

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v JBO* [2020] QCAT
132

PARTIES: **QUEENSLAND COLLEGE OF TEACHERS**
(applicant)

v

JBO
(respondent)

APPLICATION NO/S: OCR240-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 28 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Deane
Member Clifford
Member English

- ORDERS:
1. **The ground for disciplinary action is established, namely that JBO 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.**
 2. **JBO is prohibited from reapplying for registration or permission to teach until 6 September 2022.**
 3. **The Register of Teachers is to be endorsed with a notation that should JBO re-apply for registration or permission to teach after expiry of the period of prohibition, the application must be accompanied by an independent psychological report satisfactory to the Queensland College of Teachers addressing the following:**
 - (a) **An assessment as to whether the psychologist is satisfied that JBO has adequately understood and addressed the following matters:**
 - (i) **Differentiating between personal and professional relationships;**
 - (ii) **The legal obligations of teachers and**

tutors;

- (iii) The concept, and importance, of professional boundaries;
 - (iv) The development and maintenance of professional standards and professional boundaries when working with students;
 - (v) JBO's awareness of what constitutes appropriate and inappropriate communication and behaviour with students;
 - (vi) The impact of inappropriate communication, conduct and relationships upon students, families, schools and the profession;
 - (vii) The need to protect children and students from physical, psychological and emotional harm;
 - (viii) Risk assessment and early identification of potentially problematic situations and venues;
 - (ix) How to achieve realistic solutions to avoid the risk of harm to students;
 - (x) The power granted to a teacher;
 - (xi) The extent and nature of the trust invested in a teacher by students, colleagues, parents and the community;
 - (xii) Conduct that would compromise the professional standing of a teacher and the teaching profession;
 - (xiii) The importance of full adherence to the Queensland College of Teachers Code of Ethics;
- (b) Confirmation that the psychologist was provided with copies of:
- (i) the Tribunal's orders and reasons for decision;
 - (ii) the Queensland College of Teachers referral under section 97 of the *Education (Queensland College of Teachers) Act 2005* (Qld); and
 - (iii) any statement of agreed facts.

4. JBO must bear all costs of, and associated with,

compliance with the Tribunal orders.

5. Publication is prohibited of any information which may identify JBO, the relevant student or relevant school (except as recited in the published reasons) other than:

(a) to the parties to this proceeding.

(b) the Queensland College of Teachers may provide a copy of the decision and the reasons for the decision to:

(i) any relevant body conducting an investigation or disciplinary proceedings relating to the matters giving rise to the proceedings;

(ii) the Chief Executive of the Department of Education;

(iii) other teacher regulatory authorities;

(iv) any employing authority for a school;

(v) any principal of a school who was provided with a copy of the notice of suspension under section 50(4) of the *Education (Queensland College of Teachers) Act 2005 (Qld)*;

(vi) the Minister for Education;

(vii) a relevant agency with whom the Queensland College of Teachers has entered into an information sharing agreement under section 287 of the *Education (Queensland College of Teachers) Act 2005 (Qld)*;

(viii) the Chief Executive of Employment Screening; and

(ix) any other entity relevant to the teacher's practice of the teaching profession.

(c) JBO may provide a copy of the decision and the reasons for the decision to any occupational regulatory body or employer to assist with full and frank disclosure of these disciplinary proceedings.

CATCHWORDS:

EDUCATION – TRAINING AND REGISTRATION OF TEACHERS – where former approved teacher engaged in sexual relationship with a student while an approved teacher – whether a ground for disciplinary action exists –

appropriate sanction considered

Education (Queensland College of Teachers) Act 2005 (Qld), s 3, s 92, s 158, s 161, s 164, s 165, Schedule 3
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 66

Briginshaw v Briginshaw (1938) 60 CLR 336
Queensland College of Teachers v ALE [2019] 143
Queensland College of Teachers v Armstrong [2010] QCAT 709
Queensland College of Teachers v CMK [2019] QCAT 271
Queensland College of Teachers v RGK [2019] QCAT 180
Queensland College of Teachers v RTM [2016] QCAT 501
Queensland College of Teachers v SGS [2017] QCAT 383
Queensland College of Teachers v Teacher FDA [2017] QCAT 224
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)

REASONS FOR DECISION

- [1] JBO was registered as a teacher in Queensland in January 2003. The events which lead to these proceedings occurred primarily in 2008. They relate to one student and were disclosed in late 2016 to JBO's then Principal. Following that disclosure, on 6 September 2017, the Queensland College of Teachers (QCT) suspended JBO's teacher registration. Subsequently JBO voluntarily surrendered his registration. He became a former approved teacher for the purposes of the *Education (Queensland College of Teachers) Act 2005* (Qld) (the QCT Act).¹
- [2] In 2019 the QCT referred this disciplinary matter to the Tribunal.² The facts are essentially not in dispute.³ In light of the evidence produced to the Tribunal we accept those agreed facts. JBO agreed to the conduct set out at Annexure A to the QCT's referral at an early time.⁴

¹ *Education (Queensland College of Teachers) Act 2005* (Qld), Schedule 3 ('the QCT Act').

² Filed 9 July 2019.

³ A joint statement dated 27 September 2019 was provided.

⁴ Response filed 4 September 2019 and in his statement of 17 November 2017 in the earlier proceedings (OCR196-17).

- [3] The parties made written submissions as to the appropriate disciplinary sanction and non-publication orders so that the matter could be determined on the papers.⁵

Is the ground for disciplinary action established?

- [4] We are satisfied the ground is established to the requisite standard.⁶
- [5] The QCT contends and JBO agrees that the agreed conduct establishes a ground for taking disciplinary action under section 92(1)(h) of QCT Act that JBO has behaved in a way, whether connected with the teaching profession or otherwise, that does not satisfy the standards of behaviour generally expected of a teacher.
- [6] JBO commenced employment at the relevant school in 2006. From some time later in 2006 when the student was in year 10 until 2008 when the student graduated from year 12 there was a direct teacher-student relationship.
- [7] JBO accepts that he failed to maintain appropriate professional boundaries within the teacher-student relationship with the student. In summary, he accepts that:
- (a) in 2007 during a school camp he spent a lot of time with the student, flirted with her and slept in a swag next to her;
 - (b) in 2008 JBO communicated with the student by way of personal email accounts⁷ and communication became increasingly familiar;
 - (c) in early 2008 JBO arranged to meet the student at a beach one night, conversed with her and kissed her;
 - (d) following that occasion, during 2008, JBO commenced and maintained an ongoing sexual relationship with the then Year 12 student, including:
 - (i) on four or five occasions arranging to meet at her home during school time while her parents were at work and engaging in sexual intercourse;
 - (ii) engaging in sexual intercourse in vehicles, at overnight accommodation at a hotel and at her home one evening when she was home alone;
 - (iii) during term 3 arranging for he and the student to take a day off school, spend the day at the beach together and engage in sexual intercourse in the sand dunes.
- [8] JBO also accepts that he maintained a sexual relationship for a few months after the student graduated from school including at overnight motel accommodation, which he booked.
- [9] The QCT Act does not define ‘the standard of behaviour expected of a teacher’, although the Tribunal has described the standard as
- the standard ‘reasonably’ expected by the community at large, as the actions of a teacher may impact directly upon the children of the community; and this in turn should reflect the standard that those in the teaching profession would expect of their colleagues and peers.⁸

⁵ Dated 25 October 2019 and 03 December 2019 (JBO’s submissions) and 19 November 2019 (QCT’s submissions).

⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁷ Rather than school email accounts.

⁸ *Queensland College of Teachers v Armstrong* [2010] QCAT 709, [33].

[10] The Tribunal has previously found that

There is an expectation that teachers will act professionally with students at all times, and in addition to building a rapport with students, teachers must maintain appropriate professional boundaries.⁹

[11] Regrettably the Tribunal has been required to address the inappropriateness of sexual relationships between teachers and students on many occasions.

[12] JBO's conduct clearly fails to satisfy the standard of behaviour expected of a teacher.

What is the appropriate disciplinary sanction?

[13] We are satisfied that a prohibition on reapplying for registration or permission to teach until 6 September 2022, being a period of five years from the date of suspension, is an appropriate sanction.

[14] The purpose of disciplinary action is not to punish but rather to uphold the standards of the teaching profession, maintain public confidence in the profession, and protect the public by ensuring that education is provided in a professional way.¹⁰ The sanction imposed is to provide both general deterrence to members of the profession and specific deterrence to the teacher.¹¹

[15] Section 161 of the QCT Act sets out the action the Tribunal may take where a ground for disciplinary action against a former approved teacher is established. This includes prohibiting re-registration for a stated period or indefinitely, where the Tribunal would have cancelled the registration had the teacher remained registered.¹²

[16] If JBO had remained registered we would have cancelled his registration. In the Referral the QCT contended that a prohibition period of between five and seven years from the date of suspension together with a requirement for a psychologist's report should he wish to re-apply for registration would be appropriate.

[17] The QCT referred us to what they regard as previous comparable decisions to assist in determining appropriate sanction.¹³ The periods of prohibition in those cases respectively were eight years from the date of the order;¹⁴ approximately seven years from the date of the order;¹⁵ seven years from the date his provisional registration had ended; and 4 years from the date of the order.¹⁶ The QCT's submitted, having regard to the circumstances of this case and the comparable decisions that a prohibition of five years was appropriate.¹⁷ JBO agreed with this submission.¹⁸

⁹ *Queensland College of Teachers v CMK* [2019] QCAT 271, [15]; *Queensland College of Teachers v RGK* [2019] QCAT 180, [22].

¹⁰ QCT Act, s 3 (The main objects).

¹¹ *Queensland College of Teachers v TSV* [2015] QCAT 186, [25].

¹² The QCT Act, s161(2)(c).

¹³ The QCT Act, s 158(2); *Queensland College of Teachers v RGK* [2019] QCAT 180; *Queensland College of Teachers v RTM* [2016] QCAT 501; *Queensland College of Teachers v SGS* [2017] QCAT 383; *Queensland College of Teachers v ALE* [2019] 143.

¹⁴ The relevant teacher having been suspended for about 2 years and 5 months prior to the date of the order.

¹⁵ The relevant teacher having been suspended for about 7 months prior to the date of the order.

¹⁶ The relevant teacher having been suspended for about 14 months prior to the date of the order.

¹⁷ Submissions filed 19 November 2019, [79].

¹⁸ Submissions filed 3 December 2019, [2].

Aggravating and mitigating circumstances

- [18] There are some aggravating and some mitigating circumstances relevant to our consideration of an appropriate sanction.
- [19] JBO had been in a direct teacher-student relationship with the student for about a year when the inappropriate conduct commenced. The direct teacher-student relationship continued when, in 2008, an intimate relationship with the student commenced and moved quite quickly to a sexual relationship with the then Year 12 student. The relationship was maintained for a period of approximately 11 months and ended a few months after the student graduated, at JBO's instigation.
- [20] The Tribunal has previously recognised that there is a power imbalance inherent in a direct teacher-student relationship, which takes time to dissipate even after the student has graduated.¹⁹ This is an aggravating circumstance.
- [21] In 2008 when the sexual relationship commenced JBO was 27 years old and the student was 17 years old. JBO had been teaching for five years and whilst not a novice was not a senior teacher.
- [22] He knew his conduct was wrong and took steps to ensure the relationship was not discovered including by using a personal email address, engaging in sexual intercourse in remote or isolated locations, at her family home when her parents were away and during school hours and by telling his wife he was at the gym or at a football game when he was with the student.
- [23] JBO only disclosed the conduct some eight years later when he became aware that the then former student, by that time a teacher herself, had told another teacher of their 2008 relationship and that teacher proposed to tell JBO's then Principal. Although his initial reaction was to try to negotiate a transfer from the relevant school to avoid the consequences of his inappropriate conduct he has co-operated and made admissions during his interview with the Department of Education and Training and in these and the earlier Tribunal proceedings.²⁰
- [24] He has shown insight into the impact that his conduct has on his suitability to teach. As mentioned earlier in these reasons he voluntarily surrendered his teacher registration. He has also demonstrated concern for the now former student and her family being impacted by these proceedings. His admissions have avoided the need for a contested hearing and the consequential increased costs to the QCT and the need for the former student to give evidence.
- [25] We consider RGK's conduct was more serious than JBO's conduct. There was evidence that the student in that case suffered immediate and long term psychological and physical harm.
- [26] RGK, RTM and SGS were more experienced teachers and the age difference between them and the relevant students was much greater than in this case.
- [27] Whilst each case turns on their own facts, we consider the most comparable case is ALE. JBO and ALE were of a similar age and experience as teachers when the conduct occurred and there was a similar age difference between them and the relevant students. ALE was not in a direct teacher-student relationship but he was

¹⁹ *Queensland College of Teachers v Teacher FDA* [2017] QCAT 224, [40].

²⁰ OCR196-17.

the coach of a school sporting team to which the student belonged. The student in ALE's case was a little younger, at 16 years old, than the student in this case when the sexual relationship commenced. Both ALE and JBO expressed remorse and cooperated in the investigation and disciplinary processes. Both agreed a statement of facts, consented to the matter being determined on the papers and did not oppose the sanction sought by the QCT.

[28] In light of these previous decisions and the mitigating factors present in the current matter we consider a prohibition period of five years to be appropriate.

[29] The QCT's referral seeks an order that a notation be entered on the register requiring that an independent psychologist report accompany any application for registration or permission to teach. JBO agrees to such a notation. We are satisfied that such a notation is appropriate.

Non-publication order

[30] A non-publication order was granted in the previous proceedings. JBO seeks a similar non-publication order in this proceeding.

[31] The Tribunal may make an order prohibiting publication of information that may enable a person who has appeared before the tribunal or is affected by a proceeding to be identified.²¹ The Tribunal may make such an order if it considers it is necessary to avoid endangering the physical or mental health or safety of a person or to avoid the publication of confidential information or information whose publication would be contrary to the public interest.²²

[32] There is independent evidence before us, which we accept, that JBO's mental health would be adversely affected by publication of his identity.

[33] We accept that it would be contrary to the public interest for information to be published that would identify the relevant student. Further, we consider publication of JBO's name and the name of the school would tend to identify or confirm the name of the student.

[34] We are satisfied that it is appropriate to make a non-publication order, with appropriate exceptions.²³

²¹ QCAT Act, s 66.

²² Ibid, s 66(2)(b), s 66(2)(d).

²³ QCT Act, s164, s 165.