

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Queensland College of Teachers v DTC* [2020] QCAT 95

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

v

DTC
(respondent)

APPLICATION NO/S: OCR149-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON 9 April 2020

HEARING DATE: 20 February 2020

HEARD AT: Brisbane

DECISION OF: **Member Kent**
Member Clifford
Member English

- ORDERS:
- 1. A disciplinary ground is established.**
 - 2. Under section 161(2)(c) of the Act, DTC is prohibited from applying for registration or permission to teach for a period of five (5) years from the date of decision (20 February 2020).**
 - 3. The Register be endorsed with the following notation that any application by DTC 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) The respondent's awareness of what constitutes appropriate and inappropriate communication and behaviour with students;**
 - (f) The impact of inappropriate communication,**

conduct and relationships upon students, families, schools and the profession;

- (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.**
- 4. Any application by DTC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of the Tribunal's orders and reasons for decision.**
 - 5. Any application by DTC 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.**
 - 6. Any application by DTC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of any statement of agreed facts.**
 - 7. DTC must bear all costs of, and associated with, compliance with the Tribunal's orders.**
 - 8. Other than to the parties to the proceeding, publication of any information which may lead to the identification of DTC, the relevant student or relevant school is prohibited until further order of the Tribunal.**

CATCHWORDS:

EDUCATION – EDUCATORS – DISCIPLINARY MATTERS – GOVERNMENT INSTITUTIONS – where teacher engaged in sexual relationship with a student – disciplinary action

Education (Queensland College of Teachers) Act 2005

(Qld)
Queensland Civil and Administrative Tribunal Act 2009
 (Qld)

Briginshaw v Briginshaw (1938) 60 CLR 336
Queensland College of Teachers v ALE [2019] QCAT
 143
Queensland College of Teachers v DGM [2018] QCAT
 194
Queensland College of Teachers v FDA [2017] QCAT
 224
Queensland College of Teachers v PPK [2019] QCAT 59
Queensland College of Teachers v RTM [2016] QCAT
 501
Queensland College of Teachers v SGS [2017] QCAT
 383
Queensland College of Teachers v WAS [2015] QCAT 61

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 DTC was registered in Queensland as a teacher from 16 January 2016 until 16 April 2019 when his registration was cancelled due to non-payment of the annual fee. He is therefore a ‘former approved teacher’ for the purposes of the *Education (Queensland College of Teachers) Act 2005* (Qld) (‘the Act’).¹
- [2] On 16 July 2018, the Queensland College of Teachers (‘QCT’) suspended his registration under section 49 of the Act on the basis he posed an unacceptable risk of harm to children.
- [3] The teacher is 37 years of age. The QCT suspended DTC’s registration on receiving notification under section 77 of the Act from the Department of Education and Training (‘DET’) alleging that, whilst employed as a teacher, DTC engaged in an inappropriate relationship with a student then aged 17 in 2017.

The conduct

- [4] The parties are in agreement that DTC engaged in the following conduct, that the conduct fell below the standard of behaviour expected of a teacher and that a ground for disciplinary action is therefore established under section 92(1)(h) of the Act.

¹ *Education (Queensland College of Teachers) Act 2005* (Qld), Schedule 3 (‘Education Act’).

- [5] During 2017, while DTC, then aged 34, was employed as a teacher at a State School, he engaged in an inappropriate relationship with a female student.
- [6] The student was at the same school and was in year 12 at the time, aged 17.
- [7] Although the student was at the same school, DTC did not directly teach her but was a sports coach and conducted tutorial sessions that the student attended.
- [8] There is no dispute about what happened and the parties have provided an agreed statement of facts.
- [9] The relationship developed between 23 June 2017 and 12 August 2017 when DTC engaged in email communication with the student that was inappropriate and/or overfamiliar and without valid educational context. Examples of emails from DTC are provided in an agreed statement of facts.
- [10] Between 16 September 2017 and 31 October 2017, DTC sent photos to the student via iMessage that were overfamiliar, inappropriate and/or sexualised. DTC also possessed photos of the student that were overfamiliar, inappropriate and/or sexualised. Examples of the photos are referenced in an agreed statement of facts including one photo of the student wearing DTC's sunglasses while in his car.
- [11] From, or about, 15 September 2017 until at least 28 July 2018, DTC engaged in and maintained a sexual relationship with the student/former student.
- [12] Between 15 September 2017 and 28 June 2018 DTC exchanged in excess of 44,000 iMessages with the student/former student. The messages comprised inappropriate personal and/or intimate and/or sexually explicit communication. Examples of these iMessages appear in an agreed statement of facts.
- [13] DTC was a teacher of 10 years' experience at the time of the conduct. Evidence is provided of his signed attendance at the school's annual Student Free Day program on 18 January 2017, including his participation in the 'Mandatory Training Code of Conduct and Student Protection'.²
- [14] DTC, in his submission, claimed that the reason that he made a poor decision to take part in the relationship was due to his marriage breakdown and this had clouded his judgement. This is contradicted by DTC's wife during her interview where she claims that they were married at the time. Her suspicions of an affair were raised around the end of August 2017 and then confirmed when she found photos and confronted DTC. She claims that she and DTC then had trouble with their relationship from that point. They continued to live together until September 2017.
- [15] The student's mother was aware of the relationship and this was acknowledged by her in her reference for DTC. The reference was in support of a Blue Card application and not directed to the QCAT proceedings. The reference from the student's father was generic and undated.

² QCT v DTC OCR 149-19 Investigation Report to PC&TCC 133, 134.

[16] DTC claims that there is no evidence to suggest that the student has been exposed to any harm. This is not supported by the student in iMessages, where she refers to being stressed, feeling responsible and having to lie.

[17] In *Queensland College of Teachers v PPK*,³ the Tribunal said:

[B]y virtue of a teacher's position, 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.

[18] Given DTC's age and length of teaching experience, there was a power imbalance that DTC exploited which, as the Tribunal recently noted, reduced:

...the quality and relevance of the student's consent to be involved in the relationship and to what degree.⁴

[19] The Tribunal considers that DTC's conduct does not meet community standards or the standards of behaviour generally expected of a teacher.

Is a ground for disciplinary action established?

[20] QCT contends, and DTC admits, that he is solely responsible for his conduct and that a penalty is deserving. He made the decision at the time to engage in the relationship and he knew that it was not acceptable and that there would be consequences. DTC engaged in an ongoing sexual relationship with a student in breach of the Code of Conduct and Student Protection.

[21] The Tribunal was of the view that the agreed statement of facts was reasonable, based on the evidence before it. In this statement, the parties agree that the conduct fell below the standard of behaviour expected of a teacher and establishes a ground for disciplinary action under section 92(1)(h) of the Act.⁵

[22] In the latter part of 2017, DTC failed to maintain professional teacher/student boundaries. He began email communication that was inappropriate and/or overfamiliar and without valid educational context. Photographs were exchanged that were overfamiliar and/or sexualised. A sexual relationship was commenced. In excess of 44,000 iMessages were exchanged with the student and these comprised inappropriate personal and/or sexually explicit content. The relationship continued into 2018.

[23] The Tribunal is satisfied that the ground for disciplinary action of behaviour 'in a way...that does not satisfy the standard of behaviour generally expected of a teacher'⁶ is established.

Legislative Framework

³ [2019] QCAT 59.

⁴ Ibid, [14].

⁵ Education Act, s 92(1)(h).

⁶ Ibid.

[24] In matters such as this disciplinary proceeding, the standard of proof of evidence is based on the case of *Briginshaw v Briginshaw*,⁷ where the appropriate standard is the reasonable satisfaction of the decision-maker with that degree of satisfaction varying according to the gravity of the fact to be proved.⁸ The allegations in this matter are serious and will be examined in this light.

[25] Schedule 3 of the Act states that a relevant teacher means an ‘approved teacher’, or a ‘former approved teacher’, and that an ‘approved teacher’ is one who holds registration or permission to teach. DTC was an ‘approved teacher’ and a relevant teacher at the time of the misconduct.⁹ He has since become a ‘former approved teacher’.

[26] Section 92 of the Act sets out the grounds for disciplinary action in practice and conduct matters. Numerous grounds are listed including:

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.¹⁰

[27] ‘Standard of behaviour’ is not defined in the Act but has been addressed by the Tribunal in a previous matter:

...the standard expected should be the standard ‘reasonably’ expected by the community at large, as the actions of a teacher may impact directly on 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.¹¹

[28] The QCT believes that a ground for disciplinary action exists and that this is not a QCT practice and conduct matter. The referral to QCAT by the QCT has been made under section 97 of the Act.

[29] The issues for the Tribunal are whether a ground for disciplinary action against the teacher is established under section 158 of the Act, and if so, the appropriate action to be taken against the teacher.¹²

[30] The QCT has referred the Tribunal to previous matters dealt with by the Tribunal which illustrate consideration of the protection of students from harm and as to not harming students.

[31] ‘Harm’ is defined in the Act¹³ as follows:

(1) **Harm**, to a child, is any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by –

⁷ (1938) 60 CLR 336, 361-362.

⁸ Ibid.

⁹ Education Act, Schedule 3.

¹⁰ Ibid, s 92(1)(h).

¹¹ *Queensland College of Teachers v Armstrong* [2010] QCAT 709, [33].

¹² Education Act, s 161.

¹³ Ibid, s 7.

- a) physical, psychological or emotional abuse or neglect; or
- b) sexual abuse or exploitation.

(4) Harm can be caused by –

- a) a single act, omission or circumstance; or
- b) a series or combination of acts, omissions or circumstances.

- [32] 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:

Teachers are always in a professional relationship with their students whether in school or non-school settings. Although certain behaviours, when first commenced, may not breach the boundaries of a professional teacher-student relationship, these behaviours may progress incrementally to a point that could result in a breach of professional boundaries. This can be a particular risk for teachers who:

Have a ‘dual’ personal/professional relationship with the student outside the school, including, for example, being the student’s sports coach or instructor in other extra-curricular activities that the student may be involved in.¹⁴

- [33] Following on from this guideline, the Tribunal found in *Queensland College of Teachers v SGS*,¹⁵ that:

...SGS has breached student teacher boundaries and the trust that the community reposes in teachers to ensure that the teacher’s relationship with their student is a professional one and all of the contact between teacher and student has an educational context and does not in particular, become sexualised.

- [34] The Tribunal has handed down many decisions addressing the inappropriateness of sexual relationships between teachers and students and has discussed at length the standards and ethical principles that such behaviour breaches.

- [35] The Tribunal has also considered numerous cases involving relationships between teachers and former students. In *Queensland College of Teachers v FDA*,¹⁶ the Tribunal found:

The timing of the sexual relationship between Teacher FDA and the relevant student is important because there is a power imbalance that exists which takes time to dissipate as well as professional boundaries and standards expected of a teacher that extend beyond students completion of secondary school.

Sanction

¹⁴ Professional Boundaries: A Guideline for Queensland Teachers, Queensland College of Teachers, May 2016 (Updated 2017), 5.

¹⁵ [2017] QCAT 383, [23].

¹⁶ [2017] QCAT 224, [40].

- [36] The Tribunal finds that a ground for disciplinary action under section 92(1)(h) has been established. When a ground is established, the Tribunal may take action under section 161 of the *Education (Queensland College of Teachers) Act 2005* (Qld) including prohibiting re-registration for a stated period.
- [37] The Act requires that making an assessment of conduct relies on keeping in mind the welfare and best interests of children.¹⁷ The Tribunal is required to additionally take into account the objects of the Act,¹⁸ which are:
- (a) to uphold the standards of the teaching profession;
 - (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.
- [38] The parties are in agreement that DTC engaged in the misconduct, that the conduct fell below the standard of behaviour expected of a teacher and that a ground for disciplinary action is therefore established under section 92(1)(h) of the Act. On the basis of the evidence before it the Tribunal has reached the same conclusion about these matters.
- [39] The QCT submits six previous decisions of the Tribunal for consideration as to sanction, having regard to the level of seriousness of the behaviour in this matter.
- [40] The first case, *Queensland College of Teachers v ALE*,¹⁹ concerned a 26-year-old male teacher who commenced a relationship with a year 12 student. ALE had only been registered for a few years. ALE did not teach the student directly but was a coach of the student's sports team. The relationship began with messaging on social media and quickly developed into a sexual relationship. The relationship was 'not a relationship in a romantic sense. It was, rather, a series of clandestine encounters.'²⁰ The Tribunal ordered a four-year prohibition from the date of decision and notation.
- [41] The Tribunal considered DTC's behaviour to be more serious and damaging than that of ALE, particularly given DTC's age and years of teaching experience.
- [42] The second case, *Queensland College of Teachers v DGM*,²¹ concerned a 32-year-old teacher commencing a relationship with a year 12 student in the final weeks of school. The relationship began with text messaging, phone calls and social media communication escalating to a sexual relationship in November 2015 continuing until mid-2016. He gave the student money to provide a version of events that would protect him and used false names to communicate with the student. DGM also engaged in inappropriate conduct with another student in year 11, until she was removed from his class at her request. The Tribunal ordered a six-year prohibition from the date of suspension and notation.
- [43] The Tribunal considered DGM's conduct to be more serious than that of DTC given the exploitative nature of DGM's conduct.

¹⁷ Education Act, s 233.

¹⁸ Ibid, s 3.

¹⁹ [2019] QCAT 143.

²⁰ Ibid, [12].

²¹ [2018] QCAT 194.

- [44] The third case, *Queensland College of Teachers v SGS*,²² concerned a 42-year-old teacher engaging in a long-standing sexual relationship with a 17-year-old student. Sexualised text messages and Facebook posts ultimately led to a sexual relationship over at least five months and continued after the student graduated. The Tribunal ordered a seven-year prohibition from the end of provisional registration, notation and \$2,500 costs.
- [45] The Tribunal considered the conduct of SGS to be similar to that of DTC although there are considerable differences in age. SGA, however, was a less-experienced teacher, entering the profession later in life.
- [46] The fourth case, *Queensland College of Teachers v FDA*,²³ concerned a 27-year-old teacher who formed a close relationship with a 17-year-old student. A sexual relationship developed in the January following the student's graduation. There was no direct teacher-student relationship and the teacher had left the school a year before the relationship commenced. The Tribunal ordered a four-year prohibition and notation.
- [47] The Tribunal considered that this case was of little relevance to the case of DTC and accordingly gave it little to no weight in its considerations.
- [48] The fifth case, *Queensland College of Teachers v RTM*,²⁴ concerned a 35-year-old teacher who had been registered for five years, who engaged in a large number of over-familiar phone calls and text messages with a year 11 student. A sexual relationship commenced when the student was in year 12 and continued for five months after the student graduated. The Tribunal ordered a seven-year prohibition, notation and \$5,000 costs.
- [49] The Tribunal considered the conduct of RTM, which began when the student was in year 11, to be more serious than that of DTC.
- [50] The sixth case, *Queensland College of Teachers v WAS*,²⁵ concerned a 36-year-old teacher who had been registered for five years, who engaged in a large number of romantic and sexual Facebook messages with a sixteen year-old student. The student and the teacher were at the same school, but the teacher did not directly teach the student. The teacher engaged in sexual intercourse with the student on at least three occasions in the student's bedroom. The Tribunal stated:
- There is a range of relevant factors: the age of the teacher, the age of the student, the nature of the conduct, any psychological vulnerability, the level of co-operation in the proceedings and so on. It is therefore not easy to rank cases in terms of seriousness.²⁶
- [51] The Tribunal ordered a six-year prohibition, notation and \$2,500 costs.
- [52] The Tribunal consider the conduct of WAS to be similar in seriousness to that of DTC.

²² [2017] QCAT 383.

²³ [2017] QCAT 224.

²⁴ [2016] QCAT 501.

²⁵ [2015] QCAT 61.

²⁶ *Ibid*, [38].

- [53] In the current matter, at the time of the misconduct commencing DTC was 34 years old and had been registered for ten years. He had attended mandatory training in Code of Conduct and Student Protection, agrees that the relationship was wrong and a mistake. He attempts to explain the poor decision was due to his judgement being clouded by his marriage breakdown. This is contradicted by his wife in her interview. She claimed that they were married at the time and DTC's behaviour caused her to suspect that he was having an affair. When she discovered some photos on his computer, she confronted him about his conduct.
- [54] Having regard to the seriousness of this matter, the Tribunal considered that a period of five (5) years from the date of the Tribunal decision (20 February 2020) is appropriate along with conditions regarding any future application for registration and notation on the Register.

Non-publication order

- [55] The QCT submits that it is not in the public interest for information to be published, which would enable the former student in this matter to be identified and agrees that the identification of DTC and/or the school would make it possible to identify former students. The Tribunal accepts those submissions of the QCT.
- [56] Therefore, we will make orders under section 66 of the QCAT Act that publication is prohibited of:
- (a) the contents of all documents produced to the Tribunal (except as recited in the published Reasons for the decision); and
 - (b) information that may identify the teacher, the relevant student, the relevant school, staff members, former staff members of the relevant school, parents of students, former students of the relevant school, or any witnesses who engaged with the disciplinary/investigative processes.
- [57] The QCT submits, and the Tribunal endorses, that the following exception to the non-publication order should apply, insofar as it relates to DTC. The QCT may provide a copy of the decision and the reasons for the decision to:
- (a) Any relevant body conducting an investigation or disciplinary proceedings;
 - (b) Any employing authority from a school or any other employer considering employing the respondent for a teaching role or child-related employment;
 - (c) The respondent's current and future health practitioners;
 - (d) Other teacher regulatory authorities;
 - (e) The Chief Executive of Employment and Screening;
 - (f) The Chief Executive of the Department of Education;
 - (g) The Minister for Education; and/or
 - (h) Any other entity relevant to the teacher's practice of teaching profession.

Orders

[58] The Tribunal finds that a ground for disciplinary action under section 92(1)(h) has been established, and makes orders as follows:

1. A disciplinary ground is established.
2. Under section 161(2)(c) of the Act, DTC is prohibited from applying for registration or permission to teach for a period of five (5) years from the date of decision (20 February 2020).
3. The Register be endorsed with the following notation that any application by DTC 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) The respondent's awareness of what constitutes appropriate and inappropriate communication and behaviour with students;
 - (f) The impact of inappropriate communication, conduct and relationships upon students, families, schools and the profession;
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 - (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.
4. Any application by DTC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of the Tribunal's orders and reasons for decision.
5. Any application by DTC 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.

6. Any application by DTC for re-registration must be accompanied by confirmation that the psychologist was provided with copies of any statement of agreed facts.
7. DTC must bear all costs of, and associated with, compliance with the Tribunal's orders.
8. Other than to the parties to the proceeding, publication of any information which may lead to the identification of DTC, the relevant student or relevant school is prohibited until further order of the Tribunal.