

CITATION: *Queensland College of Teachers v Teacher CXJ* [2018] QCAT 117

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

APPLICATION NUMBER: OCR133-17

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Gordon**
Member Dr Grigg
Member Murray

DELIVERED ON: 23 April 2018

DELIVERED AT: On the papers

ORDERS MADE:

- 1. The ground for disciplinary action under section 92(1)(h) of the *Education (Queensland College of Teachers) Act 2005 (Qld)* has been established.**
- 2. Under section 161(2)(c) of the Act, CXJ is prohibited from applying for teacher registration or permission to teach until 8 September 2020.**
- 3. Should, after the expiry of the prohibition period, CXJ apply for teacher registration or permission to teach, the application must be accompanied by an independent report by a psychologist approved by the Queensland College of Teachers which demonstrates that the psychologist has received a copy of this decision and the reasons for the decision, and which provides an assessment of CXJ's suitability to teach and work in a child-related field and his awareness and appreciation of:**
 - (a) the appropriate boundaries of**

interaction between a teacher and a student;

- (b) the particular duty and care which is required of a teacher who is held out to a student as being in a position of trust;**
 - (c) the correct responses when a student discloses sensitive issues to a teacher who is in a position of offering pastoral support to the student;**
 - (d) the identification of situations and events which may be harmful to students and how such situations and events can be avoided;**
 - (e) the mandatory reporting obligations under the *Child Protection Act 1999* (Qld);**
 - (f) the Professional Boundary Guidelines for Queensland Teachers published by the QCT;**
 - (g) the Code of Ethics for Teachers in Queensland published by the QCT.**
- 4. Other than to the parties to the proceeding, publication is prohibited of any information that may identify the student, including the student's own name, the name of the school or its location, the names of any other students at the school, or the name of CXJ.**

CATCHWORDS:

EDUCATION – SCHOOLS – INDEPENDENT SCHOOLS – TEACHER'S EMPLOYMENT AND CONDITIONS OF SERVICE – DISCIPLINARY MATTERS – where the teacher under a different identity engaged in highly sexualised communication with the student – where there was a high risk of the student discovering the teacher's identity – where there was a betrayal of trust because of the teacher's pastoral role – whether ground for disciplinary action is established – whether the teacher should be prohibited from reapplying for registration for a period – whether conditions for reapplying should be

imposed

Education (Queensland College of Teachers) Act 2005 (Qld), s 3, s 92(1)(h), s 97, s 161

Queensland College of Teachers v FDA

[2017] QCAT 224

Queensland College of Teachers v Harvison

[2013] QCAT 684

Queensland College of Teachers v Metcalf

[2015] QCAT 147

Queensland College of Teachers v TSV

[2015] QCAT 186

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).

REPRESENTATION:

APPLICANT: Carson James Lloyd, Principal Legal Officer,
Queensland College of Teachers

RESPONDENT: Self-represented

REASONS FOR DECISION

- [1] This is a referral to the tribunal for disciplinary action against teacher CXJ who (amongst other things) communicated by email in a highly sexualised way with a female student in year 12. Of particular significance in this matter is that the teacher betrayed the trust arising from his pastoral role with the student, and that he should have realised that she could be particularly vulnerable to such betrayal.
- [2] After the events were disclosed to the teacher, he resigned from the school where he was teaching, and was then suspended from teaching by the Queensland College of Teachers (QCT).¹ This was a decision made on statutory grounds.² Such suspensions must be referred to the tribunal. The tribunal continued the suspension by a decision of 30 November 2016,³ and confirmed that decision on review on 19 May 2017.⁴

¹ This was on 8 September 2016.

² The suspension was under section 49 of the *Education (Queensland College of Teachers) Act 2005 (Qld)*. Initially this was on the grounds that he posed an “imminent risk of harm to children” but after an amendment to that section it was on the grounds that he posed an “unacceptable risk” of harm to children.

³ *Queensland College of Teachers v Teacher CXJ* [2016] QCAT 511.

⁴ *Queensland College of Teachers v Teacher CXJ (No 2)* [2017] QCAT 166.

The legal background

- [3] These types of matter are governed by the *Education (Queensland College of Teachers) Act 2005* (Qld) ('Education Act'). Under section 97 of the Act if the QCT reasonably believes that a ground for disciplinary action against a teacher exists for a 'general matter' then it must refer the matter to the tribunal. The QCT did so on 28 June 2017. The 'general matter' relied on was that CXJ had behaved 'in a way, whether connected with the teaching profession or otherwise, that does not satisfy the standard of behaviour generally expected of a teacher'.⁵
- [4] CXJ is currently a 'former approved teacher' because he has not renewed his teacher registration. Hence the relevant disciplinary options (apart from taking no action) are those described in section 161(2) of the Act:
- (b) make an order requiring the teacher to pay to the college, by way of costs, an amount QCAT considers appropriate having regard to—
 - (i) any expenses incurred by the college in investigating the matter; and
 - (ii) the expenses incurred by the college in the proceedings before QCAT;
 - (c) if QCAT would have made an order cancelling the teacher's registration or permission to teach if the teacher had been an approved teacher—make an order prohibiting the teacher from reapplying for registration or permission to teach for a stated period from the day the order is made or indefinitely;
 - (d) make an order that a particular notation or endorsement about the teacher be entered in the register.

The facts

- [5] There is a statement of agreed facts signed on behalf of the College of Teachers and by CXJ. In that document there is agreement about the factual basis of some of the allegations and their impropriety. We consider it appropriate not to depart from the agreed facts in the statement.
- [6] It is necessary to consider the allegations as originally refined and set out by QCT in its Notice of Investigation dated 3 November 2016,⁶ and as described by the student in her interviews, and then refer to CXJ's response to the allegations as they appear in his statutory declaration of 5 December 2016.⁷
- [7] The three main allegations against CXJ are:
- a) hugging the student;
 - b) touching her leg with his leg; and

⁵ Section 92(1)(h) of the Education Act,

⁶ Page 345 of the bundle.

⁷ Page 794 of the bundle.

- c) inappropriate emails.
- [8] The conduct is aggravated by two other things that we need to examine:
- a) CXJ had a pastoral role in the school but in particular with the student; and
 - b) CXJ was aware of the student's particular vulnerability.
- [9] CXJ started teaching in 2007 and taught English, History and Religious Education. From early 2016 the student then in year 12, was in CXJ's Religious Education class.
- [10] CXJ held a pastoral role at the school. The nature of that role is agreed in the statement of agreed facts. He was Pastoral Coordinator from 2013 or 2014. In 2015 the title of this role was changed to Pastoral Middle Leader. In that role CXJ was in a leadership position and was concerned with the pastoral care of students in years 10, 11 and 12, providing guidance to the students.
- [11] From the beginning of the 2016 school year until 25 July 2016, CXJ also held a Mission and Ministry role. This role consisted of a 50/50 split between teaching and CXJ engaging in school prayer, liturgies, community outreach programs, camps and other pastoral extra-curricular activities.
- [12] The statement of agreed facts states that in his capacity as Pastoral Middle Leader, the student visited him on 4 or 5 occasions in 2015 when she was in year 11, and they discussed personal and school related issues. As can be seen however, the student came to rely on and trust CXJ to a considerable degree.
- [13] On the question about CXJ's knowledge that the student was in a **heightened state of vulnerability**, QCT's Notice of Investigation said that CXJ was aware of this because the student had disclosed to him that she suffered from anxiety and/or panic attacks, and disclosed to him in April 2015 that she had been a victim of rape. Having reported the rape matter,⁸ CXJ worked with other staff members to provide support and pastoral care for the student. Therefore CXJ was aware, or should have been very much aware, that she was likely to be in a heightened state of vulnerability.
- [14] In his statutory declaration, CXJ says that he did not consider the student was in a heightened state of vulnerability. The student did not disclose to him that she suffered from anxiety and/or panic attacks. In about April 2015 the student did speak to him in his role as Pastoral Coordinator. She told him that she had been raped by the son of her father's girlfriend, but

⁸ The date of the report is identified as 11 May 2015 from the principal's email on page 263.

the girlfriend did not accept that this had happened. CXJ did report this to the House Counsellor and the House Coordinator. He did not refer to this matter again with the student. The other issues discussed with the student in his pastoral capacity were issues with school friends, teachers and general school related matters, “much the same as all the other students that consulted me”.

- [15] There is nothing further said about this in the statement of agreed facts.
- [16] As for the **allegation about hugging**, the student said in her interview that she used to go to speak to CXJ when she needed a chat. Generally this was when she was upset and needed some comfort. Often she was crying when she saw him. She said that almost every time she went to see him, he would give her a hug. She found this comforting and it did not make her feel uncomfortable.⁹
- [17] In his statutory declaration, CXJ said that he hugged the student or put a consoling arm around her shoulder only two or three times in 2015 in his role as Pastoral Coordinator and two or three times as class teacher in 2016. On each occasion the student had consulted him about her “personal and school related issues”. On each occasion it was comforting and non-sexual. CXJ says that in 2016 when the student was in his class and because she had spoken to him in his role as Pastoral Coordinator, she would often run up and hug him when he arrived at school. There were no sexual connotations in this conduct. He used to try to avoid this happening by entering the school by a different route. In 2016 on three or four occasions she hung back after the lesson to speak to him about personal matters. On two of the three occasions this happened he hugged her in a comforting and non-sexual way.
- [18] In the statement of agreed facts, this has become:
- On divers dates between 24 January 2016 and 1 June 2016 CXJ failed to maintain appropriate boundaries within the teacher-student relationship by engaging in physical contact with the student including (but not limited to) hugging the student when seeing her on the school campus.
- [19] As for the **leg touching incident**, the student said that this happened the day before the emails started. She did not feel it because it was through her dress, and she didn’t think much of it but did tell her father.¹⁰
- [20] In his statutory declaration, CXJ admitted this incident but said that it happened because he was jiggling his own leg up and down as was his habit. His leg made accidental and very slight contact with the student when she squatted down next to his desk. He admits that when he realised this was happening he slowed down the movement two or three

⁹ Pages 305 and 306 of the bundle.

¹⁰ Page 316 of the bundle.

times before he moved his leg away. He admits he should have moved the leg away immediately.

[21] In the statement of agreed facts this has become:

On or about 22 March 2016, the respondent failed to maintain professional boundaries within the teacher-student relationship by engaging in physical contact with the student, namely the respondent, while sitting in the teacher chair in the classroom and while giving the student feedback on her religion assignment, moved his leg up and down the student's leg while she was squatted next to his desk.

[22] With respect to the **emails**, there is agreement about their timing and contents. The emails are helpfully set out in chronological order in Annexure A to the statement of agreed facts.

[23] CXJ obtained the student's personal email address by telling her that he had been unable to send some amended feedback on assessments because they had bounced back.

[24] Three days after obtaining the student's email address, on 22 March 2016 CXJ used it to send an email to her using the false email name 'Itsa Secret'. His first email was:

Hiya there sexi. How r u? Can I ask, do u touch urself? The thought of u doing so is sexi, it drives me crazy! U r so hot! I wuld luv to c all of u! Wat wuld a guy hav to do to get a 'pic' of u? I wuld luv u to wear nothing under a skirt or dress nd hav u flash me – that wuld b so hot. I dream bout it!

[25] The QCT has submitted that CXJ used language in the emails sent in the name of Itsa Secret suggesting that he was a teenager. We agree, at least for this first email. After the student received this email she asked Itsa Secret to use proper English and to use full sentences, which he mostly did after this time.

[26] Over the next two months there were a number of emails between CXJ and the student. Some of the time CXJ sent those emails as Itsa Secret and other times CXJ used his true identity as teacher using the school's email system. The emails sent as Itsa Secret were highly sexualised, whereas his emails sent as teacher appeared normal except that many were sent outside school hours.

[27] At an early stage, CXJ as Itsa Secret received photographs sent by the student depicting her in skimpy underwear. On receipt of the first such photograph, CXJ expressed admiration for it using sexual language and persistently asked for more photographs including nude ones. It was a constant theme of his emails to ask the student whether she fantasised about anyone and whether she touched herself and to describe committing sexual acts upon her in graphic detail with many references to his, and her, sexual organs, and to his fantasies and desires.

- [28] On some days there were long sequences of such emails. For example in the evening of 24 March between 9.42pm and 1.01am the following morning there were 18 emails from Itsa Secret and 20 from the student. The following evening of 25 March there were 29 emails from Itsa Secret up to 2.05am the following morning, and a similar number from the student.
- [29] In the emails sent on the evening of 25 March, CXJ as Itsa Secret sent three pictures of his penis as attachments to the emails, and the student responded with a picture of herself wearing a bra and shorts. CXJ then sent 4 more pictures of his penis.
- [30] The following evening CXJ as Itsa Secret sent another sexualised email after midnight. In that email CXJ said he would be out of town for a few weeks and would not have internet.
- [31] There was then a gap without emails from CXJ as Itsa Secret until the evening of 7 April 2016, when there was a discussion about the forthcoming Year 12 Retreat. In one of the emails from CXJ as Itsa Secret, he used her full names which Itsa Secret would not have known.¹¹
- [32] The following evening the student expressed tiredness with the sexual nature of the emails from CXJ as Itsa Secret saying that he needed to chill out because he was 'all about sex'. In an email that evening, the student told CXJ as teacher that her grandfather had died a couple of days before so that it was 'not a good time'.¹² This caused CXJ as teacher to express sympathy and support.
- [33] Despite what had been said by the student about her grandfather, CXJ as Itsa Secret continued to email her pressing for information about her and saying that she turned him on.¹³
- [34] The following evening on 11 April 2016, CXJ as Itsa Secret sent an email asking the student for sex.¹⁴ In response, the student told CXJ as Itsa Secret that she had guessed who he was because he had 'made far too many slip ups'.¹⁵
- [35] At that time they were both at the Year 12 retreat. CXJ was there as a supervising teacher.¹⁶

¹¹ Emails between 7.27pm and 10.32pm of 7 April 2016.

¹² Email of 10.16pm on 8 April 2016.

¹³ Email of 2.04pm on 9 April 2016.

¹⁴ Email at 10.49pm.

¹⁵ As appears from page 315 of the bundle, the student told a friend that she suspected it was CXJ who was sending the emails. The friend then sent an email to Itsa Secret using the student's device saying his identity was known because he had made 'far too many slip ups' (email at 11.54pm on 11 April 2016).

¹⁶ This appears from a note of what was said on 12 April 2016, the Level 2 reporting form, and the memo of 30 May 2016 - pages 34, 57 and 135 of the bundle.

- [36] The next day on 12 April 2016, teachers at the Year 12 retreat noticed from the student's behaviour that something was wrong. When asked about this she said that she thought CXJ had been sending her sexually explicit emails, with pictures of his penis and asking her for nude images of herself.¹⁷
- [37] A report was immediately made by the school to the Queensland Police Service and to the Department of Communities, Child Safety and Disability Services.¹⁸
- [38] Meanwhile the emails continued. There was another long email chain on the evening of Saturday 16 April 2016. During this exchange, CXJ as Itsa Secret described his sexual fantasies to the student. She responded by saying that she had too much on her plate at that time. She explained that her grandfather's funeral was the following day and she was stressing out. She was behind in her school work. A relative was trying to kill themselves. She was grounded from school. And a guy she liked was moving away.
- [39] Despite reading this, CXJ as Itsa Secret just 6 minutes later called her sexy, asked her what she was wearing and whether she wanted to take her mind off it all with sex. The student responded saying that she did not want him trying to get with her and asking him to stop. Then, despite apologising, CXJ as Itsa Secret persisted by calling her sexy and explaining (in some detail) that he would love to see her wearing something sexy.¹⁹
- [40] The emails became less frequent, and over the following days the student asked CXJ as Itsa Secret to stop calling her sexy and to stop, but CXJ as Itsa Secret replied by asking what had changed and whether the student wanted him to be the person they had been talking about.²⁰
- [41] CXJ as Itsa Secret continued that theme nine days later on 3 May 2016 when he asked in an email whether it would make a difference if he was who she thought he was. The student did not reply.
- [42] Over the next two weeks CXJ as Itsa Secret sent to the student six emails variously calling her sexy and hot, asking what she was up to, saying that he wanted her and saying he would like to chat, and that he would like her to flash him in crotch less panties.²¹
- [43] The last email was 31 May 2016.
- [44] Two weeks before this, the police notified the school that having looked into the matter, in their view no criminal offence had been committed.

¹⁷ Note of discussion on page 507.

¹⁸ Pages 46 to 56 of the bundle.

¹⁹ Email of 7.39pm on 17 April 2016.

²⁰ Email of 10.53pm on 24 April 2016.

²¹ Email of 10.37pm 18 May 2016.

Soon afterwards the school appointed an external investigator to investigate the matter. On 31 May 2016 the school notified the QCT about the allegations. On 8 June 2016 CXJ was notified about the commencement of the investigation,²² and on 5 July 2016 he was given details of the allegations against him.²³ From 11 July 2016 CXJ was on sick leave and on 16 July 2016 he resigned from the school giving two weeks notice.²⁴ At that time CXJ was suffering from depression,²⁵ but he says he was suffering from depression long before this. The QCT then commenced its own investigation into the matters.

Considerations about the seriousness of the conduct

[45] In the view of the tribunal, there are four themes which can be picked out from the emails in our assessment of the seriousness of the conduct:

- a) CXJ demonstrated a strong desire to meet with the student for sex, as shown by the email sequence of 24 and 26 March 2016 when he asked if the student wanted to learn more about sex,²⁶ asked where he could pick her up,²⁷ and whether there was a 'discreet place' nearby where he could meet her.²⁸ Then there was the request for sex on 11 April 2016 when they were both at the Year 12 Retreat.
- b) CXJ showed an interest on several occasions as to who the student might fantasise about and whether this was about older men. This developed into a discussion about sex between a student and a teacher. Examples are the emails culminating in an email at 12.00am on 25 March 2016 in which she said how much she liked CXJ. He was also interested in who she thought he was. Examples are the emails of 24 April and 3 May 2016.
- c) CXJ provided clues to the student in some of his emails as to his true identity. For example, he emailed CXJ as teacher at 9.59pm on 25 March 2016 to ask how she was, and then two minutes later as Itsa Secret sent a sequence of emails with sexual references and expressing sexual desires in strong language. In an email on 26 March 2016 CXJ as Itsa Secret told the student that she knew him.²⁹ He then reverted to CXJ as teacher sending two emails after midnight. On 7 April 2016 when intermixing emails sent as Itsa Secret and emails sent as teacher, in both threads he referred to the forthcoming Year 12 Retreat. Then CXJ as Itsa Secret sent an email

²² Letter page 299.

²³ Letter page 330.

²⁴ Letter page 337.

²⁵ This is demonstrated by the assistant principal's statement of 5 August 2016 on page 338 and is supported by the medical evidence.

²⁶ For example, 10.57pm 24 March 2016.

²⁷ Email 12.54am 26 March 2016.

²⁸ Email 1.09am on 26 March 2016.

²⁹ Email of 1.55am on 26 March 2016.

to the student in which he used her full names. Itsa Secret would not have known this but CXJ as teacher would have done.³⁰ These strategies were high risk and we think demonstrated a willingness on the part of CXJ for the student to guess his identity. We disagree therefore with CXJs submissions that he never wanted his identity as Itsa Secret to be known to the student.

- d) CXJ disregarded the student's sensitivities and particular vulnerability. Examples are on 9 April 2016 when CXJ continued to email her pressing for information and saying that she turned him on, despite her saying the evening before that her grandfather had died and so it was not a good time for her. Another example was on 16 April 2016 when CXJ in an email called her sexy, asked what she was wearing and whether she wanted to take her mind off things with sex after the student has said just 6 minutes before that she had too much on her plate and was stressing out for the reasons she gave. Then on the following day again he called her sexy and explained (in some detail) that he would love to see her wearing something sexy, despite her request to stop.

[46] CXJ discusses in his submissions the question whether he was intending to try to meet the student for a sexual encounter.

[47] The statement of agreed facts says:

On 25 March 2016 CXJ sent a number of emails to the student proposing that he meet with her in person for the purpose of engaging in sexual intercourse/activities.

[48] In his submissions of 22 December 2017 CXJ says that the word was originally 'seeking' and it was changed to 'proposing'. He confirms his consistent assertion that the proposal was an act of roleplay. On that basis he disagreed with the word seeking because he never had any intention of ever meeting with the student in person.

[49] The tribunal can see no difference between the words seeking and proposing in this context. The fact is that the emails, as properly understood by someone in the position of the student, were invitations to meet for sex. She did not agree to do so. It is impossible to say what would have happened if the student had agreed to do so.

[50] The correct disciplinary action does not turn on whether CXJ had any intention to meet the student for sex, although had he done so, of course this would be relevant.

[51] The correct disciplinary action is however, affected by the reckless nature of the emails. There was a high risk that the student would guess Itsa

³⁰ Emails between 7.27pm and 10.32pm of 7 April 2016.

Secret's true identity. And it is a fact that the student did develop a strong suspicion that it was CXJ.

- [52] The importance of this lies in the personal relationship between CXJ and the student. In her interviews she said when she was younger she used to call him her 'school dad'. She said this was because when she was upset she would go to him and he would reassure her that everything was going to be okay and look after her welfare.³¹ Later when she was in year 10 and 11 she would open up to him a lot more – he was like her 'big brother' – like part of the family.³² When she was upset she would go straight to him and tell him she needed to talk and they would walk around school for a bit.³³ She had purposively seen him in 2015 and 2016 in order to confide with him as Pastoral Coordinator with her most intimate affairs. She said in her second interview that CXJ was the first person she had told about the rape.³⁴ CXJ was aware of her admiration for him before the emails started, from the fact that she used to seek him out at school and would run up to him and hug him. He could also see her trust and admiration for him from her emails. This is because, on his prompting as Ita Secret about teachers at school, she said that he was her 'favourite teacher', who was 'very wise' and who 'always sets me straight' and that she owed him 'so much' and 'everyone knows I got heaps of love for (CXJ)' and 'he really is amazing I love him he is so great and I trust him so much he is the only person I like to talk to'.³⁵
- [53] The risk that CXJ was willing to take therefore was that because of the trust imposed on him by this student and her admiration for him, of which he was aware, she would feel seriously betrayed if in truth he merely regarded her as a sex object, as disclosed by the Ita Secret emails.
- [54] In the light of this and the student's vulnerability, the fact that CXJ gave the student clues as to his true identity and persisted in his emails when the student expressed discomfort is extraordinary, and demonstrates a serious disregard for her sensitivities and wellbeing.
- [55] Inevitably the events have taken their toll on the student. When she began strongly to suspect that Ita Secret was CXJ at the Year 12 Retreat, she was crying and upset during the sessions and absconded. When she returned she continued to be visibly upset and was asked about it by the teachers. She then stated her suspicion that CXJ had sent the emails. It appears that during the short police investigation which followed she became 'quite overwhelmed with the whole situation' and tearful, and was agitated to the extent of scratching her arm and leaving a mark.³⁶ She was still anxious in June 2016 and felt embarrassed and stressed, having

³¹ Page 303 of the bundle.

³² Page 304 of the bundle.

³³ Page 305 of the bundle.

³⁴ Page 684.

³⁵ Emails of 11.05pm, 11.26pm and 24 March 2016 and 12.00am and 12.46am on 25 March 2016.

³⁶ Email of 18 May 2016 page 261.

frequent emotional breakdowns and finding it difficult to concentrate at school.³⁷

- [56] The QCT accept in its submissions that one of the mitigating factors in this case are that CXJ cooperated with the disciplinary process.³⁸ CXJ did not attend the request interview with the QCT, but instead submitted a statutory declaration which dealt with each of the allegations.³⁹ It may be to his credit that he negotiated and agreed the statement of agreed facts. The truth is however, that since CXJ was suspended early in the process he had little choice but to cooperate with the disciplinary process if he wished to try to continue to teach.
- [57] The QCT also accepts that CXJ has demonstrated sufficient insight into his offending conduct as evidenced by his treatment and engagement with psychologists and the opinions expressed by them.⁴⁰ We do not agree.
- [58] When considering this important question, we note that CXJ first received counselling after he had been challenged about his behaviour. He first attended for counselling on 12 July 2016.⁴¹ The reports from the psychologist show that on that day he presented with symptoms of depression, anxiety and stress. Tests for those conditions returned extremely severe. CXJ had told the psychologist that his condition had developed over time and was caused by a number of stressors – including feeling unsupported and undermined at work, where his role was constantly changing, the pregnancy of his wife and birth of his daughter with a feeling of being increasingly isolated/abandoned, and guilt because he was accessing sites of pornographic material.
- [59] This accords with what CXJ says in his statutory declaration of 5 December 2016. He says that he was depressed in 2016 before he started sending the emails and that he felt flattered by the attentions of the student – it made him feel both buoyed up and attractive. He was vulnerable to her flirtatious behaviour, although the behaviour was not sexually flirtatious – it was a showing-off behaviour.
- [60] CXJ attended 12 counselling sessions with that psychologist. The report says that the complete inappropriateness of CXJ's contact with the student was discussed. CXJ expressed the view in the sessions that he believed no harm was done to the student, but the psychologist emphasised that CXJ was not in a position to determine that and it was safer to accept the view that all contact of the nature which took place should be avoided, 'lest any harm occur'.

³⁷ Emails of 13 June 2016 pages 600 to 602.

³⁸ Submissions of 23 January 2018 paragraph 23.

³⁹ Page 793.

⁴⁰ Submissions of 23 January 2018 paragraphs 47 to 49.

⁴¹ Psychologist's report filed in case number OCR167-16 (in the proceedings concerning his suspension from teaching).

[61] This demonstrates therefore that during these counselling sessions CXJ may have been oblivious to the student's vulnerability to his betrayal of trust.

[62] That this was indeed the case is demonstrated by his statutory declaration of 5 December 2016. There, CXJ admits sending the emails but says that he never thought for a moment that he was causing the student any harm in an emotional or psychological sense.

[63] It is further demonstrated by what is said in a report dated 1 November 2017 from a counsellor who had been counselling CXJ since January 2017 both individually but also with his wife. The counsellor said:

In his individual counselling sessions CXJ has changed his perception of past behaviour that led to his suspension as a teacher. From minimising his behaviour, and not admitting that his contacting a student online was wrong, he now takes full responsibility. He now understands that his employment as a teacher placed him in a position of trust and that he betrayed this trust.

[64] It appears therefore that as late as January 2017 and possibly after that date, CXJ was not admitting that his online contact with the student was wrong. Reportedly, at some point between January 2017 and 1 November 2017 CXJ had come to realise that he had been in a position of trust and that he betrayed this trust.

[65] In submissions to the tribunal dated 3 March 2017 CXJ says:

I now fully understand that my behaviour and actions could and may have seriously harmed the student psychologically and emotionally, I sincerely hope and pray that this is not the case.

[66] Assuming that CXJ is being truthful in this statement, the tribunal is of the view that the length of time it took for CXJ to reach this level of acceptance is of concern. He was certainly downplaying what happened in the latter part of 2016. He was firmly of the view that he did not pose an unacceptable risk of harm to children in November 2016.⁴²

[67] We note also that at that time he was still denying that the pictures he sent were of his own penis.⁴³ This is something he has now admitted in the statement of agreed facts. We do not think this is something he could have been mistaken about. We note that there was evidence in the investigation showing that the background to the pictures appeared to be of his own bathroom.⁴⁴ This may have prompted his acceptance of that matter.

[68] We agree with the submission made by the QCT about CXJ's submissions of 22 December 2017 which were filed for the hearing before us. The QCT

⁴² Submissions dated 11 November 2016 in the suspension proceedings.

⁴³ Statutory declaration of 5 December 2016.

⁴⁴ Page 22 of the bundle.

says that he continues even now to downplay his conduct by describing the emails as merely 'roleplaying', and that he had no intention of ever going through with any proposal in the emails because it would have jeopardised his career and his marriage. As we have found above, this is belied by the high risk approach to his identity being guessed by the student. We agree with the QCT that the emails demonstrate that CXJ had a sexual interest in the student and this was more than roleplaying as he claims.

[69] In his submissions, CXJ says that he intended his emails to be harmless and flirty – not hurting anyone. He points out that it was he who stopped the communications as he felt it had got out of hand and the student was beginning to feel annoyed and uncomfortable. He says that he stopped before he was made aware of the allegations on 8 June 2016. Again, this ignores the high risk of being identified which would be the cause of damage resulting from the betrayal of the student's trust.

[70] CXJ has provided a report from another psychologist dated 22 November 2017. CXJ self referred to this psychologist on 24 October 2017 seeking a report to be given to the tribunal. The psychologist concluded that CXJ was not now suffering any obvious mental health problems and that 'his actions involving a young female student likely reflecting behaviour that was immature and risk taking'. The psychologist expressed the view that the trigger for CXJ's engagement in inappropriate behaviour with a student was sexual frustration in his marital relationship. He said:

In my opinion, CXJ has paid a significant penalty for his indiscretions, by his suspension, and by the impact it has had on his personal and professional life. He has shown considerable remorse, and has responded in a relatively mature manner through counselling. The various risk assessment tools did not indicate that he was likely to be a significant risk for reoffending.

[71] The clear suggestion here is that CXJ ought to be able to return to teaching immediately, which is the outcome that CXJ seeks. Our concern with the above opinion is that it tends to argue the case for CXJ. We are concerned therefore that what ought to be an independent opinion is really advocacy on his behalf. We note that CXJ repeated this in similar words in his submissions of 22 December 2017.

[72] In his submissions CXJ does not anywhere address the question of the student's heightened state of vulnerability. Despite knowing about the alleged rape, in his statutory declaration of 5 December 2016 he denied that the student was particularly vulnerable. It would appear he has not revised this view. Nor does CXJ address in his submissions the question of the betrayal of trust in his pastoral role. This is another indication we think, that he has not yet understood the importance of this.

The tests to apply when considering sanction

[73] When considering the question of sanction, we take into account the objects of the establishment and operation of the QCT and the disciplinary processes in the Education Act:⁴⁵

3 Main objects of Act

(1) The main objects of the Act are—

- (a) to uphold the standards of the teaching profession; and
- (b) to maintain public confidence in the teaching profession; and
- (c) to protect the public by ensuring education in schools is provided in a professional and competent way by approved teachers.

[74] It is settled that the disciplinary proceedings are not intended to punish the teacher but are to further these objects. They can also provide general deterrence to the members of the teaching profession and specific deterrence to further irresponsible conduct by the teacher in question.⁴⁶

[75] One of the aims of the tribunal is to achieve consistency,⁴⁷ and this is only fair to the teacher.

[76] We have received submissions from both sides that the appropriate sanction in this matter is to prohibit CXJ from reapplying for teacher registration or permission to teach for a period of time. We agree that this is an appropriate sanction. The question is how long should that period be? We note that until the law was changed as from 16 January 2012, the maximum period of prohibition was 5 years from the day when the order was made.⁴⁸ After that change, the tribunal is able to prohibit a reapplication indefinitely.

[77] The QCT referred us to a number of previous decisions of the tribunal in which a period of prohibition was imposed. One related to events which straddled 16 January 2012. All the others were either decided or related to events prior to that date.

[78] We note that in *Queensland College of Teachers v Harvison* [2013] QCAT 684 the change of the maximum prohibition period from 5 years to indefinite was noted. In that case it would appear that this was one of the reasons why the tribunal declined to impose a smaller period of prohibition which would have been consistent with three previous decisions that it considered.⁴⁹

⁴⁵ Section 3(1).

⁴⁶ *Queensland College of Teachers v TSV* [2015] QCAT 186, [25].

⁴⁷ Section 3(d) of the QCAT Act.

⁴⁸ Section 160(2)(j) in the case of an approved teacher, and section 161(2)(c) in the case of a former approved teacher.

⁴⁹ At [61].

[79] The same approach was taken in *Queensland College of Teachers v Metcalf* [2015] QCAT 147 where the tribunal said:

[77] We observe that whereas the Tribunal may now cancel an approved teacher's registration or prohibit a former approved teacher from reapplying for registration for a stated period or indefinitely, at the time of the comparative decisions that was not necessarily the case. The maximum period was previously five years. Accordingly, a five year cancellation or prohibition was likely only in respect of the most serious conduct, and lesser transgressions necessarily attracted a briefer period of prohibition (or cancellation for an approved teacher). It may be, having regard to the now indefinite period available, that over time there may be increasingly lengthy periods of cancellation or prohibition imposed for transgressions which previously attracted a shorter period. It would not be appropriate however, to ignore reasonably comparative decisions in deciding the period of prohibition to be imposed on Mr Metcalf.

[80] Bearing in mind that some 6 years has now passed since that change, we regard the cases before that change as less helpful in trying to achieve consistency in the period of prohibition than more recent ones.

[81] In *Queensland College of Teachers v FDA* [2017] QCAT 224 there was a prohibition from applying for registration or permission to teach for a period of four years from the date of the order. FDA was a teacher at the school where the student was in year 12. While she was still at school there was frequent communication between them in the form of SMS messaging, Snapchat and Instagram and they spent time together outside school hours, and on one occasion spent the night together when they hugged. After the student had graduated from year 12, they had a consensual sexual relationship and this continued for at least 3 months. An aggravating factor was that FDA had not cooperated with the disciplinary process by providing any submissions or accepting any allegations.

[82] We have regard to *FDA* although whilst also recognising the differences between that case and the case of CXJ.

Conclusion

[83] It is agreed in the statement of agreed facts that the allegations (as particularised) were failures to maintain appropriate boundaries within the teacher-student relationship at school. It is agreed therefore that the 'ground for disciplinary action' against CXJ under section 92(1)(h) of the Education Act is established. That ground is that 'the person behaves in a way, whether connected with the teaching profession or otherwise, that does not satisfy the standard of behaviour generally expected of a teacher'. We agree with this and make the appropriate order.

[84] Since CXJ is now a former approved teacher, the provisions of section 161 prescribe the sanctions that we can impose. On the basis set out in section 161(2)(c), that had CXJ currently been an approved teacher we

would have made an order cancelling the teacher's registration, we may prohibit him from applying for registration or permission to teach. Such an order must be for a stated period from the date the order is made.

- [85] We should balance the aggravating factors in this case and the mitigating factors and consider these having regard to the aims of the disciplinary process. Here the aggravating factors are that as the QCT submits, CXJ's conduct was 'highly inappropriate' and 'protracted and manipulative'. We think also that the conduct was done with a total disregard of the harm which was almost certain to result from the student's suspicion or discovering that the teacher she most admired and trusted was in fact simply treating her as a sex object. The likelihood of harm was increased by her particular vulnerability of which CXJ should have been aware, but to which he seemed to be oblivious.
- [86] CXJ's insensitivity about this was demonstrated by his continuing as Itsa Secret to email the student despite her requests to him to stop, with an explanation of her vulnerability.
- [87] It is of concern that the serious risk of harm to the student was not obvious to CXJ at the time and that it has taken at least nine months since he was challenged with the allegations for CXJ to accept the possibility of harm to her, despite over that time being counselled about that specific matter.
- [88] CXJ continues to downplay the seriousness of his conduct by continuing to insist that the emails were merely roleplay, which is belied by the clues he gave to the student to enable her to guess his identity.
- [89] CXJ continues to be insensitive to the student's particular vulnerability and the seriousness of his conduct bearing in mind the particular trust she had for him which arose from his pastoral role.
- [90] The mitigating factors are that CXJ at the time may have been going through his own personal and family problems, and he agreed a statement of facts.
- [91] In the circumstances we think the correct period of time before which CXJ can reapply to teach is the equivalent of four years from the date of his suspension, which was on 8 September 2016. Therefore he may not reapply until 8 September 2020.⁵⁰ We make that order on the basis that we would have made an order cancelling CXJ's registration or permission to teach had he been an approved teacher at the time of this decision.
- [92] Under section 161(2)(d) of the Education Act we may make an order that a particular notation or endorsement about the teacher be entered on the register. For the reasons we have given we do think we should require a formal psychological assessment if CXJ in the terms as appears in our order.

⁵⁰

We must give a stated period from the date of our order: s 161(2)(c).

Non-publication order

[93] A non-publication order has been made by the tribunal throughout these proceedings and we continue that order. This is solely to protect the student's identity from being publicised. It is in the interests of justice that students are not inhibited from raising matters of concern about their teachers by the fear of their identity being publicised. Because of the non-publication order, these reasons will be published in a de-identified form.