents. He also provided some information regarding his medical diagnosis and treatment. He noted that he was honest with the Police and ambulance personnel who took him to hospital and submitted that he was extremely apologetic and remorseful for these incidents and was embarrassed by his actions. He also submitted that he was unaware of the requirement to self-report these convictions.

The Tribunal commended Mr Andrews for the effort he has made and how determined he is to avoid repetition of his poor choices. As such they decided not to impose any conditions in relation to his drug



and alcohol counselling. The Tribunal also discounted the time period of the annotation due to the delay in issuing the decision.

The Tribunal censured Mr Andrews under s404(1)(b) and annotated that register for a period of 18 months.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-42

IN THE MATTER of the Education Act 1989

AND

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

AND **JOHN TARYN ANDREWS**
Respondent

TRIBUNAL DECISION

30 MAY 2019

HEARING: Held on 4 December 2018

TRIBUNAL: Theo Baker (Chair)
Tangi Utikere
Kiri Turketo (members)

REPRESENTATION: Ms A van Echten for the Complaints Assessment Committee
The respondent represented himself

1. The Complaints Assessment Committee (CAC) has referred the respondent to the Tribunal, asking us to exercise our disciplinary powers as a result of four convictions on 15 December 2015 for four driving convictions.
2. The reasons for the referral are set out in an amended notice of charge as follows:
 1. *On 15 December 2015, the teacher was convicted and sentenced in the District Court at Manukau for:*
 - 1.1 *One charge of driving with excess breath alcohol.*
 - 1.2 *One charge of operating a vehicle carelessly.*
 - 1.3 *One charge of driving with excess breath alcohol.*
 - 1.4 *One charge of driving a vehicle in a dangerous manner.*
 2. *The teacher did not self-report the convictions noted in paragraphs 1.1 and 1.2 to the Education Council as he was required to do under the Act.*
 3. *The CAC considers that the convictions noted in paragraph 1 warrant action by the Disciplinary Tribunal of the Education Council of New Zealand.*
3. This matter was heard on the papers. We received a summary of facts that had been agreed between the parties, and submissions from both parties.

Evidence

4. The evidence to support the referral was in the form of an agreed summary of facts signed by counsel for the CAC and the respondent himself. We set the summary out in full:
 1. *On 15 December 2015, the respondent **JOHN TARYN ANDREWS** was convicted in the Manukau District Court of offending which occurred on two separate occasions on 18 July 2015 and 3 August 2015.*

Offending on 18 July 2015

 2. *The summary of facts and certificates of conviction for this set of offending is annexed and marked "A" and forms part of the summary.*
 3. *In brief, on Saturday 18 July 2015 at 9.00am, the respondent had been driving with a blood alcohol level of 330mls of alcohol per 100mls of blood. The legal limit is 80mls of alcohol per 100mls of blood.*
 4. *The respondent parked his car near the edge of a car park in Highland Park, and stayed there for some time before reversing his car into a power box at*

the edge of the car park. The speed at which he reversed was great enough to cause significant damage to the power box.

5. *In explanation the respondent admitted to consuming one bottle of wine, but offered no explanation for driving.*
6. *As a result of this offending, the respondent was charged and pleaded guilty to the following offences:*
 - (a) *One charge of driving with excess breath alcohol content pursuant to section 56(2) of the Land Transport Act 1998. The maximum penalty for this offending is three months' imprisonment or a \$4,500 fine, and mandatory disqualification from driving for at least six months; and*
 - (b) *One charge of careless driving pursuant to section 37 of the Land Transport Act 1998. The maximum penalty for this offending is a \$3,000 fine and disqualification from driving.*
7. *The respondent was sentenced to a \$1,600 fine, analyst fees of \$109.25, medical expenses of \$100 and court costs of \$130. The respondent was also disqualified from driving indefinitely.*
8. *The respondent did not self-report these convictions to the Education Council.*

Offending on 3 August 2015

9. *The summary of facts and certificates of conviction for this set of offending is annexed and marked "B" and forms part of this summary.*
10. *In brief on Monday 3 August 2015 at 3.20pm, the respondent was driving through the suburban area of Howick which has a speed limit of 50km per hour. The respondent then drove his car onto the other side of the road, and crashed his car head on with a parked car. The parked car he crashed into was subsequently shunted back into the car behind it, causing two cars to be damaged as a result.*
11. *The respondent also admitted to drinking one bottle of red wine prior to planning to drive. A subsequent Police breath test revealed the respondent had an excess breath alcohol level of 1,445 micrograms of alcohol per litre of breath. The legal limit is 400 micrograms of alcohol per litre of breath. In explanation, the respondent stated that he was driving in excess of 50km an*

hour as one of the occupants in his car needed to vomit.

12. *As a result of his offending, the respondent was charged and pleaded guilty to the following offences:*
 - (a) *One charge of driving with excess breath alcohol pursuant to section 56(1) of the Land Transport Act 1998. The maximum penalty for this offending is three months imprisonment or a \$4,500 fine, and mandatory disqualification from driving for at least six months'; and*
 - (b) *One charge of dangerous driving pursuant to section 35(1)(b) of the Land Transport Act 1998. The maximum penalty for this offending is three months' imprisonment or a \$4,500 fine, and mandatory disqualification from driving for at least six months.*
13. *The respondent was sentenced to a \$1,400 fine, reparation of \$700 and court costs of \$130. The respondent was also disqualified from driving indefinitely.*
14. *The respondent did not self-report these convictions to the Education Council.*

Teacher's response

15. *In explanation to the Complaints Assessment Committee the respondent stated that at the time of this offending he was suffering from great anxiety and took time off work as he was not in a position to be teaching full time.*
 16. *The respondent accepted the summary of facts as being correct and noted that, "At no time during these incidents was I at school, nor was I with teaching colleagues or supervising students."*
 17. *Since then, the respondent states he has been diagnosed with depression including anxiety and panic attacks which he is now being medicated for. He further advised the Complaints Assessment Committee that he voluntarily attended counselling sessions "to ensure that incidents like this would not happen again" and has now got coping mechanisms in place to manage his condition.*
5. The Police summary of facts does not add anything material to the facts presented above.
 6. There is no dispute on the factual matters which form the basis of this referral to the Tribunal. We are satisfied that the respondent has been convicted of the matters set out in the notice of referral and that he did not report those to the Education Council.

Legal submissions

7. Ms van Echten for the CAC reminded us that under section 397(1) of the Education Act 1989, all convictions punishable by three months' imprisonment or more must be reported to the Council.
8. We confirm that one conviction for driving with excess breath alcohol may result in an adverse finding, but every case turns on its own circumstances.
9. We accept that the purpose of the Tribunal exercising our disciplinary powers in respect of a conviction is not to punish the teacher a second time, but to further the Education Council's overriding purpose of ensuring safe and high quality leadership, teaching and learning through raising the status of the profession.
10. The CAC submitted that the respondent's convictions for driving with excess breath alcohol, along with convictions for careless and dangerous driving warrant an adverse finding and that the appropriate penalty is a censure, annotation and conditions.
11. Ms van Echten submitted that it was concerning that the respondent, who as a teacher is expected to model positive values for the students he teachers,¹ has failed to model even the most basic values widely accepted in society, such as adherence to the law. She submitted that in light of the aggravating features outlined, the respondent's conduct reflects adversely on his fitness to teach and brings the teaching profession into disrepute, pursuant to sections 378(ii) and (iii) of the Act.
12. Referring to the decision of *CAC v Fuli-Makaua*² Ms van Echten submitted that the high levels of alcohol involved should be treated as a seriously aggravating factor.
13. Secondly, the associated offending, the respondent reversing his car into a power box at speed and crashing into a parked car respectively, were aggravating features. The CAC submitted that the careless and dangerous manner in which the defendant was driving was unsafe. The respondent crossed the centre line onto the other side of the road and caused significant damage to property.
14. The third aggravating feature was the time of day at which the offending occurred. There is concern with the level of alcohol the respondent had consumed to give such high readings at 9.00 am on the weekend and 3.20 pm during the week.

¹ Education Council Code of Ethics for Certified Teachers.

² *CAC v Fulimakaua* NZTDT 2017–40, 5 June 2018.

15. Fourth, the CAC submitted that although there was no evidence that the respondent willfully failed to report these convictions, as we said in *CAC v Korau* NZTDT 2017-17,³ it is “incumbent on members of the profession to be cognisant of the requirement that rests on every holder of a practicing certificate who is convicted of an offence punishable by imprisonment ... to report.”
16. Finally the CAC submitted that the very high alcohol readings were indicative of a problematic relationship with alcohol.
17. On the question of penalty, the CAC further submitted that the respondent lacks insight into how his behaviour impacts upon the profession. This submission was based on his response that at no time during the incidents was he at school, or teaching colleagues or supervising students.
18. The CAC acknowledges that the respondent did accept the incidents as set out in the summaries of facts, and also appears to acknowledge that he has a drinking problem. The CAC accepted that the respondent was attending regular counselling sessions and that certain situations can lead him to binge. The CAC conceded that the respondent has implemented a prevention plan.
19. The CAC sought the following penalty:
 - (a) Censure;
 - (b) Conditions that he:
 - Undertakes and completes drug and alcohol counselling for a minimum of two years;
 - Discloses to his current employer and any future or prospective employer a copy of the Tribunal’s decision for a period of two years from the date of conviction.
 - (c) Annotation of the register for two years.

Respondent’s submissions

20. The respondent filed full submissions on his own behalf.
21. The respondent advised us that during the period between mid-July and early August 2015, he had experienced a period of depression, great anxiety and bad health. He took

³ *CAC v Korau* NZTDT 2017-17, 26 August 2017

time off work because he was not in a position to teach full-time.

22. The respondent advised that he could not remember all the details of the incidents as he was depressed, suffering from anxiety and not eating and sleeping properly at the time. He explained that on 18 July 2015 at 9.00 am he had hardly slept the night before. He remembers driving his daughter to work in Epsom, and the next thing he remembers is being attended to by the ambulance personnel and being taken to hospital.
23. In relation to the second event he cannot remember why he went into town but he remembers that there were no passengers in the car and then coming around with the Police and ambulance personnel in attendance.
24. The respondent noted that he was honest with the Police and ambulance personnel who took him to hospital. This was necessary as the ambulance personnel thought that both of these incidents were cries for help and attempts by the respondent to self-harm. After being kept in overnight, and having consultations with doctors and psychiatrists, he was allowed to return home under the care of his doctor.
25. The respondent submitted that both these incidents happened within 16 days of each other and were quite clearly a traumatic time and an aberration in the life of a usually law-abiding citizen.
26. The respondent advised that he is extremely apologetic and remorseful for both of these incidents and the inconvenience it caused to every party involved. He added that on reflection he is quite horrified by his selfish actions and is embarrassed and humbled by the fact that he posed a danger to himself and to others.
27. In response to submissions made by the CAC, the respondent noted that he does have insight into how his behaviour impacts upon the teaching profession and how such behaviour brings the profession into disrepute. He recognises and fully accepts that as a teacher he is expected to model positive values for the students he teaches and he accepts that his conduct reflects adversely on his fitness to teach and bringing the teaching profession into disrepute.
28. The respondent advised that he accepts full responsibility for his actions and has demonstrated his remorse by being completely cooperative with the Police, the Court and the counsel's investigation. He also attended two restorative justice sessions, although the other parties declined to participate. He has attempted to make amends by pleading guilty to the charges and paying off all the fines, costs and reparations etc. by

December 2017. He has also participated and is undertaking extensive rehabilitation.

29. The respondent accepted that his level of alcohol should be considered relatively high.
30. On the matter of associated offending, the respondent accepted that he was charged with careless driving and charged with dangerous driving. He noted that he had passed his driving test in 1990 and until these two incidents he had not even had a parking or speeding ticket.
31. As for the times of the offending, the respondent advised that he was absent from school and on sick leave, observing that he was suffering from depression and anxiety and was not sleeping or eating on a regular basis.
32. As for the failure to report the convictions, the respondent said that he was not aware of the requirement to self-report these at the time but is now fully aware of this requirement.
33. The respondent noted that there were no passengers in either incident and that there were no other accompanying offences.
34. The respondent provided some information regarding his medical diagnosis. He provided a summary of his attendance at counselling and AA and his efforts at rehabilitation. These were confirmed by a letter from his doctor, a letter from Community Alcohol and Drug Services (CADS), the respondent's own plan for managing his relationship with alcohol, a letter from his principal confirming that he is aware of the issues surrounding the respondent's conviction and his problems with alcohol, a further letter from CADS and a further plan.

Decision

35. In this jurisdiction, when imposing a penalty for a referral of conviction, we must be careful not to assume the role of the District Court. We must bear in mind that the purpose of disciplinary proceedings is not to punish the teacher again.
36. We agree that the alcohol readings were high. The respondent's convictions for driving with excess breath alcohol, careless driving and dangerous driving reflect very poorly on his fitness to be a teacher. We are satisfied that an adverse finding must be made.
37. We appreciate the concern raised by the CAC that the respondent appeared to be minimising the seriousness of his conduct when referring to the fact that these offences were not directly related to his role as a teacher. However, in his later submissions, the respondent made it clear that he understood his responsibilities as a teacher to model

positive values, and he accepted that his conduct reflects adversely on his fitness to teach and bringing the teaching profession into disrepute.

38. We note that although the respondent has said that there were no passengers in the car on either occasion, according to the ASF, he told police that one of the passengers needed to vomit. Clearly if there had been students in or near the car at the time of these offences, the respondent's actions would likely have affected the wellbeing of students, and might have given rise to a charge of serious misconduct irrespective of any conviction. That fact would have been a significant aggravating feature.
39. That said, we do think the fact that the respondent's use of alcohol occurred while he was on leave is relevant in considering penalty. He has acknowledged a problem with his use of alcohol and has outlined the steps that he has taken to deal with that. There is no evidence that his mental health issues which have included alcohol abuse have had a direct impact on his performance as a teacher. Rather, they have led to his convictions in the District Court, where a relevant sentence was imposed.
40. We commend the respondent for the efforts he has made. By outlining them to us, he has demonstrated how seriously he takes these matters and how determined he is to avoid a repetition of these poor choices. We leave it to him to take responsibility for his journey of recovery, and we will not impose any conditions relating to drug and alcohol counselling.
41. The CAC asked for a condition that the respondent discloses to his current employer and any future or prospective employer a copy of the Tribunal's decision for a period of two years from the date of "conviction." The convictions were in 2015, and so we assume that the CAC was referring to this Tribunal decision. Because the respondent's conduct did not directly relate to his role as a teacher we do not think such a condition is appropriate.
42. Because of the delay in issuing this decision, we have imposed an annotation for 18 months instead of two years.
43. We therefore impose the following penalty:
 - a) The respondent is censured under s 404(1)(b);
44. Under s 404(1)(e) the record is annotated for a period of 18 months from the date of this decision. This penalty marks the disapproval of the profession and the public of the

respondent's convictions.



Theo Baker
Chair

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).