Complaints Assessment Committee (CAC) v Glazier
NZ Disciplinary Tribunal Decision 2018/59

In February 2018, teacher John Clive Glazier, at the time a holder of a Limited Authority to Teach (LAT), self-reported to the Teaching Council a conviction for assault with intent to injure.

The assault conviction related to a domestic incident with his then-wife. Mr Glazier was charged by Police and defended the charge in the criminal court. After a Judge-alone trial, the Judge found Mr Glazier guilty of the charge for punching the victim multiple times and causing a black eye. He was sentenced to 80 hours' community work and ordered to pay witness expenses and emotional harm reparation.

The Teaching Council's Complaints Assessment Committee (CAC) investigated and referred the matter to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

The Tribunal considered that Mr Glazier's behaviour adversely reflected on his fitness to teach, noting New Zealand's well-documented problem with high incidences of domestic violence, and the seriousness of the assault on the victim.

In considering Mr Glazier's approach to the process, the Tribunal noted his early reporting and co-operation with the disciplinary process as factors in his favour. Mr Glazier did attempt to challenge aspects of the Judge's findings, an approach which the Tribunal responded to by saying, "we have no jurisdiction to look behind the conviction and are bound by the Judge's factual findings, as is Mr Glazier."

In terms of penalty, the Tribunal noted that this would be a case where cancellation would normally be the most appropriate penalty. However, at the time of the Tribunal hearing, Mr Glazier's Limited Authority to Teach had expired. The Tribunal found it still had jurisdiction to consider the matter, as Mr Glazier was then a 'former authorised person,' but as he was no longer on the list of those holding a LAT and no longer held one, he could not be cancelled or annotated.

The Tribunal imposed the only available outcome to it, which was a censure.

NZTDT 2018/59

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER	the Education Act 1989
IN THE MATTER	of the referral of a conviction by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal
BETWEEN	**THE COMPLAINTS ASSESSMENT COMMITTEE** Referrer
AND	**JOHN CLIVE GLAZIER** Respondent

DECISION OF TRIBUNAL

Tribunal:	Nicholas Chisnall (Deputy Chair), David Spraggs and Stuart King
Hearing:	On the papers
Decision:	29 January 2019
Counsel:	A R van Echten and M A Shaw as counsel for the referrer The respondent in person

Introduction

[1] On 1 February 2018, the respondent was convicted in the District Court on a charge of assault with intent to injure in contravention of section 193 of the Crimes Act 1961, which is an offence that carries a maximum penalty of three years' imprisonment. The respondent was ordered to complete 80 hours' community work and to pay his victim emotional harm reparation.[1]

[2] Commendably, Mr Glazier brought the matter to the attention of the Education Council. As a consequence, the Complaints Assessment Committee (CAC) resolved to refer the conviction to the Tribunal under s 397 of the Education Act 1989 (the Education Act). The CAC asserts that the conduct behind the conviction obliges us to reach an adverse finding about the respondent's fitness to teach, thus requiring the Tribunal to exercise its disciplinary powers under s 404 of the Education Act.

The background

[3] The respondent defended the charge and was found guilty at a judge-alone trial held in the District Court. We were provided with his Honour Judge Ruth's decision explaining why, having heard the evidence, he found the charge proved.

[4] What follows is taken from the agreed statement of facts presented by the parties.

> **Background**
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> 1. On 1 February 2018, Mr Glazier self-reported to the Education Council (Council) that he had been convicted of one charge of assault with intent to injure under s 193 of the Crimes Act 1961 in the Nelson District Court. The victim was Mr Glazier's then-wife.
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> 2. Since 2010, Mr Glazier has been employed at Waimea College, Nelson as a School Guidance Counsellor. Mr Glazier held a Limited Authority to Teach (LAT) since 7 September 2011. His current LAT expired on 28 January 2018.
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> 3. Mr Glazier is currently studying towards a Graduate Diploma in Teaching with the goal of obtaining Teacher Registration. Mr Glazier is on paid discretionary leave, awaiting the outcome of the Council's investigation.

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[1] *Police v Glazier* [2018] NZDC 1759, Judge Ruth.

The offending

4. The District Court convicted and sentenced Mr Glazier on 1 February 2018 after a judge-alone trial.

5. The offending occurred on 1 May 2016. The District Court found that Mr Glazier punched the victim multiple times and that at least one strike to the eye caused a black eye and lasting damage. Mr Glazier had also faced an additional charge of assault with intent to injure, as well as a charge of threatening to kill under s 193 of the Crimes Act 1961. Mr Glazier was found not guilty of these charges. The Summary of Facts presented to the District Court, as well as the District Court judgment is **attached**.

6. Mr Glazier was sentenced to 80 hours' community work and was ordered to pay $200 by way of emotional harm reparation to the victim, as well as witness expenses.

7. Mr Glazier was previously convicted of driving with excess breath alcohol on 8 November 2010. The Council's registration team considered this conviction when Mr Glazier's first LAT was approved.

8. Mr Glazier has co-operated with Police and self-reported his conviction to the Council.

9. Mr Glazier says that he has taken full responsibility for his actions. However, Mr Glazier has stated that the victim told the Police an exaggerated version of the events giving rise to the conviction.

The relevance of the fact that Mr Glazier had a limited authority to teach

[5] Mr Glazier is not a registered teacher. Rather, on 1 May 2016 he held a limited authority to teach (limited authority), which was granted under s 366 of the Education Act.[2] Section 365 of the Education Act provides that:

> The purpose of granting a limited authority to teach is to enable employers to have access to skills that are in short supply and to enable those with specialist skills but not a teaching qualification to teach.

[6] Mr Glazier's limited authority expired on 28 January 2018.

[7] The preliminary question posed is whether the Tribunal is entitled to exercise its powers under the Education Act given Mr Glazier's status as the

[2] Which provides that the Teaching Council must grant a limited authority to teach if it considers that the applicant is of a suitable disposition and either has the skills and experience appropriate to advance the learning of a student or group of students, or has skills that are in short supply. Section 368 sets out the relevant matters that the Council must consider when deciding whether an applicant is "of good character or is fit to hold a limited authority to teach".

holder of a, now expired, limited authority? If it can, does Mr Glazier's limited authority-status fetter the scope of the Tribunal's powers?

[8] The Tribunal's duties and powers are found in Part 32 of the Education Act, which is headed "Teaching Council". The Council's functions are set out in s 382. Relevant here, it is responsible for:

> a) Carrying out the functions under Part 31 relating to teacher registration;
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> b) Monitoring and enforcing the mandatory reporting requirements contained in Parts 31 and 32; and
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> c) Performing the disciplinary functions relating to teacher misconduct and reports of teacher convictions.

[9] Section 378, which is Part 32's interpretation section, provides a widely drawn definition of "teacher". It provides:

> **Teacher includes -**
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> (a) a registered teacher; and
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> (b) a former registered teacher; and
>
> (c) an authorised person; and
>
> (d) *a former authorised person*.
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> [Our emphasis]

[10] Mr Glazier is a "former authorised person". An "authorised person" is defined in s 378 as "the holder of an authority". "Authority", in turn, is defined as meaning "a limited authority to teach granted under Part 31."

[11] Part 31 of the Education Act is titled "teacher registration". Under s 371, the Council must keep a list of persons who have a limited authority. The section provides in full that:

> (1) For the purposes of this Part, the Teaching Council must keep a list of persons who have a limited authority to teach.
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> (2) If the Teaching Council is satisfied that any of the information contained in the list is incorrect, the Teaching Council must ensure that the information is corrected.
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> (3) The Teaching Council may annotate the list following—
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> (a) an interim suspension under section 402(2); or
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> (b) an action by a disciplinary body under section 401 or 404; or

(c) an action by the Competence Authority under section 412.

(4) In the case where the list is annotated following an interim suspension, the annotation must be removed or corrected as soon as practicable after the matter is concluded (as specified in section 403(6)).

[12] Thus, s 371 creates a positive obligation to keep a list of only those who are current holders of a limited authority. This has a bearing on the Tribunal's disciplinary powers, which are contained in s 404 of the Education Act. It provides:

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:

(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 Teaching Council in respect of the costs of conducting the hearing:

(j) direct the Teaching 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).

[13] The disciplinary responses described in s 404(1)(c), (d), (e) and (g) are only available if the teacher has a current limited authority, which Mr Glazier does not. Without a limited authority, Mr Glazier is not on the list under s 371 that the Council must keep, which means that there is nothing against which to notate the disciplinary responses contained in s 404(1(c), (d), (e) and (g).

[14] Furthermore, as this proceeding involves the referral of a conviction, s 404(2) applies. It prohibits the Tribunal from utilising any of the disciplinary sanctions contained in s 404(1)(f), (h) or (i).

[15] The only disciplinary response available to the Tribunal in Mr Glazier's case is censure.

The relevant law regarding the referral of convictions

[16] This case involves the referral to the Tribunal of the fact the respondent has been convicted of a criminal offence.[3] The test that therefore applies is whether the circumstances of the behaviour that resulted in the conviction reflect adversely on the fitness of the respondent to practice as a teacher.[4] It is only by reaching an adverse conclusion that we are empowered to exercise our disciplinary powers.

[17] The District Court made it clear in *CAC v S* that we are not required to find the respondent guilty of serious misconduct before we can exercise the disciplinary powers available to us under the Education Act.[5] That being said, regardless of whether a matter reaches the Tribunal for adjudication by way of notice of referral, or by notice of charge of serious misconduct, our function is to decide if the behaviour concerned reflects adversely on the teacher's fitness to teach. This explains why it is helpful, but not mandatory, to scrutinise whether the offending engages one or more of the three professional consequences described in the definition of serious misconduct under s 378 of the Education Act.[6]

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[3] All convictions punishable by three months' imprisonment or more must be reported to the Education Council, both by the teacher under s 397 of the Education Act and by the employer.
[4] *Complaints Assessment Committee v S*, Auckland DC, CIV 2008 004001547, 4 December 2008, Judge Sharp, at [47].
[5] At [48]. We also said in *CAC v Campbell* NZTDT2016/35, at [14], that a referral to the Tribunal does not need to be framed as a charge of serious misconduct.
[6] As we said in *CAC v Lyndon* NZTDT 2016/61 at [18] and recently in *CAC v Sefton* NZTDT 2017/35 at [12]. In *Sefton*, we said at [21] that, "We should be careful that in using the serious misconduct test as guidance, we do not limit ourselves in our disciplinary response. The wording of s 404 does not require a finding of serious misconduct in order to impose a penalty. We simply must hear a 'charge of serious misconduct or any matter referred to it by the Complaints Assessment Committee'."

Should we make an adverse finding regarding the respondent's fitness to teach?

[18] We have no hesitation accepting that we are required to reach an adverse conclusion.

[19] The respondent's use of violence clearly adversely reflects on his fitness to teach. Practitioners have an obligation to their students to both teach and model lawful behaviour.[7] Mr Glazier's sustained and severe assault on his former partner must be considered in the context of the well-documented problem that New Zealand's high incidence of domestic violence poses. Mr Glazier's use of violence undermines the high standard of professional behaviour and integrity the public expects of those in the teaching profession.

[20] The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the respondent's offending? We consider there can be no doubt that Mr Glazier's behaviour risks lowering the profession's standing in the eyes of the public.[8]

Penalty

[21] The primary motivation regarding the establishment of penalty in professional disciplinary proceedings is to ensure that three overlapping purposes are met. These are to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.[9] We are required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.[10]

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[7] This obligation is contained in clause 3(c) of the Code of Ethics for Registered Teachers, which applied at the time the respondent offended.
[8] *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].
[9] The primary considerations regarding penalty were helpfully discussed in *CAC v McMillan* NZTDT 2016/52.
[10] See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

[22] It is not the purpose of a professional disciplinary proceeding to punish the teacher a second time for the same behaviour where he or she has been convicted of a criminal offence. Rather, as we said in *CAC v McMillan*,[11] the Tribunal's mandate is to protect the public through the provision of a safe learning environment for students, and to maintain both professional standards and the public's confidence in the profession.[12]

[23] The outcome in the District Court cannot be a dispositive factor regarding the penalty we impose, as different considerations are in play in this disciplinary proceeding. That being said, it is apparent from the sentence imposed that the Judge viewed the offending as serious.

[24] In *CAC v Fuli-Makaua*[13] we endorsed the point that cancellation is required in two overlapping situations, which are:

> a) Where the offending is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession;[14] and
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> b) Where the teacher has insufficient insight into the cause of the offending and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.[15]

[25] We must seek to ensure that any penalty we institute is comparable to those imposed upon teachers in similar circumstances. With that principle in mind, counsel for the CAC helpfully drew our attention to six decisions in which we dealt with referrals for violence convictions.[16] We also considered

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[11] *CAC v McMillan* NZTDT 2016/52, at [16] to [26], citing *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) and *Ziderman v General Dental Council* [1976] 1 WLR 330.
[12] See, too, *CAC v White* NZTDT 2017/29, at [19] and *CAC v Sefton* NZTDT 2017/35 at [19].
[13] *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 at [27].
[14] Referring to the sixth of eight penalty factors described by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [50].
[15] See *CAC v Teacher* NZTDT2013/46, 19 September 2013 at [36].
[16] *CAC v Teacher* NZTDT 2009/5, NZTDT 2011/2, NZTDT 2011/10, NZTDT 2012/13, NZTDT 2012/25 and NZTDT 2013/39.

our more recent decision in *CAC v Sami*,[17] where we endorsed the CAC's submission that:

> [In] cases involving violent offending, cancellation, or at least suspension, will often be the appropriate starting point – depending on the circumstances of the case. This ensures that the purposes of the [Education] Act pursuant to s 377 are upheld, to ensure that students are provided with a safe learning environment. The CAC acknowledges the Tribunal's decision in NZTDT 2009/5 supports this approach.

[26] As it is not a penalty that is available to the Tribunal, we are not required to decide whether cancellation is the commensurate outcome. However, we agree with the CAC that, had Mr Glazier still held a limited authority, he would have faced a formidable task satisfying us that a penalty short of cancellation is the least restrictive, reasonable penalty in the circumstances.

[27] We acknowledge that there are factors that would have militated against cancellation of the respondent's limited authority. These are:

a) The steps that Mr Glazier has taken to reduce the risk of repetition – in particular his completion of nine sessions of the "Living Safe" course, to which he self-referred.

b) His cooperation with the disciplinary process, which includes the fact that he reported his conviction to the Council.

[28] The CAC, however, challenges Mr Glazier's assertion that he has taken full responsibility for his actions. In his materials, the respondent has provided a relatively full narrative of events. In doing so, he said that, "None of the above is aiming to justify what I did as what I did was wrong and it is simply to highlight my journey". However, some of what the respondent says clashes with the findings made by Judge Ruth.

[29] The short point is that we have no jurisdiction to look behind the conviction and are bound by the Judge's factual findings, as is Mr Glazier.

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[17] *CAC v Sami* NZTDT 2017/14, which involved a charge of serious misconduct rather than a referral of conviction, as Ms Sami was discharged without conviction in the District Court.

[30] In light of his status as a former authorised person, we censure Mr Glazier.

[31] Mr Glazier has expressed a desire to re-join the profession. If he elects to pursue that goal, he will be obliged to satisfy the Council that he is of good character and fit to teach.

The respondent's application for permanent name suppression

[32] The respondent sought permanent name suppression, which was opposed by the CAC.

[33] The default position is for Tribunal hearings to be conducted in public and the names of teachers who are the subject of these proceedings to be published.[18] The Tribunal's powers around non-publication are found in s 405 of the Education Act. We can only make an order for non-publication if we are 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.

[34] We recently described the relevant principles regarding name suppression in *CAC v Jenkinson,*[19] which we will not repeat. However, in *CAC v Finch*[20] we said that there is a two-step approach to name suppression under s 405 that mirrors that used in other disciplinary contexts. The first step, which is a threshold question, requires deliberative judgment on the part of the Tribunal whether it is satisfied that the consequence(s) relied upon would be "likely" to follow if no order was made. In the context of s 405(6), this simply means that there must be an "appreciable" or "real" risk.[21] In deciding whether there is a real risk, we must come to a judicial decision on the evidence before us, although this does not impose a persuasive burden on the party seeking suppression. If so satisfied, the Tribunal's discretion to forbid publication is engaged. At this point, the

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[18] That open justice principle is contained in s 405(4) of the Education Act, found in Part 32, which came into force on 1 July 2015.
[19] *CAC v Jenkinson* NZTDT 2018/14, 17 September 2018, at [32] to [36].
[20] *CAC v Finch* NZTDT 2016/11, at [14] to [18].
[21] Consistent with the approach we took in *CAC v Teacher* NZTDT 2016/68, at [46], we have adopted the meaning of "likely" described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 (CA). It said that "real", "appreciable", "substantial" and "serious" are qualifying adjectives for "likely" and bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

Tribunal must determine whether it is proper for the presumption in favour of open justice to yield. This requires the Tribunal to consider, "the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression".[22]

[35] We now turn to the respondent's grounds for suppression. The nub of the application is that publication would cause harm to the respondent's family. He also asserts that the reputation of the school at which he taught will be damaged should his name be published.

[36] We said in NZTDT 2016/27 that it is almost inevitable that a degree of hardship will be caused to the innocent family members of a teacher who faces disciplinary proceedings, although we acknowledged that more acute forms of professional and familial embarrassment may make it proper to suppress a teacher's name.[23] We are not satisfied that the effects that the respondent asserts will be caused if his name is not suppressed are not in this category, however.

[37] Nor do we see a basis to order suppression to protect the interests of the school, which did not seek suppression on its own behalf. As we said in NZTDT 2016/27:[24]

> [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.

[38] We do not accept that naming the respondent will detriment the school.

[39] We also observe that the respondent's criminal offending is a matter of public record, as he was not granted permanent name suppression in the District Court. As such, any order for suppression made by this Tribunal would be of limited efficacy.

[40] We decline to order name suppression.

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[22] *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4, at [3].
[23] NZTDT 2016/27, at [65]. See, too, *McMillan*, above at [50] to [53].
[24] At [69].

Costs

[41] Under s 404(2) of the Education Act, the Tribunal is not empowered to order a teacher to contribute to the CAC's costs and those of the Tribunal following a hearing "that arises out of a report under section 397 of the conviction of a teacher". As such, we do not order costs.

Orders

[42] The Tribunal's formal order under the Education Act is to censure the respondent pursuant to s 404(1)(b).

Nicholas Chisnall
Deputy Chairperson

NOTICE

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.

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 Section 356(3) to (6) apply to every appeal as if it were an appeal under section 356(1).