

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v Teacher XBW* [2019]
QCAT 240

PARTIES: **QUEENSLAND COLLEGE OF TEACHERS**
(applicant)
v
TEACHER XBW
(respondent)

APPLICATION NO/S: OCR290-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 19 August 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell
Member Goodman
Member Griggs

- ORDERS:
1. **Teacher XWB's registration is cancelled.**
 2. **Pursuant to section 160(2)(j) of the *Education (Queensland College of Teachers Act) 2005 (Qld)*, Teacher XWB is prohibited from applying for registration or permission to teach for a period of three years and six months from the date of this decision.**
 3. **A notation is to be entered in the register of teachers that should Teacher XBW apply for registration or permission to teach after the expiry of the cancellation period, the application must include an independent psychologist's report satisfactory to the Queensland College of Teachers addressing the following:**
 - (a) **An assessment of the teacher's appreciation of the following:**
 - (i) **The legal obligations of teachers and tutors;**
 - (ii) **Differentiating between personal and professional relationships;**
 - (iii) **Development and maintenance of professional standards when working**

with young people and actively determining and implementing professional boundaries with individual students;

- (iv) Personal and social behaviour that would compromise the professional standing of a teacher and the profession of teaching;
 - (v) What constitutes inappropriate communication;
 - (vi) Understanding the effect of inappropriate relationships with students;
 - (vii) The awareness of the trust and power granted to a teacher;
 - (viii) Understanding and full adherence to the Queensland College of Teachers' Code of Ethics;
- (b) The psychologist's report must also include:
- (i) An assessment from the psychologist of the likelihood of Teacher XBW engaging in a similar type of behaviour in the future;
 - (ii) An indication from the psychologist about whether the psychologist is satisfied that Teacher XBW has adequately understood and addressed the above;
 - (iii) Confirmation that the psychologist was provided with copies of this decision and the referral under section 97 of the Education (Queensland College of Teachers) Act 2005 (Qld).

4. The publication of any information that could identify the child, the teacher and the school involved in the disciplinary matter, is prohibited pursuant to section 66 of the of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*, with the exception that the Queensland College of Teachers may publish the decision and these reasons to:

- (a) Any employer who employs, or is considering employing, Teacher XBW in a teaching role or in child-related employment;
- (b) Teacher XBW's current and future health

practitioners;

(c) Other teacher regulatory authorities;

(d) The chief executive (employment screening).

CATCHWORDS: EDUCATION – SCHOOLS – GOVERNMENT SCHOOLS – TEACHERS’ EMPLOYMENT AND CONDITIONS OF SERVICE – DISCIPLINARY MATTERS – where teacher engaged in inappropriate communications with a student – whether ground for disciplinary action – appropriate sanction

Education (Queensland College of Teachers) Act 2005 (Qld), s 3, s 160

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

Queensland College of Teachers v DRR [2012] QCAT 671

Queensland College of Teachers v FDA [2017] QCAT 224

Queensland College of Teachers v Teacher Max [2013] QCAT 436

Queensland College of Teachers v PPK [2019] QCAT 59

Queensland College of Teachers v TSV [2015] QCAT 186

REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

APPEARANCES:

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

Introduction

- [1] Teacher XBD has been registered as a teacher in Queensland since 4 March 1991. His registration was suspended on 30 January 2017 after allegations of inappropriate contact were made by a recently graduated female student. His registration remains suspended.
- [2] The Queensland College of Teachers (‘QCT’) made a referral to the tribunal for disciplinary action against Teacher XBD on 18 November 2018. The QCT has alleged that XBD engaged in inappropriate communications and interactions with a female student in year 12 and shortly after her graduation using the school email system, as well as private emails and text messages. In particular, it is alleged that

the communications and interactions were without valid educational purpose, and were flirtatious, romantic and sexualised.

- [3] After the allegations were disclosed to teacher XBW, he resigned from his position with Education Queensland. He has not participated in any part of the investigative process or tribunal process, save for requesting a confidentiality order.

Legal framework

- [4] Under section 92(1)(h) of the *Education (Queensland College of Teachers) Act 2005* (Qld) ('the QCT Act'), the following is a ground for disciplinary action:

(h) 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

- [5] Upon referral of a matter to the Tribunal by the QCT, the Tribunal, if it decides that that a ground for disciplinary behaviour is established, may make any of the orders set out in s 160 of the QCT Act. In deciding whether there is a ground for disciplinary action, the Tribunal must have regard to any relevant previous decision of which it is aware.¹

Particulars of the allegations

- [6] The particulars identified by the QCT regarding the ground for disciplinary action under s 92(1)(h) of the QCT Act are set out below.

- [7] It is alleged by the QCT that:

- (a) During the 2016 school year, Teacher XBD engaged in inappropriate communications with a student using the school email system and utilised his position as a teacher to pursue and maintain a personal relationship and communication with her, which did not have a genuine educational purpose. Some specific examples include:
- (i) Advising her about her grades before other students and asking her not to tell other students. For example, 'I know you are keen to get your mark for Task 3 so I thought I'd tell you A+. I haven't told the others what they got and I haven't finished marking either so keep it on the DL or LD or whatever it is...'
 - (ii) Making comments about other teachers.
 - (iii) Providing private Instagram details on school email on two occasions.
 - (iv) Making flirtatious comments, including 'It's a good look for leggy blondes'.
- (b) Between 19 November 2016 and approximately 19 December 2016, Teacher XBD acted unprofessionally and inappropriately with a former student. Some specific examples included:

¹ QCT Act, s 158(2).

- (i) Sending a number of poems one of which she considered to be very romantic in nature and a number of short stories that were sexually explicit;
- (ii) Asking the former student about a previous relationship and whether her ex-boyfriend made her orgasm during sex;
- (iii) Visiting the former student at her place of work without her consent;
- (iv) Indicating that he wanted to start a relationship but had to be careful because of his job;
- (v) Sending an email with subject 'Onanism', in which he asked 'How often do you do it? Where? And what do you think about while doing it?'

Is a disciplinary ground established?

- [8] In considering these allegations, the Tribunal has had the benefit of the evidence as set out in the confidential Investigation Report commissioned by the QCT dated 17 July 2017, and supporting documentation. That documentation provides evidence in support of each of the QCT's allegations.
- [9] Teacher XWB has chosen not to respond to any of the allegations or present any independent evidence. He stated that 'while I do not admit to any of the allegations, I do not wish to make a submission at this time'.
- [10] In the absence of any evidence by Teacher XBW which would refute the documented allegations made by the QCT, the Tribunal finds that the stated ground for disciplinary action has been established. We are satisfied that the above behaviour does not meet the standard of behaviour generally expected of a teacher and amounts to serious boundary violations.

What is the appropriate sanction?

- [11] The purpose of a disciplinary proceeding is not to punish the teacher, but to promote the objects of the QCT Act.² In summary, these relevantly involve upholding standards in the profession, maintaining public confidence in the profession, and protecting the public by ensuring that education is provided in a professional and competent way by approved teachers.
- [12] In determining sanction, we considered the following factors:
- (a) Teacher XBD was a not only a Head of Department but the student's English Extension teacher – a position of significant authority with regard to the student and her educational outcome;
 - (b) Teacher XBD made romantic and sexual advances towards the student immediately after she graduated on 18 November 2016 which caused the student distress and made her upset and which she perceived as 'really creepy and invasive'.

² QCT Act, s 3(1).

- (c) Teacher XBD has provided no evidence to the tribunal to indicate that he has reflected upon his conduct, recognised the potential harm to the student, or acknowledged the inappropriateness of his behaviour.
- (d) The evidence before the Tribunal indicated that the behaviour appears to be calculated and premeditated with the expressions of interest of a romantic and sexual relationship waiting until after graduation and then escalating indicating that there was some understanding of the inappropriateness of the behaviour.
- (e) Teacher XBD's seniority and experience, being 49 years old and registered for a period of over 25 years meant that he should have been thoroughly aware of the appropriate professional conduct and boundaries that must exist between teachers and students.
- [13] By virtue of a teacher's position – particularly a Head of Department, disparities in age, maturity and life experience, and the inherent vulnerability of young people, there is a power imbalance between teachers and students which must not be exploited. In respect of former students, this power imbalance continues after the student finishes school. It takes time to dissipate.³
- [14] In *Queensland College of Teachers v Teacher Max*,⁴ it was stated that:
- Teachers are expected to maintain a professional relationship with, and keep a professional distance from students.
- [15] It is self-evident that teachers must not pursue or engage in romantic or sexual relations with students, and in the 21st century all teachers should be aware of this expectation.
- [16] The Tribunal was referred by the QCT to a number of authorities, including *Queensland College of Teachers v DRR*.⁵ In that case, a 31-year-old teacher sent sexual texts to a student which was viewed as 'grooming' behaviour. He was prohibited from teaching for a period of two and a half years with a notation for a psychological report.
- [17] We consider that Teacher XBD's focus was calculated and premeditated. He has not shown any insight or remorse. His behaviour extended to expressions of intimacy, inappropriate discussions and was not isolated but occurred over a period. These are aggravating factors warrant a prohibition period longer than in DRR.
- [18] Overall, we are of the view that Teacher XBD's behaviour showed a pattern of serious boundary violations over an extended period, aggravated by his lack of insight and remorse. He placed his own desires above his paramount duties to uphold standards and maintain public confidence in the teaching profession. The community expects a teacher to have sufficient insight to know that this behaviour can harm young people. His behaviour was wrong because of the inherent power imbalance.

³ *Queensland College of Teachers v PPK* [2019] QCAT 59; *Queensland College of Teachers v FDA* [2017] QCAT 224.

⁴ [2013] QCAT 436.

⁵ [2012] QCTA 671.

- [19] In our view, the objects of the QCT Act are met by cancelling Teacher XBD's registration and prohibiting him from re-applying for registration for a period of three and a half years from the date of cancellation. Preventing Teacher XBD from teaching for a period of three and a half years will convey the Tribunal's strong disapproval of his behaviour, deter others and allow him to reflect on why it is not appropriate and its impact on the student and his profession.⁶
- [20] The Tribunal had no evidence of Teacher XBD undergoing counselling or other professional courses relating to the conduct. The Tribunal is concerned about Teacher XBD's apparent lack of insight. We will therefore include a notation requiring Teacher XBD to provide a psychological assessment with any application for registration.

Is a non-publication order appropriate?

- [21] The Tribunal may make orders under s 66 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) prohibiting the publication of information which may identify a party or any other person affected by a proceeding for, amongst other reasons, the interests of justice.
- [22] We do not consider it to be in the interests of justice to publicly identify the student. Publication of identifying details could harm the student by affecting her reputation and lead to further psychological consequences. We therefore consider it is in the interests of justice to make an order prohibiting the publication of any information in these proceedings that could identify the student in any way, including her name and address, the teacher and the school involved.
- [23] In making this confidentiality order, we have placed no weight on Teacher XBD's submissions regarding the humiliation he would suffer if his name was identified. The Tribunal's basis for making the confidentiality order rests solely with a concern for the student.

⁶ *Queensland College of Teachers v TSV* [2015] QCAT 186, [25].