

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Teacher DSM v Queensland College of Teachers* [2020]
QCATA 41

PARTIES: **DSM**
(applicant/appellant)

V

QUEENSLAND COLLEGE OF TEACHERS
(respondent)

APPLICATION NO/S: APL156-18

ORIGINATING
APPLICATION NO/S: OCR091-18

MATTER TYPE: Appeals

DELIVERED ON: 8 April 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Senior Member Howard, Presiding
Member Traves

- ORDERS:
- 1. Leave to rely upon fresh evidence is granted.**
 - 2. Leave to appeal is granted**
 - 3. The appeal is allowed.**
 - 4. The decision of the Tribunal dated 20 June 2018 is set aside and the decision set out in order 5 of this decision is substituted.**
 - 5. The suspension of the registration of Teacher DSM is ended.**
 - 6. Subject to the exception in order 7, other than the parties to this proceeding, and until further order of the Tribunal, publication of any information which may identify Teacher DSM or the names of any other person who may be identified in the material filed, and who is not a party to the proceeding, is prohibited.**
 - 7. The Queensland College of Teachers may provide a copy of the decision and the reasons for the decision to:**

- (a) any relevant body conducting an investigation or disciplinary proceedings relating to the matters giving rise to the proceedings;**
- (b) the chief executive of the Department of Education;**
- (c) other teacher regulatory authorities;**
- (d) any employing authority for a school;**
- (e) any principal of a school who was provided with a copy of the notice of suspension under s 50(4) of the *Education (Queensland College of Teachers) Act 2005 (Qld)*;**
- (f) the Minister for Education;**
- (g) the chief executive (employment screening) under the *Working with Children (Risk Management and Screening) Act 2000 (Qld)*; and**
- (h) any other entity relevant to the teacher's practice of the teaching profession.**

CATHWORDS:

APPEAL – EDUCATION – TRAINING AND REGISTRATION OF TEACHERS – suspension of teacher – suspension continued by Tribunal - where no longer a charge of a serious offence - where basis for suspending registration no longer exists - whether suspension should continue

Education (Queensland College of Teachers) Act 2005 (Qld), s 48, s 50, s 53, s 55, s 164, s 165, s 285AA

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 26, s 66, s 142, s 147

Working with Children (Risk Management and Screening) Act 2000 (Qld), s 167

APPEARANCES & REPRESENTATION:

Applicant: Holding Redlich Lawyers

Respondent: Queensland College of Teachers

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] This is an appeal of a decision by the Tribunal to continue the suspension of DSM's teacher registration under the *Education (Queensland College of Teachers) Act 2005* (QCT Act).¹
- [2] The application for leave to appeal raised grounds of appeal on questions of law and grounds on questions of mixed law and fact.² Under s 142(3)(b) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) an appeal from a decision of a non-judicial member on a question of fact or of mixed law and fact may only be made with leave. If leave is granted then, under s 147, the appeal must be decided by way of rehearing, with or without the hearing of additional evidence. In deciding the appeal, the appeal tribunal may:
- (a) confirm or amend the decision; or
 - (b) set aside the decision and substitute its own decision; or
 - (c) set aside the decision and return the matter to the tribunal or other entity who made the decision for reconsideration.
- [3] The parties agree that the suspension of the teacher should be ended on the basis of fresh evidence which was not available when the Tribunal's order continuing the suspension was made. That evidence is a recent criminal history dated 3 December 2019 for DSM which shows that the teacher is no longer the subject of a charge of a serious offence, as well as an Order of the Northern Territory Criminal Appeal Court that DSM has been convicted of one count of assault of a female with a conviction recorded and no further penalty.
- [4] For the reasons explained in the following paragraphs, the appeal should succeed. We give leave for DSM to rely upon the fresh evidence referred to above. Further, although a formal application for leave to amend the grounds of appeal has not been filed by DSM, it is plain on the submissions that DSM seeks leave accordingly and no longer seeks to proceed with the grounds of appeal as articulated at the time it was filed (that is, before the fresh evidence existed). It is also clear from the submissions of QCT that it supports the ending of the suspension. We give leave to DSM to amend his grounds of appeal. Further, we give leave to DSM to appeal the decision of the Tribunal in order to correct a substantial injustice to DSM, having regard to the fresh evidence. We are entitled to rehear the matter with the hearing of additional evidence under s 147(2) of the QCAT Act and it is clearly in the interests of justice that we do.
- [5] Section 48 of the QCT Act requires the Queensland College of Teachers (the College) to immediately suspend a teacher's registration upon becoming aware that the teacher has been charged with a serious offence. The definition of 'serious offence' in Schedule 3 of the QCT Act incorporates the definition of 'serious

¹ *Queensland College of Teachers v Teacher DSM* [2018] QCAT 181.

² Application for leave to appeal filed 11 July 2018.

offence' in s 167 of the *Working with Children (Risk Management and Screening) Act 2000 (Qld) (Working with Children Act)*.

- [6] DSM was charged with the following offences based on conduct that was alleged to have occurred between 1 July 2001 and 1 October 2001:
- (a) Sexual intercourse without the other person's consent and knowing about or being reckless as to the lack of consent pursuant to s 192(3) of the *Northern Territory Criminal Code Act 1983 (NT)*; and
 - (b) Unlawful assault with circumstances of aggravation, namely that the victim was a female and was indecently assaulted pursuant to s 188(2) of the *Northern Territory Criminal Code Act 1983 (NT)*.
- [7] These offences are the equivalent, respectively, of the offence of rape under s 349 and sexual assault under s 352 of the *Queensland Criminal Code Act 1899 (Qld)* (Queensland Criminal Code).
- [8] Under s 167 of the *Working with Children Act*, a 'serious offence' includes an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence under s 167(1)(a). Section 167(1)(a) defines 'serious offence' to include an offence against a provision of an Act mentioned in schedule 2, column 1. Section 349 and 352 of the *Queensland Criminal Code* are both mentioned in schedule 2, column 1. Accordingly, under s 48 of the *QCT Act*, the applicant's registration was suspended by QCT.
- [9] The College referred the decision to suspend DSM's registration to the Tribunal for review in accordance with s 50(5) of the *QCT Act*. Under s 53(3), the Tribunal must decide to continue a suspension pursuant to s48 unless it is an exceptional case in which the best interests of children will not be harmed if the suspension were ended. The matter is to be decided in the Tribunal's original jurisdiction. On 20 June 2018, the Tribunal, exercising its original jurisdiction, made a decision to continue the suspension.
- [10] The applicant applied for leave to appeal the decision to continue his suspension on 11 July 2018. On 3 December 2019, the College received an updated criminal history stating the applicant had been convicted of one count of assault of a female with a requirement to undertake 400 hours of community service.
- [11] On 20 December 2019, the College received a copy of an Order from the Court of Criminal Appeal of the Northern Territory of Australia which relevantly provided by order 4 that the previous requirement that the applicant perform 400 hours of community service was set aside and that the applicant be discharged without further penalty.
- [12] The count of assault does not constitute a 'serious offence' for the purposes of the *QCT Act*.
- [13] In circumstances where the original decision to suspend the applicant's teacher registration was made solely on the basis he had been charged with a serious offence and where that charge has since been withdrawn, the basis for the s 48 suspension, no longer exists.
- [14] As there is currently no referral to the Tribunal for a ground of disciplinary action by the College, the Tribunal is not required to consider the circumstances of the new

charge of assault under s 92(2)(a) or (3) of the QCT Act. Our decision is confined to the appeal of a decision on the continuation of the suspension.

[15] Given our findings about the relevance of the fresh evidence, leave should be granted for DSM to rely upon it and leave to appeal should be granted. As the basis for the suspension of the teacher registration no longer exists, we allow the appeal.

[16] We also make a non-publication order in similar terms to the order made by the Tribunal on 20 June 2018 pursuant to s 66(1)(c) of the QCAT Act. We are satisfied that there is potential for serious adverse effects on DSM's child who attends the same school where DSM was employed at the time of the suspension. The College submits that the non-publication order should be subject to an exception which permits the College to provide notice of the ending of the suspension and the reasons for it to specified entities.³ We agree that the non-publication order should be made subject to an exception which permits the College to comply with its obligations to provide information about the Appeal Tribunal's decision, including under s 164, s 165 and s 285AA of the QCT Act.

[17] Accordingly, we make the following orders:

1. Leave to rely upon fresh evidence is granted.
2. Leave to appeal is granted.
3. The appeal is allowed.
4. The decision of the Tribunal dated 20 June 2018 is set aside and the decision set out in order 5 of this decision is substituted.
5. The suspension of the registration to Teacher DSM is ended.
6. Subject to the exception in order 7, other than to the parties to this proceeding and until further order of the Tribunal, publication of any information which may identify Teacher DSM or the names of any other person who may be identified in the material filed, and who is not a party to the proceeding, is prohibited.
7. The Queensland College of Teachers may provide a copy of the decision and the reasons for the decision to:
 - (a) any relevant body conducting an investigation or disciplinary proceedings relating to the matters giving rise to the proceedings;
 - (b) the chief executive of the Department of Education;
 - (c) other teacher regulatory authorities;
 - (d) any employing authority for a school;
 - (e) any principal of a school who was provided with a copy of the notice of suspension under s 50(4) of the *Education (Queensland College of Teachers) Act 2005 (Qld)*;
 - (f) the Minister for Education;

³ Respondent's submissions to end the s 48 suspension and non-publication order filed 10 February 2020, [29] – [37].

- (g) the chief executive (employment screening) under the *Working with Children (Risk Management and Screening) Act 2000* (Qld); and
- (h) any other entity relevant to the teacher's practice of the teaching profession.