

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 015

REGISTERED TEACHER: AED

PANEL MEMBERS

Janet Sherry	Chairperson
Jeanette Barclay	Registered Teacher
Rhonda Cumberland	Panel Member

ATTENDANCE the teacher
Counsel Assisting, Mr Peter Harris

DATE OF HEARING: 3 March 2005

DECISION OF THE PANEL:

On 3 March 2005 the Panel decided not to suspend, cancel or impose conditions or restrictions on the registration of the teacher as a teacher.

EFFECT OF THE DECISION

The effect of the decision is that no further action will be taken and the teacher will remain registered as a teacher under the *Victorian Institute of Teaching Act 2001*.

REASONS

BACKGROUND

The teacher was deemed registered as a teacher under the *Victorian Institute of Teaching Act 2001* (the Act) on 31 December 2002 because she had been employed as a teacher by her employer for some period during the two years before the Act commenced.

The Victorian Institute of Teaching (the Institute) received a complaint from the employer that provided evidence of the teacher's possible serious misconduct and/or fitness to teach. The Institute considered this information and determined to conduct a formal hearing. By a Notice of Formal Hearing dated 4 February 2005 the teacher was advised that the hearing would be held on 3 March 2005.

The Notice of Formal Hearing set out the following allegations as evidence of possible serious misconduct and/or lack of fitness to teach :

1. On 24 January 2000 at the Magistrates' Court the teacher was found guilty, without conviction, of charges of possessing heroin, using heroin, taking/sending anything into a prison. The matter was adjourned to 24 January 2001 (a good behaviour bond) and the teacher was ordered to pay \$300 to the court fund.
2. On the 19 April 2000 the teacher was found guilty, without conviction, of a charge of taking/sending anything into a prison. The matter was adjourned to 29 December 2000 (also a good behaviour bond).
3. On 15 January 2001 at the Magistrates' Court the teacher was found guilty without conviction of three charges of handling/receiving/retaining stolen goods, three charges of obtaining property by deception and one charge of use drug of dependence. The teacher was placed on a community based order for 12 months and ordered to perform 150 hours of unpaid community work over 12 months.

THE ISSUES

The issues to be determined in this matter are whether the teacher's conduct amounts to conduct and/or a lack of fitness to teach and if so, what is the appropriate penalty.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Sections 26 and 28 of that Part provide:

26. Powers of inquiry

(1) The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.

28. Inquiry into criminal conduct

If the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, the Institute must conduct an inquiry under this Part into the registered teacher's fitness to teach.

The terms *serious misconduct* and *fitness to teach* are not defined in the Act. The Panel is aware of case law regarding disciplinary proceedings in other jurisdictions which refers to the terms *professional misconduct* and *fit and proper person*. The Panel has had regard to those cases and other case law on disciplinary matters to decide what is meant by the terms *serious misconduct* and *fitness to teach*.

According to the High Court, the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public;
- to maintain proper standards of conduct for the profession; and
- to protect the reputation of that profession.

A conviction for a criminal offence does not of itself mean that a teacher's registration will be cancelled. As the High Court pointed out in *Ziems v The Prothonotary of the Supreme Court of N.S.W.* (1957) 97 CLR 279, the registration authority must determine the facts that lead to the conviction before deciding whether a person should be disqualified from being a member of their profession. The role of the registration authority is not to punish the person. This has been done by the court. The conviction is of secondary importance. What is of significance is the circumstances which lead to the conviction. Many convictions would result in the disapproval of the public and colleagues but this does not mean that the teacher is not fit to teach.

Proof of a conviction does not prove a person is unfit because it does not allow the registration authority to assess the person's character or reputation. An assessment can only be made when some knowledge of the underlying facts are known. The question for the Panel is not whether the teacher has been convicted but rather whether the teacher's conduct shows that they are not fit to teach.

The Panel must be justified in holding out a teacher as being fit to be trusted with the duties and responsibilities of being a teacher. Whether a person is a fit and proper person to be a teacher will depend upon the minimum standards demanded by the teaching profession given the particular responsibilities and duties placed on teachers. It is the profession itself that sets the standard.

An inquiry into a person's fitness to teach will be concerned with the person's character. However the Panel must only consider matters that are relevant to the teaching profession. A teacher's fitness is tested at the time of the Panel hearing not at the time the offence occurred.

As the Supreme Court noted in *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46 *unfitness may be demonstrated by conduct totally unconnected with any such employment or employment at all*. That is, the conduct resulting in the offence does not

have to be connected to a teacher's professional responsibilities for the conduct to indicate unfitness to teach. The High Court noted:

Furthermore, even where it does not involve professional misconduct, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise.

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1

The approach of the Panel to a case of personal misconduct is different from a case of professional misconduct. In the statutory context a finding of professional misconduct may result in a penalty being imposed that is not cancellation of the teacher's registration. For personal misconduct the Panel will analyse the teacher's conduct to see whether it demonstrates some character defect that illustrates that the person is not fit to teach and thus their registration should be cancelled (see *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127)..

The person's character is assessed to see if they meet the high standards of honesty and ethical behaviour expected of a teacher and are worthy of the level and extent of trust placed in a teacher by the community. That conduct does not have to arise during a professional relationship but can occur at any time. However if the conduct reveals a character defect incompatible with the standards set for teachers this may indicate an unfitness to teach. A teacher's position in relation to students can be described as one of power and influence over those students. A teacher who abuses that power or influence for their own ends is unfit to teach (*Yelds v Nurses Tribunal & Ors* [2000] NSWSC 755).

As stated in *Siguenza* a person who is fit to teach must show that they possess the knowledge to carry out their duties and responsibilities, and that they possess *sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails.*

In *Burgess v Board of Teacher Registration Queensland* [2003] QDC 159 the Queensland District Court stated that *any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher. The weight to be attached to that behaviour was a matter for the Board to determine.* The persistence of the inappropriate behaviour was relevant to a finding of unfitness to teach. A teacher's conduct should not impair *the standards of the profession to which the community entrusts the immensely important task of educating young children and adolescents.*

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established.*

And later

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

DOCUMENTS CONSIDERED BY THE PANEL

1. Police brief obtained under FOI request
 - Certified extract 24 January 2000
 - Brief head and cover sheet 24/10/99
 - LEAP identifiers report 25/10/1999
 - Charge sheet 24/10/1999
 - Summary of charges
 - Forfeiture/disposal order
 - Witness list
 - Exhibit list
 - Memorandum
 - CORE memorandum 24 October 1999
 - Statement of Informant
 - Undertaking of Bail
 - LEAP incident report 12/12/2000
 - Co-defendant cover sheet
 - Brief head 23/12/2000
 - Summary of charges
 - Charge sheet
 - Witness list
 - Exhibit list
 - Statement of Constable
 - LEAP incident report 08/12/2000
 - LEAP incident report 12/12/2000
 - LEAP incident report 21/12/2000
2. Copy letter from the employer dated 1 March 2001
3. Copy record from Victoria Police dated 5 February 2001
4. Copy statutory declaration dated 31 January 2001
5. Copy notes
6. Copy letter from Victoria Police dated 31 January 2001
7. Copy letter from the teacher to the Institute dated 24 May 2004
8. Copy Certificate of Appreciation
9. Copy letter from medical practitioner 1 dated 25 May 2004
10. Copy letter medical practitioner 2 dated 12 January 2001

11. Copy letter Counsellor dated 22 July 2002
12. Copy Christmas cards
13. Copy letter from the Institute to medical practitioner 1 dated 14 October 2004
14. Copy letter from medical practitioner 1 dated 27 October 2004

THE EVIDENCE

The following evidence is not in dispute:

- all of the offences outlined in the Notice of Formal Hearing have a connection with a man who at the time was described as the teacher's partner
- on 15 January 2001 the teacher was found guilty of the following indictable offences: three charges of receiving stolen goods (s.88 Crimes Act); three charges of obtaining property by deception (s.81 Crimes Act)
- The teacher was also found guilty of other summary offences as indicated in the Statement of Formal Hearing. These offences relate to the teacher's personal use and possession of heroin and her introduction of that drug into prison, at a time when her former partner was an inmate.

The teacher gave evidence to the Panel that during late 1997 she formed a relationship with her partner and had gone out with him for a period of approximately two and a half years. She last saw him in the Magistrates Court in 2001 when he received a custodial sentence and currently has no idea of his whereabouts.

The teacher stated that she started taking drugs a month or two after meeting her former partner. Although she had smoked marijuana at university it was her former partner who introduced her to heroin. The teacher stated that she had formed a habit, within six months of meeting her former partner, which steadily built up to a \$50 a day habit. Documentary evidence from the teacher states that she was not working as a teacher when her addiction began.

In 1999 the teacher gained employment at a College. She stated that she did not use heroin whilst at the College or at any time when she was working.

When questioned by Counsel in relation to taking drugs into prison, the teacher stated that she did not intend to take drugs into the prison but did not contest the charge because of the time and cost involved and not wanting her family to know of the court case. She further stated that she was probably affected by drugs at the time.

In 2000 the teacher gained a position at College 2 and stopped using heroin for several weeks but resumed because of personal difficulties in relation to accommodation and travel to work and the release of her former partner from jail.

When questioned as to why she committed the indictable offences outlined above when on a good behaviour bond the teacher stated that:

- she was aware that her former partner was carrying out burglaries in a regional area; she asked him to stop; he indicated he would stop but he did not

- the teacher's former partner asked her to sell stolen property, she refused and the matter escalated into an intense argument
- the teacher was addicted, had no money for drugs and it was easier to agree to sell the goods
- she took responsibility for what she had done - "it was me that sold them, me who agreed"

The teacher gave evidence that she had complied with her Community Based Order although she had not completed any community work because the court had waived this requirement on the basis of medical evidence.

In 2001 the teacher applied for a position at College 3 and signed a Statutory Declaration to the effect she had no prior convictions or current charges against her. A Criminal Record Check revealed her offences and the school was advised that it was not appropriate for her to be appointed to a position. In her evidence the teacher stated that she understood, on legal advice, that her offences would not be revealed in a Criminal Record Check. She would not have applied for the position had she known and that "she was not trying to be deceptive at the time".

In January 2001, subsequent to being interviewed and charged with three charges of receiving stolen goods and three charges of obtaining property by deception, the teacher stated that she returned to live with her parents and began a medically supervised home detoxification program. She stated that her mother, a registered nurse, has supervised the program in consultation with a local doctor.

In her evidence the teacher stated that she had suffered from "extreme ups and downs" since she was 17 years old and that she had only recently been diagnosed as suffering from a mild form of Bipolar Affective Disorder. She further stated that she recently had returned to taking an antidepressant on the advice of her psychiatrist. The teacher stated that she sees her local doctor regularly and has done so for the past four years.

The teacher told the Panel that she had received counselling for the 'intense shame' she felt in response to her actions. She stated that she felt mortified, humiliated and embarrassed at what she had done and still felt upset about what the students she taught thought about her behaviour. She also stated that she was horrified about everything that had happened for her family and that when she initially found herself in trouble she had not contacted her family for months on end. She stated that she was ashamed how much she had hurt people.

Since returning home the teacher stated that she has worked at setting up her life so that the behaviour she exhibited in the past could not recur again. This has included surrounding herself with people who will alert her to 'manic behaviour' and keeping totally away from drug users, drugs or binge drinking. She also stated that she would not want to work far from her home.

The teacher told the Panel that she had not worked in a paid capacity since January 2001 but has undertaken community work teaching computer skills. The teacher

indicated she felt ready to return to teaching, perhaps initially on a part time basis as she prefers to err on the side of caution and regain her confidence.

The teacher stated that she continued to see her family doctor but has also been seeing a psychiatrist each week over the last three months. She stated that she had not requested a report from her psychiatrist because of the cost involved.

The Panel also heard evidence from the mother of the teacher. She stated that she first became fully aware that something was amiss with her daughter when her daughter left to work in a regional town. Her initial observation was that the teacher was depressed but she later realised she had an established drug habit. She described the teacher's behaviour as "difficult to describe but different, more talkative and outgoing which was out of character".

The mother of the teacher told the Panel that she had helped her daughter through a detox program after her failure to retain her appointment at College 3. She said she was not aware whether her daughter was still using when she returned home but did indicate that the teacher had begun a detox program on her own prior to return to the family home. She further stated that medical practitioner 1 had been most supportive of her daughter.

The mother of the teacher stated that her daughter was currently "the best she had ever been, had worked really hard at her rehabilitation, could control her emotions better, was trying to do the right thing around getting employment and was helpful at home". She further stated that her daughter was paying to see a psychiatrist from her social security payments.

The Panel heard evidence from the sister of the teacher. The sister told the Panel that she had been residing in England for the past three years but kept in contact with the teacher. The sister indicated that she knew that four years ago she became aware the teacher took drugs although the sister suspected "something wasn't right prior to this". The sister indicated that the teacher had tried to hide a lot from their family and did not ask for support at the time of the teacher's addiction and court appearances.

The sister indicated that she and the teacher do not now discuss the past in detail preferring to focus on the present. The sister stated to the best of her knowledge the teacher had not used drugs for the past four years and that whilst not ignoring her past the teacher had done a "fantastic job in moving on".

The Panel considered documentary evidence from medical practitioner 1. In summary his evidence was:

- the teacher has been his patient for four years and he has her records prior to this from his colleague, medical practitioner 2
- the teacher's diagnosis is essentially of depression and anxiety, including some features of social anxiety (which in part relate to her past history of substance abuse) which have been steadily improving over the past four years

- the only impact of the teacher's condition on her ability to teach would be on her ability to manage day to day stresses. Her judgement, behaviour, insight, etc, would not be affected. The teacher suffers from no other medical condition which would affect her abilities
- he believes that the teacher has been drug free for at least the three and a half years based on his numerous contacts and observation (letter dated 27 October 2004)
- the teacher would be suitable for a teaching position in the future because she has no medical reason not to be
- the teacher's past history of substance abuse is unfortunate but she has been conscientious and successful in her rehabilitation
- her psychological condition is mild to moderate, well-controlled and suffered by many people and presents no impediment to her functioning as a professional
- The teacher is an intelligent, insightful and capable person with much to offer as a teacher

DISCUSSION OF EVIDENCE

Having no evidence to the contrary, the Panel accepts that the teacher had a history of substance abuse which began late 1997 or early 1998 after she formed a relationship with her former partner and that she has not seen him since early 2001.

Corroborative evidence from the teacher, the teacher's mother and medical practitioner 1 in regard to the detox program the teacher has undertaken has persuaded the Panel that she has been free of drugs for a period of almost four years.

Evidence indicates that the teacher was addicted to heroin whilst holding a teaching position but there is no indication in the evidence that this affected her ability to carry out her professional duties.

The offences with which the teacher was charged and found guilty all appear to have a connection to her former partner. The teacher was aware, on her own admission, that her former partner was involved in burglaries, and she knowingly received stolen goods and received property by deception. The Panel formed the view that her actions were heavily influenced by her addiction and her relationship with her former partner.

Evidence given to the Panel by the teacher, the mother of the teacher and the teacher's sister indicated that the teacher has worked extremely hard to overcome her problem of addiction and accompanying depression. The teacher has continued to consult with her local General Practitioner on a regular basis and is also seeing a psychiatrist. Although no psychiatric report was available the Panel noted the views of medical practitioner 1, particularly his statements that she has been conscientious and successful in her rehabilitation and that her psychological condition is mild to moderate, well-controlled and suffered by many people and presents no impediment to her functioning as a professional.

The teacher's evidence to the Panel indicated that she was very insightful into her past behaviour and that she has appropriate strategies in place, including a supportive family, to deal with her future behaviour. This was supported by medical practitioner 1, who stated that her problems relating to anxiety and depression had been steadily improving over the past four years.

The teacher was extremely frank in discussing her feelings of shame and remorse in relation to her actions and this coupled with the evidence given by her mother and sister led the Panel to conclude that she was genuine and sincere in this regard.

FINDINGS OF FACT

1. On 24 January 2000 at the Magistrates' Court the teacher was found guilty, without conviction, of charges of possessing heroin, using heroin, taking/sending anything into a prison. The matter was adjourned to 24 January 2001 and she was ordered to pay \$300 to the court fund.
2. On the 19 April 2000 the teacher was found guilty, without conviction, of a charge of taking/sending anything into a prison. The matter was adjourned to 29 December 2000.
3. On 15 January 2001 at the Magistrates' Court the teacher was found guilty without conviction of three charges of handling/receiving/retaining stolen goods, three charges of obtaining property by deception and one charge of use drug of dependence. She was placed on a community based order for 12 months and ordered to perform 150 hours of unpaid community work over 12 months.
4. The teacher had a history of substance abuse which began late 1997 or early 1998 after she formed a relationship with her former partner.
5. The offences outlined in 1 – 3 above all have a connection to her former partner.
6. The teacher's substance abuse and subsequent criminal offences were strongly influenced by her relationship with her former partner but she was well aware of what she was doing.
7. The teacher has made a sustained and successful attempt over the past four years to remain free of drugs and to disassociate herself from those who might influence a return to her behaviour of the past.
8. The teacher has a medical and family network to support her in the future.
9. The teacher has displayed insight into, and genuine remorse for, her actions and the harm they caused to herself and others.

CONCLUSION

A person who has a complete disregard for their legal obligations brings the teaching profession as a whole into disrepute and would be unfit to teach. There is no doubt that the teacher acted outside the law and was aware of what she was doing but the Panel accepts, that to a large extent, this was due to her relationship with her former partner and attendant substance abuse at the time of the offences.

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness. The Panel accepts that the teacher has taken full responsibility for her actions and well understands their impact. She is genuine in her remorse and has taken significant steps to ensure, to the best of her ability, that a similar situation will not arise in the future.

In considering whether the teacher is fit to teach the Panel also had to consider whether her actions would be reasonably regarded as disgraceful or dishonourable by her professional colleagues. The Panel concluded that given the context of the offences, the lack of any evidence to suggest that the teacher was unable to carry out her professional duties and her conscientious and successful steps towards rehabilitation, that her behaviour would not be viewed as disgraceful or dishonourable and that she should be able to command the respect and confidence of the education community in the future.

DETERMINATION

The determination of the Panel is that the teacher remains fit to teach.



Janet Sherry: Chairperson



**Per;
Jeanette Barclay: Registered Teacher**



**Per:
Rhonda Cumberland: Panel Member**