

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v Emma Beth Halbish-Rayner* [2019] QCAT 154

PARTIES: QUEENSLAND COLLEGE OF TEACHERS  
(applicant)  
**v**  
EMMA BETH HALBISH-RAYNER  
(respondent)

APPLICATION NO/S: OCR084-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 27 May 2019

HEARING DATE: 21 May 2019

HEARD AT: Brisbane

DECISION OF: Senior Member Aughterson

ORDERS: **The suspension of Emma Beth Halbish-Rayner is continued.**

CATCHWORDS: EDUCATION – TRAINING AND REGISTRATION OF TEACHERS – suspension of a teacher – where the Queensland College of Teachers suspended the teacher’s registration – where the teacher is convicted of criminal offences – whether the teacher does not pose and unacceptable risk of harm to children - whether the suspension should continue

*Education (Queensland College of Teachers) Act 2005 (Qld) s 7, s 49, s 50, s 53, s 55*

*Queensland College of Teachers v LDW* [2017] QCAT 048 [10]-[11].

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

## REASONS FOR DECISION

- [1] The decision in this matter was made on 21 May 2019. These are the reasons for that decision.

- [2] The respondent has been provisionally registered in Queensland as a teacher since December 2017. On 21 March 2019, the Queensland College of Teachers ('the College') suspended her registration pursuant to s 49 of *Education (Queensland College of Teachers) Act 2005* (Qld) ('the Act').
- [3] By s 49 of the Act, the College may suspend a teacher's registration if it reasonably believes the teacher poses an unacceptable risk of harm to children. By s 50(1), the College must give notice of the suspension to the teacher, which notice includes a statement that the Tribunal will review the continuation of the suspension to decide whether the teacher poses an unacceptable risk of harm to children.<sup>1</sup>
- [4] In accordance with s 50(5) of the Act, the College has referred the continuation of the suspension to QCAT for review and seeks an order that the suspension continue. By s 53(1) the Tribunal must decide whether to continue the suspension, while s 53(3) requires the Tribunal to continue the suspension unless satisfied that the teacher does not pose an unacceptable risk of harm to children.
- [5] As required by the Act, directions were made by the Tribunal on 3 April 2019 inviting submissions as to why the respondent did not pose an unacceptable risk of harm to children. The respondent did not file any submissions in the Tribunal.
- [6] While the Act does not define the term "unacceptable risk of harm", by s 7 of the Act 'harm' to a child is 'any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing'. As to 'unacceptable risk', see *Queensland College of Teachers v LDW*:<sup>2</sup> "this formulation directs the Tribunal to an assessment of the 'chances' of the risk occurring and the magnitude of potential harm if it did occur, and requires a balancing exercise of advantages and detriments".
- [7] By the terms of s 53(3)(b) of the Act, it is not required that the Tribunal be satisfied that there is an unacceptable risk of harm.<sup>3</sup> Rather the sub-section is cast in negative terms. The Tribunal must decide to continue the suspension unless satisfied that the teacher does not pose an unacceptable risk of harm to children.
- [8] The notice of suspension set out the College's reasons for forming the view that the respondent posed an unacceptable risk of harm to children. The given reasons were:<sup>4</sup>
- I. In June 2018, the respondent was convicted of a number of offences involving forgery, uttering, fraud, attempted fraud and stealing. No conviction was recorded and she was placed on probation for 12 months.
  - II. Consequent upon conduct arising during the probation period, the respondent was convicted of a number of further offences involving forgery, uttering, fraud, attempted fraud and stealing. In December 2018, the respondent was ordered to pay restitution, sentenced to 5 months imprisonment and granted immediate parole.

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<sup>1</sup> The Act, s 50(3)(c). The 'review' is conducted in the original jurisdiction of the Tribunal: see s 53(2) of the Act.

<sup>2</sup> *Queensland College of Teachers v LDW* [2017] QCAT 048 [10]-[11].

<sup>3</sup> See also s 55(1)(b) of the Act.

<sup>4</sup> Notice of Suspension, 21 March 2019 at [3]-[9].

- III. In March 2019, the respondent was charged with a number of offences involving forgery, uttering, fraud, attempted fraud, stealing and attempted stealing.
- [9] In the notice of suspension it is stated that the offending and alleged behaviour has primarily involved forging documents in order to obtain opioid-based prescriptions and failure to pay for medical services and medications.<sup>5</sup> The notice of suspension also cites an Australian Institute of Health and Welfare publication,<sup>6</sup> which refers to the effects of opioid use including “giving a higher priority to using the substance than to other obligations, such as work or study ... antisocial behaviour, and mental health and behavioural disorders”.<sup>7</sup>
- [10] In the notice of suspension, the College expressed concern that should the respondent return to her teaching position it could not be satisfied that she would be able to manage classroom activities and maintain a safe learning environment and, given her admitted opioid based drug addiction,<sup>8</sup> she posed an unacceptable risk of harm to children in the classroom.
- [11] As noted above, no submissions have been received from the respondent. On the material before me, I am not satisfied that the respondent does not pose an unacceptable risk of harm to children. I therefore order that the suspension of the respondent’s registration as a teacher is to continue.
- [12] It is noted that under s 55(6) of the Act, the respondent may apply within 28 days of the notice of this decision to QCAT for review of this decision. She may at that point provide any additional material which may support a submission that she does not pose an unacceptable risk of harm to children.

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<sup>5</sup> Ibid at [10]-[11].

<sup>6</sup> Ibid at [13]: ‘Opioid harm in Australia and comparisons between Australia and Canada’, Australian Institute of Health and Welfare, 2018.

<sup>7</sup> Ibid at 5 and 69.

<sup>8</sup> Queensland Police Service Court Brief 1 August 2018, annexed to Application or referral disciplinary proceeding, filed 27 March 2019.