

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Vanessa Dickson

NZ Disciplinary Tribunal Decision 2018-83

Ms Dickson's conviction for driving with excess breath alcohol was referred to the Disciplinary Tribunal. Ms Dickson was a former teacher, who did not have a practising certificate through the period in question, but who indicated that she may wish to return to teaching in the future.

The result: The Tribunal accepted that the conduct warranted an adverse finding and found a penalty comprising a combination of censure, annotation of the register and the imposition of conditions outlining protective measures should Ms Dickson apply to reinstate her practising certificate.

At approximately 7:01pm on 11 December 2018, Ms Dickson drove a motor vehicle on Clifton Road, Hastings. She was stopped at a roadside checkpoint and roadside breath-testing procedures were commenced. A subsequent evidential breath test was conducted and returned a reading of 778 micrograms of alcohol per litre of breath. She was sentenced on 20 April 2018.

Ms Dickson has one previous conviction for driving with excess breath alcohol. She was convicted on 21 December 2016. The CAC considered this conviction on 30 January 2017 and decided to take no further action.

The Tribunal noted that it had jurisdiction to impose a penalty against Ms Dickson, as the definition of teacher in s 378 Education Act 1989 includes a formerly registered teacher.

The Tribunal did not expressly find that Ms Dickson's conduct adversely reflected on her fitness to teach. However, it went on to consider the aggravating and mitigating factors that were applicable in its assessment of the appropriate penalty. The level of alcohol involved was noted as the sole aggravating factor. There was a lack of evidence of rehabilitative efforts undertaken or of remorse, although the Tribunal noted that Ms Dickson was not obligated to self-report her conviction, as she was not practising at the time of her conviction.

The Tribunal accordingly considered that a penalty of censure, annotation of the register and the imposition of conditions on any future practising certificate that Ms Dickson were to be issued would be sufficient.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018/83

UNDER the Education Act 1989

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

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

AND **VANESSA MARGARET DICKSON** registered teacher, teacher registration 313152

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 19 March 2019 (on the papers)

TRIBUNAL: John Hannan (Deputy Chair), Kiri Turketo, Simon Williams

DECISION: 12 November 2019

COUNSEL: AR van Echten/DM Helm for Complaints Assessment Committee
No appearance for Respondent

Introduction

1. A Notice of Referral dated 5 November 2018 refers the respondent's conviction for driving with excess breath alcohol dated 20 April 2018 to the Tribunal.
2. On 21 December 2016 the respondent was convicted and sentenced in the District Court at Napier for driving with excess breath alcohol. She did not self-report this conviction. The conviction was referred to a Complaints Assessment Committee. The outcome was "no further action".
3. On 20 April 2018 the respondent was convicted and sentenced in the District Court at Hastings for driving with excess breath alcohol over 400 mcg per litre of breath, her level being 778 mcg of alcohol per litre of breath. She did not self-report this conviction but was not required to as she is not currently teaching.
4. The CAC considers that the 2018 conviction warrants action by the Disciplinary Tribunal

Facts

5. The respondent has signed an agreed summary of facts dated 11 February 2018. This is as follows:

1. *The respondent, Vanessa Margaret Dickson, was first registered and provisionally certificated in August 2008 and moved to full certification on 26 October 2010. The respondent's last practising certificate expired on 30 September 2017.*
2. *The respondent is 48 years of age. She is not currently teaching and has not taught for at least two and half years.*
3. *The respondent has one previous conviction for driving with excess breath alcohol dated 21 December 2016. The CAC considered this conviction on 30 January 2017 and decided to take no further action. The respondent was reminded of her obligation to self-report this conviction and was advised that any further offence would be likely to be viewed as a serious matter.*

2018 conviction

4. *On 20 April 2018 the respondent was convicted in the Hastings District Court of driving with excess breath alcohol, contrary to sections 56(1) and (3) Land Transport Act 1998 (LTA) (maximum penalty 3 months imprisonment or \$4500 fine).*

5. *The respondent pleaded guilty to a summary of facts. The summary of facts for this offending was as follows:*

Introduction

About 7:01 PM on 11 December 2017 the defendant Dickson drove a Nissan motor vehicle registration number JHB 450 on Clifton Road, Haumoana, Hastings.

Circumstances

The defendant was stopped at a road checkpoint.

Breath test procedures were commenced and a subsequent evidential breath test gave a reading of 778 mcg of alcohol per litre of breath.

Defendant comments

In explanation the defendant stated she had just gone home to pick up some dinner.

6. *On 20 April 2018 the respondent was sentenced to 100 hours community work, six months supervision and six months disqualification from driving. Evidence of the respondent's conviction is attached as Annexure One.*
7. *The respondent was not required to self-report the 20 April 2018 conviction as she was not the holder of a current Practising Certificate.*

Teacher's response

8. *On 20 July 2018 the respondent provided a written response to the Teaching Council on her conviction for driving with excess breath alcohol. The respondent stated that on the night in question she had been to a friend's place just 5 km away from where she lived and was having a few drinks. She had a few more than anticipated but, as she only lived up the road, she decided to push her luck and drive home.*
9. *The respondent has advised the Teaching Council that although she is not teaching at the moment, she may return to the profession in the future.*

6. No further communication from the respondent is before the Tribunal.

CAC submissions

7. the CAC submits that an adverse finding is appropriate and that the appropriate penalty is censure, together with annotation and an order that conditions be placed

on the respondent's practising certificate if a further application is made to reinstate a practising certificate.

8. The CAC notes that the definition of "teacher" in section 378 of the Education Act includes "former registered teacher", so that the Tribunal has jurisdiction to impose a penalty pursuant to section 404 (1).
9. The CAC referred to *CAC v Fuli-Makaua*¹ where the Tribunal stated the factors which will be taken into account in assessing conduct and appropriate penalty in relation to excess breath alcohol offences.
10. The CAC pointed out that the breath alcohol level of 778 mcg of alcohol per litre of breath, while not as high as in other cases, was significantly over the limit. Accordingly it should be treated as a moderately aggravating factor.
11. The CAC noted that this is the respondent's second EBA conviction, and the previous conviction is in close proximity and should be treated as an aggravating factor.
12. The CAC submitted that there are no obvious mitigating features, and the respondent has not filed any evidence of rehabilitative steps.
13. The CAC consequently submitted that on the basis of the aggravating factors outlined, an adverse finding is virtually inevitable. Teachers are expected to model positive values for students but the respondent has failed to model adherence to the law and respect for the safety of others. The CAC submitted that the respondent's conduct in light of these aggravating features reflects adversely on her fitness to teach and brings the teaching profession into disrepute.
14. As to outcome, counsel for the CAC submitted that in line with *CAC v Fuli-Makaua* the appropriate penalty for EBA convictions will often be censure, coupled with conditions and annotation, where there is repeat offending, the level of alcohol and the other factors outlined in that case.
15. The CAC submitted that this was relatively serious offending and that in these circumstances the appropriate penalty is censure coupled with annotation and the imposition of conditions on any subsequent practising certificate. The CAC outlined what those conditions should be.

¹ NZTDT 2017/40

16. Counsel for the CAC referred to *CAC v Teacher X*², which concerned a referral of convictions for possessing objectionable material. In that case the Tribunal noted that the only logical outcome was censure where the respondent is no longer registered. It pointed out that under section 404(1)(j) of the Education Act the Tribunal has the power to direct the Teaching Council to impose conditions on any subsequent practising certificate issued to the teacher.
17. Since the respondent has provided no evidence of any rehabilitative steps the CAC submitted that it could be concluded that she lacks insight into why drinking and driving is unacceptable and consequently the imposition of conditions is appropriate.

Decision

18. Where convictions are referred to the Tribunal, it 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 of the Education Act 1989. 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.
19. The Tribunal had the benefit of submissions from the CAC on the general principles that the Tribunal has applied in its approach to referrals of EBA convictions. The principles are set out in full in *CAC v Fuli-Makaua*.
20. In *CAC v Bird*, the Tribunal affirmed that a referral to the Tribunal does not need to be framed as a charge of serious misconduct, but that the Tribunal needs to reach an adverse finding as to the respondent's fitness to practise as a teacher before exercising its power to impose orders under s 404 of the Act.³ In *CAC v Lyndon*⁴, the Tribunal noted that its function is to decide if the conduct reflects adversely on the teacher's

² NZTDT 2010/18

³ NZTDT 2017-5

⁴ NZTDT 2016-61 at [18]

fitness to teach, and so assessment against the “serious misconduct yardstick” may be a useful tool in determining whether an adverse finding is warranted.

21. In NZTDT 2011/16, the Tribunal accepted that, depending on the circumstances of the individual case, even one conviction for a serious driving offence may call into question a professional person’s fitness to practise (s 378(a)(ii)), and that a series of convictions will certainly do so. Such conduct may also bring the teaching profession into disrepute (s 378(a)(iii)). Similarly, in *CAC v Reriti*, the Tribunal held that, although a single conviction for a drink driving offence may not justify an adverse finding (though it might, depending on other factors), where the conviction is against a background of a number of previous offences, an adverse conclusion will be warranted.⁵
22. In *CAC v Fuli-Makaua* the Tribunal said that the purpose of the Tribunal exercising its disciplinary powers in respect of a conviction is not to punish the teacher a second time. Rather, disciplinary proceedings are designed to further the Education Council's overriding purpose of "ensure[ing] safe and high-quality leadership, teaching and learning" through raising the status of the profession.⁶ Disciplinary proceedings must further this purpose by protecting the public through the provision of a safe learning environment for students, and maintaining professional standards and the public's confidence in the profession.⁷ This, as the Tribunal held in *CAC v Bird*, is achieved through holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the education environment when required.⁸
23. The respondent’s EBA reading was not very high but nevertheless toward the higher end of the scale. There is one prior relevant conviction. There is no evidence of any particularly risky driving. The respondent was not obliged to self-report. There is no evidence of mitigating features such as remorse and accountability. There is no evidence about rehabilitation
24. We consider the appropriate outcome to reflect the seriousness of the conviction is, as submitted by the CAC, that the respondent should be censured, that the register should be annotated, and that conditions formalising protective measures be attached to any subsequent practising certificate.

⁵ NZTDT 2014/19,

⁶ Education Act 1989, s377

⁷ *CAC v McMillan* NZTDT 2016/52 23 January 2017 at [23] and *CAC v White* NZTDT 2017/29, 28 November 2017 at [19]; *CAC v Korau* NZTDT 2017/17 26 August 2017 at [13]

⁸ *CAC v Bird* NZTDT 2017/5, 3 July 2017 at [32].

Orders

25. The Tribunal orders as follows:

- (a) The respondent is censured;
- (b) The register is to be annotated for a period of two years from the date of this decision;
- (c) It will be a condition of any subsequent practicing certificate issued to the respondent that she undertakes and completes drug and alcohol counseling for a maximum duration of one year to the satisfaction of the Manager-Professional Responsibility of the Teaching Council. The respondent must cause the counseling service to provide reports as required by the Manager;
- (d) For a period of two years from the date of this decision, the respondent is to disclose a copy of this decision to any prospective employer proposing to engage her as a registered teacher and is to provide evidence to the satisfaction of the Manager-Professional Responsibility that she has done so.

Costs

26. Section 404(2) of the Education Act provides that no costs order is to be made where, as here, the hearing arises out of a report under section 397. No costs are ordered.

Date: 15 October 2019



John 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.

27. 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.

28. Subsections (3) – (6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.