Complaints Assessment Committe (CAC) v Abel Timo Te Mata
NZTDT 2018-66

Teacher Abel Timo Te Mata was referred to the Disciplinary Tribunal following four driving convictions between July 2017 and May 2018. This included two convictions of driving with excess breath alcohol.

The result: The Tribunal censured Mr Te Mata and ordered that the register be annotated for three years. There are no non-publications orders in this case.

On 8 July 2017 Mr Mata was stopped at a routine traffic stop on his scooter. Breath test procedures gave a reading of 808 micrograms of alcohol per litre of breath. On 10 October 2017 he was convicted and sentenced for this and failing to comply with a driving prohibition.

On 17 February 2018, while disqualified from driving, Mr Mata drove a vehicle. When stopped for a routine check, he showed signs of recent alcohol consumption. Breath testing procedures showed a reading of 662 micrograms of alcohol per litre of breath. On 8 May 2018 he was convicted of driving with excess breath alcohol and driving while disqualified.

Mr Te Mata self-reported his excess breath alcohol conviction on 18 May 2018 in accordance with the requirement under s 397 of the Education Act 1989. He had not reported his other three convictions.

The CAC argued before the Tribunal that an adverse finding was warranted and noted that it was concerning that Mr Te Mata failed to model basic values widely accepted in society, such as adherence to the law. The CAC pointed to a number of aggravating factors including the high blood alcohol levels, the associated driving offences, the short time between convictions and the failure to report three out of the four convictions. The CAC also submitted that there was a lack of insight into his behaviour and that sustained drug and alcohol counselling was required.

The Tribunal had no difficulty making an adverse finding. They went on to state that these convictions reflect adversely on Mr Te Mata's fitness to be a teacher and brought the teaching profession into disrepute. However, the Tribunal noted that an alcohol intervention assessment identified him as at a low risk of reoffending and not in need of further counselling and there was no expert evidence that Mr Te Mata had a problem with alcohol.

The Tribunal went on to discuss the disciplinary response and stated that it must be one which is consistent with the overlapping purposes of disciplinary proceedings: protecting the public through the provision of a safe learning environment, maintaining professional standards and maintaining public confidence in the profession.

The Tribunal imposed the following penalty on Mr Te Mata:

- censure under s 404(1)(b)
- annotation of the register for three years under s 404(1)(e).

The Tribunal impressed on Mr Te Mata that any further convictions may jeopardise his registration and failing to report them would be an aggravating factor. In addition, it reminded Mr Te Mata of the influential nature of his position as a teacher and that it is essential he demonstrates positive behaviour that he would want his students to emulate.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-66

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	**ABEL TIMO TE MATA**
	Respondent

TRIBUNAL DECISION

23 APRIL 2019

HEARING: Held on 20 December 2018

TRIBUNAL: Theo Baker (Chair)
Kiri Turketo and Stuart King (members)

REPRESENTATION: Ms van Echten and Mr Shaw for the Complaints Assessment Committee
The respondent represented himself

Introduction

1. The Complaints Assessment Committee (CAC) has referred to the Tribunal four convictions as set out in an amended Notice of Referral:

   (a) On 10 October 2017 – Driving with excess breath alcohol ("**EBA**") and being an unlicensed driver and failing to comply with a prohibition on driving.

   (b) On 8 May 2018 – Driving with EBA and Driving while disqualified.

Facts

2. The Tribunal heard the matter on the papers on 20 December 2018. The evidence was presented in a Summary of Facts, signed by Counsel for the CAC and the respondent. We were told that the respondent is a fully registered teacher, and has worked at Kaiti School in Gisborne for approximately 5 years.

3. On 3 May 2015, the respondent was forbidden from driving a motor vehicle because he did not hold a current driver's licence.

4. On 8 July 2017 the respondent drove his scooter and was stopped at a routine traffic stop. Breath test procedures gave a reading of 808 micrograms of alcohol per litre of breath. On 10 October 2017 the respondent was convicted and sentenced for driving with EBA under s 56(1) of the Land Transport Act 1998 for which he was fined $800, ordered to pay court costs of $130 and disqualified from driving for six months. He was also convicted and discharged for failing to comply with a prohibition direction under s 52(1)(c) of the Land Transport Act 1998.

5. On 17 February 2018, while disqualified from driving, the respondent drove a vehicle. When stopped for a routine check, he showed signs of recent alcohol consumption. Breath testing procedures showed a reading of 662 micrograms of alcohol per litre of breath.

6. On 8 May 2018 the respondent was convicted of driving with EBA and sentenced to 6 months' supervision with special conditions. He was also convicted of driving while disqualified under s 32(1)(a) and s 33(3) of the Land Transport Act 1998 and was fined $500, ordered to pay court costs of $130 and disqualified from driving for 6 months.

7. The respondent self-reported his EBA conviction on 18 May 2018 in accordance with the requirement under s 397 of the Education Act 1989 (**the Act**). The respondent had not

reported his three other convictions to the Education Council[1] (**the Council**).

8. The respondent's explanation for these latter offences was that on 17 February 2018, he was simply trying to shift his vehicle out of the driveway of his address to make way for another vehicle; that he did not intend to drive. He said that he is extremely embarrassed as he took the original charge very seriously and was making changes to address matters. He apologises for his behaviour. He has attended and successfully completed a one-day "Drink Safe" programme as required by his 2018 supervision sentence. An alcohol intervention assessment identified him as a low risk of reoffending and not in need of further counselling.

General legal principles

9. The CAC provided helpful legal submissions, noting that all convictions punishable by three months' imprisonment or more must be reported to the Education Council, both by the teacher under s 397 of the Education Act 1989 (the Act) and by the employer. Because the maximum penalty for driving with EBA under s 56(1) or (2) is three months' imprisonment, convictions for driving with an EBA exceeding 400 micrograms meet this criterion,[2] but as the CAC noted, the circumstances can vary widely.

10. The CAC referred to our decision of *CAC v Fulimakaua* [3] where we summarised the CAC's fulsome legal submissions. We confirm that the starting point is that even one EBA conviction may result in an adverse finding. We add that we would expect that in most circumstances, a single EBA conviction could appropriately be dealt with by a CAC under 401 of the Act. Once there is more than one such conviction, it is likely that it will be referred to the Tribunal.

11. We also accept that teachers are role models for learners and have considerable influence in and beyond the learning environment, and that, even one conviction for a drink driving offence "places a teacher's registration in jeopardy".[4] We confirm that practitioners have an obligation to both teach and model positive values for their

[1] The Education Council was renamed the Teaching Council on 29 September 2018, by section 5(2) of the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018

[2] Driving with an EBA of between 250 and 400 micrograms or a blood alcohol between 50 and 80 micrograms are infringement offences under ss 56(1A) and (3A) respectively and so do not attract a term of imprisonment.

[3] *CAC v Fuli-makaua* NZTDT 2017-40, 5 June 2028

[4] *CAC v Korau* NZTDT2017/17 26 August 2017 at [23] citing *CAC v Teacher* NZDT2014/1 21 January 2014) at 7.

students, and driving while intoxicated does not mirror that expectation".[5]

12. The purpose of the Tribunal's disciplinary powers in respect of a conviction is not to punish the teacher a second time.[6] Rather, disciplinary proceedings are designed to further the Council's overriding purpose of ensuring safe and high quality leadership, teaching and learning through raising the status of the profession.[7] Disciplinary proceedings 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.[8] 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 teaching environment when required.[9]

Failure to report conviction(s)

13. Pursuant to s 397 of the Act, teachers must report qualifying convictions to the Council. Failure to do is, in and of itself, "misconduct that may give rise to disciplinary proceedings".[10] As we have previously said, 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." [11]

Present case

14. The CAC submits that an adverse finding is warranted. Referring to the Teaching Council Code of Ethics for Certified Teachers,[12] the CAC noted that it is concerning that the respondent, has failed to model even the most basic values widely accepted in society, such as adherence to the law.

15. The CAC submitted that the following aggravating factors apply to the respondent's conduct:

    - The levels of alcohol are relatively high and should be treated as a seriously aggravating factor. In support of this submission, the CAC referred to our earlier

5 *CAC v White* NZTDT2017/29, 28 November 2017 at [22].
6 *Ziderman v General Dental Council* [1976] 1 WLR 330; *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 ; *CAC v Campbell* at [15]; *CAC v White* NZTDT2017/29, 28 November 2017 at [19]; *CAC v Korau* NZTDT2017/17 26 August 2017 at [13].
7 Education Act 1989, s 377.
8 *CAC v McMillan* at [23] and *CAC v White* at [19]; *CAC v Korau* NZTDT2017/17 26 August 2017 at [13].
9 *CAC v Bird* NZTDT2017/5, 3 July 2017 at [32].
10 Education Act 1989, s 397(2).
11 *CAC v Korau* NZTDT2017/17 26 August 2017 at [9].
12 This was replaced by the Code of Professional Responsibility on 30 June 2017

decision of *CAC v Korau,*[13] in which we observed that a reading of 592 micrograms was "relatively high";

- Both times the respondent drove with EBA, there was "associated offending" with convictions for driving when prohibited and driving while disqualified;
- Both sets of convictions happened within a short period of each other;
- The high alcohol readings and the closeness of the convictions indicate a problem with alcohol, which the respondent has failed to acknowledge;
- Failure to report three out of four convictions, when failure to self-report a conviction is misconduct that may give rise to disciplinary proceedings under s 397 of the Act.

16. The CAC further submitted that while the respondent has attended a one-day "Drink Safe" course (as required by his sentence of supervision), the respondent has failed to acknowledge that he has a drinking problem. Rather he has highlighted the result of the alcohol intervention assessment that he is a low risk of reoffending and does not need further counselling. It was submitted that the respondent lacks insight into his behaviour and how it impacts on his teaching practice and the profession as a whole, and that his attendance at a one-day "Drink-Safe" course is not adequate security against future poor behaviour.

17. The CAC submitted that substantive and sustained drug and alcohol counselling is required to address the issues the respondent has with alcohol (as evidenced by his repeated convictions) and to reduce the risk of his behaviour being repeated. It was submitted that the respondent will also need to develop a plan to adequately address his relationship with alcohol and minimise his risk of offending in connection to it.

18. The CAC sought a penalty of:

- censure
- a condition that the respondent undertake "drug and alcohol counselling to the satisfaction of the practice manager for a maximum of one year, including providing reports as required by the practice manager"
- a condition that the respondent disclose to his current employer and any future or

[13] See above note 10

prospective employer, a copy of the Tribunal's decision for a period of two years from the date of conviction;

- annotation of the register for two years.

19. We also received some letters in support of the respondent. His Principal, Deputy Principal and Senior Leader all spoke very highly of him and the positive impact he has at school. We were told that he "recognises that he is role model for the tamariki he teaches and he recognises the importance of professionalism in the role he plays as a member of our school community where he is respected by the whānau and tamariki of the children he teaches. He has made changes and been accountable for his actions, and I am confident he will continue to make good choices and not make the mistakes he has made in the past."

20. The respondent's Principal told us that the respondent has been very open and transparent about his situation. He added, "You don't often find teachers of Abel's calibre and ability. We rely on Abel heavily to be the pillar he is with our Māori and Tongan boys."

Discussion

21. We have no difficulty in making an adverse finding. Although we are not required to make a finding of serious misconduct as defined in s 378 of the Act, we do consider that these four convictions reflect adversely on his fitness to be a teacher and bring the teaching profession in to disrepute.

22. On the question of associated offending, we agree that the respondent's disregard for the law is evidenced by his failure to comply with a police direction not to drive, and then a court order disqualifying him from driving.

23. We also accept the CAC's submission that the closeness of the convictions is concerning and is an aggravating feature, as is his failure to report the convictions.

24. Contrary to our decision in *Korau,* we would see a reading of around 600 micrograms neither high nor low. We agree that the reading of 808 micrograms per litre of breath is a high reading. We do not agree with the CAC that either of these readings on its own would be "seriously" aggravating.

25. The CAC submits that attendance at a one day "Drink Safe" programme is not adequate security against future poor behaviour, but we note that no intervention can guarantee

that reoffending will not occur. Attendance at this course was obviously something that the Court and/or the Department of Corrections see as a suitable rehabilitative measure.

26. We should be careful how we treat the submission of a problem with alcohol. In *CAC v Campbell* NZTDT 2016-35,[14] we said this:

> *The earlier conviction for driving with excess breath alcohol (EBA) in January 2014 should have been a salient lesson to the respondent. One conviction for driving with excess breath alcohol is evidence of very poor judgment and disregard for the welfare of other users of the road. When the conviction (in this case 2016) is on top of another one, only two years earlier, the situation is much graver. The previous conviction is taken into account by the District Court in sentencing. In the context of these proceeding, it is evidence of the extent of the respondent's relationship with alcohol.*

27. In our view, a second conviction for EBA certainly raises a question about a teacher's use of alcohol, even more so when, as in the present case, the convictions are fairly close together. However, the teacher in *Campbell* acknowledged that she was an alcoholic. Without such an admission, we would not have been able to make the last statement in the passage above.

28. Applying that reasoning to the present case, although our initial response to these referrals is to speculate whether the respondent has some type of dependency on alcohol, it is an agreed fact that an alcohol intervention assessment identified him as a low risk of reoffending and not in need of further counselling. Without either an acknowledgement from the respondent or an independent expert opinion on the matter, we cannot say that he has a problem with alcohol. We add that even where a respondent acknowledges such a problem, it may be relevant to penalty but that it is not the same as being an aggravating factor.

29. In *Campbell*, we were asked to suspend the teacher's practising certificate until she had attended a residential rehabilitation programme. We declined to do so on various grounds including that we did not consider this forum was the best place to explore treatment options.[15] However, there was evidence of the negative impacts of the respondent's alcoholism pervading her life and so we imposed certain conditions to

[14] *CAC v Campbell* NZDT 2016-35, 3 October 2016
[15] Above, note 14 paragraph 32 e.

reinforce the rehabilitative steps she was already taking.

30. The present case is in quite a different category. There is no admission or independent evidence that the respondent has an alcohol problem. Therefore there is no proper basis to say that he has taken inadequate steps to address a problem with alcohol.[16] Unlike cases where a teacher has been under the influence of alcohol at school, it is not the fact that the respondent has consumed alcohol that has resulted in this referral to the Tribunal. Rather it is the fact of his convictions that has resulted in this referral.

31. The disciplinary response must be one which is consistent with the overlapping purposes of disciplinary proceedings: protecting the public through the provision of a safe learning environment, maintaining professional standards and maintaining public confidence in the profession.[17] In imposing a penalty, the Tribunal must arrive at an outcome that is fair, reasonable and proportionate in the circumstances.[18] The Tribunal will also seek to ensure that any penalty is comparable to those imposed in teachers in similar circumstances.[19]

32. We therefore impose the following penalty:

- censure under s 404(1)(b)
- annotation of the register for three years under s 404(1)(e).

33. We hope that the respondent has truly reflected on the impact of his choices and want to impress on him that further convictions for matters of this nature may jeopardise his registration. Failure to report any conviction as required by s 397 would be an aggravating factor. In addition, we want to remind him of the influential nature of his position as a teacher, as evidenced in the references provided. It is essential that he demonstrates positive behaviour that he would want his students to emulate.

Costs

34. Section 404(2) provides that no cost orders may be made where, as here, the hearing arises out of a report under s 397. Therefore no costs are ordered.

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[16] We have previously said that this can be a ground for cancellation in *CAC v Campbell* above note 14, at [27] as cited in *CAC v White* NZTDT2017/29, 28 November 2017 at [23].
[17] *CAC v McMillan* NZTDT 2016/52 as cited in *CAC v White* NZTDT2017/29, 28 November 2017 at [24].
[18] *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [51]; *CAC v Korau* NZTDT2017/17 26 August 2017 at [22],
[19] *CAC v White* NZTDT2017/29, 28 November 2017 at [27]; *CAC v Lyndon* NZTDT2016/61 at [26].

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).