

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2019-5

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 **CADZOW JOHN COSSAR**
Respondent

TRIBUNAL DECISION

17 OCTOBER 2019

HEARING: Held on 26 September 2019 (in Auckland)

TRIBUNAL: Theo Baker (Chair)
Maria Johnson and Rose McInerney (members)

REPRESENTATION: Ms Scott for the Complaints Assessment Committee
The respondent represented himself

1. The Complaints Assessment Committee (**CAC**) referred the respondent to the Tribunal as a result of a conviction for driving with excess breath alcohol (**EBA**). The CAC has alleged that the conduct amounts to serious misconduct and/or conduct otherwise entitling us to exercise its powers.
2. The facts were agreed before the hearing, and the CAC filed submissions as to penalty. The respondent did not file anything but appeared in person. He did not oppose any submissions or arguments made by the CAC, but made himself available for questioning about his current circumstances and background.

Summary of decision

3. We made an adverse finding and imposed the following penalty:
 - (a) The respondent is censured under s 404(1)(b).
 - (b) There are conditions on the respondent's practising certificate:
 - (i) for a period of three years¹ from 28 September 2019 that he tell his current, future and prospective employer of this decision and give them a copy of it; and
 - (ii) Within one month, that is by 27 October 2019 the Principal of Rutherford College is to confirm to the Teaching Council that he has seen the decision.
4. We suppressed any evidence that the respondent gave regarding his health apart from the acknowledgment of his alcohol use and rehabilitation.

Evidence

5. The CAC evidence was in the form of a summary of facts which had not been signed by the respondent but was accepted at the hearing. In particular he accepted that on 12 April 2018 he was convicted in the Waitakere District Court on a charge of driving with excess breath alcohol on 9 April 2017 and that he did not report the conviction as required under the Education Act 1989.
6. The respondent obtained registration as a teacher in about May 2000 and currently holds a Limited Authority to Teach (**LAT**). He is employed as a music teacher at Rutherford College in Auckland.

¹ The time period of three years was not stipulated in our oral decision, but s 404(1)(c) requires any condition to be for a specified period. Three years is the time specified in the CAC submissions and the respondent did not object to this.

7. On 4 December 2017, the respondent submitted an application for continuation of his LAT. A Police Vet Report from December 2017 to April 2018 was received by the Education Council² in May 2018. This showed that he had been convicted in 2018 for EPA.
8. The respondent has several previous EBA convictions. We were provided with a record of his criminal and traffic history. He was convicted four times of EBA before he registered as a teacher. These prior convictions date from 1983 to 1997. There was a further one in October 2009, the only previous one since he has been registered as a teacher.
9. Back in November 2010, when the respondent applied to renew his LAT all of his convictions were referred to a CAC and on 21 March 2011 the CAC resolved to censure him.
10. Significantly, in its decision, the CAC provided the respondent with a copy of the New Zealand Teachers Council³ Code of Ethics and in particular brought his attention to the responsibility of teachers to act as role models for their students and that they are expected to respect the law. He was also advised that convictions of this nature reflect adversely on him and on the teaching profession as a whole. Furthermore, he was advised that any further convictions were unlikely to be viewed with the same leniency.
11. The 2018 conviction was as a result of the respondent's driving on 9 April 2017. He was stopped because of the manner of his driving, and when spoken to by Police exhibited signs of recent alcohol intake. An evidence breath test revealed a reading of 1,061 micrograms of alcohol per litre of breath.
12. The District Court proceedings took an unusual course. We were provided with a copy of the Judge's sentencing decision. It seems that at the time of entering a guilty plea in 2017, the respondent applied to enter the Alcohol and Other Drug Treatment Court. A starting point of sentence in the District Court was probably about 9 or 10 months' imprisonment. Unfortunately, the Alcohol and Other Drug Treatment Court was not available to offer the respondent a place, but the respondent had been seen as a worthy candidate, having undertaken a good assessment the CADS (Community

² The Education Council was renamed the Teaching Council on 29 September 2018, by s 10 of the Education (Teaching Council of Aotearoa New Zealand) Amendment Act 2018

³ The Teachers Council was replaced by the Education Council as a result of various provisions in the Education Amendment Act 2015

Alcohol and Drug Service) clinician but the Court was full. However, the Judge had decided to “give [him] a chance to put [his] best foot forward and see if [he] could earn a better outcome for [himself], not only in terms of sentence but also make some meaningful choices that would set [him] up better for moving forward...”

13. The Judge recorded that since July 2017, the respondent had completed the CADS Getting Started, the CADS Action Group, the CADS CAP pre-entry and main programme. The continuing care was then transferred through to the CADS Maintenance Group which the respondent had been doing until it conflicted with a CADS Managing Moods Course which at the time of sentence the respondent was completing.
14. The respondent had also engaged with the 12 Step Fellowship and was a very regular attendee at meetings. He had a home group and a sponsor.
15. The sentence imposed was short term of imprisonment but involved some electronic monitoring for a period of 6 weeks from 16 April 2018. A 12-month intensive supervision sentence was also imposed, during which the respondent was to undertake any assessment, course, programme, counselling or treatment as directed by a Probation Officer for alcohol or any other drug issues and relapse prevention. During the period of supervision there was also the judicial monitoring, meaning that the Judge would receive reports on how it was going for the respondent. The respondent was also disqualified from driving for 3 months.

2018 conviction

16. On 12 April 2018, Mr Cossar was convicted and sentenced in the Waitakere District Court for EBA (3rd or subsequent offence). The relevance of it being his third offence is that the maximum and mandatory penalties under the Land Transport Act 1998 are greater than for the first two offences.⁴ On this occasion, his level was 1061 micrograms of alcohol per litre of breath and it related to his driving on 9 April 2017.
17. The conviction and sentencing had taken an unusual course. Following his guilty plea, the respondent was deemed suitable for the programme that is run in the Alcohol and Drug court, but there were no vacancies. The respondent was facing a term of imprisonment. The sentencing judge, however, gave him a chance to explore alcohol

⁴ Section 58(4) Land Transport Act 1998

use and take responsibility for his own rehabilitation....

Oral evidence at the hearing

18. The respondent attended the Tribunal hearing fully expecting to have his registration cancelled. He was sworn in and answered questions from the Tribunal and Ms Scott for the CAC.
19. We learned that the respondent had gone back and redone one of the CADS courses listed above. He said that during the year of supervision it had been useful to step back and look at how he was leading his life. He had not done that before.
20. He said that he had been abstinent now for the best part of two years but had recently had a drink with a meal on a couple of occasions.
21. The respondent explained that he had grown up with parents that drank a lot in an era when drink driving was not an issue and so it became habitual. He has been working as an entertainer in the music industry most of his life and is used to working late nights in bars. He is now embarrassed at the extent to which he lived with his blinkers on. He sees it as ridiculous now.
22. The respondent now exercises discipline and willpower that had been lacking or overlooked in the previous years. He feels he is older and wiser and has had a long time to realise the error of his ways. He has suffered the loss of liberties, including the ability to be able to drive a car.
23. The respondent is still performing a little. While on tour the whole month of May he noted that the music industry has changed a lot (in terms of the drinking culture). He had a glass of wine with dinner on a couple of occasions.
24. The respondent acknowledged that after the last EBA incident he has been significantly affected. He is also now dealing with some other health issues, which he detailed for us.
25. The respondent is currently teaching only 4 hours as an itinerant teacher. His current employer is aware that he has a conviction and that there are issues with the Teaching Council.
26. The respondent considers himself fortunate to be able to do what he loves most of all, that is play and teach. He told us that many musicians don't enjoy teaching, but he has always enjoyed imparting knowledge and "seeing the penny drop" for his students.

With NCEA there are clear guidelines in what the students need to do to reach credits, and he gained satisfaction from steering them to success. He talked about scientific studies which show it is important that children learn music. He said he finds he has quite an aptitude for teaching and enjoys it.

27. The respondent was reluctant to overstate his successes, but he advised that he was the day beforehand handed an appraisal which recorded that he had a good rapport with students. He said he makes a point of recognising the ability (or lack thereof) of his students. He has taught special needs students and works according to their capability. He spurs them on to practise and clearly gets satisfaction from seeing them start to enjoy it and practice of their own accord.
28. The respondent appeared to fully accept that cancellation was a very likely outcome of the hearing and said, "I am replaceable". He acknowledged that he knew he should have notified the Teaching Council of the conviction but was probably avoiding the consequences. He confirmed that he did attend the CAC meeting.
29. The respondent is currently living in a rural property with a couple whom he has known for years. He enjoys being able to be outdoors, using yoga, reading a book or playing an instrument in order to help him manage stress.
30. In cross-examination, Ms Scott understandably explored the respondent's current use of alcohol, noting that the respondent had enjoyed a drink very soon after the end of his supervision in April 2019. The respondent explained that he did not immediately drink as soon as the supervision was ended. In fact, he had earlier a nip of scotch in celebration of his father's birthday, and that he had told the Probation Officer about this.
31. The respondent was asked if he now feels that he can drink. He said he wouldn't call it drinking compared to how he used to drink, simply a glass of wine with dinner or a beer beforehand.
32. The respondent said that he stopped going to AA about 6 months ago because he wasn't getting any benefit. He continued to go to supervision while that was in place. He was finding the AA meetings a bit repetitious. He advised his sponsor that he was not going to continue, that he made it clear to his sponsor that he had a handle on things. The respondent said they had a good rapport and he made it known to the sponsor that he was on his own now which the sponsor accepted.

33. The respondent was asked about the temptation in his current environment. He advised that the couple he lives with are not big drinkers, and that if family come over, he often steps back and does not participate in the event. When asked if he thought the consumption of any alcohol was contrary to the courses and period of sobriety that he'd gone through, the respondent said he saw it was wholly detrimental to his wellbeing and he can live without constant alcohol. When asked if he saw any risk of the use of any alcohol, he said he was keenly aware of the consequence. He can't ingest alcohol in quantity because it does not make him feel good.
34. In answer to questions from the Tribunal, the respondent advised that he is comfortable being around alcohol now. The respondent also advised that, even in the face of recent challenging health issues, he has not turned to drink. He admitted that he had thought about it but then realised that after a drink he would be worse off. He said he now has the willpower not to drink.
35. The respondent has recently had the interlock⁵ system uninstalled from his car. This is because it is expensive to maintain.

Adverse finding

36. Although invited to make a finding of serious misconduct, we simply made an adverse finding, which we are required to do before we exercise our powers.⁶ We accept that the circumstances of this conduct would likely meet the threshold of serious misconduct, but as Ms Scott submitted, the real issue for us was penalty and in particular whether we should cancel the respondent's registration, which is where we focused our attention.

Penalty

37. Our powers to impose a penalty are found in s 404 of the Act, which provides:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*

⁵ A device where the driver breathes into the alcohol interlock before starting the vehicle. The alcohol interlock analyses the breath sample and if alcohol is detected the vehicle won't start.

⁶ *Complaints Assessment Committee v S*, Auckland DC, CIV 2008 004001547, 4 December 2008, Judge Sharp, at [47].

- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a report under section 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).*
- (3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

CAC submissions

38. Ms Scott filed helpful submissions summarising the legal principles for EBA as set out in *CAC v Fuli-Makaua* NZTDT 2017-40.⁷ She referred to the aggravating factors in the present case as follows:

- b) The respondent chose to drink an unknown quantity of beer before driving and when stopped produced a very high reading of 1061 micrograms per litre of breath.
- c) This high reading created a significant risk to the general public.

⁷ *CAC v Fuli-Makaua* NZTDT 2017-40, 5 June 2018

- d) This is the respondent's sixth EBA conviction.
- e) This is the second time the respondent has failed to report his convictions to the Teaching Council.
- f) The respondent had been warned by the CAC in 2011 that any further convictions were unlikely to be viewed with the same leniency.

39. The CAC also referred to the following favourable factors:

- a) The respondent's previous convictions are historic. The last one before this was 9 years earlier, in 2009, and before that there were two in 1997, one in 1995 and one in 1983.
- b) The respondent has used the opportunity afforded to him by the District Court Judge to complete a number of comprehensive rehabilitation programmes.
- c) The respondent has shown insight into his behaviour.

40. In her written submissions Ms Scott had referred favourably to the respondent's attendance at the Twelve Step fellowship meetings, his home group and his sponsor. This submission changed as a result of the respondent's oral evidence. She submitted that the Judge's sentencing had been on the basis of the respondent's sobriety. Now that he no longer attended AA or had a sponsor, after this disciplinary process has ended, there is nothing hanging over him to remind him of the need to abstain. There is now the possibility for his minimal drinking to increase.

41. The CAC submitted that if we considered an outcome less than cancellation is justified, then an appropriate penalty would be:

- a) Censure;
- b) A condition that he advise any employers of the Tribunal decision for a period of three years;
- c) To submit to any breath testing or blood testing for alcohol at the request of any school that employed him;
- d) And in light of the respondent's acknowledgements of recent alcohol consumption, the respondent to provide ongoing reports from his GP confirming that his drinking is at a minimal level and not having any adverse effect on his fitness to teach;
- e) That the register be annotated.

Discussion

42. We share the CAC's concerns about the change in the respondent's total abstinence from alcohol. The 2018 EBA conviction which has been referred to us is the respondent's second such conviction since becoming a teacher and his sixth in total. That clearly raises questions about his fitness to continue as a teacher. In March 2011 when the CAC censured him, he was told that any further convictions were unlikely to be treated with the same leniency.
43. The lack of leniency is reflected in the CAC's referral of this conviction to the Tribunal and unlike the CAC, we have the power to cancel his registration. However, we decided not to. We were struck by the respondent's candour and acceptance of the likelihood of cancellation. He did not try to make excuses for his behaviour and did seem to show insight into his drinking. This is what sets him apart from some teachers who come before us with a history of EBA convictions who are in denial about the addiction (whether physical or psychological) to alcohol and the adverse impact it has on their lives.
44. We do not require a report from the respondent's GP because we do not think that a GP is best placed to comment on the amount of the respondent's alcohol consumption or the effect of alcohol on his fitness to teach. In our view the respondent's convictions for drink driving reflect adversely on his "fitness to be a teacher" which is the wording of one of the definitions of serious misconduct in s 378 of the Act. That is not exactly the same as his fitness to teach. There was no suggestion of the respondent's performance as a teacher being impaired because of alcohol use or his attendance at school under the influence of alcohol, and so we did not impose any conditions about submitting for alcohol testing at school.
45. We observed that the respondent has tended to be private about his thoughts and emotions. We trust that he will ensure that he has mechanisms in place to support him to have a healthy relationship with alcohol (which might mean abstinence). Our role is to impose a penalty that recognises that his earlier convictions are relevant, but also that they are historic. Since the respondent has been a teacher, he has twice been convicted of drink driving and has now undergone significant rehabilitation over a twelve-month period.
46. The respondent has a choice about whether he drinks and about whether he drinks and drives. We agree with the CAC that there is a possibility that the respondent may

find that his drinking increases. The danger then is that after drinking, he may be more likely to drive, and that carries with it first and foremost the risk of harm to others and secondly the chance that the respondent loses his liberty and his registration. We encourage him to be honest with himself about any increase in his drinking and take whatever steps are available to him ensure that he does not slip into old habits.

47. We agree that music education is important and appreciate that not all good musicians are good teachers. We believe the respondent has an important contribution to make to the education sector. We therefore imposed the following penalty:

(a) The respondent is censured under s 404(1)(b).

(b) There are conditions on the respondent's practising certificate:

(j) for a period of three years⁸ from 28 September 2019 that he tell his current, future and prospective employer of this decision and give them a copy of it; and

(ii) Within one month, that is by 27 October 2019 the Principal of Rutherford College is to confirm to the Teaching Council that he has seen the decision.

Non-publication

48. There are no orders for non-publication of the respondent's name. We do, however, suppress any evidence that he gave regarding his health apart from the acknowledgment of his alcohol use and rehabilitation. We have not included details of that evidence in this decision.



Theo Baker
Chair

⁸ The time period of three years was not stipulated in our oral decision, but s 404(1)(c) requires any condition to be for a specified period. Three years is the time specified in the CAC submissions and the respondent did not object to this.

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).