

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Teacher K

NZ Teachers Disciplinary Tribunal Decision 2018/88

Teachers have an obligation in the *Code of Professional Responsibility* to maintain public trust and confidence in the teaching profession.

In this case, Teacher K, a primary teacher, attended a parent-teacher evening under the influence of alcohol. About 15 parents notified the school principal, saying that they could smell alcohol on him, and he was repeating himself, and appeared dehydrated and disorientated.

The matter was referred to the Teaching Council's Complaints Assessment Committee (CAC) and following an investigation it was referred to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

Teacher K admitted to being unwell that day and said he had, against better judgment, consumed two beers which had an impact on his presentation at the parent teacher interviews. Teacher K had a history of depression and anxiety, for which he was taking prescribed medication, and the combination of this with his illness and drinking the alcohol led to him being impaired. He also accepted that he had some dependency on alcohol given other factors in his life at the time, including family health issues, relationship problems, and stress at work.

The Tribunal considered that Teacher K's conduct arose from poor professional judgment, and reflected adversely on his fitness to teach, and that it may bring the profession into disrepute.

In deciding the penalty, the Tribunal accepted that Teacher K immediately took a voluntary leave of absence to get treatment, continued to undertake treatment for depression and anxiety, completed a residential programme for alcohol abuse, and engaged in Community Alcohol and Drug Service and cooperated with the Teaching Council's disciplinary process.

However, in 2016, Teacher K had come before the CAC on other matters which arose from his health and relationship with alcohol, and for which he was subject to conditions to maintain his mental health.

On balance, the Tribunal considered that given the steps he had already taken, Teacher K had good prospects of rehabilitation, provided he had the right supports. The Tribunal decided to censure Teacher K, and applied conditions for three years, with annotation on the register. His name was permanently suppressed.

The conditions included:

- not undertaking any teaching employment in a position of Acting Principal or higher; and
- if employed, he must provide the Council and his employer with updated medical reports from his general practitioner every six months; and
- he must develop a relapse prevention plan, which he is required to provide to any employer and the Council; and
- he must submit to any breath or blood alcohol testing regime instituted by his employer.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

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

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **TEACHER K**

Respondent

DECISION OF TRIBUNAL

Tribunal: Nicholas Chisnall (Deputy Chair), David Spraggs and David Turnbull

Hearing: On the papers

Decision: 28 February 2019

Representation: E McCaughan and C Howard for the referrer
The respondent in person

Introduction

[1] The Complaints Assessment Committee (the CAC) charged the respondent, Teacher K, with serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers and referred the matter to us for determination. The CAC's notice of charge alleges that the respondent, while employed at a primary school:

On 15 February 2017 attended parent-teacher learning interviews after having consumed alcohol and appeared to be intoxicated.

[2] The respondent agreed to this matter being heard on the papers.

[3] We have made an order suppressing the name and identifying particulars of the respondent. For that reason, we have anonymised this decision.

The evidence

[4] The parties filed an agreed summary of facts, which provides:

Introduction

1. Teacher K is a fully certificated primary school teacher. He gained provisional certification in New Zealand in 2004, where he taught until 2005. Teacher K then taught in the UK and, on returning to New Zealand in 2009, gained provisional certification again and then full certification in 2012.

2. Between 2010 and 2017 Teacher K taught at [name of school suppressed] [REDACTED] (including three years as Principal and four years as Deputy Principal) and [REDACTED] including a short period as Principal at this school in 2015-16.

3. Teacher K resigned from [REDACTED] in May 2016.

4. Teacher K then worked at [REDACTED] until accepting a role as Associate Principal and Year 4 teacher at [REDACTED] in December 2016. [REDACTED] is a full primary school (Years 1 – 8) in [REDACTED] with a roll of approximately 450 students.

5. Teacher K resigned from [REDACTED] on 17 February 2017. As at his resignation date on 17 February 2017, Teacher K had only worked in the classroom for four days.

Serious misconduct – 15 February 2017

6. On 15 February 2017, parent / teacher learning meetings took place at [REDACTED] [REDACTED]. Teacher K was one of the teachers involved.

7. On that evening approximately 15 parents notified the Principal of [REDACTED], [REDACTED], that Teacher K appeared to be unwell, and not fit for work. The parents advised [REDACTED] that it appeared that Teacher K was either having a diabetic low, or was

drunk.

8. [REDACTED] subsequently spoke to Teacher K, who was slurring his speech, and appeared sweaty, flushed and unwell. When Teacher K stood, he was unsteady on his feet, and held the table for support. There were two visible stains on his trousers, which appeared to be vomit.

9. [REDACTED] subsequently received three written complaints from parents regarding Teacher K's behaviour that evening. The written complaints included the following points:

a. One parent said that they could smell alcohol coming from Teacher K, and noticed that he repeated himself at least twice and seemed to lose his train of thought during the meeting.

b. Another parent was concerned that Teacher K had leaned in to give her a kiss on the cheek at the end of the meeting, and that she could smell alcohol on his breath at this time.

c. The third parent also noticed that he smelt of alcohol, and appeared dehydrated and disoriented.

10. After the meetings [REDACTED] telephoned Teacher K to discuss her concerns. They agreed to meet at 8.15am the next morning (16 February 2017).

11. Teacher K did not attend the meeting on 16 February 2017.

12. Later that day [REDACTED] emailed Teacher K to ask why he did not attend the meeting.

13. Teacher K emailed [REDACTED] to explain that he would be resigning from his post as Associate Principal and Year 4 teacher, effective 17 February 2017.

14. On 17 February 2017, the Education Council received a complaint from [REDACTED] regarding Teacher K's conduct.

Information obtained by CAC

15. On 12 May 2017, Teacher K emailed the following explanation to the CAC:

In regard to the matter specified in the documents I was not impaired by alcohol on that evening. I had been unwell and coupled with the medication I take must have come across as impaired.

It had also been a stressful time in my life and in hindsight starting at [REDACTED] was too early.

I had fully applied myself in the start-up and preparation of my classroom and senior management responsibilities before the school year started and had a positive outlook. However my health is more important and choose it was best to resign and take the time I need."

16. The CAC subsequently received a letter dated 26 May 2017 from Dr [REDACTED] concerning Teacher K:

Teacher K is a registered patient of mine and was reviewed today in clinic. Teacher K is medically well and has had regular reviews with myself.

Teacher K takes regular medications for depression and anxiety. His mental health is stable and he is no longer drinking alcohol.

17. On 12 July 2017, Teacher K provided a letter to the CAC which made the following comments:

I am medicated for depression and anxiety I currently take Lithium, escitalopram and quetiapine. I am supposed to take this medication with breakfast in the morning.

On the day in question I had been unwell with a stomach flu and had been suffering from diarrhoea. I had also been under a great deal of stress and not sleeping or eating well. That particular day I took my medication late (at the end of the school day) and it made me feel unwell which it can do. Particularly, if I have not been eating well or hydrating enough.

In hindsight I should have taken the day off or at least postponed the parents meetings I had in the afternoon / evening. Instead of doing this I carried on. There was some suggestion I was impaired by alcohol, this is not entirely correct. The big mistake I made was having 2 beers (2 standard drinks) with some fries before returning to the meetings. The combination of not eating well, being sick, the medication and the small amount of alcohol made me slightly impaired. I fully understand this is a terrible decision and feel devastated it happened.

Soon after I resigned to focus on getting well. I am extremely passionate about the education profession and know that I have made a positive impact as a teacher, team leader, deputy principal and principal. In hindsight I started back into permanent work too soon. I really needed to take the necessary time to get myself well in order to perform at the level I know I can.

For my health I have decided not to return to teaching for the foreseeable future.

Medical update: I am still medicated for depression and anxiety. I have also completed a 30 day alcohol rehab centre in Auckland and remain sober. This was all part of staying well and something I had planned to do for months. I see my GP on a regular basis.

18. Teacher K included a letter from [REDACTED] confirming his participation in a 30 day residential programme to deal with his alcohol abuse issues, commencing on 13 March 2017.

19. On 6 September 2017, Teacher K emailed the CAC, advising:

- a. He had been sober for 6 months.
- b. He was taking medications – Lithium and Escitalopram for anxiety, and Zopiclone and Quetiapine for sleep.
- c. He had been in regular contact with his GP, and had recently made contact with a counsellor.

20. On 13 November 2017, the CAC received a letter from [REDACTED], of the [REDACTED] Community Alcohol and Drug Service (CADS). The letter confirmed Teacher K had been with the service since September 2017 for ongoing treatment.

21. On 21 December 2017, the CAC received a further letter from Dr [REDACTED]. The letter advised that:

- a. Teacher K was medically well and had regular reviews with Dr [REDACTED].

- b. Teacher K was taking regular medications for depression and anxiety.
 - c. Teacher K's mental health was stable.
 - d. Teacher K was no longer drinking alcohol and had regular follow-up with CADS with a good support structure in place.
22. On 14 May 2018, the CAC received a further letter from [REDACTED] of CADS. The letter confirmed Teacher K continued to be engaged with CADS.

23. On 14 May 2018, Teacher K wrote to the CAC. His letter included the following comments:

I am writing to provide details about my strategies and support structures that I have in place to manage my ongoing wellness and continued recovery.

...this was an extremely stressful time for myself both professionally and personally. I had been having marriage problems, my son had a number of health issues and I was doing my best to integrate into a new leadership position that also had a teaching component, something I hadn't done for a while due to my school management and former principal positions. Over this time, I was getting very little sleep and had missed my medication a few times or taken them late. Lack of sleep, being generally unwell with a head cold, coupled with taking my medication late and the poor decision to have two beers with a meal before returning to the parent teacher conferences meant I was not able to do my job and should have made the decision to reschedule. However not wanting to let anyone down I carried on. Obviously in hindsight I would have left for the evening. Taken some medical leave to better manage my situation. I now realise this is what I should have done.

24. Teacher K stated that he had been sober for 1 year and 2 months, that he had regular meetings with a support worker at CADS, and that he continued to see Dr [REDACTED] regularly.

25. He also stated that he was studying towards a Graduate Diploma in Psychology at Waikato University, and that:

Although I am currently studying Psychology at Waikato University and I don't plan to return to the Teaching Profession in the near future, I would dearly love to have this opportunity left open for me should I choose to go back. In my time as a teacher, Head of Dept, Deputy Principal and Principal I know I worked extremely hard to make a positive impact on the children I was responsible for through creating strong learning partnerships with parents and the wider community. I became a Principal at a young age and thrived on this opportunity and I look back on it fondly. In reflection I know that if I was to return to teaching I still have plenty to offer to education in Aotearoa, New Zealand.

Previous misconduct finding

26. In 2016, the CAC considered a mandatory report from [REDACTED] following Teacher K' resignation, raising a number of concerns about Teacher K' conduct, including his attitude to alcohol.

27. After considering the matter the CAC found that:

a. Teacher K had failed to complete core tasks that were part of his role as a Principal in a timely manner (e.g. teacher contracts; appraisals and registrations; annual plan; budget; setting of school fees and donations and the ICT development plan).

b. Teacher K had a number of unplanned absences in addition to periods of sick leave.

28. Teacher K agreed that his conduct amounted to misconduct in that he did not follow his professional responsibility to look after his health and take a break to ensure that he was well enough to continue his role as Principal without ongoing interruption.

29. On 16 September 2016 Teacher K agreed to the following conditions being placed on his practising certificate for a period of two years:

a. Not to undertake any teaching employment in a position of Acting Principal or higher.

b. Continue regular monitoring with his GP. Provide a report to the Manager of Teacher Practice at the Education Council every six months.

c. To inform any current or future employers of the agreement.

Our findings

[5] Section 378 of the Education Act 1989 defines “serious misconduct” as behaviour by a teacher that has one or more of three outcomes; namely that which:

(a) Adversely affects, or is likely to adversely affect, the well-being or learning of one or more children; and/or

(b) Reflects adversely on the teacher’s fitness to be a teacher; and/or

(c) May bring the teaching profession into disrepute.

[6] The test under s 378 is conjunctive.¹ As such, as well as having one or more of the three adverse professional effects or consequences described, the conduct concerned must also be of a character and severity that meets the Education Council’s criteria for reporting serious misconduct. The Education Council Rules 2016 (the Rules) describe the types of behaviour that are of a prima facie character and severity to constitute

¹ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

serious misconduct.² The CAC asserted that Teacher K's alleged breach of his professional responsibilities contravened r 9(1)(o), which encompasses "any act or omission that brings, or is likely to bring, discredit to the profession". Rule 9(1)(m) is also potentially applicable in the circumstances, as it describes "breaching the standards or rules of the school or early childhood education service concerning the use of alcohol at the school or while engaged in the business of the school or early childhood education service".³ However, we were not told whether the school had rules in place regarding the use of alcohol.

[7] The respondent did not resist the conclusion that his behaviour amounts to serious misconduct. While the Tribunal is required to reach its own view, we accept that the parties have correctly assessed the gravity of the conduct.⁴ We therefore accept that the CAC's charge is made out, for the reasons that follow.

[8] Counsel for the CAC directed out attention to two decisions in which the Tribunal found that the respective practitioner was guilty of serious misconduct for performing his or her duties under the influence of alcohol – *CAC v Collins*⁵ and *CAC v Craig*.⁶

[9] The behaviour in *Collins* was somewhat worse than that in the instant case, as the practitioner taught students while intoxicated. Mr Collins, like the respondent, had previously been dealt with by the CAC; albeit for driving with excess breath alcohol on two occasions. He accepted that he had a harmful relationship with alcohol. We said:⁷

[A] teacher who attends school under the influence of alcohol or consumes alcohol during the teaching day, for whatever reason, brings harm to the reputation of the teaching profession.

² Rule 9 was amended on 18 May 2018, but this decision refers to the preceding iteration.

³ The current equivalent to r 9(1)(m), which came into effect on 29 September 2018, is r 9(1)(h), which describes, "being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners".

⁴ We have kept in mind that, notwithstanding the parties' agreed position, the burden rests on the CAC to prove the charge, on the balance of probabilities.

⁵ *CAC v Collins* NZTDT 2016/43, 24 March 2017.

⁶ *CAC v Craig* NZTDT 2015/26, 11 November 2015.

⁷ At [41].

[10] Ms Craig was observed to have brought alcohol onto school grounds and then “acted in a way that showed she was under the influence of alcohol while at school and in charge of a classroom of students”. Ms Craig’s two convictions for drink-driving formed the backdrop to the allegation of serious misconduct. Again, the practitioner accepted that she had a problem with the use of alcohol.

[11] Turning to the first limb of the definition of serious misconduct in s 378 of the Education Act, we are satisfied that Teacher K’s poor professional judgement reflects adversely on his fitness to teach, which contravenes s 378(1)(a)(ii). We are also satisfied that the respondent’s conduct is of a nature that brings the teaching profession as a whole into disrepute when considered against the objective yardstick that applies under s 378(1)(a)(iii) of the Education Act – which requires the Tribunal to ask whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the respondent’s behaviour.⁸

[12] For the same reasons, we are also satisfied that that the respondent’s conduct is of a character and severity that engages 9(1)(o) of the Rules, which therefore fulfils the second stage of the test in s 378, because it involved behaviour that brings, or is likely to bring, discredit to the profession.

[13] We accept that the respondent committed serious misconduct.

Penalty

[14] The primary motivation regarding the establishment of penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met. These are to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public’s confidence in the profession.⁹ We are required to arrive at an outcome that is fair, reasonable and proportionate in the

⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28]. As we have said many times, practitioners make a commitment to “maintain public trust and confidence in the teaching profession by demonstrating a high standard of professional behaviour and integrity”.

⁹ The primary considerations regarding penalty were discussed in *CAC v McMillan* NZTDT 2016/52.

circumstances in discharging our responsibilities to the public and profession.¹⁰

[15] We accept that there are significant mitigating factors that ought to influence the combination of penalties imposed under s 404(1) of the Education Act. As the CAC acknowledged in its helpful submissions, the respondent, following his misconduct, embarked upon a rehabilitative journey. The steps Teacher K has taken are:

- (a) To immediately resign his position.
- (b) To remain under the care of his general practitioner, who is overseeing the treatment of his depression and anxiety.
- (c) Completion of a 30 day residential programme for the treatment of alcohol abuse in March/April 2017.
- (d) To enrol, in September 2017, with the Community Alcohol and Drug Service (CADS). CADS has affirmed that the respondent remains engaged with its service.
- (e) The respondent cooperated with the CAC's investigation and the disciplinary process and took responsibility for his actions.

[16] The CAC submitted that the combination of penalties required to maintain professional standards and preserve the public's confidence in the profession are:¹¹

- (a) Censure.
- (b) Imposition of conditions that will come into force if and when the respondent is issued with a practising certificate in future, and which will remain in effect for five years. The conditions proposed by the CAC are that the respondent:
 - i. Must not undertake a teaching employment in a position of Acting Principal or higher, which mirrors the condition that was

¹⁰ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

¹¹ The CAC acknowledged that this is not a case that falls within either of the two overlapping situations described in *CAC v Fuli-Makaua* NZTDT 2017/40 that invite cancellation of a teacher's registration to teach.

imposed by the CAC in 2016, and which was in effect when Teacher K misconducted himself;

ii. Must inform any prospective employer of this proceeding and provide it with a copy of this decision; and

iii. If employed, he must provide his employer with updated medical reports from his general practitioner every six months; and

iv. Must submit to any breath or blood alcohol testing regime instituted by his employer.

(c) Annotation of the register for five years.

[17] We acknowledge that we must seek to ensure that any penalty we institute is comparable to those imposed upon teachers in similar circumstances. However, we do not consider that either *Collins* or *Craig* are particularly instructive regarding the penalty required in Teacher K's case. As *Collins* and *Craig* demonstrate, suspension can be used in conjunction with rehabilitative conditions as a means by which to meet the Council's duty under s 377 of the Education Act to "ensure" that students are provided with a safe learning environment.¹² As we have said previously, a disciplinary sanction is not designed to punish a practitioner for "evidence of alcoholism", but the extent of a teacher's harmful relationship with alcohol is relevant to the assessment of the risk that he or she poses if allowed to remain part of the profession.¹³ That explains the result in *Collins* and *Craig* – where suspension was necessary because neither practitioner had developed complete insight into his or her problematic use of alcohol, nor taken sufficient rehabilitative steps to satisfy us that there was not an extant risk if we sanctioned an immediate return to the classroom.

[18] We agree with the CAC that:

In terms of the respondent's level of insight, it is concerning that [he] has had a previous finding of misconduct in 2016, on the basis that he did not follow his professional responsibility to look after his health and take a break when required. The respondent was still subject to conditions at the time that the serious misconduct occurred.

¹² Section 377 of Part 32 of the Education Act, which came into effect on 1 July 2015.

¹³ See *CAC v Fuli-Makaua* NZTDT 2017/40.

[19] We are nonetheless satisfied that Teacher K is in a different category to either of the practitioners dealt with in the earlier cases we have discussed. The respondent candidly acknowledges that he is vulnerable to stress and that the way in which he used alcohol affected his health and compromised his performance of duties. We are satisfied that the respondent has taken concrete steps to minimise the risk of repetition. We are impressed by Teacher K's recognition that – despite the fact that he has been sober for over a year – it would not be in his best interests to return to teaching yet. The respondent candidly acknowledges that his premature return to teaching in 2017, and into a position that carried significant management responsibilities, triggered his relapse. He is to be complimented for wanting to avoid a repetition of that state of affairs.

[20] While the respondent agrees that the conditions sought by the CAC are reasonable, he queries whether it is necessary to impose them for five years. As he explains, "I have already been away from the profession for two years and made considerable progress in that time".

[21] The CAC's selection of five years is predicated on the fact that we imposed conditions for this length of time in *Collins*, which were to take effect after two years of suspension. It is helpful to set our reasoning in *Collins* for selecting a five-year term:

The length of conditions and annotation was felt to be necessary given the respondent's previous lapses. We accept that he has appropriate support in place, but the same could be said of when conditions were imposed in 2014. The respondent has said that he cannot guarantee he will not drink again, and it is therefore necessary that future employers will be able to test him if it appears that he is under the influence of alcohol. This is particularly important given his lack of acknowledgement of that fact [that he had been drinking] on this occasion.

[22] Teacher K has exhibited a degree of insight we found wanting in Mr Collins. We expect that he also has a far greater resilience to relapse now than he did in 2017. We accept that Teacher K's voluntary absence from the profession, during which he underwent treatment, can be taken into account in our assessment of penalty. For this reason, we have decided that the least restrictive way in which to achieve the relevant disciplinary purposes – which are to maintain both professional standards and the public's confidence in the profession, and to also meet Teacher K's rehabilitative and reintegrative needs - is to impose conditions for three

years. However, we have decided to alter the conditions proposed by the parties in one regard – by requiring the respondent to develop a relapse prevention plan and share that with any future employer. We expect that Teacher K has already undertaken this exercise as part of his treatment, but impose this requirement out of an abundance of caution.

The respondent’s application for permanent name suppression

[23] The respondent sought permanent name suppression, and the CAC, in careful submissions, recognised the finely-balanced nature of the application. It took a neutral stance regarding whether we should exercise our discretion.

[24] The default position is for Tribunal hearings to be conducted in public and the names of teachers who are the subject of these proceedings to be published.¹⁴ The Tribunal’s powers around non-publication are found in s 405 of the Education Act. We can only make an order for non-publication if we are of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and to the public interest.

[25] We recently described the relevant principles regarding name suppression in *CAC v Jenkinson*,¹⁵ which we will not repeat in full. There is a two-step approach to name suppression under s 405 that mirrors that used in other disciplinary contexts. The first step, which is a threshold question, requires deliberative judgment on the part of the Tribunal whether it is satisfied that the consequence(s) relied upon would be “likely” to follow if no order was made. In the context of s 405(6), this simply means that there must be an “appreciable” or “real” risk.¹⁶ If so satisfied, the Tribunal’s discretion to forbid publication is engaged. At this point, the Tribunal must determine whether it is proper for the presumption in favour of open justice to yield. This requires the Tribunal to consider, “the more general need to

¹⁴ That open justice principle is contained in s 405(4) of the Education Act, found in Part 32, which came into force on 1 July 2015.

¹⁵ *CAC v Jenkinson* NZTDT 2018/14, 17 September 2018, at [32] to [36].

¹⁶ Consistent with the approach we took in *CAC v Teacher* NZTDT 2016/68, at [46], we have adopted the meaning of “likely” described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 (CA). It said that “real”, “appreciable”, “substantial” and “serious” are qualifying adjectives for “likely” and bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

strike a balance between open justice considerations and the interests of the party who seeks suppression".¹⁷

[26] We now turn to Teacher K's ground for suppression. He has provided letters from both his general practitioner and his clinician at CADS, which address the potential impact that publication will have on his mental wellbeing and risk of relapse.

[27] We acknowledge that it may be proper to order suppression where there is a real risk that publication will either exacerbate an existing condition, or adversely affect a practitioner's rehabilitation and recovery from an illness or disorder.¹⁸ The information contained in the experts' letters satisfies us that there is an appreciable risk to the respondent's wellbeing should his name be published.¹⁹ Under the second stage of s 405's test, we agree that it is proper for the presumption in favour of open justice to yield. We therefore exercise our discretion and suppress Teacher K's name.

Costs

[28] The CAC sought a contribution from the respondent towards the actual and reasonable costs it incurred undertaking its investigative and prosecutorial functions. We have also considered whether to make an order that the respondent contributes to the Tribunal's own costs, which is the third category described in our 2010 Practice Note.

[29] We have not been provided with a schedule of the CAC's costs. The Tribunal's costs are \$1,145.

[30] In recent times, we have ordered a smaller contribution – 40 instead of the usual 50 per cent – where a practitioner has accepted responsibility for his or her misconduct and agreed to the matter being dealt with on the papers. That is the approach we will take here.

¹⁷ *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4, at [3].

¹⁸ Teacher K relied upon a recent case where we ordered suppression for this reason, and where we were provided with evidence from the teacher's clinician setting out the risks associated with publication: *CAC v Teacher B* NZTDT 2017/35, 25 June 2018.

¹⁹ The CAC acknowledged that the respondent had provided sufficient evidence to fulfil the first limb of the test: see NZTDT 2016/27, at [63].

[31] We order the respondent to make a 40 per cent contribution towards the actual and reasonable costs incurred by the CAC. The CAC is to file and serve a schedule of its costs on the respondent within 10 working days. The respondent will then have 10 working days to file a memorandum should he dispute the reasonableness of the CAC's costs.

[32]

Orders

[33] The Tribunal's formal orders under the Education Act are as follows:

(a) Pursuant to s 404(1)(b), the respondent is censured for his serious misconduct.

(b) Pursuant to s 404(1)(j), the Council is directed to impose the following conditions, which will come into force if and when the respondent is issued with a practising certificate in future, and which will remain in effect for three years. The conditions are that the respondent:

- i. Must not undertake and teaching employment in a position of Acting Principal or higher;
- ii. Must inform any prospective employer of this proceeding and provide it with a copy of this decision;
- iii. If employed, must provide the Council and his employer with updated medical reports from his general practitioner every six months;
- iv. Must develop a relapse prevention plan, which he is required to provide to any employer and the Council; and
- v. Must submit to any breath or blood alcohol testing regime instituted by his employer.

(c) The matters referred to in (a) and (b) will be annotated on the register until the conditions referred to in (b) expire.

(d) Under s 405(6)(c), the name of the respondent is permanently suppressed.

(e) The respondent is to pay 40 per cent of the CAC's actual and reasonable investigative costs pursuant to s 404(1)(h).

(f) The respondent is to pay \$458 to the Tribunal pursuant to s 404(1)(i).



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 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 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).