

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 70

REGISTERED TEACHER: Anthony Crawley

PANEL MEMBERS

Marilyn Mooney	Chairperson
Robert Bertagnolio	Registered Teacher
Graham Hout	Panel Member

ATTENDANCE: The teacher attended the hearing and was not represented.

Counsel Assisting: Ms A Sheehan with Ms C Sherman solicitor instructing.

DATE OF HEARING: 9 September 2008

DETERMINATION UNDER SECTION 2.6.46(2) OF THE ACT

On 9 September the Panel determined to impose the following conditions on the teacher's registration as a teacher:

1. That the teacher obtain treatment on a regular basis from a counsellor of his choice for counselling in relation to depression and alcohol and substance dependence for a period of at least 18 months from the date of this decision.
2. That the teacher provide to the Panel three detailed reports from his counsellor by:
 - 1st report: 31 March 2009
 - 2nd report: 30 September 2009
 - 3rd report: 31 March 2010

3. Each report must address the following matters:
 - the dates the teacher has attended for treatment;
 - his understanding of personal and social behaviour that could compromise the professional standing of a teacher, and the profession of teaching
 - his familiarity with and understanding of the Victorian Institute Code of Ethics and the Code of Conduct
 - his ability to recognise and deal appropriately with personal stressors; and
 - his development of a repertoire of positive strategies to respond to stressful situations.

The Panel requires a detailed paragraph on each of the dot points identified above and comment on the teacher's progress and his development of personal insight on each of the 4 points. Comment also is required on the likelihood of the teacher re-offending. Such reports must be to the Panel's satisfaction for the conditions to be deemed to be complied with.

4. That the teacher is responsible for the cost of attending treatment and the cost of supplying the reports.
5. That the teacher is to arrange for a registered teacher (either primary or secondary) of at least 5 years experience to act as his professional mentor over the 18 month period. The mentor will through peer support and collegial advice assist the teacher with his professional practice including classroom management strategies and engagement of students.
6. That by 30 September 2009 the teacher is to provide to the Panel a report from his mentor that will attest to the teacher's use of a range of classroom strategies and appropriate curriculum development and delivery.

REASONS

BACKGROUND

The teacher has been a registered teacher since 31 December 2002.

On 15 June 2007, the teacher consented to a National Criminal History Record Check being conducted through CrimTrac, an agency of the Australian Police Services. On 3 October 2007, the Institute received the teacher's criminal history.

The details of the teacher's criminal history were referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 17 October 2007. The Committee decided to refer the matter to an investigation.

Following the investigation the matter was referred back to the Committee and on 14 May 2008, the Committee determined that the matter should be referred to a formal hearing.

The Notice of Formal Hearing dated 31 July 2008 was served upon the registered teacher by registered post on 4 August 2008.

DOCUMENTS CONSIDERED

1. The teacher - Registration Details (4 pages) **001-004**
2. Document entitled 'Chronology of Events' (2 pages) **005-006**
3. Documents provided by Courts:
 - o A certified copy of the official Magistrates' Court 1 extracts of 26 September 2003 (3 pages) **007-009**
 - o A certified copy of the official Magistrates' Court 1 extracts of 31 March 2005 (1 page) **010**
 - o A certified copy of the official Magistrates' Court 2 extract of 2 June 2005 (1 page) **011**
 - o A certified copy of the official Magistrates' Court 1 extract of 28 November 2006 (2 pages) **012-013**
4. Document obtained under a Freedom of Information request to Victoria Police:
 - o Charge result list for an Offender Hearing for hearing at Magistrates' Court 3 on 13 July 1978 (1 page) **014**
 - o Brief Head relating to offences of 19 June 2003 (2 pages) **015-016**
 - o Summary of Charges relating to offences of 19 June 2003 (1 page) **017**
 - o Charge for 19 June 2003 (2 pages) **018-019**
 - o Brief Head relating to offences of 31 July 2004 (2 pages) **020-021**
 - o Summary of Charges relating to offences of 31 July 2004 (1 page) **022**
 - o Charge for 31 July 2004 (1 page) **023**

- Document (untitled) (2 pages) **024-025**
- Brief Head relating to offences of 16 May 2005 (2 pages) **026-027**
- Charge Sequence and Result of Charge Report relating to hearing on 2 June 2005 (1 page) **028**
- Summary of Charges relating to offences of 16 May 2005 (1 page) **029**
- Charge for 16 May 2005 (2 pages) **030-031**
- Brief Head relating to offences of 6 December 2005 (2 pages) **032-033**
- Summary of Charges relating to offences of 6 December 2005 (1 page) **034**
- Charge and Summons (3 pages) **035-037**

5. Notice of Formal Hearing dated 31 July 2008.

The following exhibits were accepted by the Panel:

- A.** The Victorian Institute of Teaching Code of Conduct
- B.** *Ziems v Prothonotary of the Supreme Court of NSW* (1957) HCA 46; (1957) 97 CLR 279 (2 July 1957)
- C.** Victorian Civil and Administrative Tribunal Administrative Division, Occupational and Business Regulation List VCAT Ref No. B92/2006 (Michael O’Hara and VIT)
- D.** Victorian Institute of Teaching Decision 015
- E.** Victorian Institute of Teaching Decision 018

THE EVIDENCE

The allegations of possible lack of fitness to teach as set out in the Notice of Formal Hearing are as follows:

1. Whilst registered as a teacher in Victoria, the teacher:
 - a. Appeared in Magistrates’ Court 3 on 13 July 1978 charged with one count of the indictable offence of ‘possess Indian Hemp’. The matter was adjourned to 12 April 1979 on a \$100 Good Behaviour Bond.
 - b. Appeared in Magistrates’ Court 1 on 26 September 2003 charged with one count each of the indictable offences of ‘possess ecstasy’, ‘possess amphetamine’ and ‘possess cannabis’. The matters were adjourned to 24 September 2004 without conviction.
 - c. Appeared in Magistrates’ Court 1 on 31 March 2005 charged with one count of the indictable offence of ‘possess cannabis’. The teacher was convicted and fined an aggregate of \$350. A forfeiture order was made by consent.
 - d. Appeared in Magistrates’ Court 2 on 2 June 2005 charged with one count of the indictable offence of ‘possess cannabis’. The teacher was convicted and fined an aggregate of \$400. A forfeiture order was made by consent.

- e. Appeared in Magistrates' Court 1 on 28 November 2006 charged with one count each of the indictable offences of 'possess methylamphetamine' and 'possess cannabis'. The teacher was convicted, fined an aggregate of \$750 and ordered to pay \$59.80 statutory costs. A forfeiture order was made by consent.

The Teacher

The teacher gave evidence under oath. He told the Panel that he graduated from College in 1980 and that he has taught at school 1 from 1980 – 1985; school 2 from 1986 – 1988; and school 3 from 1988 – 1998. The Panel heard that whilst at school 3 the teacher was Head of Drama and also taught Humanities and Media.

He told the Panel that in 1998 he was ill and depressed due to the breakdown of his marriage and subsequent court proceedings where he was seeking custody of his daughter. He said that he took anti-depressants to help him through this difficult time.

The Panel heard that in 1998 the teacher accepted ill-health retirement. He said that his life "went down hill from there" and he started taking "other things" to help him cope with his life situation. He told the Panel that in 1998 he was receiving medical treatment from his General Practitioner who also acted as a counsellor. However the Panel heard that from approximately 1998 until 2005 the teacher was receiving no medical treatment. The teacher told the Panel that he was very depressed and trying to come to terms with living on his own. He said that he was on a "downhill slide" and that taking anti-depressants made him tired and left him in a state of having no energy. This caused him then to move on to amphetamines and marijuana. He said that this was "band-aiding" his problems.

The teacher explained to the Panel that he lost his way and that his way of coping was through drug abuse. He told the Panel that prior to 1999 the only time he had used marijuana was during his university days of the late 1970s. It wasn't until the difficult time of 1999 – 2005 where he had a lot of time on his hands and where he met up with a crowd of people who indulged in drugs that he got "sucked in to this lifestyle". The teacher told the Panel that in 2005 he realised that as he was getting into more and more trouble with the police he needed to change his lifestyle. He sought help from a Detoxification Unit, and then received weekly counselling focussing on his depression and drug abuse.

He said that in 2005 he began "climbing back up the hill" and that his life has evened out now. In 2006 he moved back to live in his parents' home to help look after his sick father. The teacher's father died a week prior to the hearing and he is now supporting his mother.

The teacher told the Panel that he has weekly counselling sessions. He is involved in a personal support project under the guidance of the witness from the Community Services Organisation. He said that seeking the help was a good step as it opened his eyes to what he was missing out on. He told the Panel that he had not "fallen off the wagon" and that the 'detox' treatment was the turning point for him.

The teacher told the Panel that he is on a Disability Pension which he is presently trying to work off. He is working as a casual relief teacher in three schools for approximately 15 hours a week. He is coping and working well and has used the internet and friends to help familiarise himself with curriculum and related activities.

The teacher told the Panel that when difficult situations present, for example knowing what to teach in a primary class or having engaging activities for students, he can call on his drama knowledge and experience to help him out. He also seeks advice from colleagues and friends on behaviour management issues. He said that he talks to his mother about his day and that he does not and has not resorted to drugs. He told the Panel that he is able to talk to previous teaching colleagues about the “bad days” as they are aware of his ill-health retirement and his problems with drugs.

Counsel Assisting put a hypothetical situation to the teacher asking how he would cope if he was exhausted and strung out after teaching for 5 days a week for 3 weeks with little support. The teacher told the Panel that if he was only exhausted and strung out he would go home and relax. He added that if he were ill at ease or stressed he would seek advice from school and other colleagues on how to engage and motivate students in a more positive way.

The teacher told the Panel that he was looking for part time work for a few years with a view to moving to full-time teaching. His Disability Pension is based on depression and this is to be reviewed in October 2008.

The Witness

The witness gave evidence under oath and told the Panel that he is a case worker with the Community Services Organisation. The witness has formal qualifications in Theology, Pastoral Care, and Counselling and Human Services. He has 20 years experience as a counsellor.

The witness explained to the Panel that Centre Link refers clients to the Community Services Organisation which is how he met and now works with the teacher. He said that clients can present with very complex problems and that they work with them for up to two years in pre-employment programs.

The witness told the Panel that he will work with the teacher to plan out his future and that they will meet every 3 weeks approximately. The Panel heard that the witness can liaise with other support people such as doctors and counsellors who might assist the teacher.

The witness said that he had helped the teacher pursue his casual relief teaching employment. He told the Panel that the teacher is a determined person who is sensible and can use his commonsense. He said that the teacher has had the wind taken out of his sails over the last few years but now recognises that he needs to “get cracking”. The witness stated that the teacher is now more self-confident and has a measure of hope. He said that he is capable of making good decisions and choices.

The Panel heard that the teacher's period of support with the Community Services Organisation ends in October 2008 but that a post placement support program can be utilised for up to 6 months.

The teacher expressed remorse for his poor judgement and criminal behaviour over the past several years and an active determination to learn from the experience and re-establish himself as a teacher.

DISCUSSION OF EVIDENCE

The Panel noted that it was bound by the principles of natural justice. The Panel also acknowledged that it was not bound by the rules of evidence. Further, in examining and discussing the evidence, the Panel was mindful that it was only the allegations in the Notice of Hearing which the teacher had been served with, that were relevant to the hearing process.

In considering this case the Panel acknowledged the responsibility to inform itself thoroughly and in turn gave the teacher many opportunities to discuss what had transpired and why. The Panel was aware that it must act with care and caution, mindful of the teacher's reputation and the possible consequences for him. This was particularly important as the teacher was not legally represented at the Hearing.

The teacher did not dispute the allegation or the documentation provided by the Institute to support it.

Disciplinary Proceedings are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177).. In line with the High Court decision in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the Panel must make a decision in the public interest, as well as one that seeks to ensure the maintenance of proper standards of conduct for the profession, and is additionally a determination that takes a step in order to protect the reputation of the teaching profession as a whole. The Panel must also differentiate between personal and professional misconduct.

The Panel was conscious that none of the teacher's criminal record relates to a period of time when he was teaching. Further the Panel was impressed by the proactive approach taken by the teacher to address his drug dependence and depressive state, his on-going acceptance of counselling support, his remorse and broad determination to get his life back into order. Whilst not corroborated, the teacher's evidence of his success in his relief teaching sessions and his willingness to seek support, guidance and curriculum materials impressed the Panel as a sound start to his desired return to regular teaching. The Panel also responded to the issue before it of a teacher with a sound professional record attempting to move on from a serious personal crisis, become independent of government welfare support, provide care and support to his parents and return to his passion of teaching. The Panel addressed the question, "How does it serve the public interest" to place unreasonable obstacles in the path of this process of recovery?"

The witness was a credible and compelling witness who could substantiate the impression that the teacher was making a significant attempt to overcome his depression and history of drug use.

The Panel was of the view that the teacher should be further encouraged to return to teaching. At the same time it felt it had a role to play to reinforce the teacher's recovery by placing some conditions on his on-going registration.

FINDINGS UNDER SECTION 2.6.46(2) OF THE ACT

The Panel found the allegation substantiated and that the teacher was unfit to teach.

However, the Panel found:

- that the allegation related to the teacher's personal life at times when he was not employed as a teacher.
- that the teacher has demonstrated, by his evidence and actions over the last several years, remorse for his criminal activity and poor life choices, a determination to recover from those experiences, and an appropriate mindset to return to teaching on a regular basis.
- that it was not necessary to debar the teacher from teaching in order to protect the public interest, the maintenance of proper standards of conduct for the profession, or the reputation of the teaching profession as a whole.
- that in order to ensure the protection of the public and to support the teacher's recovery process, certain conditions should be placed on his registration.



MARILYN MOONEY, CHAIRPERSON



**per ,
ROBERT BERTAGNOLIO, REGISTERED TEACHER**



**per ,
GRAHAM HOULT, PANEL MEMBER**