

CITATION: *Cooper v Teacher Registration Board And Attorney-General for the Northern Territory* [2012] NTMC 004

PARTIES: JULIA MARY GRACE COOPER
v
TEACHER REGISTRATION BOARD
AND
ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY

TITLE OF COURT: Local Court

JURISDICTION: Appeal from Teacher Registration Board

FILE NO(s): 21134830

DELIVERED ON: 24 February 2012

DELIVERED AT: Darwin

HEARING DATE(s): 8 February 2012

JUDGMENT OF: Ms Fong Lim SM

CATCHWORDS:

Appeal - Teacher Registration Board- imposition of conditions on registration – reasonableness of conditions

REPRESENTATION:

Counsel:

Appellant: Mr Johnson
Respondent: Mr Ingrames

Solicitors:

Appellant:
Respondent:

Judgment category classification: C
Judgment ID number: [2012] NTMC 004
Number of paragraphs: 29

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21134830

BETWEEN:

JULIA MARY GRACE COOPER
Appellant

AND:

TEACHER REGISTRATION BOARD

AND

**ATTORNEY-GENERAL FOR THE
NORTHERN TERRITORY**
Respondent

REASONS FOR JUDGMENT

(Delivered 24 February 2012)

Ms FONG LIM SM:

1. Julia Cooper is a primary school teacher who has spent most of her teaching career in remote communities in the Northern Territory. Ms Cooper came to the teaching profession after working in other areas and has now seven years experience. In 2010 Ms Cooper pleaded guilty to a charge of possessing a trafficable amount of cannabis which she had purchased in Sydney and brought into Nhulunbuy, a remote community.
2. It was accepted by the Court of Summary Jurisdiction that Ms Cooper mainly used the cannabis for pain relief for a skin condition she suffered as well as socially. Ms Cooper was fined and no conviction recorded against her name. Ms Cooper was also suspended by the Teacher Registration Board

and subjected to an inquiry by a committee into her fitness for registration, that inquiry was at the direction of the Teachers Registration Board. The conclusion of that inquiry was that Ms Cooper's registration ought not be cancelled but certain conditions should attach to her registration and a review be taken 24 months after those conditions are imposed. The conclusion and recommendations were adopted by the Board on 1 September 2011.

3. Ms Cooper appealed the imposition of three conditions on the grounds that there was no basis or insufficient basis for such conditions. The Board submitted to the jurisdiction of the Court and the second respondent pressed the imposition of those conditions.
4. The conditions appealed are:
 - a. Ms Cooper must, within six months of the Board's decision attend a pain specialist at the Appellant's own expense and obtain a pain management plan. Further Ms Cooper must comply with that plan for a period of at least 12 months and she is to provide the Board, before the expiration of 24 months from the date of decision, and at her own expense, with a report from the Appellant's specialist reporting as to her compliance with the pain management plan.
 - b. Ms Cooper must, within six months of the Boards decision commence a drug counselling program, at the Appellant's own expense. Further Ms Cooper must, within six months of completing the program, provide the Board with a report from the drug counselling organisation as to her attendance at and the completion of the program.
 - c. Ms Cooper is not to work in remote school or in a school in an indigenous community for 24 months.
5. The appeal before this Court is a rehearing (section 74B (3) and (6) of the Teachers Registration Act) and Court's power upon hearing an appeal from

the Board's decision is to make any order it thinks appropriate (section 74B(7) of the Act).

6. An Appeal does not affect the operation of the Board's decision unless the Court has ordered a stay of that order (section 74B(8) of the Act). There has been no application for a stay.
7. Leave was granted to Ms Cooper to call fresh evidence about her pain management, cannabis use and any rehabilitation she has undergone. She provided that evidence by way of affidavit. The balance of the hearing was on papers on the evidence before the Board and the transcript of the plea before the Court of Summary jurisdiction.
8. **Imposition of conditions** - There is no doubt the Board has the power to impose conditions on the registration of a teacher with or without an inquiry (see section 36(3) and section 53 of the Act). It was submitted by counsel for Ms Cooper that the imposition of conditions had no basis because at the time of the Board's deliberation Ms Cooper had her pain levels under control and she no longer used cannabis. He also submitted that remains to be the case.
9. It was also submitted without the need for pain management and rehabilitation the condition restricting Ms Cooper from teaching in remote communities was also ill founded. Counsel for Ms Cooper supported that submission with reference to the decision of the Court of Summary Jurisdiction not to impose any conditions on Ms Cooper. His submission was as the magistrate had to consider the effect of Ms Cooper's behaviour on the general community and chose not to impose any conditions on her then the Board in considering the effect Ms Cooper's actions on the school community had no basis for the Board to impose conditions on her registration.
10. That submission must be rejected. The objective of the Teacher Registration Act is to ensure that those people who teach in the NT are fit and proper,

appropriately qualified and competent to teach (see section 3 of the Act). When the Board considers the registration of a teacher they have to consider several factors (see section 30 and 32 of the Act). Those factors are different to those considered by the Court of Summary Jurisdiction under section 5, 6 and 6A of the Sentencing Act. While the Court of Summary Jurisdiction may have had good reason not to impose any conditions upon Ms Cooper that decision carries little weight in the deliberation of the Board. The Board has the power to put restrictions on Ms Cooper's employment conditions; the Court of Summary Jurisdiction does not and should not have that power. The considerations for the continued registration of a teacher are different to sentencing for a criminal offence. Just as a lawyer may be found guilty of a dishonesty offence and achieved a no conviction fine he would still be subject to a consideration by the Law Society as to whether he remains a fit person to maintain his practicing certificate.

11. The Board must be concerned to ensure Ms Cooper is a fit and proper person to teach in the Northern Territory and her offending and drug use put her fitness in question. Ms Cooper put no medical evidence before the Board that her medical condition had at that time become manageable nor did she place before the Board any objective evidence that her drug use had ceased. The Board clearly considered Ms Cooper someone who required some intervention to maintain her fitness to teach. Counsel for Ms Cooper submitted there was no evidence to support that view.
12. While it was accepted by the Board and the Court of Summary Jurisdiction that Ms Cooper had been using cannabis mainly for pain relief and that Ms Cooper did not teach while affected by cannabis and that she was well regarded as a teacher in Nhulunbuy. It is also accepted by Ms Cooper that her use of cannabis and her offending adversely affected her reputation as a teacher and cast a shadow on the profession in general in breach of the professional standard rules.

13. The Board's duty is to ensure those people registered to teach children at the impressionable ages between five and 17 years provide a good role model as well as are competent to teach. Someone who knowingly breaks the law and uses illegal drugs is not a good role model. However after taking into account Ms Cooper's otherwise positive attributes not in the least that her abilities as a teacher and her involvement in the smaller communities the Board formed a view it was appropriate to consider a way to ensure Ms Cooper could continue teaching without putting the ethical standards of the teaching profession in jeopardy.
14. **Pain Management** – Ms Cooper provided to the court an affidavit in which she attested her pain levels are no longer an issue and she has been able to manage her pain through conventional medication. Her present treatment includes antibiotics and topical creams; she makes no mention of any pain relief medication or treatment for pain. She further attested this was the situation when she was investigated by the Committee of Inquiry. Ms Cooper did not provide any medical evidence to support her assertions.
15. Ms Cooper did not originally disclose to her doctors about using cannabis for pain relief. The doctor's report to the inquiry described a treatment for the condition as extremely painful and he was impressed with how Ms Cooper managed that pain. However the doctor was not aware of Ms Cooper's use of the cannabis to help her through this pain and therefore his observations of her ability to cope with the pain must be seen with a level of scepticism as should his opinion that she was a direct open and trustworthy person. She was not being open and honest about her use of cannabis.
16. Given there was no independent evidence before the Board about Ms Cooper's continuing pain levels and the sort of treatment she was receiving and given that she had previously deceived others about her activities I find it reasonable that the Board placed the condition requiring Ms Cooper to go to a pain management clinic.

17. **Rehabilitation for drug use** - Ms Cooper had been using cannabis regularly for 3 years, she used it socially as well as for pain relief, she didn't disclose to her doctor that she was supplementing her prescribed pain relief with cannabis. Before that she had experimented with the drug in her teens and used it socially when studying. There is no positive evidence of addiction although there is some reference to Ms Cooper accepting she has some "addictive components to her personality" in her counsel's submissions in the plea in the Court of Summary Jurisdiction. Ms Cooper's counsel submits those comments were misinterpreted by the Board and Ms Cooper having an addictive personality. There is no medical evidence to support either view of Ms Cooper's addiction or otherwise to the drug.
18. Counsel for Ms Cooper submitted I should take judicial notice that many people have used cannabis and many of those have stopped using without any outside intervention. I accept that to be the case with some people. I also take judicial notice that some people who use cannabis regularly for pain relief and socially can be dishonest with themselves and others about their addiction to the drug.
19. Without objective evidence that Ms Cooper has ceased using the drug, for example regular negative drug screens it is my view reasonable for the Board to consider that Ms Cooper may have an addiction to cannabis and may not be being honest about her drug use. It was also reasonable for the Board to suspect she may not have the skills to stick to her resolve not to use the drug. On that basis the Board did not err in the imposition of the condition to attend rehabilitation.
20. **Restriction on remote teaching** - The basis for the restriction on remote teaching was because the Board was concerned Ms Cooper would not be able to get access to medical care and rehabilitation services as required by the conditions imposed.
21. There is no doubt should Ms Cooper require the services for pain management and rehabilitation then she could not access those services in

remote communities and it is entirely appropriate that the condition was put in place by the Board. In the circumstances the Board did not err in the imposition of this condition.

22. **Should the conditions be confirmed?** I note that Ms Cooper has not complied with the conditions put in place on 1 September 2011. I note the 6 months in which she was required to attend a pain management clinic and drug rehabilitation expires on 1 March 2012 and even if she commences the programs now she will unlikely be able to obtain a report as required by the conditions imposed. There has been no application for a stay of the Board's decision which remains in effect (see 74B (8)). Ms Cooper has failed to comply with the directions of the Board.
23. Ms Cooper has provided fresh evidence to this court which was not before the Board or the committee of inquiry. She has produced an affidavit of what she says is her present condition regarding pain management and cannabis use. She attests that she has now been seen by a specialist dermatologist and her skin complaint has settled and that she has not used cannabis since her arrest.
24. Ms Cooper's recent affidavit cannot be given great weight as there is no medical evidence supporting her claims. She has been proven by her offending and the circumstances of offending as someone who is willing to conceal her wrongdoings from others and therefore it is reasonable to have some doubt about the truth of her assertions. She attests the content of her affidavit to be true yet she was clearly mistaken as to the fine imposed upon her which might indicate she was not careful about the contents of the affidavit.
25. In relation to the cannabis use since her arrest Ms Cooper does not produce any independent evidence to support her assertion that she has not used the drug since her arrest.

26. The Board and the community are entitled to expect Ms Cooper to prove herself to continue to be a fit and proper person to teach. She has not yet complied with the Board's decision. The community is entitled to expect the Board and this Court to make a decision which would protect our children from the risk of any exposure to teachers who have been involved in illegal activities and who do not act in accordance with their professional standards. It is a heavy responsibility the Board carries and in my view in relation to this teacher they have undertaken that responsibility appropriately. However with the fresh evidence before this court it is appropriate to review the conditions imposed.
27. This court has the power to make orders it thinks appropriate and with fresh evidence before it can consider changing the conditions on the registration of Ms Cooper as a teacher
28. Given Ms Cooper's evidence about her pain levels and use of cannabis it is my view additional conditions should be added to Ms Cooper's registration to ensure her fitness for teaching duties in the future.
29. **Orders** - The appeal is dismissed and I confirm the conditions imposed by the Board and impose the following condition:
- a. Ms Cooper submit to weekly urine analysis testing at her own cost for the next three months and to provide the results of those tests to the Board each week. For the following three months Ms Cooper provide monthly urine analysis to the Board and provide the results of those tests to the Board for the further three months.

Dated this 24th day of February 2012

Tanya Fong Lim
STIPENDIARY MAGISTRATE