EDUCATION COUNCIL
NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee v McMillan:
NZ Disciplinary Tribunal Decision 2016/52

This case concerns a teacher who, whilst subject to a drug testing regime as part of an Education Council competence process, returned a positive drugs test due to smoking cannabis. Following an investigation, the Complaints Assessment Committee (CAC) of the Education Council referred the matter to the New Zealand Teachers Disciplinary Tribunal.

In brief, a mandatory report was filed with the Council in 2013 that raised concerns around the teacher's drug-related impairment in the classroom. Those investigations resulted in the teacher entering into a rehabilitative agreement, which included providing negative drug tests every three months.

During the rehabilitation period, the teacher returned a positive drugs test which indicated recent cannabis consumption. This was investigated by the CAC and it referred the matter to the New Zealand Teachers Disciplinary Tribunal.

Initially, the teacher denied that he had consumed any cannabis and cited weight loss as a possible explanation for the result. However, laboratory tests confirmed cannabis was present in his system - which confirmed recent consumption - and that weight loss could not account for the positive result. The teacher finally admitted he had smoked two cannabis cigarettes.

The Tribunal ruled that the teacher's conduct amounted to serious misconduct, in breach of Rule 9(1)(i) and (o) of the Rules. The teacher agreed. The Tribunal noted that whilst smoking cannabis is not the most serious example of illegal drug use, it did occur while he was subject to his previous agreement with the Council. His conduct was also in contravention of section 7(1)(a) of the Misuse of Drugs Act 1975, potentially carrying a maximum penalty of three months' imprisonment.

The Tribunal censured the teacher and annotated the register for two years, placing the following conditions on the teacher's practising certificate:

i. *To inform any prospective employer of this professional disciplinary proceeding, and to provide them with a copy of this decision;*
ii. *To make himself available for random urine sample testing for drugs at any time directed by the Education Council's Manager Teacher Practice;*
iii. *To attend drug counselling within one month of these conditions being imposed to complete a drug counselling assessment, and to attend further drug counselling sessions at the recommendation of the counsellor.*

No orders for non-publication of any aspect of this decision were made.

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2016-52

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	**DANIEL BRUCE MCMILLAN**
	Respondent

TRIBUNAL DECISION

23 JANUARY 2017

HEARING: **Held at Auckland 13 December 2016 (on the papers)**

TRIBUNAL: Theo Baker (Chair)

David Hain and Patrick Walsh (members)

COUNSEL: Mr La Hood for the CAC

Ms King for the applicant

1. The Complaints Assessment Committee (CAC) has referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. It is alleged that the respondent:

   Whilst on a drug testing regime as part of an Education Council competence process, returned a positive drugs test, due to smoking cannabis.

2. The respondent accepts that his actions amount to serious misconduct.

Evidence

3. An Agreed Summary of Facts, signed by both counsel, forms the evidence to support the charge. In brief, following a mandatory report to the Education Council in March 2013, an Impairment Committee found that the respondent's performance had been impaired and his professional practice affected by depression and drug use, with custody issues also taking their toll. On 1 September 2014, the respondent signed an agreement with the Council. This required him to provide negative drug tests every three months.

4. Drug tests on 27 October 2015 and 25 February 2016 were negative, but there was one in between, on 16 February 2016 which was positive. An "own-motion referral" was made to the Complaints Assessment Committee.

5. In the course of the competence assessment, the respondent initially denied that he had consumed any cannabis and cited weight loss as a possible explanation for the result. Canterbury Health Laboratories advised the CAC that the respondent must have used cannabis between October 2015 and February 2016 for the cannabis to show in his system. It was possible that it was used on only one occasion, but it was definitely used, and weight loss would not account for the existence of cannabis in his specimen.

6. Through his representative, the respondent then advised the CAC that during the Christmas period he had smoked two cannabis cigarettes. It was an isolated incident, occurred at his home and has not happened since. He also said that he was not employed by any school.

7. According to the Summary of Facts, the respondent has been working as a teacher at Kingslea School (Te Puna Wai o Tuhinapo) Youth Justice residential facility for six terms since 2015. Te Puna Wai o Tuhinapo means "Cleansing of the spirit by the waters of Tuhinapo". This school provides education to vulnerable and at-risk youth aged 14 to 17

years.

8. On 6 July 2016 the Education Council Competence Assessor released the respondent from all conditions imposed in the September 2014 agreement and advised it is taking no further action, noting that the respondent has made a successful transition back into teaching.

Serious misconduct

9. Although the parties were agreed that the conduct amounted to serious misconduct, the Tribunal must still be satisfied of that. High standards of conduct are expected of teachers, but it is accepted that even where it is found that a teacher's conduct falls below expected standards, not every single shortcoming or breach of the Education Council Code of Ethics necessarily constitutes serious misconduct.

10. We were assisted by Mr La Hood's submissions for the CAC. He reminded us that this charge was laid after the amendments made to the Education Act 1989, effective 1 July 2015. The definition of serious misconduct in s 378 therefore applies:

> ***serious misconduct*** *means conduct by a teacher—*
>
> *(a) that—*
>
> *(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or*
>
> *(ii) reflects adversely on the teacher's fitness to be a teacher; or*
>
> *(iii) may bring the teaching profession into disrepute; and*
>
> *(b) that is of a character or severity that meets the Education Council's criteria for reporting serious misconduct.*

11. We accept the submission that the respondent's conduct reflects adversely on his fitness to be a teacher and may bring the teaching profession into disrepute. In meeting the second limb of the definition, Mr La Hood referred us to paragraphs (i) and (o) of the Teachers Council (Making Reports and Complaints) Rules 2004:

> *(i) Involvement in the manufacture, cultivation, supply, dealing, or use of controlled drugs:*
>
> *(o) any act or omission that brings, or is likely to bring, discredit to the profession.*

12. Mr La Hood referred to two cases involving convictions for possession of prohibited

drugs: *CAC v Diamond*,[1] in which the Tribunal said, "It scarcely needs to be said that teachers should not be involved in the use of possession of prohibited drugs; and *NZTDT 2012/10* where the Tribunal noted, "Convictions for drug related offences are serious matters, and the Tribunal generally takes the view that such convictions raise a question as to a teacher's fitness to practise."

13. We agree with the CAC that smoking cannabis is not the most serious example of illegal drug use. Of course, unlike the two cases referred to above, the respondent has not actually been convicted in this instance, but nonetheless, based on the respondent's admission, at some stage between October and February he smoked two cannabis cigarettes, which would be in contravention of s 7 (1)(a) of the Misuse of Drugs Act, and as Mr La Hood points out, this is a criminal offence carrying a maximum term of three months' imprisonment.

14. This matter was not referred to the police. Rather the respondent has been charged with returning a positive drugs test due to smoking cannabis. Possession of cannabis is implied, but the thrust of the charge is that he returned a positive drugs test while in a competence process. The positive test was in breach of his agreement to provide negative drug tests every three months.

15. We find that the conduct therefore amounts to serious misconduct for two reasons:

- the respondent has used a controlled drug (r 9(1)(i) and s 378(b)) and this is a matter that may bring the teaching profession into disrepute (s 378 (a)(iii))
- the respondent has failed to comply with an agreement that he made with his regulating authority (r 9(1)(o) and s 378(b)) and this reflects adversely on his fitness to be a teacher and may bring the teaching profession into disrepute (s 378(a)(ii) and (iii).

Penalty

16. The parties agree on the following penalty:

- Censure
- Annotation of the register for two years
- A condition on his practising certificate for a period of two years:
    - The respondent is to inform any prospective employer of this professional

[1] NZTDT 2016/41

disciplinary proceeding, and to provide that prospective employer with a copy of this decision

- The respondent is to make himself available for random urine sample testing for drugs at any time directed by the Education Council's Manager Teacher Practice by presenting himself at a doctor's surgery for such testing within 24 hours of receiving notice requiring him to do so from the Manager Teacher Practice.
- The respondent is to attend drug counselling within one month of these conditions being imposed to complete a drug counselling assessment, and to attend further drug counselling sessions at the recommendation of the counsellor.

17. We are grateful to Mr La Hood for his summary of the approach to penalty and the purposes of the disciplinary proceedings. He submits they include:

(i) Protection of the public by providing a safe learning environment for children (as set out in s 377 of the Act).
(ii) Maintaining professional standards and accountability[2]
(iii) Maintaining public confidence in the profession[3]
(iv) Where appropriate, rehabilitation[4]
(v) To a lesser extent, punishment.[5]

18. We accept those principles, but add some further comment.

Protection of the public

19. Mr La Hood cites s 377 as authority for the public protection purpose of disciplinary proceedings. The emphasis of the protection of the public as a separate and distinct purpose has been articulated in decisions of the Health Practitioners Disciplinary Tribunal, with reference to s 3 of the Health Practitioners Competence Assurance Act 2003, which clearly articulates a statutory purpose to "protect the health and safety of members of the public of by providing for mechanisms to ensure that health practitioners

[2] *Taylor v General Medical Council* [1990] 2 All ER 263 (PC); *Ziderman v General Dental Council* [1976] 2 All ER 334 (PCP; and *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC)
[3] Daniels v Complaints Committee 2 of the Wellington District Law Society [2011] 3 NZLR 850 (HC) at [34]
[4] *J v Director of Proceedings* HC Auckland CIV-2006-404-2188
[5] *Dentice v Valuers Registration Board*, above n 2. Contrast *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97].

are competent and fit to practise their professions." Similarly, the purposes of the Lawyers and Conveyancers Act 2006 include "to maintain public confidence in the provision of legal services and conveyancing services"[6] and to protect the consumers of legal services and conveyancing services".[7]

20. The disciplinary functions of the Education Council and Disciplinary Tribunal are found in Part 32 of the Education Act 1989. The purpose of the Education Council is set out in s 377:

The purpose of the Education Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.

It provides for protection of the public in the sense that it must ensure safe and high quality leadership, teaching and learning for the children and young people, in other words, the "users" of teaching services. As with the other professional regulatory acts, professional discipline is only one of the means by which this purpose may be achieved.

21. In the legal authorities, there is apparent overlap between the protection of the public, the maintenance of professional standards and accountability and the maintenance of public confidence in the profession, as demonstrated in this excerpt from *Dentice v Valuers Registration Board:*[8]

Such provisions exist to enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the professional calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them;

22. And this passage from *Young v PCC:*[9]

The protection and maintenance of professional standards is an important part of the protection of the public. It is through the maintenance of high professional standards that the public is protected. Deterrence is in the same category. This is intended to discourage others from acting in the same way reflected in the severity of the punishment imposed."

23. The role of disciplinary proceedings is therefore to maintain standards so that the public

[6] Section 3(1)(a)
[7] Section 3(1)(b)
[8] [1992] 1 NZLR 720
[9] Wellington HC, CIV 2006-485-1002, 1 June 2007, Young J

is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

Punishment

24. We agree with Mr La Hood that the role of punishment in disciplinary proceedings has not been consistently described. It is clear from the authorities that it is not the primary purpose.[10] This is particularly clear where a conviction has been referred to a disciplinary tribunal and a penalty has already been imposed by a court in its criminal jurisdiction.[11]

25. But even where there has been no criminal conviction there is also clear authority that disciplinary proceedings are not meant to be punitive,[12] significantly, by the Supreme Court in 2006[13] and in 2008 in one of the decisions Mr La Hood referred to, *Z v Dental Complaints Committee,*[14] where the majority said:

> *It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.*

26. The extremely rare imposition of a fine in the penalties imposed in this jurisdiction is evidence that punishment has not been viewed as a significant purpose of this Tribunal. And so we use the term "penalty" to cover the range of responses available under s 404.

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[10] *Patel v Complaints Assessment Committee* HC Auckland CIV 2007-404-1818;
[11] *Ziderman v General Dental Council* [1976] 1 WLR 330 at p 333 (PC); *S v Wellington District Law Society* [2001] NZAR 465; *PCC v Martin* HC Wellington CIV-2006-485-1461, 27 February 2007]
[12] *In re a Medical Practitioner* [1959] NZLR 784; *Dentice v Valuers Registration Board* above, n 2
[13] *C v Complaints Assessment Committee* SC 27/2005 [2006] NZSC 48
[14] [2008] NZSC 55, [2009] 1 NZLR 1

Similar cases

27. We were greatly assisted by Mr La Hood's outline of similar cases and his comparison of this case with *CAC v Poinga*, where the respondent had been convicted of a possession of a pipe for smoking cannabis and possession of utensils for smoking methamphetamine. Unlike the present case, he immediately told the principal of his offending. The Tribunal's penalty was annotation of register and conditions that the respondent inform any prospective employer of his convictions and this disciplinary proceeding, and submit himself to drug testing for a period of 18 months.

28. The CAC points to the following aggravating features of the present case: the respondent was already subject to a condition not to consume prohibited drugs, and he initially lied about his cannabis use. It is also submitted that the respondent's failure to acknowledge his behaviour constitutes serious misconduct shows a lack of insight, but we note that according to the agreed summary of facts, the respondent has acknowledged serious misconduct and so we reject that submission. We accept the other matters the CAC raised.

29. In addition we observe that according to the Summative Report provided (Exhibit A of the respondent's affidavit in support of name suppression), he was employed primarily as a hard technologies teacher. The health and safety risks inherent in such a role make the presence of cannabis in the respondent's system of even more serious concern.

30. We agree with the proposed penalty. Failure to comply with an agreement with the Education Council warrants a censure as a mark of disapproval. Some form of oversight is also required.

31. The respondent's actions have demonstrated his inability to refrain from cannabis consumption when it has already been identified as an issue for him, and to be honest when confronted with the evidence. In short there is a lack of trustworthiness in his conduct, which any proposed employer should be aware of. The respondent has demonstrated his competence a teacher, but we believe that the requirement that he explore his use of drugs with a counsellor should help ensure that he maintains that capability.

32. We trust that the respondent will comply with the conditions imposed and that there will be no reason for him to appear before this Tribunal again. We wish to make it clear that

if he fails to comply and in particular, if he receives another positive drugs test, he places his registration in jeopardy.

Costs

33. The parties did not mention costs in the agreed summary of facts. For the CAC, Mr La Hood submitted that 50% is appropriate and in order with other cases. Although the respondent admitted the facts, it took a significant amount of time to reach that position. No costs submissions were received on behalf of the respondent.

Name suppression

34. The respondent's submissions were directed at name suppression. He seeks an order under s 405 prohibiting the publication of his name and the school and any identifying details. The grounds are that publication would risk identification of the children which would in turn have a detrimental effect on the children, the domestic situation and family relationships. Ms King referred us to the decisions of NZTDT 2015/20, NZTDT 2015/33 and *ABC v Complaints Assessment Committee*[15] *and R v Liddell*[16] submitting that the latter two cases are authority for the proposition that the door must be left open to the possibility that personal, professional and familial embarrassment or anguish can be grounds for a suppression order.

35. In an affidavit, the respondent advised that has four children, who attend school in Christchurch. He has sole custody of one and shares the care of the other three, who spend most of the time with their mother. This arrangement is the subject of a Parenting Order under the Care of Children Act 2004. The respondent expresses concern about the effect of name publication on:

    a. his children and potentially the care arrangements

    b. other family members who are also teachers

    c. the school where he teaches.

36. The respondent feels that publication would be disproportionate to the conduct.

37. He has produced a copy of a Summative Report Advice and Guidance Programme from Rachel Maitland, Assistant Principal of Kingslea School where he has been teaching hard technology. He has clearly engaged with other staff and demonstrated willingness

[15] [2012] NZHC 1901
[16] [1995] 538

to learn, receive feedback and reflect on his practice. A report from another Assistant Principal, Jonny Langley, outlines his observations of the respondent's teaching, including planning, and confirms that there are no concerns about his competence.

38. The Tribunal also received an affidavit from the Principal of Kingslea School. She describes the respondent as being "open and forthright" about his failed drug test. She says that there is no evidence of the respondent being under the influence of any substance. The Board is satisfied that the respondent meets all of their robust safety checks. She says that "Any publication of Daniel's name or Kingslea would jeopardise his employment to the extent he could no longer be employed at Kingslea". She notes that as a Youth Justice Facility and part of CYF, the school often attracts a disproportionate amount of often sensationalised media coverage. She also provided information about expansion of operations. She also submitted that publication would have grossly disproportionate negative consequences to Kingslea and their partners.

39. The CAC opposes suppression. Mr La Hood referred us to relevant provisions of the Education Act and Rules, as well as recent Tribunal decisions *CAC v Finch* and *NZTDT 2016/17*, outlined below.

Discussion

Open justice

40. Section 405(3) 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) 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.*

41. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the respondent, his children and her son, as well as the

public interest. If we think it is proper, we may make such an order.

42. There has been much discussion of the principle of open justice in the Courts and legal commentary. The principle of open justice has been described as a fundamental principle of common law and is manifested in three ways:

[F]irst, proceedings are conducted in 'open court'; second, information and evidence presented in court is communicated publicly to those present in the court; and, third, nothing is to be done to discourage the making of fair and accurate reports of judicial proceedings conducted in open court, including by the media. This includes reporting the names of the parties as well as the evidence given during the course of proceedings.

43. Fisher J's explanation of the reason for open justice is often quoted:

In general the healthy winds of publicity should blow through the workings of the Courts. The public should know what is going on in their public institutions. It is important that justice should be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present the defendant with an opportunity to re-offence.[17]

44. And the presumption in favour of open justice is articulated by the Court of Appeal in *R v Liddell*:[18]

…the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as "surrogates of the public"…The basic value of freedom to receive and impart information has been re-emphasised by s 14 of the New Zealand Bill of Rights Act 1990.

45. The principle of open justice therefore exists regardless of any need to protect the public. The tenor of s 405 is consistent with s 95(2)(d) of the Health Practitioners Disciplinary Act 2003, which was considered in *Dr A v Director of Proceedings*[19] by Panckhurst J, who said:

The scheme of the section means, in my view, that the publication of names of persons

[17] *M v Police* (1991) 8 CRNZ 14, p15
[18] [1995] 1 NZLR 538 at 546
[19] (High Court, Christchurch, CIV 2005-409-002244, 21 February 2006, Panckhurst J)).

involved in the hearing is the norm, unless the Tribunal decides it is desirable[20] to do order otherwise. Put another way, the starting point is one of openness and transparency, which might equally be termed a presumption in favour of publication.

46. In *Director of Proceedings v I*,[21] Frater J found that any differences between the Courts and medical disciplinary processes (under the Medical Practitioners Act 1995) were ones of emphasis and degree. The most significant difference was the threshold to be reached before the balance was tipped in favour of name suppression. Unlike the courts, where "exceptional" circumstances are commonly required, the criterion for cases before the Medical Practitioners Disciplinary Tribunal (and its successor, the Health Practitioners Disciplinary Tribunal), is whether suppression is desirable.

47. In this jurisdiction, the threshold of whether it is "proper", is the same as under the Lawyers and Conveyancers Act 2006. That Tribunal has suggested that "proper" is arguably between "exceptional" and "desirable", but in any event the threshold is somewhat lower than that imposed in the courts.[22]

48. So our starting point is the presumption of publication, based on the principles of open justice. We must now consider whether the personal interests advanced by the respondent and the school outweigh the public interest in publication.

Effect on his family and children

49. Mr La Hood referred to a passage from *Hart v Standards Committee (No 1) of the New Zealand Law Society*[23] and its adoption in *NZTDT 2016/17.*

50. The respondent cited two Tribunal decisions as being similar to the present case: *NZTDT 2015/20* and *NZTDT 2015/33.* We agree with Mr La Hood that both of these decisions were made in quite different circumstances. As he observes, in the former the Tribunal was assisted by expert psychological evidence about the impact on the respondent. It is not clear whether this was also the basis for the conclusion that publication would adversely affect his family. The latter case arose from the respondent's treatment of his own child. We agree that is quite a different matter, and in

[20] The term, "desirable", as opposed to "proper" is used in the Health Practitioners Competence Assurance Act 2003
[21] [2004] NZAR 635,
[22] *Canterbury Westland Standards Committee No.2 v Eichelbaum* [2014] NZLCDT 23
[23] [2011] NZCA 676 at [18]

two recent decisions[24] the respondent has been granted name suppression because of the close involvement or implication of their respective children in the charge.

51. Although the respondent argues that publication of his name would have an adverse effect on his family, it is appears that not all members of his family are aware of these proceedings, and suppression is aimed at protecting the respondent, rather than them.

52. The Tribunal struggled to see the relevance of the fact that the respondent's children attend school in Christchurch and accept Mr La Hood's submission that if that were a basis for name suppression, that it would apply in virtually all cases where the teacher had school-age children.

53. The respondent also submits that publication would be disproportionate to the conduct. The purpose of publication is not punishment, but we accept it can have a punitive effect. However, that is not a reason for this Tribunal to suppress any part of its decision. The respondent has engaged in unlawful conduct in circumstances where he knew that he could be tested for drugs and where he knew that there had been concerns about his behaviour as a teacher as a result of his drug use. As with the young people he teaches, there are consequences for his actions. If this disciplinary proceeding is relevant to his child care arrangements, that is a matter for another jurisdiction.

Effect on school

54. Mr La Hood accepted that the students at the school are inherently vulnerable and submitted that this in fact gives rise to even further public interest factors. Suppression would be sending the wrong message not only to troubled students at the school, but also the wider community. He quoted this Tribunal's decision:

When a teacher commits serious misconduct in the course of his or her duties, it is inevitable that there will be a degree of fallout for the school concerned. However, in light of the central role that schools have in disciplinary proceedings, it is safe to assume that their potential to suffer detrimental reputational (and potentially financial) impact through open publication was factored when Parliament introduced the presumption of open justice. We do not rule out the possibility that in rare cases suppression may be required to protect a learning institution's interests. In the majority of cases, however, the principle of open justice places the interests of the educational community at large ahead of those of an individual school.

[24] *NZTDT 2015/64, NZTDT 2015/67*

55. We are not sure that suppression would send out the wrong message, as Mr La Hood submits, because of course then the students and wider community would probably not know about this matter at all.

56. We are troubled by the school's submissions. We understand that if the respondent's name is suppressed, he will be able to continue teaching at the school, but if it is published he will not. That argument indicates that there is a strong public interest in publication. It is apparent that his conduct is relevant to the community. We would have thought that if the school deems the respondent's conduct warrants dismissal, then suppression of name is not a factor relevant to that determination.

Summary of decision

57. We find that the conduct as alleged in particular 1.1 amounts to serious misconduct.

58. We order the following penalty:

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

    b. Under s 404 (1) (c), the following conditions are imposed on the respondent's practising certificate for a period of two years:

        i. The respondent is to inform any prospective employer of this professional disciplinary proceeding, and to provide that prospective employer with a copy of this decision

        ii. The respondent is to make himself available for random urine sample testing for drugs at any time directed by the Education Council's Manager Teacher Practice by presenting himself at a doctor's surgery for such testing within 24 hours of receiving notice requiring him to do so from the Manager Teacher Practice.

        iii. The respondent is to attend drug counselling within one month of these conditions being imposed to complete a drug counselling assessment, and to attend further drug counselling sessions at the recommendation of the counsellor.

    c. The matters in paragraphs a. and b. will be annotated on the register two years.

    d. The respondent will pay costs of 50% pursuant to s 404 (1)(h) and (i).

59. Counsel for the CAC is to provide the respondent with a schedule of costs within 10 days of the date of this decision. The secretary will also provide a schedule of the

Tribunal costs. The parties may then file submissions as to costs within a further 10 days. The Tribunal delegates to the Chairperson the power to make orders as to costs.

60. There are no orders for non-publication of any aspect of this decision.

Theo Baker
Chair