

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 117

REGISTERED TEACHER: Steven Robert THOMPSON

PANEL MEMBERS: Jane O'Shannessy, Chairperson
Terry Hayes, Registered Teacher
Anne Farrelly, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Simone Bingham, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 23 January 2012

DATE OF DECISION: 16 April 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 16 April 2012 the Panel found the teacher guilty of serious misconduct and unfit to teach.

The Panel determined to cancel the registration of the teacher from that date.

REASONS

BACKGROUND

The teacher had been registered as a teacher with the Victorian Institute of Teaching (the Institute) from 31 December 2002.

By letter dated 11 February 2009, the principal of the school notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 22 April 2009 and the Committee decided to refer the matter to an investigation.

By letter (undated) received by the Institute on 27 April 2009, the teacher advised that he had resigned from his employment and that he no longer wished to be registered with the Institute.

On 20 May 2009, the Disciplinary Proceedings Committee (the Committee) decided to continue with the inquiry.

On 16 September 2009, the Committee considered the Investigator's report, but deferred making a decision regarding the matter.

The matter was referred back to the Committee on 20 January 2010 and the Committee decided to continue with the inquiry and referred the matter to a Formal Hearing.

A Notice of Formal Hearing dated 21 December 2011 was personally served upon the teacher on 12 January 2012.

THE ALLEGATIONS

The allegations of serious misconduct and lack of fitness to teach as set out in the Notice of Formal Hearing are:

Whilst employed between 2007 and 2009 as a registered teacher at the school, the teacher engaged in the inappropriate use of his school allocated laptop computer in circumstances where:

- 1. He downloaded and/or otherwise accessed 422 graphic based image files, the content of which was pornographic in nature, including, images of person(s) naked, images of person(s) partially naked or displaying genitalia and/or images of person(s) engaged in sexual acts .*
- 2. He downloaded and/or otherwise accessed 11 movie based files, the content of was pornographic in nature displaying images of person(s) naked, images of person(s)*

partially naked or displaying genitalia and /or images of person(s) engaged in sexual acts, including:

[REDACTED]

3. *He downloaded and/or otherwise accessed 1289 .lnk data files (also known as Microsoft Windows Operating Short Files that create shortcuts pointing to an original data file, application or directory)*

(a) with the naming conventions linked to an original data file, application or directory, suggesting the content included sexual references to among other things students and/or teaching for example:

[REDACTED]

(b) containing a data file, application or directory under the laptop's D drive entitled
[REDACTED]

(c) with the naming conventions linked to an original data file, application or directory suggesting the content related to incest or incest based references and themes, including:

[REDACTED]

4. *Attempted to delete the data referred to in allegations 1 – 3 in order to be covert about his inappropriate use of the school's laptop computer. Documents in support of allegation were provided.*

THE EVIDENCE

Witness 1 gave evidence under oath. Her witness statement appears in the Hearing Book (pages 1-76).

Witness 1 informed the Panel that she had worked at the school as an Information Technology (IT) professional as a member of the IT staff for seven years. Previous to that she had worked in various roles relating to IT for twenty two years in the corporate world. Her duties at the school were various and included investigating issues relating to the misuse of the schools IT facilities including the accessing of pornography or on-line gambling using the school's IT facilities.

Witness 1 stated she knew the teacher as a member of the teaching staff and although she did not have a large amount of professional interaction with him had formed the view that he had above average knowledge about the use of computer technology. She said he was quite savvy compared to other staff and, she believed, would have known ways to delete evidence that he had been using his laptop to access inappropriate material.

Witness 1 explained the school's laptop usage policy whereby each member of staff was provided with a laptop for their individual use. Prior to issue, each laptop was loaded with the relevant software applications and other information necessary for the laptop to access the school's computer network. The teaching staff had administrator rights to their individual laptops which enabled them to configure their laptops to suit their purposes such as setting them up to operate a home network. The school also operated a domain based network through which the staff used their laptops to access the school's IT facilities. Staff members did not have administrator rights to the school's network.

Witness 1 stated that when a staff member left the school the teacher was required to return the school supplied laptop to the staff service area where it would be reformatted by a member of the IT staff before issuing to another teacher. This process involved deleting everything from the computer then loading the relevant software and other requirements to access the school network from a master image. Witness 1 said she was aware that the teacher, who was taking one year's leave, had returned his laptop early in 2009, because she remembered him returning it late.

Witness 1 outlined the processes whereby she became aware of the materials which was the basis of the allegations, and the steps she took upon discovering them.

She had accessed the teacher's laptop because she was asked by a member of staff for an electronic version of a 40 odd page document, possibly an assignment, which the teacher had been unable to locate on the school network. From her conversation with the teacher she became aware that the teacher was either the author or co-author of the document. As the teacher's laptop had been returned late she thought it may not have been reformatted and the document could be accessed from it.

On acquiring the teacher's laptop from the IT department where it had been stored she noticed that the desktop seemed unusually clean as it displayed only a basic number of

icons and there seemed to be a high number of pop up viruses and spy wear on the laptop.

Having failed to find the requested document she used a software program called Recuva to try to locate it; Recuva being a program which allows the recovery of recently deleted files which have not been written over.

She subsequently found several electronic files including a number of gif and jpg files. One file was titled [REDACTED] which she thought was a derogatory reference to a member of the Humanities faculty. Another was titled [REDACTED] also a member of the Humanities faculty. There were also a number of recovered files with titles she thought inappropriate. The file path for [REDACTED] indicated it had been accessed on the Internet. On accessing [REDACTED] she discovered it was a pornographic website.

She then looked in the laptop's Recent Documents folder to find when the requested document might have been deleted. In the folder she was surprised to find hundreds of files many of which had titles she thought inappropriate. Her search led her to conclude that several of the files had been accessed from external information sources such as the Internet (including a mirror server of pornography), CDs, DVDs and USBs. She stated that she believed the material may have been viewed at school and was concerned that the school's firewall/Internet security might have been breached, however she found the material had been downloaded outside of school.

Because of her concern about the inappropriate nature of some of the file names and images she printed out a copy of the screen captures of the recovered files and those found in Recent Documents and took them to the vice principal who was responsible for dealing with complaints or concerns regarding the use of IT facilities at the school.

After securing the laptop in a safe place she and the vice principal met with the principal, who requested her to investigate whether any inappropriate material had been stored on the hard drive and when the inappropriate material had been accessed. She did so, and saved a selection of recovered files into a folder titled recovered from laptop hard drive.

Using the Windows Command Line interface she accessed the directory of Recent Documents which she then produced as an Excel file listing all the titles in the directory, the time and date when a file was accessed, the size of the files, and in some cases, where the original data/material accessed was located. All the files in the Excel file have the file extension.lnk which means that they were short cuts or pointers to other files located elsewhere, either somewhere on the laptop itself, on an external storage device such as a CD, DVD or USB, or a computer linked to the laptop via a network.

In response to questions from Counsel Assisting and Panel members, witness 1 stated that, though initially she thought it unlikely that teachers and students in the school other than the teacher could have viewed the material, upon reflection, she believed it possible because folders and links to files had been recorded as being present on the desktop.

Witness 1 stated she saved all the material collected on to a USB stick which she then gave to the principal who asked further questions about whether the material could have been accessed by accident.

The laptop was then kept out of action in a secure place until the principal requested it so that he could obtain further external advice (from Deloitte) about the material located on it. The laptop was returned some time later to the IT department and the Manager was asked to remove the hard drive and provide it to the principal. A new hard drive was installed in the laptop and it was then re-formatted and issued to another teacher.

The Panel received a statutory declaration (19/1/2012) from the principal of the school at the time the incidents in the allegations occurred. In his declaration the principal confirmed witness 1's account of the chain of security regarding the teacher's laptop once the material had been discovered and the actions he subsequently undertook, including referring the matter to Deloitte.

The principal, in his witness statement contained in the Hearing Book, stated that he considered the teacher to be an excellent practitioner in his subject area who was outstanding in his incorporation of IT technology into classroom practice.

In his statutory declaration the principal stated that as a longstanding member of the profession he considered that the teacher's conduct with respect to downloading and/or otherwise accessing the material which was found on his laptop, as conduct that impairs his standing in the community and his influence over students. He said he considered that the teacher's conduct had the effect of bringing the profession as a whole into disrepute.¹

The teacher declined to appear before the Panel and made it clear that, if summonsed, he would decline to give evidence. At the Panel's request he provided a statutory declaration (9/3/12) in which he stated he was unemployed and an author.

In relation to Allegations 1-3 the teacher stated that he did not contest the fact that he used his school laptop to access pornographic, and therefore inappropriate, material though he had no recollection of accessing or viewing the presented evidence. He stated that he accessed such material late at night or early in the morning and occasionally on weekends on his home network. He further stated that he never accessed inappropriate material using the school network, nor did he access the material at school, in the presence of students or teachers or save it on his laptop so that it could be inadvertently accessed by teaching colleagues or students.

The teacher also stated that, having been provided with a laptop computer by the school, he was broadly aware of the acceptable use policy related to the school's computers and network system, and acknowledged he was in breach of this policy.

The teacher said that in 2007, because of increasing work pressures, he had started taking amphetamines in the belief that they would provide additional energy and stimulation which would allow him to undertake extra work at home. Instead, they led to anxiety, insomnia, disorganised thought, impaired judgment and erratic behaviour in his personal relationships. In addition, their usage fuelled an increase in his casual Internet use, the

frequency with which he accessed pornographic material and the types of pornographic material accessed. During that period he said he accessed and stored a range of material for its shock value.

The teacher stated that he no longer uses such drugs and has not done so since May-June 2009. Nor does he access pornographic material with the same frequency as he had previously or access material of highly inappropriate themes or content.

In relation to Allegation 4, the teacher stated that it was his regular practice to delete personal files and his browsing history from shared computers in order to protect his intellectual property, and the integrity of email and Internet banking accounts. He disputed the allegation that he deleted the inappropriate material in question as an act of concealment, adding had he wished to conceal his Internet use he would have employed specialist software to do so.

In a letter (18/1/12) tendered to the Institute, the teacher did not seek to excuse his actions but judged himself severely. He stated: "I currently consider myself both incapable of teaching and unworthy to hold any teaching position". He requested that the Panel cancel his registration.

The Panel also received evidence from the teacher's medical practitioner, Doctor 1, in the form of clinical notes for a series of six consultations from 9/4/10 to 23/7/10 with a further consultation on 5/3/12. The notes suggested the teacher had been suffering from depression and suicidal feelings. The notes contain correspondence between Doctor 1 and Doctor 2, consultant psychiatrist at The Clinic, regarding a referral of the teacher to the latter. Doctor 2's letter (6/8/10) records the fact that despite several attempts to contact the teacher he did not take up the referral.

Counsel Assisting informed the Panel that the Institute referred the matter to the Victorian Police who were unable to ascertain, on the limited material available very early on in the investigation, whether the material constituted child pornography. Counsel Assisting added that the more comprehensive material contained in the Deloitte report, which included titles and links to sites with incest and incest related themes was very disturbing in the circumstances.

DISCUSSION OF THE EVIDENCE

Notwithstanding the teacher's refusal to attend the panel hearing to give evidence on his own behalf or to make submissions in mitigation of his conduct, the Panel made considerable effort to ensure that natural justice and procedural fairness were accorded him.

The Panel noted the teacher did not contest the Allegations 1-3 in relation to accessing inappropriate material.

The Panel concluded that it should give little weight to the teacher's statement that he was unaware of accessing or viewing the actual material presented as evidence in the

Allegations, having regard to the teacher's unwillingness to give evidence under oath or to be cross examined. The Panel also concluded that it could place little weight on the mitigating circumstances he proffered to explain his increased Internet use to access inappropriate material.

In relation to Allegation 4 the Panel noted the teacher's assertion that the deletion of the inappropriate material resulted from his practice of removing all material (even of a non-offensive personal kind), as the inference being that the deletion was routine rather than acting covertly. The teacher stated he was aware of the relevant software which would have enabled him to completely delete the material if he had wished to do so. Witness 1 believed he had the necessary expertise to delete the material. The teacher's attempts to delete the material appear superficial (simply removing the evidence from his desktop) given the relative ease with which witness 1 was able to follow a trail of evidence in locating the inappropriate material. While the panel did not have the opportunity of testing the teacher's statement's it concluded that the surrounding facts are consistent with his statement on this point.

FINDINGS

The Panel found Allegations 1-3 proven based on the detailed evidence provided by witness 1. The Panel also notes that the teacher has made admissions in regard to these matters.

The Panel found Allegation 4 not proven. The panel concluded that on the balance of probabilities, there was no action of covert concealment which distinguished Mr Thomson's deletion of inappropriate material from his laptop, from his usual actions in deleting material of a non-offensive kind.

The Panel determined that the actions in the Allegations 1-3 constitute serious misconduct. In bringing very disturbing material so casually into the school environment where it might have been accessed, either inadvertently or otherwise, by other persons, the teacher showed little regard for its potential effect upon his students or his fellow teachers. Not only did his actions contravene the school's Staff Laptop Policy in relation to inappropriate use of the equipment, they seriously contravened the Victorian Teaching Profession Code of Conduct, especially Principle 2.1: The personal conduct of a teacher will have an impact on the professional standing of that teacher and on the profession as a whole. In so doing he ran the risk of bringing the profession into disrepute.

The Panel also determined that the teacher is unfit to teach. He himself recognises this. His failure to attend at the panel hearing to explain his actions or to give any indication of action on his behalf is a cause for concern. The Panel concluded that there is little in the material available which suggests that the teacher has achieved any significant insight into his actions and their consequences. His remorse appears genuine but, as expressed in his letter, it is very focused on his reputation and his sense of shame. The panel noted and endorses the principal's judgment on the implications of the teacher's conduct, which makes clear that the conduct has consequences beyond its effect on the teacher's reputation or sense of well being. The effect which the conduct may have on his students,

his fellow teachers, the school community and the profession as a whole need to be considered as well.

DETERMINATION

The Panel determined that the teacher's registration be cancelled from 16 April 2012. In making its decision the Panel was aware of the fact that the teacher is no longer registered as a teacher. It did so in accordance with Section 2.6.47 of the Education Training and Reform Act which allows it to take such action in the case of an unregistered teacher.



.....
JANE O'SHANNESY, CHAIRPERSON



.....
per:
TERRY HAYES, REGISTERED TEACHER



.....
per:
ANNE FARRELLY, REGISTERED TEACHER