

# TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

## Complaints Assessment Committee (CAC) v Shannon Brown

*New Zealand Teachers Disciplinary Tribunal 2018-78*

*Mr Brown was referred to the Disciplinary Tribunal for convictions relating to charges of driving with excess breath alcohol (3<sup>rd</sup> or subsequent) and driving while disqualified. In addition, he was charged with failing to self-report those convictions as required by s 397 Education Act 1989.*

*The result: The Tribunal agreed that the convictions and behaviour adversely reflected on Mr Brown's fitness to teach and warranted an adverse finding. It found a penalty short of cancellation was appropriate. The Tribunal imposed a penalty comprising a combination of: censure, annotation of the register for two years, a number of conditions on Mr Brown's practising certificate, and the obligation to disclose this decision to future employees for two years.*

In relation to the excess breath alcohol offending, the Tribunal recorded that Mr Brown had driven home at around 2:00am following a session of drinking and having dinner with friends. He was stopped by Police after driving approximately 60 metres and found to be driving with a breath alcohol reading of 470 micrograms of alcohol per litre of breath. Mr Brown had been convicted twice previously for driving with excess breath alcohol. Those convictions had been considered by the Teaching Council at the time that Mr Brown applied to be registered as a teacher.

In relation to the driving while disqualified offending, the Tribunal recorded that Mr Brown had driven with 10 days remaining on his period of disqualification. Mr Brown had driven from Rototuna towards Hamilton with the intention of meeting his son to help him move a couch. However, he was stopped by Police for speeding and his disqualification was discovered during that stop.

The Tribunal noted that this was Mr Brown's third conviction for driving with excess breath alcohol and expressed concern that his continued offending illustrated that Mr Brown had not successfully engaged in rehabilitative efforts prior to him being registered following his second such conviction. The Tribunal also noted in respect of the conviction for driving while disqualified, that Mr Brown was initially stopped for speeding and appeared unwilling to comply with his disqualification from driving.

The Tribunal considered Mr Brown expressed genuine remorse and insight into the effect of his offending, had undertaken extensive rehabilitative work as an outpatient of CareNZ, and had devoted significant time to better the community by volunteering at the Western Community Centre. Strong professional support from colleagues and the length of time that had passed between Mr Brown's offending and the matter proceeding to a hearing were also noted as mitigating factors.

The Tribunal declined to grant Mr Brown's application for name suppression.



**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2018/78**

**IN THE MATTER** of the Education Act 1989

**AND**

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

**BETWEEN** **COMPLAINTS ASSESSMENT COMMITTEE**

**AND** **SHANNON ADAM BROWN**  
**Respondent**

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**DECISION OF THE TRIBUNAL**

**6 November 2019**

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**HEARING:** Held on 2 May 2019 (in person)

**TRIBUNAL:** Chris Merrick (Deputy Chair)  
Maria Johnson and Simon Williams (members)

**REPRESENTATION:** Ms O'Sullivan for the Complaints Assessment Committee  
Ms King for Mr Brown

## Reasons for referral

1. The Complaints Assessment Committee ("CAC") has referred the respondent to the Tribunal for the following reasons:
  - On 7 February 2017 the teacher was convicted and sentenced in the District Court at Morrinsville for driving with excess blood alcohol (3<sup>rd</sup> of subsequent).
  - On 17 January 2018 the teacher was convicted and sentenced in the District Court at Morrinsville for driving whilst disqualified.
  - The teacher did not self report the 2017 and 2018 convictions as he was required to do pursuant to section 397(1) of the Education Act 1989 ("the Act").
2. Further, the CAC has charged the Respondent with failing to report the conviction to the Education Council (as it then was) as required pursuant to section 397(1) of the Education Act 1989 ("the Act").
3. The matter was heard in person on 2 May 2019, following that hearing further information was directed to be filed by Mr Brown. Namely, a more detailed letter from CareNZ outlining the counselling completed by him over the period he worked with them, and confirmation of any community work done through the Western Community Centre Hamilton.

## Summary of facts

4. The parties have agreed on a summary of facts which is attached to the submissions of the CAC dated 18 April 2019.
5. The salient points of the summary are:
  - The respondent has two previous convictions for drink driving from 2006 and 2013 (for which he was convicted, fined, and disqualified, as well as ordered to pay the usual associated costs), at the time of applying for his Practising Certificate in 2015, he was asked to comment about those convictions which he did so in writing (as annexed to the SOF), assuring the Teaching Council that he had learnt from his mistakes and put measures in place to address reoccurrence.
  - On 7 February 2017, the respondent was convicted of another offence of driving

with excess breath alcohol (470mg) which he committed on 26 August 2016. He was sentenced on 7 February 2017 to three months' community detention, six months supervision and was disqualified for a year and one day.

- On 17 January 2018 the respondent was convicted in the Morrinsville District Court of driving while disqualified contrary to s 32(1)(a) and 32(3) LTA (maximum penalty 3 months' imprisonment or \$4500 fine) an offence committed on 18 December 2017. He was convicted and fined \$300 (plus \$130 court costs) and disqualification from driving for six months.
- The respondent did not self-report either of these convictions to the Teaching Council as he was required to.

6. The summary records the teacher's responses as follows:

*EBA (third or subsequent)*

- On 1 December 2018 the respondent provided a written response to the Teaching Council on his conviction for excess breath alcohol (third or subsequent), stating that he had been out for dinner and drinks with friends. Around 2am he decided he would head home, and after driving about 60 metres he was pulled over by Police.

*Driving whilst disqualified*

- On 24 August 2018 the respondent provided a written response to the Teaching Council on his conviction for driving while disqualified. The respondent stated that he was 10 days away from seeing out his disqualification and received a call from his son asking if he could help him lift a couch he had just purchased. His son needed an urgent response, so he made a judgement call to drive from Rototuna to Hamilton East. When pulled over for excess speed the respondent told Police he was not allowed to drive and acknowledged it was the wrong decision to make.
- The respondent pointed out that his previous convictions were alcohol related, while the 2018 conviction was not. However, he acknowledged that on both occasions he made the wrong choice.

**Legal Principles on conviction referrals**

7. It is well established that the purpose of the Tribunal exercising its disciplinary powers

in respect of a conviction is not to punish the teacher a second time for the index offending. Rather, the proceedings are put in place in order to further the Teaching Council's overriding purpose of "ensuring safe and high quality leadership, teaching, and learning" through raising the status of the profession.<sup>1</sup>

8. As the Tribunal has held in *CAC v Bird*, this can be achieved through holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required.<sup>2</sup>

### **Adverse finding**

9. In their respective written submissions the parties agree that the conduct in this case is such that an adverse finding is inevitable. In short, the behaviour in this instance reflects adversely on the fitness of the respondent to practice as a teacher and brings the teaching profession into disrepute. I find that to be so for the following reasons.
10. This was the respondent's third drink driving conviction. Whilst the level of alcohol was low (470mg), against the backdrop of the letter provided by him to the Council when applying for a practicing certificate in 2015 explaining his previous two drink drive convictions, this instance showed further poor judgment, and significantly illustrated that at that stage the rehabilitative work he had ensured would happen had not been enough to stop it happening again.
11. The driving whilst disqualified charge illustrated a poor attitude on behalf of the teacher regarding complying with his sentence and is concerning in the circumstances. It is also noted he was initially stopped for driving at speed.
12. In light of that finding, I now turn to consider the legal principles, submissions, and mitigating features relevant to penalty.

### **Legal principles on penalty – drink driving**

13. It must be recorded here that the Tribunal has emphasised on a number of occasions the principle that even one conviction for a drink driving offence "places a teacher's

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<sup>1</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA). *CAC v White* NZDT 2017/29, 28 November 2017 at [19]; *CAC v Korau* NZDT 2017/17 26 August 2017 at [13].

<sup>2</sup> *CAC v Bird* NZDT 2017/5, 3 July 2017 at [32].

registration in jeopardy”.<sup>3</sup> Further, as the Tribunal summarised in *CAC v Fuli-Makaua*:<sup>4</sup>

...A series of convictions will certainly do so. Notwithstanding the fact that it is a traffic offence it is, as the Tribunal held in NZDT2009/4 a “very serious one” and “not behaviour which our society is prepared to tolerate. Driving while intoxicated poses a danger to the public. And, as the Tribunal held in *CAC v White*, “practitioners have an obligation to both teach and model positive values for their students, and driving while intoxicated does not mirror that expectation”. Such conduct undermines a teacher’s professional commitment to “respect [their] trusted role in society” by “fostering learners to be active participants in community life...”.

14. In *CAC v Fuli-Makaua* the Tribunal outlined the following factors to be considered in assessing the seriousness of the offending:<sup>5</sup>

- *Circumstances of the offending*: the level of alcohol involved, the nature of the driving, presence of passengers, timing, associated offending;
- *Prior relevant convictions*;
- *Prior traffic history*;
- *Other evidence of harmful relationship with alcohol*;
- *Whether students have been put at risk*;
- *Failure to report conviction*.

15. Mitigating features can include:<sup>6</sup>

- *Accountability and remorse*;
- *Insight into behaviour*;
- *Evidence of rehabilitative steps*;

### **CAC submissions**

16. The CAC submits that the present offending can be regarded as moderately serious. Taking into account the respondent’s previous EBA convictions and the circumstances around his DWD conviction, the CAC has submitted that the appropriate starting point

<sup>3</sup> *CAC v Korau* NZTDT2017-17 26 August 2017 at [23] citing *CAC v Teacher* NZDT2014/1 21 January 2014 at 7.

<sup>4</sup> *CAC v Fuli-Makaua* NZTDT 2017/40 5 June 2018, at [36].

<sup>5</sup> *Ibid* at [39] – [49].

<sup>6</sup> *Ibid* at [50].

is cancellation. The CAC submits that the respondent's convictions demonstrate a pattern of offending that indicates a disregard for the law and a lack of understanding as to how his behaviour has brought the profession into disrepute. The CAC had reservations about the extent to which the respondent had completed rehabilitative measures, however accepts, in line with *Fuli-Makaua*, that if the Tribunal is satisfied that there are rehabilitative prospects, that may be open to the Tribunal to find that a penalty short of cancellation will meet the overlapping purposes identified at [7] above.

17. The CAC submitted that if that was the case, the appropriate penalty ought to be censure, annotation, and conditions on the respondent's practising certificate as follows:
- Deferring the respondent's full registration for a period of 12 months; and
  - Requiring two six monthly reports from a mentor to the Manager of Professional Responsibility regarding the respondent's commitment to the teaching profession.

### **Respondent's submissions**

18. I have had regard to the written submissions filed on behalf of the respondent and letters filed in support. In the course of the hearing on 2 May, Mr Brown also addressed the Tribunal by making a personal statement and answered questions from counsel for the CAC. I also take that into account.
19. Ms King on behalf of the respondent submits that a penalty short of cancellation is appropriate and submits censure, annotation of the record, and addition of conditions to Mr Brown's practising certificate are the just outcome here.
20. In support of that submission, there are a number of mitigating features which were put before the tribunal.

### *Mitigating features*

#### Accountability and Remorse

21. In a document titled, Brief of Evidence of 29 March, Mr Brown outlined some of the background to the original offending. He outlines that his mother was critically ill, and has stressed his shame and disappointment in himself that he offended during this period.
22. The respondent has attached letters of support from a friend Mr Al Ritchie, who himself has a background in teaching. I note Mr Ritchie attended in support at the hearing on 2

May. He outlines the fact that Mr Brown is a talented young teacher, which was exemplified by his elevation to a head of department role at a previous school. Mr Ritchie outlines that he has spoken with Mr Brown about his offending and had the opportunity to observe him and gauge his remorse, which he says in his view is genuine.

23. This assessment of genuine remorse was illustrated in the way in which Mr Brown addressed the Tribunal on 2 May.

Insight into behaviour

24. When addressing the Tribunal, Mr Brown showed good insight into his behaviour. This was a concern raised in the written submissions of the CAC, and a concern of the Tribunal. In speaking to the Tribunal Mr Brown impressed as being able to show that flaws in his thinking were what led to him to offend. He admitted that he was impulsive and has learnt strategies to deal with this. He has acknowledged the role alcohol played in impairing his thinking. He has sought help in the form of counselling in order to address this.

25. Mr Brown also spoke of his background, and why he became a teacher, this aspect of his oral statement illustrated to the Tribunal that he understands the jeopardy he has put himself in of potentially losing the opportunity to do what is described as his passion.

Evidence of rehabilitative steps

26. In a letter dated 26 January 2017, Mr Michael Cowan addressed the work done by Mr Brown through the intensive out-patient program facilitated by CareNZ. Mr Cowan noted that whilst initially having a denial around issues relating to his alcohol use, he grew quickly to accept these. He observes that the work done from the point of this acceptance was significant in terms of observed psychological and emotional growth and the reparation/management of inter-personal relationships. He appeared to be a valued member of the group whose input was regarded by other clients as insightful and encouraging, and engaged in group with integrity, honesty, openness, and willingness.

27. This was further supported in a letter dated 22 May by Mabruka Bendardaf, Clinical Manager at CareNZ, who detailed the components of the Living Free Programme completed by Mr Brown.

Good character and community involvement

28. The respondent has referred the Tribunal to a character reference from Mrs Katie

Blackett, a friend and colleague from the school at which he teaches. She has acted as a mentor to him professionally and has known him for eight and a half years. She speaks of his strengths as a teacher and she concludes:

Without hesitation, I know that Shannon would be a loss to the teaching profession. At a critical time where retaining quality, qualified members of this vocation is growing difficult I can confidently state that you should reconsider cancelling his registration.

29. Much of what Ms Blackett has written in support in terms of good character is supported by Mr Ritchie.
30. It is also evident from the letters filed in support and Mr Brown's written and oral statements, that he cares for his students, and this shows in his level of extra-curricular involvement for example, with musicals and theatre sports.
31. Mr Brown also outlined that he had approached the Western Community Centre about volunteering his time with them on a voluntary basis. This was an aspect of the hearing that the Tribunal also sought further information on. In a letter dated 30 May, Mr Nathan Morgan outlined his relationship with Mr Brown and how Mr Brown had been involved in community activities through the centre in the past. In it he also outlines Mr Brown's proposal to assist on a voluntary basis moving forward.

#### Support from his Principal

32. A letter of support was provided by the Principal of Rototuna School, Ms Hemara. In many ways it underscores the final point made by Ms Blackett quoted above. She outlines the context of the school in that it was only opened in January 2017 and that Mr Brown was part of the foundational staff that opened the school. She outlines his important role as Poutiaki Performing Arts (Leader of Learning Curriculum) and the difficulties the school would face in finding someone to replace him.

#### **Penalty**

33. In the Tribunal's view, weighing the aggravating features of this case discussed above, the starting point is cancellation.
34. However, as outlined above, there are a number of mitigating features present which the Tribunal is satisfied allows for a penalty which falls short of cancellation. In this regard, the Tribunal places particular weight on the fact that by the time of hearing some time had passed since the last offending, in that period Mr Brown had taken rehabilitative

steps, his remorse is genuine, he has showed good insight into his offending and its impact on himself, the teaching profession, and community, and in terms of accountability he has committed to give back to the community by volunteering at the Western Community Centre.

35. Accordingly, pursuant to s 404(1) of the Act, the penalty is as follows:

- S 404(1)(b) – Mr Brown is formally censured.
- S 404(1)(c) the following conditions are imposed on his practising certificate:
  - a. Mentoring: Mr Brown is to receive mentoring for a period of 12 months, with six monthly reports to be provided by his mentor to the Manager, Professional Responsibility, Teaching Council outlining his progress. The suggestion of the teacher members of the Tribunal was that this mentoring be education, leadership and role modelling.
  - b. Counselling: Mr Brown is to complete an alcohol assessment and if necessary following assessment, further counselling through an approved provider and to provide a copy of the assessment and/or counselling report to the Manager, Professional Responsibility, Teaching Council Council within 6 months.
  - c. Defensive Driving: Mr Brown is to complete a defensive driving course to improve his decision-making regarding driving. He is to complete that within 6 months and file a copy of the completion certificate with the Manager, Professional Responsibility, Teaching Council.
  - d. Report on Community involvement: Mr Brown is to provide a letter from the Western Community Centre outlining the involvement he has had with them. He is to do that within 6 months.
- S 404(1)(e) – the register is to annotated for a period of two years.
- S 404(1)(f) – this decision is to be made available to any prospective employer for a period of two years.

36. Finally, the Tribunal wishes to warn Mr Brown that any further conduct of this nature involving drink driving will likely warrant a stern response from the Tribunal.

## Name Suppression

37. The respondent seeks name suppression on the grounds of the impact it will have on his children. The CAC opposes this application.
38. Section 405(3) of the Act provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) further provides:
- (6) *If the Disciplinary Tribunal is 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, it may make any 1 or more of the following orders:*
- ...
- (c) *an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.*
39. As the Tribunal noted in *CAC v Jenkinson*, the principle of open justice is a “fundamental tenet of our legal system”.<sup>7</sup>
40. The test involves two steps, as outlined in *NZTDT 2016/27*:<sup>8</sup>
- Having regard to the various interests specified in the section, is it “proper” to make a suppression order? If so
  - Then the Tribunal may exercise its discretion to do so.
41. In relation to the impact of publication on family members, the Tribunal in *NZTDT 2016/27* specifically noted:<sup>9</sup>
- It is almost inevitable that a degree of hardship will be caused to the innocent family members of a teacher found guilty of serious misconduct. Such “ordinary” hardships are not sufficient to justify suppression.
42. The Tribunal has considered the evidence put forward in support of this application.
43. It is important to note that the respondent did not seek suppression in the criminal

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<sup>7</sup> *CAC v Jenkinson* NZTDT 2018/14. 17 September 2018 at [33].

<sup>8</sup> *CAC v Teacher* NZTDT 2016/27 at [61], citing *CAC v Finch* NZTDT 2016/11.

<sup>9</sup> At [65].

proceedings to which these disciplinary proceedings relate. Of note also is the fact that for the EBA charge, a sentence of community detention was imposed, which would have required an electronic bracelet, restriction of movements at night time. It is difficult to accept that Mr Brown's children would not have been aware of those facts.

44. However, even putting that issue to one side, the evidence put forward in support of the application does not meet the level of detail supported by independent evidence on the impact on his children, which would be required to displace the open justice principle and make a suppression order proper in these circumstances.
45. In addition, I note the level of support Mr Brown has in his community, and presumably this extends to his family.
46. The risk of publication of these disciplinary proceedings and any consequence for Mr Brown will simply need to be part of the accountability and rehabilitative journey he needs to carry on with, and part of taking the necessary responsibility of making such mistakes.
47. The application for suppression is declined.

### **Costs**

48. As this is a referral of a conviction under s 397 of the Act the Tribunal has no jurisdiction to make any award of costs.



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Chris Merrick  
Deputy Chair

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).