

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Elizabeth Wilson NZTDT 2019/14

Teacher Elizabeth Wilson's four convictions for using documents for a financial advantage were referred to the Disciplinary Tribunal.

The result: The Tribunal imposed a censure, annotation of the register and imposed conditions for two years, that Ms Wilson was not to hold any position involving financial responsibility in any school, to inform prospective employers of the Tribunal decision and the employing school was to confirm that she did not have a position involving financial responsibility. There are no non-publication orders in this case.

On 19 June 2019 the Tribunal released its decision following a hearing on the papers. Ms Wilson accepted that between 13 and 23 December 2016, at a time when she was a teacher at Hokitika School and Treasurer of the New Zealand Educational Institute (NZEI), Westland branch, she used cheques to unlawfully withdraw a total of \$3,280 from the NZEI bank account, over 11 days. Ms Wilson was in a position of trust when she made these unlawful withdrawals and used the money for personal use. She has since repaid the full amount owing to NZEI.

Ms Wilson pleaded guilty, and on 19 July 2018 was convicted and sentenced in the Timaru District Court to six months supervision with a special condition that she was to complete any course, programme or counselling directed by her probation officer.

Ms Wilson's employer notified the Council of the charges, by filing a mandatory report, and Ms Wilson notified the CAC of her convictions after sentencing. Ms Wilson advised the CAC that the offending occurred at a time when she was under heavy stress; with significant whānau health issues, requiring frequent travel, and additional responsibility to cover whānau household bills. She had also accepted a promotion, with additional responsibilities.

The CAC submitted that an appropriate starting point was cancellation, however as Ms Wilson repaid the money, acknowledged wrongdoing, and was working in a supportive work environment, further submitted that the appropriate penalty should be censure, annotation and conditions, formalising protective measures for the school and the teacher. Ms Wilson accepted the CAC submissions.

The Tribunal found that the offending clearly crossed the threshold of serious misconduct, nothing that *"it was a serious abuse of a position of trust involving a significant amount of money. It was deliberate, and was repeated, occurring on more than one occasion albeit within a short time span."* However, the Tribunal noted that Ms Wilson was *"subjected to particular family and related pressures at the relevant time and was under heavy stress."*

The Tribunal considered that this was not a case which required cancellation, there were contextual explanations for Ms Wilson's offending, and it was not a case of dishonesty solely for reasons of personal greed and advantage. The Tribunal considered that there was a clear rehabilitative path for Ms Wilson, and she was clearly capable of making significant contributions to her school and to her community.

The Tribunal imposed a censure, annotation of the register and conditions for two years, to inform prospective employers of the Tribunal decision, and not to hold any position involving financial responsibility in any school, with confirmation of that condition of employment from the school.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2019/ 14

UNDER the Education Act 1989

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

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

AND **ELIZABETH WILSON, registered teacher, teacher registration 314720**

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 14 June 2019 (on the papers)

TRIBUNAL: John Hannan (Deputy Chair), Stuart King, Tangi Utikere

DECISION: 19 June 2019

COUNSEL: Rosie Kós for Complainant
KC Beazley for Respondent

Introduction

1. The CAC has referred convictions of the respondent to the Disciplinary Tribunal. On 19 July 2018 the respondent was convicted and sentenced in the District Court at Timaru on 4 charges of take/obtain/use documents for a pecuniary advantage, under section 228 of the Crimes Act 1961.
2. The CAC considers that the convictions warrant action by the Disciplinary Tribunal.

Facts

3. A summary of facts has been agreed and is set out below.

1. *ELIZABETH WILSON was first registered with Teaching Council of Aotearoa New Zealand (the Council) in April 2014 after holding a Limited Authority to Teach in 2008. The respondent was employed at Hokitika School from July 2014 until the end of 2016. The respondent gained full certification with the Council in August 2016. The respondent has been employed as a full time Kaiako at Arowhenua Maori School since term one in 2017.*
2. *On 19 July 2018 the respondent was convicted and sentenced in the Timaru District Court for four charges of using documents for pecuniary advantage pursuant to s 228 of the Crimes Act 1961.*
3. *The respondent pleaded guilty to a Summary of Facts (Annexure 1). The facts to which she pleaded guilty were that between 13 and 23 December 2016, at a time when she was a teacher at Hokitika School and Treasurer of the New Zealand Educational Institute (NZEI), Westland branch, she used cheques to unlawful withdraw a total of \$3,280 from the NZEI bank account. The respondent was in a position of trust when she made these unlawful withdrawals, and used the money for personal use.*
4. *The respondent has since repaid the full amount owing to NZEI.*
5. *A pre-sentence report was prepared in relation to this offending (Annexure 2).*
6. *The respondent was sentenced on 19 July 2018 to six months' supervision with a special condition that she was to complete any course, programme or counselling directed by her probation officer. A copy of the sentencing Judge's decision is annexed as Annexure 3.*
7. *The respondent has one historic dishonesty conviction.*
8. *The Council became aware that the respondent was involved in court proceedings following a mandatory report from Bronwyn Te Koeti James, Principal at Arowhenua Maori School on 13 February 2018. The respondent herself notified the Complaint's Assessment Committee (the CAC) that she had been sentenced on 23 July 2018.*

Teacher's response

9. *In the criminal proceedings the respondent explained she was in a desperate situation, knew what she did was wrong and took full responsibility, and apologised to NZEI for her actions.*
10. *The respondent provided a written response to the CAC.*
11. *The respondent said that the offending occurred at a time when she was under heavy stress. The respondent's mother had recently had a stroke (her mother was the main caregiver of the respondent's brother and sister, who both had significant health issues). The respondent was travelling, frequently up North to put in place care plans for her whanau. The respondent was also covering many of her whanau members' household bills.*
12. *The offending also occurred after the respondent had accepted a promotion at Arowhenua Maori School and had picked up additional responsibilities.*
13. *The respondent says that although she wanted to go through the restorative justice process, NZEI wished for the matter to go to court.*
14. *The respondent stated that she had paid the money back as quickly as possible and that she deeply regrets what she did. The respondent stated that she told the Board of Trustees, staff and principal of Arowhenua Maori School of the charges as soon as she started at the school, and they have all continued to support her.*

Subsequent Steps

15. *The respondent offered to resign from Arowhenua Maori School. However, this offer was not accepted and the respondent has continued to teach. Arowhenua Maori School has put in place measures to keep her and the school safe.*

Additional Facts

4. The District Court judge who sentenced the respondent noted that the offending involved four cheques, one for each charge, used over 11 days.
5. Submissions by counsel for the respondent noted that she has expressed her remorse and repaid the amount taken. She is currently the associate principal at the school at which she is employed. She is fully involved with all aspects of both the school and the community cultural activities, teaching Te Reo, being the head of Kapa Haka and taking children to and from sporting activities both within school hours and on the weekend. She is involved in the Arowhenua Marae and the Te Aitarakihī Multicultural Centre.
6. When she disclosed the offending to the principal of her employing school it was decided that she would not be involved with any financial responsibility.

CAC submissions

7. The CAC submitted that an appropriate starting point is cancellation. However it also submitted that in light of the respondent having repaid the amount taken, her acknowledgement of wrongdoing, and her current supportive work environment, an appropriate penalty would be censure together with annotation and conditions on her practising certificate.
8. The CAC also pointed out that the Tribunal is not required to find the respondent guilty of serious misconduct, where a conviction is referred to it. Despite that, the test to serious misconduct is a useful yardstick by which to assess offending where a conviction is referred.
9. Accordingly the CAC submitted that an adverse finding is warranted here in that the offending reflects adversely on the respondent's fitness to be a teacher, and brings the teaching profession into disrepute. The CAC also submitted that the convictions were of a character or severity that meets the teaching Council's criteria for reporting serious misconduct, being "theft or fraud" within the Teaching Council Rules 2016, Rule 9(1)(h).
10. The CAC referred to *CAC v Fletcher* NZTDT 2018/17 where the principal of a rural primary school misused the school's fuel card to purchase petrol for personal use, totalling \$5926.70, falsely claimed reimbursements and failed to pay rent to a total of a further \$2400 (approx.). The teacher in this case was overseas at the time of the hearing and made no submissions on penalty. In those circumstances the Tribunal ordered censure and cancellation. The Tribunal found that the principal had abused the position of trust which he occupied.
11. In *CAC v Lyndon* NZTDT 2016/61 a teacher was convicted on 3 charges of dishonestly using a document and 2 charges of obtaining by deception. This involved false letters to Work and Income New Zealand, resulting in the receipt of \$3091. There was a degree of sophistication in the way the respondent obtained the funds involving the creation of false documents. In this case the respondent had 11 years teaching experience, was fluent in Te Reo Maori, had completed a Masters degree, showed remorse and admitted her conduct at the earliest opportunity. She self-reported the convictions to the Education Council and cooperated fully with the CAC. The Tribunal focused on the teacher's rehabilitative prospects and her degree of insight into the causes of the offending. It noted that the respondent was subject to family pressures and had undertaken counselling to enable her to deal with pressure and stress. The Tribunal accepted that the respondent's behaviour was out of

character and there was little risk of repetition. The Tribunal accepted the respondent had positive attributes suggesting real potential to positively contribute to the teaching profession in future. In that case, the Tribunal considered the appropriate outcome was censure and annotation of the register for 2 years.

12. Relative to the present case, the CAC submitted that the amount of money stolen was relatively modest but that the respondent held a position of trust with NZEI. The CAC submitted the starting point should be cancellation. However the CAC also accepted that the Tribunal must have regard to the respondent's rehabilitative prospects and noted that the offending occurred against the backdrop of the respondent's care for a sick relative. This was acknowledged by the sentencing judge. The CAC noted further that the respondent is well supported by her new employer and that the employer has taken steps to ensure that it and the respondent remain safe.
13. The CAC therefore submitted that the appropriate penalty is censure and annotation of the register together with conditions formalising protective measures for the school and the respondent.

Submissions for respondent

14. Submissions for the respondent effectively echoed the submissions from the CAC and accepted those submissions.

Decision

15. Where convictions are referred to the Tribunal, the Tribunal must consider whether the circumstances and the behaviour that resulted in the convictions reflect adversely on the fitness of the respondent to practice as a teacher. If the Tribunal reaches an adverse conclusion it may exercise one or more of the powers contained in section 404 the Education Act 1989 ¹. It is not necessary that the Tribunal finds the respondent guilty of serious misconduct before exercising the disciplinary powers available under section 404 of the Education Act 1989. Nevertheless the serious misconduct yardstick is important in assessing first whether an adverse finding should be reached at all, and, second, the degree to which the conduct impacts upon the relevant respondent's fitness to teach and thus whether the outcome should be cancellation or some other step. Rule 9(1)(h) clearly indicates that a teacher who engages in "theft or fraud" will likely cross the threshold of serious misconduct.

¹ CAC v S, Auckland DC, CIV 2008 004001547, 4 December 2008, Judge Sharp

16. This offending clearly crosses the threshold of serious misconduct. It was a serious abuse of a position of trust involving a significant amount of money. It was deliberate, and was repeated, occurring on more than one occasion albeit within a short time span.
17. Set against that, the respondent was subjected to particular family and related pressures at the relevant time and was under heavy stress. These pressures are recounted in the summary of facts set out above.
18. The Tribunal considers that this is not a case which requires cancellation, when set against those cases in which cancellation has been imposed in relation to convictions for dishonesty offending. There are contextual explanations for the respondent's offending. This was not a case of dishonesty solely for reasons of personal greed and advantage, or involving the funding of a gambling or drug habit. There is a clear rehabilitative path for the respondent, and she is clearly capable of making significant contributions to her school and to her community.
19. We therefore consider the appropriate outcome to reflect the seriousness of these convictions is, as submitted by the CAC, that the respondent should be censured, that the register should be annotated, and that conditions formalising protective measures for the school and the respondent should be placed on her practising certificate. We do not however agree with the CAC's submission that there be a condition that the respondent "undertake professional development". It is not clear to the Tribunal what type of professional development that might be, and it also does not appear that the stresses in the respondent's life had anything in particular to do with her duties as a teacher.

Orders

20. Accordingly the Tribunal orders that pursuant to section 404 (1) (b) of the Education Act, the respondent is censured;
21. The Tribunal directs that the register be annotated so as to refer to this decision;
22. The Tribunal imposes the following conditions on the respondent's practising certificate, for a period of 2 years from the date of this decision;
 - (a) the respondent is not to hold any position involving financial responsibility in any school;
 - (b) the respondent is to inform any prospective employer of this decision, provide a copy of the decision to such prospective employer, and is to

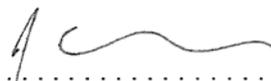
provide satisfactory evidence to the Manager – Professional Responsibility of the Teaching Council that she has done so;

- (c) Her current employing school is to confirm to the satisfaction of the Manager – Professional Responsibility of the Teaching Council that the respondent has not been and will not be employed in a position involving financial responsibility.

23. As this is a referral of convictions no question of costs arises, since under section 404(2) of the Education Act 1989 the Tribunal may not award costs in relation to conviction referrals.

Date: 19 June 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.