

CITATION: Queensland College of Teachers v Hayes
[2013] QCAT 657

PARTIES: Queensland College of Teachers
(Applicant)
v
Terence Michael Hayes
(Respondent)

APPLICATION NUMBER: OCR187-12

MATTER TYPE: Occupational regulation matters

HEARING DATE: 30 September 2013

HEARD AT: Brisbane

DECISION OF: **Presiding Member Howard**
Member Browne
Member Macdonald

DELIVERED ON: 29 November 2013

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Terence Michael Hayes is reprimanded.**
- 2. The teacher registration of Terence Michael Hayes is suspended for 2 years from the date of these orders, with the suspension wholly suspended for three years, to take effect immediately if further grounds for disciplinary action arising during the suspension period are established against Mr Hayes.**
- 3. A condition is imposed on the teacher registration of Terence Michael Hayes in that Terence Michael Hayes is prohibited from working as a principal or acting principal or as a child protection contact (or any similar role).**
- 4. Terence Michael Hayes must undertake 50 hours of community service within the next 12 month period at Rosie's or St Vincent de Paul, or such other organisation as may be approved by the**

Queensland College of Teachers, with evidence of his service to be presented to the Queensland College of Teachers within 13 months of the date of these orders.

CATCHWORDS: TEACHERS DISCIPLINARY PROCEEDING- SANCTION- where previous finding that teacher unsuitable to teach- school principal failed to take adequate steps to protect children from harm after reported sexual assaults of students by another teacher at school- where principal re-employed teacher as a relief teacher- where principal reported the behaviour to his employing agency- where other teacher subsequently charged with 44 offences

Education (Queensland College of Teachers) Act 2005
Queensland Civil and Administrative Tribunal Act 2009

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Mr Jon Gormley, in-house legal officer, represented Queensland College of Teachers

RESPONDENT: Mr Andrew Knott of Tresscox Lawyers represented Mr Hayes

REASONS FOR DECISION

- [1] This disciplinary matter against a teacher is unusual in that it does not concern behaviours directly undertaken by a teacher against a student or students. It concerns the disciplinary action appropriate where a principal fails to take reasonable steps to protect students from reasonably foreseeable risk of harm from sexual conduct by another teacher.
- [2] The Queensland College of Teachers (QCT) filed a referral of a disciplinary proceeding concerning Mr Hayes in QCAT. The referral was previously considered by the Tribunal at a hearing on the papers. On 15 March 2013, the Tribunal made a finding that a ground for disciplinary action had been established against Mr Hayes, namely that he was unsuitable to teach.¹ In essence, it was satisfied that Mr Hayes, when a principal at a primary school, failed to take reasonable measures to protect the welfare of students from a reasonably foreseeable risk of harm. The parties had filed an agreed statement of facts and made joint submissions about sanction, to the effect that Mr Hayes should be reprimanded.

¹ *QCT v HMT* [2013] QCAT 153.

- [3] The Tribunal gave written reasons for its finding that disciplinary grounds existed and made orders adjourning the proceeding to an oral hearing (as explained in the reasons for decision, so that further submissions could be received regarding sanction); adjourning an application made by Mr Hayes for a closed hearing and non-publication order; and making an order, until further order, prohibiting publication of Mr Hayes' name.
- [4] As the member who presided at the hearing on 15 March has since resigned from the Tribunal, the further hearing of the proceeding was listed before this re-constituted panel of the Tribunal.
- [5] At the commencement of the hearing, Mr Hayes, in light of changed circumstances (namely an improvement in his mental state), sought leave to withdraw the applications for a non-publication order and closed hearing. Further, Mr Hayes consented to the discharge of the interim non-publication order. Leave was granted and the interim order discharged accordingly.
- [6] It remains for the Tribunal to determine the sanction to be imposed on Mr Hayes under s160 of the *Education (Queensland College of Teachers) Act 2005* (the Act).

Background

- [7] The Tribunal's reasons of 15 March 2013, sets out the facts which provide the context for our findings and decision which follow, although we also refer to the circumstances in the course of our discussion.
- [8] However, we provide some abbreviated background. In essence, in early September 2007, Mr Hayes received a complaint from the parent of a year 4 student concerning sexual conduct with students in the year 4 class by the class teacher, Mr Byrnes. Mr Hayes made some investigations following the complaint. He reported it to his employer. He wrote to Mr Byrnes about matters arising from the complaint and subsequent investigations. Mr Byrnes admitted some things including placing girls on his lap in class, but denied the more serious allegations of inappropriate sexual conduct.
- [9] Mr Hayes failed to take adequate action after receiving the complaint until 14 November 2008, including failing to take protective measures as a result of admitted behaviours and in light of the nature of the allegations. Supervision and monitoring of Mr Byrnes was inadequate and Mr Byrnes was not monitored or removed as a Student Protection Contact.
- [10] Mr Byrnes retired on about 30 July 2008. After his retirement, Mr Hayes sought and obtained approval for Mr Byrnes to be re-employed as a casual teacher.
- [11] Mr Byrnes was subsequently convicted of 44 sexual offences against students at the school.

What is the appropriate sanction?

- [12] Section 160 of the Act sets out the range of penalties that may be imposed by way of disciplinary sanction on an approved teacher, which Mr Hayes is, under the Act. These include reprimanding the teacher; cancellation or suspension of registration; imposing conditions on the teacher's registration; or *another order QCAT considers appropriate*.
- [13] The parties have jointly submitted that a reprimand is the appropriate sanction. The Tribunal has considered in professional disciplinary proceedings that where parties jointly propose sanction, the Tribunal ought not depart from the proposed sanction unless it falls outside of the permissible range of sanction for the conduct having regard to the particular circumstances.²
- [14] Both parties acknowledge the very serious consequences for the students of Mr Hayes' failure, both describing them as tragic.
- [15] The parties agree that there are no precedents for sanction of a principal in comparable circumstances. However, we conclude that a reprimand alone is outside of the permissible range of sanction.
- [16] In reaching this conclusion we consider a variety of matters relevant as discussed below.
- [17] Fourteen of the 44 sexual offences committed by Mr Byrnes were committed after Mr Hayes was notified by a parent of Mr Byrnes conduct. Mr Hayes, once aware of the allegations about Mr Byrnes conduct, was in a position as principal of the school to take appropriate steps (such as ensuring adequate investigation of complaints and appropriate supervision of teachers) to protect young and vulnerable students from future conduct. As he acknowledges, he did not do so.
- [18] The main objects³ of the Act, include maintaining public confidence (that is, the confidence of persons including parents of children attending schools) in the teaching profession, and protecting the public (that is, students within the education system).
- [19] In this case, the students were of tender ages being year 4 students. It is reasonable to infer that the students who were victims of Mr Byrnes conduct have been significantly traumatised and may likely suffer the consequences for many years to come, or for the rest of their lives. Also, for the education system to operate well, parents must feel confident that their children will be appropriately protected from reasonably foreseeable harms when entrusted to the school environment. Mr Hayes' failure to take adequate steps served to damage public confidence and failed to protect students.

² *Medical Board of Australia v Martin* [2013] QCAT 376, [91-93]; *Medical Board of Australia v Grant* [2012] QCAT 285, [55, 60-63].

³ Section 3.

- [20] We are cognisant that the purpose of disciplinary proceedings is protective rather than punitive.⁴ The sanction imposed must serve as both specific (to the teacher) and general (to other teachers) deterrence.⁵
- [21] We conclude that a reprimand alone would be wholly inadequate as a general deterrent. That said, as will be further discussed, we do however consider it appropriate to include a reprimand in the sanction imposed on Mr Hayes, as part of the sanction. A reprimand constitutes public professional censure,⁶ which we consider appropriate in the circumstances.
- [22] Following report to the Police and their subsequent investigations into Mr Byrnes conduct, significant consequences flowed for Mr Hayes. His employment as principal was terminated, and publicly so given intense media interest. He was charged with, but ultimately acquitted, of a criminal offence relating to failure to report the conduct to Police (because he was not legally obliged to make a report).
- [23] His representative submits that it is relevant that Mr Hayes gave evidence in the criminal proceedings although he would have been acquitted in any event, in order to accept his role in the failures which occurred. He submits that Mr Hayes personally demonstrated insight by doing so, as he has in these proceedings, by reaching an agreed statement of facts with the disciplinary body, and also not taking the point that unsuitability to teach must be demonstrated at the time of the disciplinary action.⁷
- [24] There has been considerable delay between the relevant events and the culmination of the disciplinary action. Mr Hayes was suspended on full pay in February 2009, and dismissed in December 2009. He did not teach again until August 2010. Between August 2010 and December 2010, he did some relief teaching. Then from February 2011 to December 2011, because of awareness of QCT's disciplinary considerations, he did not teach. Again between April 2012 and December 2012, he undertook some relief teaching. In 2013, he has taught full-time. Accordingly, he has experienced some two years without pay as a teacher over that period. He also worked as a relief teacher only on a sporadic basis for about a year.
- [25] That said, the consequences for the young students who were the victims of Mr Byrnes conduct have suffered potentially much more serious and long-lasting consequences. Principals must be deterred from similar failings.
- [26] Having regard to the serious nature of the failing, we consider that Mr Hayes teacher registration should be suspended immediately for 2 years. However, given the time Mr Hayes has experienced effectively out of

⁴ For example, see discussion in *Medical Board of Australia v Martin* [2013] QCAT 376.

⁵ For example, see discussion in *QCT v Genge* [2011] QCAT 163, [14]; *QCT v Banyai* [2013] QCAT 180, [21]; *QCT v Kyei* [2012] QCAT 335, [27]; *Nursing and Midwifery Board of Australia v Fankhauser* [2013] QCAT 395, [33].

⁶ *Nursing and Midwifery Board of Australia v Geary* [2012] QCAT 294, [15].

⁷ *QCT v GHI* [2012] QCAT 182.

teaching already, we intend to wholly suspend the operation of the suspension for three years. If there are no further grounds for disciplinary action established as having occurred within the 3 year period then the suspension will not come into effect. If there are, our intention is that the suspension will immediately take effect for a 2 year period.

- [27] Further, despite Mr Hayes gaining insight into the consequences of his failures, we are of the view that a condition should be imposed on his registration prohibiting him from working as a principal (or acting principal) or as a child protection contact (or any similar role) at any time in the future. Effectively, this means that his teacher registration is limited and will continue to be limited for its future duration.
- [28] Finally, Mr Hayes lawyer submitted at the hearing that the Tribunal may consider imposing community service, in addition to a reprimand. He suggested that, although there is no precedent for it having been done, s160 is broad enough to cover such a sanction. Several organisations at which such service could be done were proposed, Rosie's and St Vincent de Paul. We consider it is also appropriate to require Mr Hayes to perform 50 hours of community service over a 12 month period at one of these organisations (or another organisation as may be approved by QCT) as part of the sanction imposed. In due course, Mr Hayes should provide evidence of having completed the required community service.
- [29] We make orders accordingly.