

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Ritchie

NZ Disciplinary Tribunal Decision 2018/46

Teacher Jane Ritchie came before the Disciplinary Tribunal after receiving a conviction for driving while her licence was revoked in 2018.

The result: Ms Ritchie was censured. There are no non-publication orders in this case.

On 24 October 2017, the New Zealand Transport Agency (NZTA) revoked Ms Ritchie's licence for medical reasons. On 23 November 2017, she was stopped for driving while her licence was still revoked.

Ms Ritchie explained that she mistakenly thought her doctor had lifted the revocation of her licence after a discussion the day prior to the offending.

On 20 February 2018, the Council received a notification from the Ministry of Justice following Ms Ritchie's conviction, as Ms Ritchie was a registered teacher. She was not teaching and did not hold a practising certificate, so was not required to report the conviction to the Council.

Ms Ritchie applied to renew her practising certificate in March 2018, and her conviction was referred to the Complaints Assessment Committee (CAC).

When considering this conviction, the CAC noted that Ms Ritchie had a previous conviction for driving with excess breath alcohol from 2011. Against this background, Ms Ritchie's 2018 conviction was referred to the Disciplinary Tribunal.

The CAC submitted that Mrs Ritchie's "*actions in driving when she did not have proper clearance from a medical specialist posed a potential risk to members of the public, and that such conduct risks bringing the teaching profession into disrepute.*"

The Tribunal considered that it did "*not see a pattern of driving offences or failure to comply with court orders. In this case, it was a prohibition on driving on the basis of medical grounds.*"

The summary of facts recorded that on 11 April 2018, Ms Ritchie was cleared to drive by her specialist. The NZTA reinstated the respondent's licence on 10 May 2018.

The Tribunal agreed that a penalty of a censure was appropriate in the circumstances.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-46

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 **JANE RITCHIE**
Respondent

TRIBUNAL DECISION

6 June 2019

HEARING: Held on 30 January 2019 (on the papers)

TRIBUNAL: Theo Baker (Chair)
Simon Williams, Dave Turnbull (members)

REPRESENTATION: Ms E Mok for the Complaints Assessment Committee
Ms J Andrews for the Respondent

1. The Complaints Assessment Committee (CAC) has referred the respondent to the Tribunal, asking us to exercise our disciplinary powers. The reasons for the referral are set out in a Notice of Referral as follows:
 1. *On 19 February 2018 the teacher was convicted in the Blenheim District Court for driving while her licence was revoked, an offence under s 32(1)(c) and 32(3) of the Land Transport Act 1998.*
 2. *She was sentenced to 40 hours' community work.*
 3. *The teacher has a previous conviction for driving with excess breath alcohol dating from 2011.*
 4. *The teacher did not report her 2018 conviction.*
 5. *The CAC considers that the convictions warrant action by the Disciplinary Tribunal of the Education Council of Aotearoa New Zealand.*
2. This matter was heard on the papers. We received an Agreed Summary of Facts (**ASF**) that had been signed by Ms Andrews for the respondent and Ms Mok for the CAC. We also received submissions from the parties.

Factual findings

3. The evidence to support the referral was in the form of an ASF signed by the representatives for both parties. We also had an affirmation that the respondent had filed in support of an application for interim name suppression.
4. The ASF is set out in full:
 1. *On 24 October 2017, the New Zealand Transport Agency (**NZTA**) revoked Jane Ritchie's (respondent) licence for medical reasons.*
 2. *On 23 November 2017, the respondent was stopped for driving in Blenheim while her licence was still revoked. As a result, she was charged with driving while her licence was suspended or revoked, which is an offence under ss 32(1)(c) and 32(3) of the Land Transport Act 1998. The maximum penalty for the offence is three months' imprisonment or a fine not exceeding \$4,500.*
 3. *On 19 February 2018, the respondent was convicted in the Blenheim District Court of the offence. A copy of the Summary of Facts filed with the Court is attached. The respondent was sentenced to 40 hours' community work on the*

same date.

4. *In explanation for the offending, the respondent advised that she mistakenly thought her doctor had lifted the revocation of her licence after a discussion the day prior to the offending.*
5. *The respondent has a previous conviction for driving with excess alcohol from 2011. This matter was referred to a Complaints Assessment Committee, which decided to take no further action.*
6. *At the time of the offending, the respondent was a registered teacher, but was not teaching due to her medical issues, and did not hold a current practising certificate.*
7. *The Ministry of Justice notified the Education Council of the respondent's conviction on 20 February 2018.*
8. *On 5 March 2018, the Education Council received an application from the respondent (dated 23 February 2018) seeking to renew her practising certificate. The respondent did not declare her conviction for driving whilst suspended on her application, but gave her consent for a Police vetting check.*
9. *On 5 March, the Education Council sent the respondent a letter enclosing the notification from the Ministry of Justice and advised the respondent that, should she wish to renew her practising certificate, she would need to provide an explanation for her conviction to the Education Council.*
10. *On 9 March 2018, the Education Council emailed the respondent advising that (following its correspondence on 5 March) it had received the respondent's application to renew her practising certificate and that she would now be required to explain her conviction. The letter recorded that it appeared that the respondent's application had "crossed over" with the previous letter of 5 March. The respondent subsequently provided a full explanation of her conviction to the Education Council.*
11. *On 11 April 2018, the respondent was cleared to drive by her specialist. The NZTA reinstated the respondent's licence on 10 May 2018.*
12. *In her response to the Committee dated 17 May 2018, the respondent stated that she had been unable to complete her Court-ordered community service*

because of an accident in which she sustained injuries. The respondent stated that she expected to be able to complete her community service once she had obtained medical clearance. She also said that her last experience of vertigo had been on 31 August 2017.

5. We are satisfied that the reasons for the referral are fully supported by the ASF.

Legal submissions

6. Ms Mok provided submissions on liability and penalty. The CAC submitted that the respondent's conduct warranted an adverse finding and that censure was the appropriate penalty.
7. Using the test for serious misconduct as a tool in determining whether an adverse finding is warranted,¹ Ms Mok submitted that although it is a finely balanced assessment, the respondent's conduct meets the threshold for an adverse finding.
8. The CAC acknowledged that:
 - (a) The offending was not connected to the respondent's teaching, and occurred when she was not working as a teacher;
 - (b) The respondent says she had understood that she was permitted to drive at the time of the offending following a conversation with her GP;
 - (c) The respondent says she was undergoing stress and hardship at the time of the offending due to her ongoing medical issues; and
 - (d) The offending was relatively low level in terms of seriousness.
9. However, the CAC noted the Tribunal's decision in NZTDT 2011/16, where we 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 practice (s 378(a)(ii)), and that a series of convictions will certainly do so. Such conduct may also bring the teaching profession into disrepute (s 378(a)(iii)).
10. Ms Mok also referred to *CAC v Reriti* NZTDT 2014/19, 26 August 2014, where we held that although a single driving offence, even a serious one, may not justify an adverse finding, where the conviction is against a background of a number of previous offences,

¹ See *CAC v Lyndon* NZTDT 2016 61, 26 April 2017 at paragraph 18.

an adverse conclusion will be warranted.

11. The CAC submitted that the respondent's actions in driving when she did not have proper clearance from a medical specialist posed a potential risk to members of the public, and that such conduct risks bringing the teaching profession into disrepute.
12. The CAC submitted that having regard to the low level nature of the conduct, a censure is appropriate to meet the purposes of general and specific deterrents, particularly given the respondent's previous driving related conviction.
13. No costs were sought because this hearing arises from a referral of convictions under s 397 of the Act.
14. For the respondent, Ms Andrews accepted that the Tribunal would most likely make an adverse finding, given that the respondent now has two driving related convictions, but noted the following:
 - (a) The comments made in NZTDT 2011/16 were in the context of someone who had serious convictions for excess breath alcohol driving offences, and had been sentenced to home detention. The conditions of the sentence were breached. The teacher in that case was alcohol dependent;
 - (b) In *CAC v Reriti*, the respondent had a history of excess breath alcohol convictions which spanned a period of time;
 - (c) The pattern of offending in this case is less serious than in the previous cases;
 - (d) In a GP letter there was some uncertainty about whether or not the respondent should be able to drive. This lack of clarity does not help;
 - (e) The respondent was not required to report her convictions under s 397 as she did not have a practising certificate at that time. When she did reapply, she was advised that she needed to explain her conviction, which she then attended to.
15. Ms Andrews accepted that censure was an appropriate penalty.
16. Finally, she advised that the respondent did not seek permanent name suppression.

Discussion

17. Included in the documents before us was a letter dated 14 March 2018 from a Dr Bird. It includes a sentence which reads, "There is some uncertainty as to whether or not she

should be able to drive, Jane was not happy with the advice given and has been waiting for more than six months to see a specialist Neurologist. She has an appointment for 11 April 2018.”

18. It is not clear when or how any uncertainty about driving arose. This letter does not go so far as to support the respondent’s contention that she had grounds to believe that in November 2017 she was not prohibited from driving, and we are not sure that this argument was advanced in the District Court.
19. In this jurisdiction, we are considering her conviction of this offence. Section 401(3) of the Act provides that a CAC may at any time refer a matter to the Disciplinary Tribunal for a hearing, and under s 401(4) it must refer any matter that it considers may possibly constitute serious misconduct. The present referral has not been framed as a charge of serious misconduct. It is her 2018 conviction for driving while suspended that has led to her referral to us.
20. The respondent has a drink driving conviction from 2011. The 2018 conviction is also for a driving offence but is of a different nature. We are not persuaded that she was required to report this conviction to the Teaching Council because she was not the holder of a practising certificate at that time. Technically at the time she applied for a new practising certificate, she was not the holder of a practising certificate, and therefore s 397 did not apply.
21. The respondent did not declare her conviction for driving while suspended. It is not clear that the application required a declaration of any convictions. It is accepted that she consented to a police vet at that time.
22. On its own, this conviction would not ordinarily lead to a referral to the Tribunal. We assume that it is against a background of a previous driving offence that the CAC decided to refer it to the Tribunal. Unlike some cases, we do not see a pattern of driving offences or failure to comply with court orders. In this case, it was a prohibition on driving on the basis of medical grounds.
23. We agree that a penalty of censure under s 404(1)(b) of the Education Act is appropriate.

24. Because this matter has been a referral of conviction, there will be no orders for costs.
25. The respondent's interim name suppression now lapses.

A handwritten signature in blue ink that reads "Theo Baker". The signature is fluid and cursive, with the first name "Theo" and last name "Baker" clearly distinguishable.

Theo Baker
Chair