

CITATION: *Queensland College of Teachers v FAS* [2017] QCAT 226

PARTIES: Queensland College of Teachers
(Applicant)
v
FAS
(Respondent)

APPLICATION NUMBER: OCR093-15

MATTER TYPE: Occupational regulation matters

HEARING DATE: 12 May 2017

HEARD AT: Brisbane

DECISION OF: **Member Howard, Presiding Member**
Member Gordon
Member Day

DELIVERED ON: 5 July 2017

DELIVERED AT: Brisbane

ORDERS MADE:

1. A ground for disciplinary action against FAS is established.
2. FAS is reprimanded.
3. FAS must, within seven days of returning to teaching, whether that be on a casual, supply, part-time or full-time basis, notify the Queensland College of Teachers that he has returned to teaching, on what basis and at which school.
4. That it be noted in the register that FAS has provided:
 - (a) An irrevocable authority and direction to his treating psychiatrist, to advise the Queensland College of Teachers immediately upon the happening of certain events, and to provide the College with certain information and documents as they may request;
 - (b) A similar irrevocable authority and direction to his treating medical practitioners (whoever they may

be from time to time) to report to the Queensland College of Teachers as set out in the authority and direction.

5. The Queensland College of Teachers shall as soon as is practicable inform the treating psychiatrist of the significance, meaning and effect of the documents signed by FAS referred to in 4 above.
6. The interim order made on 16 December 2016 shall no longer have effect.
7. Publication of the name of FAS and of any information that may enable him to be identified, is prohibited *except that* the fact that FAS is the teacher named in this decision may be published to:
 - (a) Any employer who employs him in a teaching role or in child-related employment;
 - (b) His current or future health practitioners;
 - (c) Other teacher regulatory authorities;
 - (d) The chief executive (employment screening).
8. The reasons for decision are to be published in a de-identified form in compliance with this order.

CATCHWORDS:

EDUCATION – SCHOOLS – GOVERNMENT SCHOOLS – TEACHERS’ EMPLOYMENT AND CONDITIONS OF SERVICE – DISCIPLINARY MATTERS – where teacher convicted of indictable offence that is not a serious offence – where events caused by a major depressive episode – whether teacher is not suitable to teach – whether ground for disciplinary action established

EDUCATION – SCHOOLS – GOVERNMENT SCHOOLS – TEACHERS’ EMPLOYMENT AND CONDITIONS OF SERVICE – DISCIPLINARY MATTERS – where purpose of discipline is to protect not punish – where teacher has given irrevocable authorities to treating health practitioners present and future – whether irrevocable authorities reduce any risk of harm to children to an acceptable level

Acts Interpretation Act 1954 (Qld), s 20(2)(b)

Education (Queensland College of Teachers) Act 2005, s 7, s 11, s 12, s 12A, s 49, s 92(1)(b), s 92(1)(h), s 97, s 160(2)
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66(2)(b)

Queensland College of Teachers v CSK [2016] QCATA 125
Queensland College of Teachers v DLJ [2015] QCAT 413

APPEARANCES:

APPLICANT: Carson Lloyd, principal legal officer, and Beth Houston, senior legal officer, Queensland College of Teachers

RESPONDENT: Rachel Drew, solicitor, and Edmond Burke of Holding Redlich Lawyers

REASONS FOR DECISION

- [1] FAS has been a registered teacher in Queensland since January 1997 and is currently registered as a teacher.
- [2] In March 2015, FAS was convicted by a Magistrates Court of the offence of dangerous operation of a motor vehicle. The conviction was recorded and he was sentenced to 9 months imprisonment with a parole release date 14 days after the conviction. He was disqualified from driving for 9 months.
- [3] The Queensland College of Teachers (QCT) believed that there were grounds for disciplinary action against FAS and made a disciplinary referral to the tribunal under s 97 *Education (Queensland College of Teachers) Act 2005* (Qld) (QCT Act). The referral was filed on 19 June 2015 alleging a ground of disciplinary action existed under s 92(1)(b) of the QCT Act. Subsequently, an amended referral was later filed on 1 December 2015 alleging a second ground for disciplinary action existed under s 92(1)(h) of the QCT Act.

The law applicable to the disciplinary referral

- [4] Section 92 of the QCT Act provides for the grounds for disciplinary action. The grounds for disciplinary action have been amended since the amended referral. In particular, s 92(1)(h) has been amended. However, it is uncontroversial between the parties that the QCT Act (and relevantly, the grounds for disciplinary action as they existed at the time of the referral) must be applied in deciding the proceeding. In this regard, we observe that s 20(2)(b) of the *Acts Interpretation Act 1954* (Qld) provides that the amendment of an Act does not affect the previous operation of the Act or anything suffered, done or begun under the Act.

- [5] References to s 92(1)(h) of the QCT Act are references to the former ground of disciplinary action, namely, “the teacher is not suitable to teach”.

The alleged grounds for disciplinary action

- [6] The original referral by the QCT alleged that the ground for disciplinary action in s 92(1)(b) applied. That ground is that the teacher has been convicted of an indictable offence that is not a serious offence. The amended referral by the College added the ground in s 92(1)(h) that FAS is not suitable to teach.
- [7] The tribunal accepts with the submissions of the parties that it must determine whether a ground for disciplinary action exists under s 92(1)(b) and under s 92(1)(h).
- [8] Looking at the ground under s 92(1)(b), it is uncontroversial that FAS was convicted of an indictable offence but not a serious offence under the legislation. Therefore, we find that the ground for disciplinary action under s 92(1)(b) is established.
- [9] We turn to consider the ground in s 92(1)(h), that FAS is not suitable to teach. Sections 11, 12 and 12A of the Act set out matters to be considered in determining whether a person is suitable to teach for the purposes of granting teacher registration or permission to teach. These matters have been considered relevant in deciding whether the disciplinary ground that a teacher is not suitable to teach has been made out.¹ These matters include whether the person is suitable to work in a child-related field,² and include factors that might be described more generally as relevant to assessing whether the person poses a risk of harm to children, ‘harm’ being any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.³
- [10] The Tribunal’s decision about whether FAS is suitable to teach is informed by the medical opinion given as to FAS’ current condition. We set this medical evidence out in some detail below. In short, he suffers from a chronic major depressive disorder. When it is in remission, as it currently is, he suffers no significant symptoms from this condition. It does not affect his suitability to teach. In the circumstances, we accept the submissions made by the parties that this ground for disciplinary action has not been established.

The appropriate sanction

- [11] Having found that a ground for disciplinary action has been established, the Tribunal may impose a sanction on FAS under s 160 of the QCT Act. The potential sanctions provided for include cancelling teacher registration; issuing a reprimand;⁴ the imposition of conditions on a

¹ *Queensland College of Teachers v CSK* [2016] QCATA 125, [26].

² QCT Act, s 12(1)(b).

³ *Ibid*, s 7.

⁴ QCT Act, s 160(2)(c).

teacher's registration or permission to teach;⁵ and the making an order that a particular notation or endorsement about the teacher be entered in the register.⁶ The Tribunal may also make another order it considers appropriate.⁷

Background to the conviction

- [12] In order to explain our determination of the appropriate sanction for the established ground, we set out more fully the facts and the background to the conviction which we have accepted establishes it. These facts appear from the agreed statement of facts submitted by both parties, but also from the evidence submitted to the Tribunal, in particular, in the medical reports.
- [13] FAS suffers from chronic depression, and has done so most of his life. With medication and counselling, he is usually able to function normally and work as a teacher. In 2010, he was acting head of department. He found this stressful and he sought help at that time from his psychologist and from his General Practitioner. He took 9 months off work, as a result of a deterioration in his condition at that time.
- [14] He returned to work as a teacher and continued working until late 2013 or early 2014, when due to family circumstances, he took special leave without pay. He has not taught since then, apart from some supply teaching and attending three student free days at a school.
- [15] Towards the end of 2014, FAS developed severe depression. As a result of an incident involving his wife, a domestic violence order was made against him. He sought help from the mental health unit of a local hospital, but his condition deteriorated. Early in 2015 he wrote a suicide note. Then he was admitted to the hospital as a voluntary inpatient, and discharged a few days later.
- [16] On the day of his discharge, he attempted to commit suicide. He loaded at least one drum of petrol into his car with the intention of driving into a tree. The police were alerted by his wife and a police chase ensued, during which, FAS at one point performed a U-turn and drove on the wrong side of the road directly at the police vehicle which had to swerve off the road to avoid a head-on collision.
- [17] FAS was arrested and spent three days in the watch-house on a voluntary basis. This was followed by two months in custody until his release on parole after his conviction for the charges discussed earlier. He then returned to hospital for three weeks and, after his release from hospital, remained as an outpatient until September 2015.
- [18] One year later, FAS' treating psychiatrist declared him clinically well and fit for work and reported that he was taking his medication regularly.

⁵ Ibid, s 160(2)(h).

⁶ Ibid, s 160(2)(i).

⁷ Ibid, s 160(2)(k).

[19] In October 2016, his employer suspended FAS' employment.

The medical evidence

- [20] Various medical reports were in evidence. Dr Tom Bell prepared the most recent independent assessment relating to matters relevant to this proceeding and we accept it. The medical evidence provided by Dr Bell, consultant psychiatrist, is that FAS suffers from a major depressive disorder with recurrent episodes of major depression, alternating with periods of remission.⁸ In his opinion, FAS' periods of remission would last for months and sometimes for years. During this time, FAS would behave quite normally and not have any significant symptoms. A relapse would be transient and could last from several days to several months. During a relapse into major depression FAS would suffer an increase in depression, anxiety and irritability, disturbance of sleep, appetite, weight, motivation, energy and libido, decreased concentration and short term memory, inability to retain new information, inability to think quickly and clearly and an increase in problems with interpersonal relationships.⁹ Treatment at that time would eventually bring the episode under control, stabilise his mood, behavioural, social and cognitive function and expedite his transition into the next period of remission.¹⁰
- [21] Dr Bell is of the view that during a major depressive episode, at its most severe, FAS' symptoms might include paranoid, psychotic and suicidal thinking as occurred in early 2015. In those circumstances, FAS could pose a risk of harm to himself, and potentially to his students, his work colleagues and anyone else who inadvertently came into contact with him.¹¹
- [22] As for the speed with which FAS' condition might deteriorate in this way, Dr Bell was unable to say with any precision.¹² That said, it is his impression that if a deterioration occurred, rapid deterioration is less likely than a slowly progressive deterioration. Whether any deterioration will occur in the future, or when, cannot be known.
- [23] Since FAS' condition is permanent, Dr Bell is of the view that, optimally, FAS would remain under the care of a specialist psychiatrist indefinitely, with constant monitoring at 2-4 weekly consultations. He would need to continue on medication and there would need to be active psychiatric intervention at the first sign of problems re-emerging.
- [24] In deciding the appropriate sanction and conditions to impose on FAS should he return to teaching, we are mindful that the objects of the disciplinary process include protecting the public by ensuring that education in schools is provided in a professional and competent way by

⁸ Exhibit 6, 8.

⁹ Ibid, 11.

¹⁰ Ibid, 12.

¹¹ Ibid.

¹² Exhibit 10.

approved teachers, and to maintain public confidence in the teaching profession.¹³

- [25] In imposing sanction, our aim, consistent with the objects of the Act, is to ensure that children are appropriately protected in the event of a relapse in FAS' depressive disorder, such that any risk of harm to children is reduced to an acceptable level. In *Queensland College of Teachers v DLJ* [2015] QCAT 413, there was no reliable mechanism to achieve this. In that case the teacher had suffered from a psychosis which had resulted in a violent attack on his de facto wife and stepdaughter. The psychosis had developed quickly, and its seriousness had been missed by treating medical practitioners. There remained a risk that the teacher would relapse into a psychotic state. In the circumstances the tribunal said that it would need a high level of confidence that:
- a) The teacher's insight into his mental state was sufficient for him to appreciate a change in his mental state, that he would report it or it would otherwise be identified; and
 - b) That if that happened something would then be done to ensure that if he were teaching, no child would be at risk of harm.
- [26] In *DLJ*, on the evidence there were doubts about a), and there was no reliable mechanism to achieve b).
- [27] FAS' case is different. We accept the submissions made on behalf of FAS that the risk of harm to children from a relapse is much lower than in *DLJ*. In *DLJ*, the violence of the teacher was born of a psychotic state. This resulted in direct violence towards individuals one of whom had only recently become an adult. In the case of FAS, the violence towards individuals in the main incident with which we are concerned (the police chase) was indirect and a product of FAS' strong desire to commit suicide. It is much less likely than in *DLJ* that children would be involved in the case of a serious relapse.
- [28] Secondly, we accept that FAS demonstrates real insight into his condition. This is shown by his seeking help from his psychologist and from his GP in 2010 when he felt unwell, and then taking 9 months off work. It is also shown by his seeking help from the mental health unit in 2014 and subsequently voluntarily admitting himself as an inpatient there, by his voluntary incarceration in the watch house for 3 days after his arrest, and in his submission to regular visits to the psychologist under our interim order to which we refer below. We also accept submissions made on his behalf that his insight is demonstrated by his willingness to give the irrevocable authorities to his medical practitioners which are discussed in the following paragraphs.

¹³ QCT Act, s 3.

The irrevocable authorities and their history

- [29] On 16 December 2016, on the application of the QCT, the tribunal made an interim order which required FAS to consult with his treating psychiatrist at least every 4 weeks and for his psychiatrist to then provide the College with brief written advice after each attendance about FAS' current condition. The interim order also set out notification requirements should FAS return to teaching and for ongoing consultations with a psychologist should he do so.
- [30] At the time the interim order was made, FAS had been suspended from his employment by his employers. So, whilst FAS complied with the interim order by attending his treating psychiatrist as required, he did not return to teaching pending the final decision of the tribunal.
- [31] The QCT proposed that the final order should be in similar terms to the interim order, so that FAS would be required to subject regular short medical reports to the QCT. If his condition deteriorated this would emerge from those reports.
- [32] Initially we convened to reach a final decision on the disciplinary action against FAS in an "on the papers" hearing. At that hearing, we were concerned that the medical evidence was unclear about how quickly FAS' condition was likely to deteriorate if there were a relapse. We were also unclear about the practicalities of the QCT monitoring FAS' condition by receiving reports as suggested. The parties did not agree about the form of order that would be appropriate.
- [33] On 2 February 2017, we directed that further medical evidence and evidence of the QCT be filed to clarify the identified matters. We listed the matter for a further oral hearing.
- [34] At the resumed hearing on 12 May 2017, we received further evidence and heard further submissions. At the hearing, FAS' solicitors offered two documents which had been signed by FAS.
- [35] The first document signed by FAS was an irrevocable authority and direction to his current treating psychiatrist. It is in the following terms:-

IRREVOCABLE AUTHORITY

**TO DOCTOR TO PROVIDE INFORMATION AND
MEDICAL REPORT**

To: [name of psychiatrist] of [address]

**For the benefit of Queensland College of Teachers of
[address]**

I [FAS] of [address], irrevocably authorise and direct you to make available to the Queensland College of Teachers all medical and other records which you may have in your possession or power

relating to me as they may request, and to provide them with a medical report in accordance with any request they may make.

I request and authorise you to advise the Queensland College and Teachers immediately in the event of the following:

1. My medical condition deteriorates such that I am not suitable to teach.
2. If you recommend my admission to hospital for a mental health concern.
3. If I fail to attend an appointment and have not contacted you to reschedule or provide a reasonable explanation for non-attendance.
4. If I terminate treatment or if you terminate treatment.
5. If I refuse to follow any direction you give me in relation to your medical treatment, including if I appear to have failed to take medication as directed or if I fail to accept a recommendation such as a recommendation to consult with a psychologist.
6. If there arises any circumstances that you believe affects my suitability to teach.

I confirm that, in consideration of the matters before the Queensland Civil and Administrative Tribunal in matter OCR093-15, I declare that this Authority will be irrevocable, except with prior consent of the Queensland College of Teachers in writing, and will remain in force while I hold teacher registration in Queensland.

Signed:

Witnessed by:

Dated:

- [36] The second document is in similar terms save that it is addressed to FAS' treating medical practitioners generally, and so would act as an authority and direction to any treating medical practitioner in the future. It is in these terms:

IRREVOCABLE AUTHORITY

To: My Treating Medical Practitioners

For the benefit of: Queensland College of Teachers of [address]

I [FAS] of [address], irrevocably authorise the Queensland College of Teachers to contact any of my treating medical practitioners, including [name of psychiatrist].

I irrevocably authorise and direct my treating medical practitioners to make to the Queensland College of Teachers all medical and other records which you may have in your possession or power relating to me as QCT may request, and to provide them with a medical report in accordance with any request they may make, including reporting immediately if:

1. My medical condition deteriorates such that I am not suitable to teach.
2. If any medical practitioner recommends my admission to hospital for a mental health concern.
3. If I fail to attend an appointment and have not contacted my medical practitioner to reschedule or provide a reasonable explanation for non-attendance.
4. If I terminate treatment or if my medical practitioner terminates treatment.
5. If I refuse to follow any direction from my medical practitioner in relation to medical treatment, including if I appear to have failed to take medication as directed or if I fail to accept a recommendation such as a recommendation to consult with a psychologist.
6. If there arises any circumstances that my medical practitioner believes affects my suitability to teach.
7. Otherwise, on any pattern of routine reporting as requested by the Queensland College of Teachers which may include routine reporting on my mental health and compliance with treatment including medication.

I confirm that, in consideration of the matters before the Queensland Civil and Administrative Tribunal in matter OCR093-15, I declare that this Authority will be irrevocable, except with prior consent of the Queensland College of Teachers in writing, and will remain in force while I hold teacher registration in Queensland.

Signed:

Witnessed by:

Dated:

[37] We are satisfied that the irrevocable authorities and directions given to FAS' current treating psychiatrist and treating medical practitioners generally, provide a satisfactory manner to protect the public. We are confident that they will ensure that in the event that FAS suffers a relapse in his condition, or terminates or fails to co-operate in his treatment, the QCT will be alerted to this as early as is practicable so that it can take appropriate action if necessary. Such action could include the QCT alerting FAS' current employer or the chief executive (employment

screening) or if necessary, suspension of his registration if the QCT reasonably believes the teacher poses an unacceptable risk of harm to children.¹⁴

- [38] That said, we consider that it is necessary for the significance, meaning and effect of the irrevocable authority to be explained to the treating psychiatrist in non-legal terms. In particular, the treating psychiatrist needs to be aware that FAS has instructed that the QCT may be a party to all past and future medical information about him and he has therefore abandoned his rights of confidentiality and privacy to that extent. Further, FAS has directed that the QCT must be told if he suffers a serious deterioration in his condition, or ceases or fails to co-operate with his treatment, for example if he misses an appointment without reasonable explanation. It is crucial that it is understood that FAS cannot retract these directions. They are irrevocable unless the QCT agrees in writing. They operate while FAS remains a registered teacher. The QCT has offered to prepare a suitable letter setting out these matters.

Conclusions on sanction

- [39] We are satisfied that it is appropriate to reprimand FAS. Further, as agreed by the parties, we are satisfied that it is appropriate to make orders that notations be entered in the register in short form about the irrevocable authorities and directions, coupled with an endorsement. Orders are also made requiring that FAS must notify the QCT of his return to teaching and requiring the QCT to write to his treating psychiatrist in the terms discussed.

Orders

- [40] We make orders accordingly.

Non-publication order

- [41] We also consider that it is necessary to make a non-publication order in this case¹⁵ to avoid endangering the mental health of FAS. We accept the submissions made by the QCT that the order should not prohibit the identification of FAS to certain persons and bodies, as we have set out in the order.

¹⁴ QCT Act, s 49, in its amended form which applies as from 8 September 2016.

¹⁵ QCAT Act, s 66(2)(b).