

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2017-4C

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 **BARBARA JACKI NGAIRAHİ CLARK**

Respondent

DECISION ON COSTS

DATE: 26 March 2018

REPRESENTATION: Ms N Copeland for the CAC

The respondent represented herself

1. This matter was heard on 13 June 2017, and a decision issued on 18 September 2017. It was a referral of convictions.
2. In our decision, we noted that s 404(2) prohibits the ordering of costs following a report that arises out of a report under s 397. Section 397 concerns the mandatory reporting of convictions, whereas in this case a mandatory report was received 5 ½ months before a conviction was entered and so the hearing did not actually arise from a mandatory report under s 397. We allowed the parties a further opportunity to comment before we finalised the issue of costs.
3. For the CAC, Ms Copeland agreed that s 404(2) did not prohibit the ordering of costs and further submitted that the respondent was not referred to the Disciplinary Tribunal as a result of a conviction, but for the particular conduct that led to the conviction. She submitted that this was appropriate because the Education Council was the “victim” of her dishonesty, so it goes to the heart of professional expectations aside from any criminal responsibility. She says that the charges were laid against the Respondent on the basis of a breach of r 9(1)(h) and (o) of the Education Council Rules 2016.
4. Ms Copeland submitted on behalf of the CAC that whether there is a conviction or not, cases involving dishonesty in relation to the professional role, either within a school or early children centre and/or towards the Education Council as the regulator, are serious misconduct and are therefore required to be referred to the Disciplinary Tribunal.
5. We appreciate the distinction Ms Copeland is making. Unlike certain convictions which may bring discredit to the profession, the respondent’s conduct involved attempts to deceive the Education Council and bypass the standards and processes put in place to ensure high quality teaching and learning. Then, when asked to respond to the allegations contained in the report, she denied the allegations. We agree that her conduct breached the integrity of the education framework.
6. However, we nonetheless find that the charge was essentially a referral of convictions. They were referred to as part of the charge. In any referral of convictions, it is the conduct which must be examined to decide whether an adverse finding can be made. This matter was not referred to the Tribunal before a conviction was entered. The CAC did not initially seek costs, and so it seems that it viewed the matter as falling within s 404(2).
7. The CAC’s position contrasts with that in *CAC v Wallace*, where a similar point arose. In

that case, because the police notified the Council of their investigation before any convictions were entered, the referral of a burglary conviction was not a notification under s 397. In that case, Mr Lewis advised that CAC wished to have a consistent approach on conviction matters and accordingly does not seek costs for that part of this prosecution.

8. We noted that we presume that the rationale behind s 404(2) is to ensure that the respondent is not twice “punished” in a pecuniary way for the same conduct, the emphasis of the disciplinary powers of the Tribunal being on maintaining professional standards and ensuring some protection from teachers not fit to practise.
9. We find that s 404(2) does not prohibit us from making an order for costs, but in cases where a conviction has been referred to the Tribunal, the presumption should be that we take an approach consistent with those where there has been a report under s 397 and order no costs.



Theo Baker
Chair

NOTICE

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 409(2) or 404 of the Education Act 1989 may appeal to a District Court.
2. An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
3. Subsections (3)-(6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.