

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v REC* [2020] QCAT 178

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

v

REC
(respondent)

APPLICATION NO/S: OCR047-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 15 May 2020

HEARING DATE: 16 April 2020

HEARD AT: Brisbane

DECISION OF: Member Traves
Member Robyn Oliver
Member Jones

ORDERS:

1. **REC is prohibited from reapplying for registration as a teacher or permission to teach for a period of twelve months from 2 July 2018.**
2. **The Register be endorsed with the following notation that any application by REC for re- registration must be accompanied by a detailed and independent psychologist's report addressing the following issues:**
 - (a) **Differentiating between personal and professional relationships;**
 - (b) **The legal obligations of teachers and tutors;**
 - (c) **The concept and importance of professional boundaries;**
 - (d) **The development and maintenance of professional standards and professional boundaries when working with students;**
 - (e) **REC's awareness of what constitutes appropriate and inappropriate communication and behaviour with students;**
 - (f) **The impact of inappropriate communication;**
 - (g) **The need to protect children and students from**

- physical, psychological and emotional harm;**
- (h) Risk assessment and early issue identification of potentially problematic situations and venues;**
 - (i) How to achieve realistic solutions to avoid the risk of harm to students;**
 - (j) The trust and power granted to a teacher;**
 - (k) The extent and nature of the trust invested in a teacher by students, colleagues, parents and the community;**
 - (l) Conduct that would compromise the professional standing of a teacher and the teaching profession; and**
 - (m) The importance of full adherence to the Queensland College of Teachers Code of Ethics.**
- 3. Any application by REC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of the Tribunal's orders and reasons for decision.**
 - 4. Any application by REC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of the QCT referral under section 97 of the Act.**
 - 5. Any application by REC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of any statement of agreed facts.**
 - 6. REC must bear all costs of, and associated with, compliance with the Tribunal's orders.**
 - 7. Other than to the parties to the proceeding, and until further order of the Tribunal, publication of any information which may lead to the identification of REC, the relevant student or relevant school is prohibited, other than to the extent necessary to enable the Queensland College of Teachers to meet its statutory obligations.**

CATCHWORDS:

EDUCATION – EDUCATORS – DISCIPLINARY MATTERS – where teacher engaged in inappropriate sexualised conduct with a student – whether ground for disciplinary action established – appropriate sanction

*Education (Queensland College of Teachers) Act 2005 (Qld), s 3, s 12(3)(a), s 92(1)(h), s 158, s 161, Schedule 3
Queensland Civil and Administrative Tribunal Act 2009*

(Qld), s 66

Queensland College of Teachers v Brady [2011] QCAT 464
Queensland College of Teachers v Clough [2011] QCAT 125
Queensland College of Teachers v DRR [2012] QCAT 671
Queensland College of Teachers v XBW [2019] QCAT 240
Queensland College of Teachers v QKE [2013] QCAT 548
Queensland College of Teachers v CXJ [2018] QCAT 117
Queensland College of Teachers v Banyai [2013] QCAT 180
Queensland College of Teachers v Genge [2011] QCAT 163

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

MEMBER TRAVES

- [1] I agree with the reasons of Member Oliver and Member Jones and with the Orders that they propose.

MEMBER OLIVER AND MEMBER JONES

Introduction

- [2] REC is a former approved teacher¹ under the *Education (Queensland College of Teachers) Act 2005* (Qld) ('the QCT Act'). He was first registered on 30 June 2016. On 22 January 2018 REC was suspended and on 2 July 2018 his name was removed from the register due to non-payment of fees. REC has accepted that he has engaged in misconduct which is the subject of this decision. At the time of the misconduct REC was 22 years of age and teaching in a high school as a relief teacher on a casual basis.
- [3] During 2016 REC taught a Year 10 Physical Education class for one lesson. Sometime in late November 2017 REC came in contact with one of the female students from that 2016 physical education class at a tutorial in the school library.
- [4] The misconduct appears to have started on this day, when the Year 11 student, then aged 16 years, picked up REC's phone in the library and took a number of 'selfies' on it. Although REC said that the photos had been deleted before leaving the library, in fact they had not been deleted and were the beginning of a two month period of texting and photographic communication between REC and the student that had no educational purpose.
- [5] The communication was eventually intercepted by the student's father on 13 December 2017 and brought to the attention of the Deputy Principal of the school the next day.

¹ Schedule 3 definitions in the QCT Act.

- [6] REC was suspended on 22 January 2018, the same day that the Queensland College of Teachers (QCT) appointed an investigator for the matter. On 30 November 2018 the Professional Capacity and Teacher Conduct Committee, the internal disciplinary body of the QCT referred the matter to the Tribunal.

The misconduct

- [7] REC sent naked pictures of himself to the student and encouraged her to do the same; he received naked and near-naked pictures of the student; he made comments about her body; he commented about assisting her losing her virginity; he suggested that communications be kept secret; he attended the student's home on two occasions; he kissed the student on the first occasion. There was no other personal contact between the teacher and the student.

Issues to be decided by the Tribunal

- [8] The issues to be decided by the Tribunal are:
- (a) Whether the 'ground for disciplinary action' is established,² namely that the person behaves in such a way, whether connected with the teaching profession or otherwise, that does not satisfy the standard of behaviour generally expected of a teacher;³ and
 - (b) If so, the appropriate sanction to be applied.⁴

Background about the conduct

- [9] In an agreed statement of facts and issues in dispute filed on 3 February 2020, it was agreed that:
- (a) during the week beginning 13 November 2017 the student took photographs of herself on REC's mobile phone;
 - (b) the student was able to access the camera without unlocking REC's mobile phone;
 - (c) on the second last day of the school year the student entered REC's car;
 - (d) REC drove a short distance;
 - (e) the student kissed REC before getting out of the car;
 - (f) on two consecutive mornings between 27 November 2017 and 8 December 2018, REC attended the student's residence before the start of the school day;
 - (g) the student was home alone on both occasions;
 - (h) on the first morning, a kiss occurred between the student and REC.
 - (i) from on, or about 23 November 2017, REC and the student communicated via Instagram and Telegram.

² QCT Act, s 158.

³ QCT Act, s 92(1)(h).

⁴ QCT Act, s 161.

- (j) There was an overall daily average of more than 90 inappropriate and overfamiliar electronic communications between REC and the student;
- (k) there were a number of sexualised photos and associated comments exchanged between REC and the student.
- (l) there is evidence that REC engaged in inappropriate and/or overfamiliar electronic communication with another Year 11 student who was a friend of the complainant student. REC believed he was communicating with the complainant student; and
- (m) there is evidence that REC offered to forward the ‘selfies’ taken by the student in the library to this second student, REC being unaware that the second student was signed into the complainant student’s phone account.

[10] A number of issues were disputed by one party or both. The disputed issues found to be corroborated through the investigation process are as follows:

- (a) The second student’s phone communications show that REC had not deleted the ‘selfies’ taken by the complainant student in the library.⁵
- (b) It was disputed that REC had offered the complainant student a ride home in his car. The second student’s phone communications revealed that ‘...he went to pick you up but I was there. He said it was awkward.’⁶
- (c) It was disputed whether REC had touched the student’s neck or bottom on the first visit to her residence when they kissed. The student’s phone communications revealed REC’s comment ‘I couldn’t keep my hands off your butt last time’.⁷
- (d) It was further disputed whether REC had nominated a favourite ‘selfie’ photo of the student taken by her in the library. The second student’s phone communication revealed ‘...the top one is his fav.’⁸
- (e) The final dispute concerned whether or not REC said that he was going to miss the student when he went away on holidays. The final day of phone communication settles this issue. On the second student’s phone conversations it was revealed on 23 November 2017 at 10.13 pm that: ‘He’s saying he is going to miss you for 8 weeks’.⁹ At 7.50 am on 8 December 2017: ‘I’m good today thank you! I miss you!’.¹⁰ At 8.35 am on the same day: ‘I will miss you every day’.¹¹ Later the same day at 5.21pm: ‘...I’ll miss you loads but know you’ll have a fun time!’¹²

[11] To place context around the seriousness of this matter it is necessary to consider some detail of the remaining texting conversations, the photographs and accompanying comments. There may have been up to ten further days of

⁵ QCT Document bundle p 319.

⁶ Ibid p 317.

⁷ Ibid p 274.

⁸ Ibid p 319.

⁹ Ibid p 320.

¹⁰ Ibid p 296.

¹¹ Ibid p 297.

¹² Ibid p 301.

texts/photographs deleted from the student's phone prior to the phone being taken by the student's father. This missing time frame was between 23 November and 4 December 2017 and was referred to by the student during the investigation.¹³

- [12] The conversations often began innocently but soon escalated to sexualised banter that included the exchange of revealing photos. The inappropriate conversations included how to meet up secretly while the student's parents were at work. There appeared to be manipulative play in REC's texts trying to lead the student on at various times, and at other times there were notes of more sinister impatience. In REC's own words 'It was a fun cycle that happened'.¹⁴
- [13] The following are examples of REC's 'encouraging/leading on' texts: 'miss you! This weekend was so hard'; 'I saw you at school! Wanted to run up so bad'; 'you seemed very different with me over the weekend...just not as interested'; 'this is so bad of us but I can't help it!'; 'yeah pretty boring and the days go slow and I don't get to see you which makes it a lot harder!'
- [14] The following texts are examples of texts the Tribunal considered more sinister in terms of the pressure REC placed on the student: 'you better be in undies at the front door Wednesday'; 'i'll see how scandalous the pic is before I come over'; 'Would be so nice but we wouldn't snuggle for long hahah'; 'I hope you are ready to lose your virginity'; 'I feel like mine have been more scandalous than yours' (referring to the naked photos the teacher sent); 'yeah! I want to see more though'.
- [15] While the texts in [14] and [15]¹⁵ above have been isolated from their context, it is evident that any one of these texts stands well outside the language of communication that would be appropriate in any teacher/ student relationship.

Is a ground for disciplinary action established?

- [16] From the outset of this inappropriate behaviour, REC did not act in the manner expected of a teacher by speaking to the student firmly about not touching his phone in the library and insisting at that time that she delete the 'selfies'.
- [17] REC made unauthorised arrangements with the student for him to drive her home in his car. He allowed her to get into his car and kiss him. He went to the student's residence on two occasions knowing that she was home alone and engaged in intimate physical contact. He communicated with her online which included the exchange of naked and near naked photographs. His comments included opinions about the student's appearance, the possibility of her losing her virginity to him, and numerous requests to keep their contact secret.
- [18] Teachers are expected to model responsible behaviour and to maintain professional boundaries at all times in their relationships with students.
- [19] REC behaved in ways that did not adhere to the satisfactory standards of behaviour expected of a teacher and therefore he is 'not suitable to teach'.¹⁶ The Tribunal finds a ground for disciplinary action is established.¹⁷

¹³ Ibid p 272.

¹⁴ Ibid p 227.

¹⁵ Ibid pp 269-320.

¹⁶ QCT Act, s 12(3)(a).

What is the appropriate sanction?

- [20] The objects of the QCT Act are to uphold the standards of the teaching profession, maintain public confidence in the profession, and to protect the public by ensuring that education is provided in a professional way.¹⁸ The purpose of disciplinary action is not to punish the teacher but to uphold these objects of the QCT Act and to provide ‘a general deterrence to the members of the teaching profession and specific deterrence to further irresponsible conduct by the teacher in question’.¹⁹
- [21] Various sanctions are available to the Tribunal under s 161 of the QCT Act. Previous decisions of the Tribunal establish that conduct of this nature would attract a sanction of cancellation, had REC maintained his registration. In addition, the Tribunal proposes a psychological report in the event of the teacher reapplying for registration.
- [22] The QCT relied on five previous decisions by the Tribunal to assist with the length of time of the period of exclusion.
- [23] In *Queensland College of Teachers v Clough*²⁰ the 30 year old inexperienced teacher had inappropriately commented during class with one student and had inappropriately communicated with, met with, and touched another student. There was a 15-year age gap between the teacher and the students. The teacher blamed the second student for her part in the communication, lacking insight and remorse for his own behaviour. He had been warned prior to the relevant conduct by the deputy principal for inappropriate class teaching practices and had given three differing versions of his story to investigators. He was disqualified from teaching for a period of three years and ordered to undergo a course of counselling to help him understand and develop some insight into the inappropriateness of his behaviour. The distinguishing features of Clough compared to this matter is that in comparison with the current matter, Clough was 10 years older than REC and the student involved was a year younger. Clough had been previously warned by his Deputy Principal to discontinue certain teaching practices and showed a complete lack of insight and remorse by blaming the student. This was a more serious matter, in our view, than the current matter.
- [24] In *Queensland College of Teachers v DRR*²¹ the 17 year old former student was vulnerable. The 29 year old, more experienced teacher sent photographs of his penis to the student and expressed his fantasy of a sexual relationship with her. He was prohibited from reapplication to teach for 30 months. The distinguishing features in DRR when compared to this matter is that DRR was more experienced, older, had misused his trust with a vulnerable student and had sent sexually explicit photos to the student. In addition, DRR had no insight into the seriousness of his conduct. His behaviour, in our view, is more harmful than that of REC.

¹⁷ QCT Act, s 92(1)(h).

¹⁸ QCT, s 3(1).

¹⁹ *Queensland College of Teachers v Brady* [2011] QCAT 464, [55].

²⁰ [2011] QCAT 125.

²¹ [2012] QCAT 671

- [25] *Queensland College of Teachers v XBW*²² concerned a mature 49 year old teacher of over 25 years' experience who sent sexualised communication to a Year 12 student. After the student's graduation this behaviour escalated, becoming more sexually explicit. XBW was the head of a department and as such was in a leadership position. There was no evidence of insight for his boundary violations over an extended period. XBW's case is far more serious than REC's conduct and is of little assistance for the limited reasons mentioned.
- [26] *Queensland College of Teachers v QKE*²³ is a further example of a mature 38 year old teacher with over 18 years' experience coming into contact with the 16 year old daughter of a friend. Text messages and photos were unwelcome and sexual in nature, and included a photo of himself under a blanket with his penis exposed. He ignored a request to stop the communication. His sanction was two years' prohibition from teaching together with a further six months on suspension. In our view, QKE was a more serious matter due to the age differences, the teacher's level of experience and the gravity of the unwelcome behaviour to a teenage student.
- [27] *Queensland College of Teachers v CXJ*²⁴ is a recent case illustrating serious misconduct towards a very vulnerable Year 12 student by a department coordinator in a leadership position, over 30 years of age and an experienced teacher. The behaviour was related to touching, hugging and explicit sexualised communication, with pressure on the student to meet up for sex, and downplaying the seriousness of his behaviour suggesting it was 'role play'. CXJ was given a four year prohibition from teaching. The conduct in this case is far more serious than REC's conduct and is of little assistance.
- [28] Other cases relevant to deciding the sanction include *Queensland College of Teachers v Banyai*²⁵ where the teacher was suspended for a period of 11 months before receiving a prohibition from teaching for 12 months. The misconduct concerned a 31 year old teacher who had five years' experience. He communicated online in an over familiar and sexual manner with students who were 14 and 15 years of age. This makes Banyai's case worse than REC's in that the teacher was more experienced and the children were younger. The teacher was cooperative in the disciplinary process.
- [29] *Queensland College of Teachers v Genge*²⁶ related to a young and inexperienced teacher who engaged in highly inappropriate online communication with a Year 12 student, over a three month period with suggestions of meeting for sex. This teacher co-operated with the process and was suspended for a period of over 10 months. Her prohibition from teaching was for a further eight months which places the facts and inappropriate conduct in Genge's case on a similar footing to those in this case.
- [30] We accept that REC has shown deep remorse for his conduct and apologised to the many people and children whose trust he abused through misuse of his power and position as a teacher.

²² [2019] QCAT 240.

²³ [2013] QCAT 548.

²⁴ [2018] QCAT 117.

²⁵ [2013] QCAT 180.

²⁶ [2011] QCAT 163.

- [31] We are also satisfied that REC has undergone a period of psychological counselling which appeared to address his own personal mental health issues. While this is important we consider a further course of counselling sessions are appropriate.
- [32] REC co-operated with the investigative process by adopting the agreed statement of facts thereby protecting the student from a need to be investigated in person.

The Orders

- [33] Having regard to the cases referred to above, REC's remorse, insight to his conduct and cooperation with the investigative process the Tribunal is satisfied that in all of the circumstances REC be prohibited from reapplying for registration for a period of 12 months from 2 July 2018.²⁷ In arriving at this sanction we have taken into account the period of suspension from 22 January 2018 to 2 July 2018. This means REC was eligible to reapply for registration from 2 July 2019.
- [34] In addition to the above sanction REC will be required to undergo a period of counselling according to the criteria applied by the QCT around the issues of boundaries should he wish to reapply for teacher registration.

Non-publication

- [35] Pursuant to s 66(1)(c) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) the Tribunal may make an order prohibiting the publication of information that may enable a person who has appeared before the Tribunal, or is affected by a proceeding, to be identified. The Tribunal may do so on the application of a party or on its own initiative.²⁸ We are satisfied that it would be contrary to the public interest for information to be published that would identify the relevant student. There is a possibility that the publication of the name of REC or the relevant school would lead to identification of the student. We make orders pursuant to s 66 of the QCAT Act prohibiting the publication of that information, other than to the extent necessary to enable the College to meet its statutory obligations.

²⁷ QCT Act, s 161(2)(d).

²⁸ QCAT Act, s 66(3).