

**CITATION:** *Queensland College of Teachers v Teacher CXJ* [2017] QCAT 83

**PARTIES:** Queensland College of Teachers  
(Applicant)  
v  
CXJ  
(Respondent)

**APPLICATION NUMBER:** OCR167-16

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Senior Member O’Callaghan**

**DELIVERED ON:** 13 March 2017

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. The review conducted by the Tribunal under s 55(6) of the *Education (Queensland College of Teachers) Act 2005* is conducted in the Tribunal’s original jurisdiction.
2. On review, the Tribunal will consider the appropriateness or otherwise of the Tribunal’s decision to continue the QCT’s suspension of CXJ’s teacher registration.
3. The QCT must file in the Tribunal two (2) copies and give to CXJ one (1) copy of submissions as to whether, in light of the further material, the suspension should continue, by 28 March 2017.
4. The Tribunal will then make a decision on the papers as to whether it is appropriate to continue the suspension, unless either party requests an oral hearing by 4 April 2017.

**CATCHWORDS:** EDUCATION – TRAINING AND REGISTRATION OF TEACHERS – suspension of teacher – where suspensions previously continued by the Tribunal pursuant

to s 49 of the *Education (Queensland College of Teachers) Act 2005* – where teacher has sought a review of the Tribunal’s decision – nature of that review

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – Jurisdiction – whether review pursuant to s 55(6) of the *Education (Queensland College of Teachers) Act 2005* is in the Tribunal’s original jurisdiction

*Education (Queensland College of Teachers) Act 2005* (Qld), s 49, s 50(3), s 55(6)(b)  
*Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 10(1)(b), s 10(2)

*Briginshaw v Briginshaw* (1983) 60 CLR 336  
*Queensland College of Teachers v Teacher CXJ* [2016] QCAT 511  
*Queensland College of Teachers v Teacher GXM* [2016] QCAT 411

#### **APPEARANCES:**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

#### **REASONS FOR DECISION**

- [1] Teacher CXJ’s teacher registration was suspended by the Queensland College of Teachers (QCT) pursuant to s 49 of the *Education (Queensland College of Teachers) Act 2005* (Qld) (the Act) on the basis that the QCT reasonably believed Teacher CXJ posed an unacceptable risk of harm to children. As required by s 50(3) of the Act the QCT referred the matter to QCAT for the Tribunal to review the continuation of the suspension.
- [2] For a suspension under s 49, the Tribunal must decide to continue the suspension unless it is satisfied that the teacher does not pose an unacceptable risk of harm to children.<sup>1</sup>
- [3] Once suspended the teacher bears the onus of satisfying the Tribunal that they do not pose an unacceptable risk of harm.
- [4] In this matter, Teacher CXJ was directed to file submissions as to why he did not pose an unacceptable risk. He complied with the direction and the QCT filed submissions in reply.

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<sup>1</sup> *Education (Queensland College of Teachers) Act 2005* (Qld), s 53(3)(b).

- [5] The Act prescribes that the Tribunal must determine whether the suspension should continue within the relatively short period of 14 days from the time he was directed to provide submissions or they were received, whichever is the earlier date.
- [6] On 30 November 2016, the Tribunal determined on the material before it that the suspension should continue. Teacher CXJ had not satisfied the Tribunal to the requisite standard that he did not pose an unacceptable risk of harm.<sup>2</sup>
- [7] The Tribunal observed that it was open to Teacher CXJ under s 55(6)(b) of the Act to '*apply within 28 days of receiving the decision notice to QCAT for review of QCAT's decision*'.
- [8] Teacher CXJ applied within the requisite time for such a review.
- [9] The matter came on before me for a directions hearing on 31 January 2017.
- [10] As discussed at the directions hearing the scope and nature of the Tribunal's review of its decision under s 55(6) is not clear from the provisions of the Act. That issue had not previously been determined by the Tribunal. In those circumstances I considered it appropriate for the Tribunal to make a determination as to the nature and scope of the review.
- [11] The parties were directed to provide submissions on that issue. They have done so.
- [12] The QCT has filed useful submissions. They submit, and I accept, that the Tribunal's review of the decision to continue the suspension is a review carried out in the Tribunal's original jurisdiction.
- [13] The QCT referred me to s 10(2) of the QCAT Act which provides that the Tribunal's original jurisdiction under s 10(1)(b) of the QCAT Act also includes jurisdiction conferred on the Tribunal under an enabling Act (in this case the *Education (Queensland College of Teachers) Act 2005* (Qld)) to review a decision of the Tribunal made under the enabling Act.
- [14] Section 10 cites the Tribunal's review of its own decision to appoint guardians and administrators in the Guardianship and Administration jurisdiction as an example.
- [15] The QCT also refers to the explanatory notes to the Bill, noting that the *Acts Interpretation Act 1954* (Qld) permits access to extrinsic material to assist in interpreting or to confirm an interpretation conveyed by the ordinary meaning of the word in legislation.<sup>3</sup>

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<sup>2</sup> *Queensland College of Teachers v Teacher CXJ* [2016] QCAT 511.

<sup>3</sup> Submissions of the QCT filed 13 February 2017, [24]-[28].

- [16] The explanatory note records in reference to s 10(2):

This review is not part of the tribunal's review jurisdiction because it is not a review of an administrative decision by a government agency, but a review of the ongoing appropriateness of the appointment.

Similarly, a number of Acts conferring jurisdiction of the tribunal to hear and decide disciplinary matters for members of various professions or vocations also confer jurisdiction to review disciplinary orders of the tribunal involving suspension or requiring certain conditions to be met in order to ensure that it was appropriate for the suspension to be lifted or the conditions have been met.

- [17] I accept the QCT's submission that by reference to s 55(6)(b) of the Act, s 10(2) of the QCAT Act and the intent of the legislature expressed in the explanatory notes, the review under s 55 is conducted by the Tribunal in its original jurisdiction. It is a review of the appropriateness or otherwise of the Tribunal's decision to continue the QCT's suspension of the teacher's registration. Accordingly, the provisions contained in the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) concerning the Tribunal's 'review' and 'appeal' jurisdictions have no application in these proceedings.
- [18] The review is also determined on the same principles as the first decision on continuation of the suspension, including that the onus is on the teacher to satisfy the Tribunal that he or she is not an unacceptable risk of harm to children.<sup>4</sup> As in the original decision, the standard of proof is the civil standard of balance of probabilities, in line with what is commonly referred to as the 'Briginshaw standard',<sup>5</sup> and based on the serious consequences of findings, a teacher would not be successful in discharging the onus on the basis of inexact or flimsy evidence.<sup>6</sup>
- [19] I also accept the QCT's submission that in conducting the review the Tribunal can consider any further material provided by the parties.
- [20] CXJ in his submissions supports this interpretation and has provided further material by way of an updated psychologist's report and a further statement.
- [21] Having decided the nature and scope of the review and having received extra material from CXJ, it is appropriate that the QCT be given the opportunity to comment on whether, in light of the further material, the suspension should continue.
- [22] The QCT is directed to provide those submissions within 14 days.

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<sup>4</sup> *Queensland College of Teachers v Teacher CXJ* [2016] QCAT 511, [26]; *Queensland College of Teachers v Teacher GXM* [2016] QCAT 411.

<sup>5</sup> *Briginshaw v Briginshaw* (1983) 60 CLR 336, at 361-362.

<sup>6</sup> *Queensland College of Teachers v Teacher CXJ* [2016] QCAT 511, [27].

[23] The Tribunal will then make a decision on the papers as to whether it is appropriate to continue the suspension, unless either party requests an oral hearing within 21 days.