

# QCAT

Queensland Civil and Administrative Tribunal

**CITATION:** *Queensland College of Teachers v HMT* [2013] QCAT 153

**PARTIES:** Queensland College of Teachers  
(Applicant)  
v  
HMT  
(Respondent)

**APPLICATION NUMBER:** OCR187-12

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Ms Kate Buxton, Presiding Member**  
**Ms Michelle Howard, Member**  
**Mr Stuart MacDonald, Member**

**DELIVERED ON:** 15 March 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. The hearing is adjourned to a date to be fixed with respect to the disciplinary action to be taken.
2. The Application filed 27 February 2013 for a non-publication order is adjourned to a date to be fixed.
3. Until further order, publication of the name of the teacher is prohibited.

**CATCHWORDS:** Referral regarding approved teacher; whether suitable to teach, supervisory role, penalty

*Education (Queensland College of Teachers) Act 2002* (Qld), s 92(1)(h), s 160(2)(d) and (j)

*Briginshaw v Briginshaw* (1938) 60 CLR 336

**APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

## REASONS FOR DECISION

- [1] HMT, the teacher in these disciplinary proceedings, was first registered to teach on 20 January 1981, some 32 years ago, and remains registered as a teacher<sup>1</sup>. At times material to the matters raised in these proceedings, he was the principal at a school in South East Queensland. He was dismissed from that position in 2009 and has subsequently worked as a teacher, but not as a Principal or administrator, in other schools of the Roman Catholic Church within the Archdiocese of Brisbane.
- [2] By application filed 17 December 2012 the College referred this disciplinary proceeding to QCAT on the basis that the College formed the reasonable belief that a ground for disciplinary action existed against HMT pursuant to s 92(1)(h) of the *Education (Queensland College of Teachers) Act 2005*, that: *the teacher was not suitable to teach*.
- [3] The material facts relied upon by the College relate to HMT duties and obligations arising from his supervision and control of another teacher whilst he was Principal. It is alleged that HMT conduct failed to satisfy a standard generally expected of a teacher, namely, to take reasonable care to avoid harm being suffered by students.
- [4] BG, a teacher and student Protection Contact, committed 44 sexual offences against students at the school in the period from January 2007 to November 2008. It is alleged that HMT, during this period, in his capacity as Principal of the school, failed to take reasonable measures to protect the welfare of students from a reasonably foreseeable risk of harm.
- [5] The College and HMT have together agreed a statement of facts.<sup>2</sup> In further support of its allegations the College has also produced the referral,<sup>3</sup> the affidavit of Mr Gormley sworn 24 May 2012,<sup>4</sup> and the submissions filed by the College.<sup>5</sup> HMT submissions<sup>6</sup>, which were filed after the agreed statement of facts, have also been taken into account.
- [6] On the basis of the statement of agreed facts, the parties submit that the Tribunal should be satisfied that HMT is unsuitable to teach. The College seeks the disciplinary sanction that HMT be reprimanded under s 160(2)(c) of the Act. HMT agrees to and accepts this sanction. However, this Tribunal must itself determine the appropriate course.
- [7] The determination of this disciplinary referral is an administrative function where the Tribunal must be reasonably satisfied as to the facts giving rise to the conclusions. The degree of satisfaction necessary varies according

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<sup>1</sup> s 223 certificate.

<sup>2</sup> Statement of Agreed matters signed by the parties and filed in this proceeding on 17 December 2012.

<sup>3</sup> Filed 17 December 2012.

<sup>4</sup> Sworn 24 May 2012.

<sup>5</sup> Filed 17 December 2012.

<sup>6</sup> Filed 18 January 2013.

to the gravity of the fact to be proved.<sup>7</sup> The relevant standard is the civil balance of probabilities but the gravity of those facts is such that, if the Tribunal is satisfied that the conduct occurred as alleged by the College, the teacher may have his employment suspended or terminated. A high degree of assurance is therefore needed for the Tribunal to be satisfied that the facts occurred as alleged.

### Background

- [8] The agreed statement of facts sets out in full the background to this referral. It is sufficient to state that:
- (1) On 3 September 2007, HMT received a complaint from the parent of a student in BG' year 4 class to the effect that BG had engaged in sexual conduct with students in his year 4 class;
  - (2) On 5 September 2007, HMT told BG to the effect that he received a very serious complaint from a parent and would meet BG after meeting the parent.
  - (3) On 6 September 2007, that parent and the child informed HMT of the detail of the alleged conduct.
  - (4) On 7 September 2007 HMT was informed that XC had told another student to the effect that BG had put his hand down her pants.
  - (5) HMT then consulted with the Catholic Education Office about the matter. On 12 September 2007 he wrote a letter to BG in his capacity as Principal. This letter conveyed to BG the substance of the allegations made against him and referred to components of the Catholic Education Offices Student Protection Kit, including " 'Discipline Procedures for Staff' and 'Guidelines for Appropriate Professional Boundaries'.
  - (6) By letter dated 20 September 2007, BG responded to HMT. BG:
    - (a) Admitted certain conduct, namely:
      - (i) Placing girls on his lap in class;
      - (ii) Distributing lollies to students;
      - (iii) That students frequently visit his class;
      - (iv) That students (mostly girls) want to talk to him while on playground duty.
    - (b) Stated that he did not recall:
      - (i) Kissing any girl on the cheek;
      - (ii) Putting his hand through a girls shirt;
      - (iii) Placing his hand on the upper leg of a girl.
    - (c) Denied using inappropriate language;
    - (d) Offered to:
      - (i) Comply with any directives, training or support;
      - (ii) Cease, review or reconsider the practices he had admitted to.

<sup>7</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361 to 362.

- (7) After receiving that letter from BG, HMT failed to take adequate action in response to the allegations made by the students and parent and of BG's responses in his letter.
- (8) On or about 30 July 2008, following BG's retirement, HMT, sought and obtained approval from CEO for BG to be re-employed by CEO as a casual teacher.
- [9] The offences committed by BG were perpetrated between January 2007 and November 2008, whilst HMT was the Principal of the school and therefore responsible ultimately for the supervision of BG. Fourteen of those offences were perpetrated after HMT received complaint about BG behaviour. HMT also subsequently supported the re-employment of BG as a casual teacher. This occurred well after the reported concerns in September 2007 to which we have referred.
- [10] HMT accepts that what he did was not enough in the circumstances. We agree.
- [11] This Tribunal is satisfied to the requisite standard that, as a result of the material facts agreed between the parties, HMT conduct has fallen well below the standard generally accepted of a teacher. That is particularly acute in circumstances where:
- a) No or no adequate internal investigation of the allegations took place within the school or, to HMT knowledge, within CEO;
  - b) No external report to the police took place;
  - c) He supported the re-employment BG without having taken such steps to get to the bottom of the allegations;
  - d) He permitted BG to remain a Student Protection Contact, which is a position of great responsibility insofar as vulnerable children are concerned.
- [12] We therefore find that HMT is unsuitable to teach.

#### **Next Steps- what disciplinary action should be taken**

- [13] The parties have agreed upon what they consider is an appropriate penalty in this matter. However, given the unusual nature of the material facts, it would assist the tribunal to hear further from the parties as to why a more significant penalty ought not be applied which may provide greater deterrence than the proposed reprimand. The issue of penalty is therefore adjourned and the parties will have the opportunity to be heard on this issue at a further oral hearing to be scheduled by the QCAT Registry.
- [14] On 27 February 2012 HMT filed an application for a non-publication order under s 66 of the QCAT Act to prohibit publication of his name. It is supported by reports from his general practitioner and his psychologist. The College indicated through correspondence with HMT legal representative that it consented to such an order. This is an issue which

the Tribunal must determine, having regard to the fact that the names of parties in a proceeding will ordinarily be published unless there is a compelling reason to prohibit such publication. An interim order is made prohibiting publication of HMT name. However, the application is adjourned and the parties will have the opportunity to make oral submissions at the further hearing of this matter as to why a non-publication order is appropriate in this matter.

[15] We make orders accordingly.