

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 075

REGISTERED TEACHER: DRH

PANEL MEMBERS: Heather Schnagl, Chairperson
Terry Hayes, Registered Teacher
Nicole Lylak, Registered Teacher

ATTENDANCE: The teacher was represented by Mr Mark
Champion, with A'Beckett Lawyers instructing
prior to the adjournment

The teacher was unrepresented following the
adjournment

Ms Melinda Richards Counsel Assisting with
Ms C Pickett, instructing

DATES OF HEARING: 15 October 2008 and 27 October 2009

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION AND
TRAINING REFORM ACT 2006*

On 27 October 2009 the teacher was found fit to teach.

REASONS

BACKGROUND

The teacher was provisionally registered with the Victorian Institute of Teaching (the Institute) on 23 August 2006 and was granted full registration on 31 October 2007.

On 8 April 2008, the teacher consented to a National Criminal History Record Check being conducted through CrimTrac, an agency of the Australian Police Services. On 24 April 2008, the Institute received the results of the teacher's criminal record check.

The details of the teacher's criminal history were referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 25 June 2008 and the Committee decided to refer the matter to a formal hearing.

The Notice of Formal Hearing dated 12 August 2008 was served upon the registered teacher by registered post on 15 August 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 12 August 2008
2. The teacher - Registration Details (4 pages) 001-004
3. Document entitled 'Chronology of Events' (1 page) 004a
4. Documents provided by Court:
 - A certified copy of the official County Court transcript extract of 27 March 2008 (2 pages) 005-006
5. Document obtained under a Freedom of Information request to the Office of Public Prosecutions:
 - Victoria Police Original Brief cover page (1 page) 007
 - Witness List (9 pages) 008-016
 - Statement the victim (6 pages) 017-022
 - Statement the victim (3 pages) 023-025
 - Statement Victoria Police Officer (5 pages) 026-030

- Transcript of Interview with D the teacher, dated 1 August 2007 (45 pages) 031-075
- *The Queen v the teacher* - Prosecution Opening (5 pages) 076- 080

The following exhibits were accepted by the Panel for Part I of the hearing:

- A. Hearing book
- B. Sentencing Remarks of His Honour Judge McInerney
- C. County Court Suppression Order
- D. Counsel Assisting the Panel's opening submissions
- E. Teacher's representative's opening submissions
- F. Psychological report of the teacher's treating psychologist
- G. Letter from the teacher to the Institute
- H. Reference of the teacher's partner
- I. Reference of teacher 1
- J. Statement of participation dated 15 April 2008
- K. Reference of referee 1
- L. Psychological report of forensic psychologist
- M. Academic Transcripts
- N. Reference of the principal

The following exhibits were accepted by the Panel for Part II of the hearing:

- O. Report of the teacher's treating psychologist dated 27 October 2009 but received by the Institute on 22 October 2009
- P. Letter to Panel from the teacher (undated) received by the Institute on 22 October 2009

THE EVIDENCE – Part I

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

1. Whilst registered as a teacher in Victoria, the teacher:
 - (b) Appeared in the County Court on 27 March 2008 charged with one count of the indictable offence of 'blackmail'. The teacher was convicted and sentenced to 2 years imprisonment which was wholly suspended with an operational period of 3 ½ years. He was ordered to pay a fine in the sum of \$3,000.00.

Evidence from the teacher

The teacher gave evidence under affirmation. He told the Panel that he was 32 years old and grew up in New South Wales, both his parents were alive, that his mother was a teacher and his father a dentist. He stated that he had a good relationship with his parents. He said he had a brother in Brisbane who was also a teacher and a sister in Sydney who was a nurse. He explained to the Panel that his brother and sister did not know of his offence, nor of this hearing. When asked by his counsel as to why he did not tell his brother and sister, he indicated that his mother said to him, "I do not know if they are ready to hear this."

The teacher stated that he was and is still supported by his partner who has attended some of the counselling sessions with him. He told the Panel that his therapy started in March 2008. The teacher said that after the initial counselling session was conducted to obtain an expert report for his court appearance, he continued to attend counselling sessions approximately weekly which would then make it about twenty sessions barring a few weeks. He also indicated that he intends to continue these counselling sessions.

The teacher told the Panel that he was currently working five days per week and that his partner was working two and a half days per week. They had a son who is 15 months old. He estimated that his income was about fifty thousand dollars, that his rent was one thousand and forty dollars per month.

The Panel heard that the teacher completed a Bachelor of Arts in Communication in 1997. He told the Panel that he worked in a number of jobs including a sound recordist at the ABC and that he played the drums, percussion, didgeridoo and guitar. The teacher explained that he undertook a teaching role in 2001 – 2002 in Japan teaching English. This was his first teaching position for which he undertook a three month training course.

On returning to Australia in 2002, the teacher enrolled in a Post Graduate Diploma in Special Needs (2003) and subsequently a Diploma in Education (2004) in Drama and Media in which he undertook the forty-five days of supervised teaching at three special schools.

The teacher told the Panel that he had on-going employment at his current school, where he commenced in March 2005. He is still working under the same principal who originally employed him. The teacher told the Panel that the school consisted of a number of campuses including the one where he worked. He indicated that there were about two hundred students in total at all of the campuses. The teacher explained to the Panel that he taught the group where the students' ages were from fourteen to eighteen, and their special needs were autism - high functioning with co-morbid mental health issues. He informed the Panel that he had a class of seven students which he team taught with teacher 1 (who provided a reference for the teacher, (Exhibit I), although he was not aware of the teacher's conviction) and two support staff.

The teacher explained to the Panel that his curriculum focused around social, behavioural and communicative skills, rather than on academic skills. His teaching involved educating the students on areas such as greetings, job interview skills and observing birthdays: generally helping the students to become independent when they leave school.

The teacher was excited about the school recently receiving government funding approval to build a new school where all the campuses will merge into one campus and that the school will be a purpose built school for students with autism. He indicated that he would like to be part of this change and help create a new curriculum for the new school.

The Panel was told how the teacher had participated in a religion for approximately four years, which he attended every Sunday. The Panel also heard that his official role within the church every Sunday was to greet people, mark rolls, balance books and take donations, (Exhibit J). The teacher also told the Panel that he attended Yoga two to three times per week (at his treating psychologist's suggestion).

The teacher accepted the details of his offence as outlined in the police brief, namely that he blackmailed a person with whom he had had a consensual homosexual experience. The teacher videoed approximately 30 minutes of his encounter with his victim, (which was actually the third meeting between the teacher and the victim) which he subsequently used to blackmail his victim for \$3,000. Following his arrest, the teacher confessed his actions to the police and subsequently pleaded guilty at the County Court, sparing his victim the need to

appear. The teacher told the Panel that it was not until his third sexual encounter with the victim that the idea of blackmail had occurred to him.

The teacher advised the Panel that he was embarrassed, personally and professionally by his actions and that it was the worst thing he had ever done. He admitted that he was confused about his sexuality and that he felt different and 'trapped'. When questioned as to the intent behind the recording of his homosexual encounter, the teacher told the police that it was with the intention of obtaining money as he and his partner had a credit card debt and that they were adjusting to a single income following the birth of their son. In his explanatory letter to the Institute dated 10 June 2008 (Exhibit G, which he confirmed under affirmation) the teacher explained that the recording was for personal use, and that that the blackmail was an impulsive action. The teacher said that when he wrote the document (Exhibit G) that he did not have the court document and he wrote it from memory and without legal representation.

The teacher admitted to the Panel that he went through a really rough patch, having to tell of the most embarrassing moment in his life (the circumstances behind his offence) to his partner, parents, close friends, psychologist and complete strangers, about 10 people in total. He told the Panel he is now feeling clearer, more focused and at peace. His relationship with his partner also suffered due to this incident and that they were working through it together and that his relationship with her is now 'great'. He decided to be a better person for his partner and himself following the disclosure of 'his secret' (his confused sexual identity).

Through his counselling the teacher rationalised that his actions against his victim was a reflection of his hatred for his own secret life. The fact the victim was a lot older and still living the secret life (that of a 'closet homosexual') only magnified his own 'secret' life.

He gave evidence that his principal was informed that he had committed the offence of blackmail, although she was not aware of the circumstances behind the offence and has continued to be kept up to date regarding proceedings. The teacher informed the Panel that his principal was shown the court letter, however she did not want to know about the offence. She was concerned that she may have to find another employee. The teacher also indicated that he may tell his team teaching partner about his conviction some day. He stated that he did not have time to be personal at school. The teacher felt that after his conviction that his professionalism and the relationship with his partner were stronger. The teacher stated that whether or not he continued to remain a registered teacher as a result of this hearing, he would still continue to work through his personal issues and see a therapist.

Counsel Assisting obtained the following facts, with a little assistance of clarification from the teacher's partner, regarding the teacher's financial situation, namely that his partner:

- earned between \$43,000 and \$46,000
- had maternity leave from June 2007
- had 9 weeks paid maternity leave (and no other paid leave)
- ran out of leave in mid September
- received the baby bonus approximately one month after baby was born, which did not support the teacher's earlier evidence regarding their financial difficulties at this time.

The teacher was questioned as to his role that he played in his church and whether one of his responsibilities was to collect money, and if so did he ever feel the urge to take some of the money? To which the teacher replied that the idea had flashed through his mind very briefly, but that it was at church where he is at his best. The teacher acknowledged to the Panel that this whole process has been very expensive and that he still has to pay the fine, lawyers' costs (whilst acknowledging that he did use legal aid for the court appearance) and that he has received no financial assistance from either his own or his partner's family.

The teacher believes that he has been a model professional, except for this one-off occurrence. He believes that it is great to be a teacher, sharing perspectives of life with the students. The teacher told the Panel that he does not see the students he teaches as vulnerable, but rather that autism is a 'mystery'. The teacher feels as if he is now in a good position.

Evidence from the teacher's treating psychologist

The teacher's treating psychologist gave written and verbal evidence under oath.

The teacher's treating psychologist stated that he has been a registered psychologist since 1976, having practiced clinically and forensically. He is also a Senior Fellow in the School of Medicine in the Faculty of Medicine, Dentistry and Health Science at the University of Melbourne.

The teacher's treating psychologist stated that he was approached by Legal Aid in February 2008 to provide a detailed psychological assessment of the teacher for presentation to the County Court of Victoria. Of that assessment, the teacher's treating psychologist wrote, "I have rarely encountered such a personally scarifying and intelligent attempt at self examination." The teacher's treating psychologist stated that the focus of the therapy was on the deep underlying motives which he believed had been the underlying foundation of the teacher's offence.

The teacher's treating psychologist stated that he has since seen the teacher either individually or with his partner for fifteen sessions. He stated that the therapeutic relationship will continue irrespective of the outcome of the panel hearing. The teacher's treating psychologist described the therapeutic enquiry as a three stage process: adulation, resistance or dislike and synthesis. The teacher's treating psychologist said he believed that the teacher had made considerable progress with his therapy but was still in the first stage, adulation.

The teacher's treating psychologist described aspects of the teacher's family life that had led him as a child to cultivate a secret life that provided him with both a sense of power and a sense of guilt. He had carried that secret life into adulthood where the focus was on concealment and duplicity regarding his sexuality.

The teacher's treating psychologist argued that the blackmail offence arose in circumstances where there seemed to have been a loss of perspective on the teacher's part in respect to credit card debt and the imminent birth of his first child, and far more importantly, a projection of his own self loathing driven by the conflicts and dissatisfactions resulting from his sexual needs and chronic behaviour. The financial stress caused by the credit card debt, the teacher's treating psychologist argued, was very much the tip of a much deeper psychological iceberg. The underlying foundation for the offence was more deep seated in the teacher's projection of his self loathing on to his victim. The teacher's treating psychologist stated that the teacher saw in his victim one who mirrored his own situation, that is a man both cheating on his wife by being with another person, and compounding that cheating by not being able to inform his wife. The teacher's treating psychologist described the teacher's attitude as a determination "to punish the victim for the state I'm in."

The teacher's treating psychologist stated that he believed the teacher had taken full responsibility for his action. He had not minimised the seriousness of his crime and he recognised that blackmail was a violent act. The teacher's treating psychologist stated that he did not know whether the person whom the teacher attempted to blackmail was vulnerable or not. He was, the teacher's treating psychologist said, not so intimidated that he did nothing about it. The teacher's treating psychologist said he did not view the teacher's action as an opportunistic preying upon people. He stated that while there was some focus in the teacher's therapy sessions on the impact of his act on the victim, the therapy was less concerned with issues of victim empathy than it was with the teacher's motivations.

The teacher's treating psychologist stated he had considerable confidence that there would be no further criminal activity on the teacher's part. The teacher's treating psychologist said there had been none prior to the blackmail charge and the activity arose from underlying psychological issues which were now being

openly confronted. The teacher's treating psychologist said he based his opinion on the teacher's intention to continue in therapeutic enquiry as well as his concern for the effects on others including his professional colleagues. The teacher's treating psychologist also stated that the fact that the teacher's behaviour was being scrutinized so closely by his professional peers, his friends – some of whom are gay and very disturbed by his actions – family, and most importantly, his partner, provided some powerful guarantees that this sort of activity will not recur.

Asked to consider whether the teacher's current psychological status would impede his teaching ability the teacher's treating psychologist stated that he did not believe there was any evidence for concern. The teacher's treating psychologist stated that he had spent a good deal of time reading about the "ideal" qualities of a good teacher with appropriate ethical standards and a capacity for commitment, dedication, inspiration, personal reliability, constancy and consistency supported by well founded techniques for achieving specific pedagogical goals. He believed the teacher possessed these qualities.

The teacher's treating psychologist stated that he did consider whether the teacher's current psychological status had any detrimental effect on his students. The teacher's treating psychologist said that it was very obvious that the teacher had sequestered his "secret (private) life" very effectively and he believed that the teacher had the ego-based capacity to maintain effective separation from this aspect of his private life and his professional life.

The teacher's treating psychologist stated that he did not believe the teacher posed any sexual risk at all, and certainly not to his students. The teacher's treating psychologist stated that the circumstances of the sexual interaction were consensual and to his understanding the teacher has only ever been involved with adults.

The teacher's treating psychologist stated that the teacher was, and is remorseful for his behaviour and that he has placed his career in jeopardy, and has affected his relationship with his partner. He said the teacher is ashamed of his actions which are contrary to his own practising religious principles. The teacher's treating psychologist said he believed the teacher to be "basically an extremely ethical person with appropriate personal, social, professional and spiritual values."

The teacher's treating psychologist stated that the teacher's personal, academic and philosophical interests have now found a focus in his work at the school. He said that the teacher had told him "I went into studying teaching and then special needs because I found that I really enjoyed the interaction with students and being listened to and being taken seriously. Working with special need students came from my meditative practice and wanting to help all beings on this planet and deciding that I should give my energy to those who can't and don't get it

from most people. I am not sure about where I might go with my teaching. Eventually I would like to teach teachers how to teach students with autism or possibly an entire new field in personal management, or even a job at a university as a lecturer. I have a deep interest in integral theory and its applications. I have personally studied and kept up to date with this growing theory for several years now.”

In response to questioning from Counsel Assisting as to whether he believed the teacher’s action (with respect to the blackmail) was premeditated or impulsive The teacher’s treating psychologist stated there was probably a melding of the two processes. He added that he was aware that the teacher had engaged in visual stimulation on previous occasions.

DISCUSSION OF THE EVIDENCE – PART 1

The purpose of this hearing was to determine whether the teacher was fit to teach following his conviction for the serious indictable offence of blackmail on 27 March 2008.

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 protects the reputation of the teaching profession as a whole. The Panel must also differentiate between personal and professional misconduct.

In his evidence the teacher admitted that his actions, namely filming of a consensual homosexual act, was a premeditated action in order to blackmail a vulnerable person. Whether his primary motivation for the filming was for personal titillation or for the blackmail was, from the evidence presented, not clear. In his evidence the teacher’s treating psychologist told the Panel that the teacher’s actions were not the actions of a person preying on a vulnerable individual but rather an expression of loathing for a person in a similarly confused sexual state. The teacher’s treating psychologist also stated that he did not believe that the teacher would take advantage of someone in his care and that the teacher’s personal life was sequestered from his professional life.

The teacher’s offence was committed at a time when he experienced a period of stress due to the birth of his first child (which due to his sexual confusion made him feel trapped) and the financial pressure associated with adjusting to a single income. The Panel heard evidence that the teacher’s subsequent disclosures of his sexual issues to his partner, parents, and a small group of close friends made a

repeat offence extremely unlikely. Given that the teacher was likely to experience further periods of stress in his life, the Panel needed to assure itself that he had adequate mechanisms to deal with any future stressors and that he would not be tempted to commit a similar offence in the future. The Panel noted the teacher's sincere efforts to enhance his personal support networks, both physical and emotional, through his involvement in both religion and yoga.

It was to the teacher's significant credit that, both in his police interviews and at the subsequent court hearing, he openly admitted his actions and pleaded guilty sparing his victim from appearing at the hearing. In his evidence before the Panel, the teacher clearly demonstrated remorse for his actions. He recognised that his actions brought not only himself but his chosen profession of teaching into disrepute.

Whilst the offence is of a very serious nature, the Panel heard evidence that the teacher was unlikely to re-offend and consequently the Panel agreed with the sentencing judge, His Honour Judge McInerney, that there was no evidence that the teacher was a risk to the children he taught. Given that the teacher's teaching responsibilities were with autistic children, who the community would perceive as being the most vulnerable of young people, the Panel questioned both the teacher and his treating psychologist, the teacher's treating psychologist at length but were satisfied that he did not pose a risk to his students. In fact the Panel were impressed by the teacher's description of autism as a mystery and that his role was to help students who really needed it.

The Panel heard evidence that, as a result of the charge and subsequent court case, the teacher's partner and parents and a small circle of friends were now aware of his confused sexual identity. Whilst the Panel was concerned with regard to the small number of people who were fully informed of the circumstances of the teacher's offence, they were reassured by his treating psychologist's evidence that even this small number was sufficient for his actions to be considered to be 'in the open'. Whilst the Panel was told that it could never be completely satisfied that the teacher would not re-embark on a secret sexual life again, his treating psychologist stated that in his professional opinion that it was not probable.

Whilst his principal is aware of his conviction for blackmail she is not aware of the circumstances which led to the offence nor are his teaching colleagues. The teacher told the Panel that his principal did not want to be informed of the circumstances leading up to the offence. This was of concern to the Panel who have to be mindful of the effect of the teacher's conviction on his school community and the teaching profession as a whole should it become known.

Whilst the teacher attended a psychologist prior to his court hearing in March 2008 to obtain a report, it was only since the court appearance that he had

commenced undertaking psychological treatment for the underlying issues behind his conviction. His treating psychologist provided clear and detailed evidence to the Panel that the teacher had made significant progress in his rehabilitation but that there was still a significant road ahead.

Despite the teacher's underlying confusion regarding his sexual identity, evidence was presented that he had been able to keep his personal and professional lives totally separate. There was no suggestion in the evidence presented that the teacher's performance of his duties as a teacher was in any way affected by his actions. It was, however, of concern to the Panel that neither of the persons who provided professional references to the hearing, namely the principal, nor his teaching colleague, teacher 1, were aware of the detailed circumstances of the teacher's conviction.

In its determination, the Panel was mindful that the teacher's offence represented a single instance in an otherwise unblemished record. It is however the serious nature of his offence against a vulnerable individual that requires the Panel to be cautious in its findings. The teacher's conduct was a grave lapse from the personal conduct expected of a member of the teaching profession. It was, however, a single instance and was not of a continuing or persistent nature.

While the Panel heard evidence that the teacher had made significant progress in his rehabilitation in the six months since his court appearance, the Panel was not able to be confident that his rehabilitation had reached the point yet at which it could make findings about the teacher's fitness to teach. The Panel formed the view that if the teacher continued to receive ongoing psychological treatment for his issues for a further 12 months, especially with respect to his psycho-social makeup, that it would be in a better position to determine whether or not the teacher was fit to teach.

Given that the Panel does not have the power to impose conditions on the teacher's registration without making an adverse finding under section 2.6.46(1) about fitness to teach, the Panel resolved to adjourn the hearing for a period of 12 months from 22 October 2008 to enable the teacher to continue to receive treatment before making its final decision. At that time the Panel suggested that it would be of assistance to the Panel if the teacher could provide to the Panel at least two detailed reports from his treating psychologist before 22 October 2009. Each report would need to canvass issues relevant to the teacher's fitness to teach and could include:

- The dates the teacher has attended for treatment
- His understanding of his personal behaviour that could compromise the professional standing of a teacher and the profession of teaching
- His ability to recognise and deal appropriately with personal stressors and conflict, especially in his private life

A detailed paragraph on each of the above dot points and comment on the teacher's progress and his development of personal insight on each of the points would be of assistance to the Panel.

During the adjournment the teacher's registration was not affected and he is able to continue teaching.

THE EVIDENCE – Part II

Following the twelve month adjournment, the Panel reconvened and received an additional report from the teacher's treating psychologist, (Exhibit O) together with a submission from the teacher himself (Exhibit P).

Evidence from the teacher

The teacher gave evidence under affirmation to the Panel regarding the events of the past twelve months, with particular reference to his teaching practice and the progress of his counselling. Whilst still teaching at the same school, the teacher has been teaching only two days per week this year whilst also caring for his young son, thereby enabling his partner to resume her teaching career. During these two days the teacher is teaching a younger group of students with autism spectrum disorders as opposed to his previous work with older adolescents. The Panel heard details of his work with the students, in which he was able to incorporate his particular musical skills, and also involved working with a team consisting of another teacher and two aides.

The teacher explained to the Panel that he had not found the transition to part time work with the younger students easy and in fact he had met with his principal in response to other teachers' perception that he had 'not been pulling his weight'. It was to the teacher's great credit that he had turned the situation around and was now working effectively in a team for the benefit of his students. He was able to reflect in a deeply thoughtful and professional manner as to what he had learnt through this process and how he had learnt to communicate effectively with the team that he was working with and how each person could use their strengths for the benefit of the students.

Counsel assisting the Institute questioned the teacher as to how he would deal with stressors, both in his professional and personal life. The teacher responded to the Panel how much he had changed through his work with his treating psychologist and that he had learnt how to talk through any issues both with his partner and his colleagues, even to the extent of ending up 'laughing about it'. In response to questioning from Counsel as to how he would handle enormous pressure, the teacher told the Panel of his perspective on life, that his family came

first and that providing for them was paramount. To handle severe pressure he would also go to the gym, speak with his partner, colleagues and write in his journal (which he now keeps). The teacher also regularly practises a type of meditation which gives him 'a bit of space'.

In his evidence to the Panel, the teacher was able to articulate clearly the professional responsibilities of a teacher and that it included life both inside and outside school as teaching was a profession held in high regard by the public. The teacher spoke of teaching as an honourable profession and that he had not previously given it the value it deserved but the past 18 months working with his psychologist had helped him now see teaching as a professional career.

The teacher affirmed that the court fine had now been paid and that he had not committed any other offences.

The teacher told the Panel that the past two years had been a time of incredible change for him and that he now 'felt the happiest with what I am' and that 'it was a massive relief not to live how he was'. In his words, he 'feels very authentic in what I am doing'.

In her closing remarks Counsel Assisting the Institute made considerable reference to the detailed report (Exhibit O) received from the teacher's treating psychologist. In particular, she pointed out the following comments which the teacher's treating psychologist made in his report on the teacher to the Panel specifically for the resumed hearing. The teacher's treating psychologist stated to the Panel that:

It is not a difficult task, in this case, to conclude that there is no impairment of a psychological nature to be considered in your decision-making.

With reference to the number of counselling sessions which the teacher had attended since the hearing was adjourned, the teacher's treating psychologist stated that:

There has been a fortnightly average frequency of meeting this year with a total of 22 sessions.

In relation to the teacher's counselling sessions, the teacher's treating psychologist commented:

He has always been reliable and punctual. He has continued the process of discussion and examination with enthusiasm and commitment. There is ample evidence that he has seen it as an important aspect of his own development and not merely an obligation to preserve his registration as a teacher.

The teacher's treating psychologist also stated that:

As a matter of formal finding, I advise you that I have had no concerns about any of these issues in respect of external information, communication with his

partner, or with material that has been processed during our sessions.

With specific relation to the criminal offence which the teacher had committed, the teacher's treating psychologist reported that:

He has been well aware that notwithstanding his commitment and quality as a teacher that his actions have had the effect of bringing the profession into disrepute, simply by association, even though there was no direct connection with his professional function.

The teacher's treating psychologist also stated that:

There is no evidence of any - let alone sustained - antisocial behaviour, notwithstanding that the teacher has some attitudes and interests which might be seen by some as being of a nonconforming nature. They make him a more interesting individual with an additional richness in his outlook and attitude.

In fact, according to Counsel Assisting the Institute, these attributes are good ones for a teacher to have.

The teacher's treating psychologist's report stated that:

We have moved well away from the actual index offence, though it has never been forgotten. These issues have been explored in his internal world; his personal relationships; and his pattern of behaviour which had previously been driven on occasions by his internal fantasies. Areas of enquiry have included personal sexuality, the ethics of responsibility, and perceptions of behaviour .

It was also clear to those present in the resumed hearing as pointed out by Counsel assisting the Institute, that over the past twelve months, the teacher had gained a significant degree of insight as a consequence of the counselling process.

The teacher's treating psychologist's report also stated that:

I have never suspected him of any dissimulation or deliberate obfuscation or any tinge of dishonesty in our interaction. In the pattern which was set from the start of our interaction, and discussed in detail in my first report, he has been scarily conscientious in the process of self-examination.

In his evidence to the Panel (following the adjournment) the teacher displayed a similar level of frank honesty and conscientiousness with respect to his professional performance during the past 12 months. He openly told that Panel as to how he had 'dropped his game' on moving to a part time role with younger students, the subsequent interactions with his principal and exactly how he had addressed this to improve his performance.

The teacher's treating psychologist's report also stated that:

In therapy we have examined in great depth the long standing patterns of

behaviour which were always justified or rationalized on the basis that there was no harm to others. It was as though that from the time of childhood he was running with a very long rope that gave him the illusion of a freedom beyond the understanding of others. Now he has found that it not only has limitations but it has jerked him to a violent halt from which he is still recovering.

The teacher's treating psychologist went on to say that:

In the teacher's case there are many positive features of relevance. I have known him now for twenty months. He is intelligent, fundamentally honest, creative, conscientious and caring in a way that is consistent and dependable.

The level of detail displayed in the above comments has enabled the Panel to be satisfied with respect to the level of insight gained by the teacher through the counselling process.

In his conclusion the teacher's treating psychologist stated:

He both acknowledges the seriousness of his actions and its consequences but has demonstrated a determination to understand and control the psychological processes which were antecedent to this action. For a creative and unusual person this may well be a work in progress.

The Panel acknowledged that this would be true for most people.

Prediction is always a fraught process but I would have great confidence that he now has both the will and ability to scrutinise, review and control his thinking, emotional responses and actions in any situation which might lead to negative consequences.

The teacher's treating psychologist's report finished by stating that:

I hold this young man in considerable regard.

DISCUSSION OF THE EVIDENCE – PART II

The purpose of this resumed hearing was to make a final determination as to whether the teacher was fit to teach following his conviction for the serious indictable offence of blackmail on 27 March 2008.

In deferring its final decision for 12 months, the Panel was of the view that with continued counselling for this period there was a strong likelihood that the teacher would be able to be found fit to teach.

Whilst in no way wishing to interfere with the Institute carrying out its statutory role, in his sentencing remarks, His Honour Judge McInerney stated that whilst he had convicted the teacher of a serious crime and the sentence he imposed, he noted the steps that the teacher had taken to overcome the difficulties he had had with his psychosocial makeup. His Honour also stressed that this was a dishonesty offence that he regarded as an

aberration to the teacher's prior crime free life rather than something that would indicate and personal danger to the children he would teach.

In Davidson v Victorian Institute of Teaching (VCAT 920), the Victorian Civil and Administrative Tribunal took the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature, rather than a single act of serious misconduct. In the teacher's case, there was a single instance of serious misconduct rather than repeated offences. In addition, the teacher's conduct since the hearing and especially his extensive engagement in counselling give the Panel a degree of comfort that the likelihood of the teacher re-engaging in serious misconduct is very low indeed.

The primary purpose of this hearing was to determine the teacher's fitness to teach to both protect the public and the reputation of the teaching profession. The community should have a high level of comfort from the rigorous process, involving more than 38 counselling sessions, which the teacher has undergone, and that he now understands at a deep level the professional responsibilities and obligations of a teacher, and especially the profession's Code of Ethics and Code of Conduct.

In this instance the Panel finds itself in a privileged position having witnessed the professional growth of the teacher over a twelve month period. At the resumed hearing, the Panel was impressed by both the professional detail and the seriousness of the report from the teacher's treating psychologist. The Panel concurred with Counsel Assisting that the process which the teacher has undergone, in terms of extensive counselling, has improved his professionalism and not diminished it. The Panel concluded the hearing itself by taking the unusual step of congratulating the teacher on his professional growth, both as a person and as a teacher over the past 12 months. His achievements in the past twelve months significantly exceeded that which could have been reasonably expected by the Panel and fully justified the adjournment prior to making its finding.

On 27 October 2009 the Panel determined that the teacher was fit to teach.



HEATHER SCHNAGL, CHAIRPERSON



per:
TERRY HAYES, REGISTERED TEACHER

Heather Schragl.

per:
NICOLE LYLAK, PANEL MEMBER