

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 045

REGISTERED TEACHER: **BILL JOHN ATKIN**

PANEL MEMBERS

Garry Salisbury Chairperson

Norm Fary Registered Teacher

Kay Bodna Panel Member

ATTENDANCE: Mr Atkin was not represented

Counsel Assisting: Ms Anne Sheehan with Ms Annabel Haslam solicitor instructing

DATE OF HEARING: 12 December 2006

DETERMINATION UNDER SECTION 42(2) OF THE ACT:

On 11 January 2007 the Panel decided that Mr Atkin will remain registered as a teacher in Victoria.

The following conditions will be placed on Mr Atkin's registration as a teacher:

- (a) that Mr Atkin must submit a report from his treating psychologist, to the Institute by 1 July 2007
- (b) that the report must attest that Mr Atkin has attended at least four counselling sessions in the period between November 2006 and the 1 July 2007
- (c) that the report must attest that Mr Atkin has received counselling for his depressive illness.

REASONS

BACKGROUND

The teacher was deemed registered as a teacher on 31 December 2002. The Victorian Institute of Teaching (the Institute) was advised by the teacher's employer (the Department of Education) by letter dated 17 September 2004 that action had been taken against the teacher because he had been found guilty of an indictable offence. Under sections 27 and 28 of the *Victorian Institute of Teaching Act 2001* (the Act) the Institute conducted an inquiry to assess whether the teacher was guilty of serious misconduct and/or was not fit to teach.

The Notice of Formal Hearing dated 25 October 2005 set out the following allegation:

1. By letter dated 7 September 2004 the employer had advised the teacher
 - a. that he had misappropriated sports equipment belonging to the school to the soccer club, these goods being 20 soccer balls, 1 high risk survival kit, 2 soccer corner flags, 1 linesman flag, 1 soccer net, 1 aluminium stretcher and 6-25 kg of English whiting chalk.
 - b. that he had personally received three cheques totalling \$1,374.80 from the soccer club for sports equipment outlined in (a) that was purchased from the school physical education budget.
 - c. that the teacher received \$4,750 from the school's soccer clinic, which has not been accounted for in the school's banking. This amount consisted of 95 students paying \$50 each.
2. That on 23 August 2005 the teacher pleaded guilty to two charges of theft in the Magistrates' Court and was convicted and sentenced to a Community Based Order of twelve months commencing on 23 August 2005.

After considering the evidence at a Formal Hearing on 8 December 2005, the Panel concluded that the teacher was guilty of very serious offences against the public as well as the teaching profession. The ethical standards of personal and professional integrity that the community and the profession expect from teachers are of the highest order. The teacher's actions were a serious departure from these expectations and he had brought the profession into disrepute in the eyes of the public and more significantly in his local community.

In considering the separate question of whether the teacher was fit to teach, the Panel determined that the teacher's serious misconduct did not make him unfit to teach. The Panel took into account: the short duration of the misconduct; that the teacher was ashamed of his conduct and showed remorse; that the teacher was honest in his evidence to the Panel; and that the teacher showed some insight into his serious misconduct.

The Panel made the following determination under section 42(2) of the Act:

1. that the teacher will remain registered as a teacher in Victoria

2. that the following conditions be placed on the teacher's registration as a teacher:
 - a. that the teacher is to abstain from gambling for a twelve month period from the date of the determination
 - b. that the teacher attend a psychologist of his choice for counselling in relation to depression for a period of twelve months from the date of this decision
 - c. that the teacher must attend at least two counselling sessions in the twelve month period
 - d. that the teacher must supply two reports from his treating psychologist, the first by 31 July 2006 and the second by 23 December 2006
 - e. that a failure to provide the above reports or if those reports show that the teacher has not abstained from gambling will constitute a failure to comply with this determination.

On 27 July 2006 the Institute wrote to the teacher reminding him that that a report by his treating psychologist should be provided to the Institute by 31 July 2006. The teacher did not acknowledge receipt of this correspondence and failed to provide the required report by 31 July 2006.

In a letter dated 10 August 2006, the teacher was advised that as he had not complied with the condition, the matter would be referred to the next meeting of the Disciplinary Proceedings Committee. The teacher was further advised that if he wished to provide an explanation to be considered by the Committee, his explanation should be provided by Monday 4 September 2006.

The teacher contacted the Institute by telephone on 17 August 2006 and it was confirmed that he was to provide the Institute with a copy of the report and a letter explaining the circumstances of the failure to provide the report to the Institute as required by the conditions. This information was to be received by the Institute by 31 August 2006 to enable the matter to be referred to the next meeting of the Disciplinary Proceedings Committee.

In a letter dated 21 August 2006 and received by the Institute on 4 September 2006, the teacher provided the Institute with a copy of his treating psychologist's report dated 18 November 2005.

In a telephone conversation on 4 September 2006, the teacher was advised that the report pre-dated the formal hearing of 8 December 2005 and that the report he had provided to the Institute did not comply with the determination. The teacher was requested to provide a report to confirm that he had received counseling as required in accordance with the Panel's determination.

In correspondence dated 12 September 2006, the teacher acknowledged his failure to comply with the conditions the Panel had placed on his registration as a teacher.

In a letter dated 13 September 2006 to the teacher the Institute confirmed that he had not complied with the conditions imposed by the Panel and advised that the matter

would be referred to the next meeting of the Disciplinary Proceedings Committee on 18 October 2006.

According to section 50(3) of the Act, if a registered teacher does not comply with a determination under section 42, the teacher is guilty of serious misconduct. This matter was referred to the Disciplinary Proceedings Committee on 26 September 2006 and the Committee referred this matter to a formal hearing.

THE LAW

Section 50(3) of the Act provides:

50. Enforcement of a determination

A registered teacher who does not comply with a determination under section 42 is guilty of serious misconduct.

In this matter, the Panel which met on the 8 December 2005 determined amongst other things, that the teacher must supply two reports from his treating psychologist, the first by 21 July 2006. This requirement is part of the determination under section 42. If The teacher did not comply with this requirement, he would be guilty of serious misconduct.

According to section 42(2), if a Panel finds a teacher is guilty of serious misconduct, it may make a determination to do one or more of the following:

- impose conditions, limitations or restrictions on the registration of the teacher
- suspend the registration of the teacher for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination
- cancel the registration of the teacher

DOCUMENTS CONSIDERED

The Panel that met on 12 December 2006 was provided with the following documentary evidence:

- Notice of Formal Hearing dated 9 November 2006 -
- Copy of Decision Number 29 of 23 December 2005. (10pgs) **001 - 010**
- Copy letter to the teacher dated 5 January 2006. (1pg) **011**
- Copy letter to the teacher dated 10 January 2006. (1pg) **012**
- Copy letter to the teacher dated 27 July 2006. (1pg) **013**
- Copy letter to the teacher dated 10 August 2006. (2pgs) **014 - 015**
- Copy letter to the teacher dated 1 September 2006. (1pg) **016**
- Copy letter received by the Institute from the teacher on 4 September 2006. (1pg) **017** and attachment
 - Copy report dated 18 November 2005. (1pg) **018**
- Copy letter received by the Institute from the teacher on 13 September 2006. (1pg) **019**
- Copy letter to the teacher dated 13 September 2006. (1pg) **020**

THE EVIDENCE

The teacher requested that the hearing should be closed. He said that the previous hearing had resulted in publicity in his local newspaper and was a contributing factor to the loss of his teaching position. The Panel adjourned to discuss his submission. The Panel decided not to close the hearing on the grounds that there was a public interest in maintaining an open justice system. The matters to be discussed were not of such intimate, personal or financial matters as to justify granting an exception to this general rule.

Counsel Assisting the Panel submitted that under section 50(3) of the Act there was no discretion available to the Panel because not complying with the first half of condition (d) meant the teacher had to be found guilty of serious misconduct.

In his evidence the teacher submitted that he thought he had satisfied the condition by providing a psychologist's report dated 18 November 2005 written by psychologist 1. The Panel noted the correspondence and phone calls up to and after 31 July 2006 which clearly indicated the teacher's responsibilities and that these responsibilities had been communicated to him succinctly and over an extended period of time.

The teacher provided no new evidence to the Panel that he had been undertaking ongoing counselling for his depression. He said in evidence that he was confused in late 2005 and early 2006. He did see a psychologist, psychologist 1, in November 2005. He said he had many pressures in early 2006, his baby was born, his wife became ill and in his own words he was "...rebuilding my life." He provided no independent evidence of these difficult personal circumstances during 2006 either in his correspondence to the Institute or on the day of the second hearing.

The teacher said that he had started seeing a psychologist in November 2006 but he was unable to provide any evidence of this. He said that he had told psychologist 2, his treating psychologist of the circumstances surrounding his consultation. He had found 2006 very stressful and difficult. He told the Panel he found it hard to seek help, and said that he had been receiving treatment on and off for depression for more than ten years including medication. He was dismissed from his school and he continues to reside in the area. He said he could not go to the supermarket or out in public out of a sense of shame and embarrassment.

Counsel Assisting the Panel suggested that the teacher could seek an adjournment to get a report from his psychologist. She expressed concern that the teacher had not told his psychologist of the background information in relation to previous treatment and the conditions of compliance he was required to satisfy. She also expressed concern that the psychologist may not be aware of the date required (ie 23 December 2006) for the submission of the second report. This suggestion of an adjournment was a significant gesture and one which the teacher did not appear to appreciate or take up. He said that there was not a day when he was not reminded of what he had done. The teacher took the view however that he could not guarantee that the psychologist's report would be available quickly and so he did not wish to apply for an adjournment.

The teacher either misinterpreted or was wilfully blind to the comments and recommendations of the original Panel's findings, the thrust of which was to gain his compliance with regular psychological counselling over a twelve month period with two reports to be supplied to the Institute over that period. He appeared to think the original Panel wanted him cured of depression.

The teacher appeared to take a somewhat fatalistic view that since he would not seek an adjournment to gather psychological evidence, in his words, "...what will be will be.." and that he would move on with his life and pursue another career path. In his summing up the teacher said that he had made efforts to comply and that the public did not need to be protected from him.

On the 22 December 2006 a letter dated 18 December 2006 was delivered to the Institute from psychologist 2, a registered psychologist, which indicated that the teacher had commenced psychological assessment and treatment with her in November 2006. The Panel was of the view that the teacher's inability to provide evidence of the sessions beginning in November on the day of the hearing on 12 December 2006 was indicative of poor preparation on his part and it was a cause of concern for the Panel. However, while the teacher had not complied with the determination by providing a report by 31 July 2006, he had at last, and belatedly, started to engage with a psychologist for the purpose of treating his ongoing depressive illness.

The Panel was of the view that the conditions of ongoing counselling for the teacher in 2006 with two reports over a twelve month period to be provided to the VIT were not unduly onerous. The Panel also understands that the teacher is suffering from a debilitating mental illness and has done so since his adolescence. It noted that the original Panel wished the teacher to continue his treatment because it believed his depression was "...a major contributing factor to his gambling problems which in turn led to the thefts." The findings of the Panel that conducted the hearing on 12 December 2006 are consistent with the original Panel findings in that their general thrust is to compel the teacher to develop a regime of ongoing counselling with a psychologist to assist him to avoid the behaviours which placed his registration as a teacher at risk.

Counsel Assisting the Panel submitted that in the light of the teacher's reluctance to seek an adjournment to gather further psychological evidence and his failure to comply with the Determination of the original Panel, there was little point in setting further conditions. The arrival of the letter from psychologist 2 dated 18 December 2006 resulted in a re-examination of Counsel Assisting's submission.

Because the Panel had not determined this matter before receiving the letter from psychologist 2 it was able to take this further information into account when making its Determination. The letter had been sent to the Institute who made no comment on the letter when referring it on to the Panel members. At the hearing Counsel Assisting had been supportive of the teacher obtaining a report from psychologist 2 and so it is not surprising that the Institute chose not to object to the Panel considering this further information.

The Panel came to the view that while the teacher must be found guilty of serious misconduct under the Act, it has exercised its discretion as regards to the penalty and decided to impose further conditions on the teacher's registration. He has commenced treatment by psychologist 2 and this indicates that the teacher is receiving treatment for his underlying medical condition, the cause of his offending. The teacher must understand that a failure to satisfy the conditions contained in this determination could have significant adverse effects on his registration as a teacher.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The teacher failed to provide a report from his treating psychologist by 31 July 2006 and thus he has not complied with a determination under section 42.

The teacher is guilty of serious misconduct.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

The Panel has decided that the teacher will remain registered as a teacher in Victoria.

The following conditions will be placed on the teacher's registration as a teacher:

- (a) that the teacher must submit a report from his treating psychologist to the Institute by 1 July 2007
- (b) that the report must attest that the teacher has attended at least four counselling sessions in the period between November 2006 and the 1st July 2007
- (c) that the report must attest that the teacher has received counselling for his depressive illness.

The teacher failed to supply a report from his treating psychologist by 31 July 2006. This failure to comply with a determination under section 42 of the VIT Act makes him guilty of serious misconduct under section 50 (3) of the Act.



Garry Salisbury, CHAIRPERSON



**per
Norm Fary, REGISTERED TEACHER**

A handwritten signature in black ink, appearing to read "Kay Bodna". The signature is written in a cursive style with a large initial 'K' and 'B'.

per
Kay Bodna, PANEL MEMBER