

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 115

REGISTERED TEACHER: BMT

PANEL MEMBERS: Garry Salisbury, Chairperson
Michael Butler, Registered Teacher
Alina Jonas, Panel Member

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented

Ms Anne Sheehan, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 25 January 2012

DATE OF DECISION: 25 January 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 25 January 2012 the Panel found that while the teacher was guilty of serious misconduct they made no adverse findings in relation to her present fitness to teach. The Panel could find no impediment or ongoing issues for the teacher to address should she seek re-registration and determined that she is fit to teach.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 3 February 2009, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and lack of fitness to teach of the teacher. The teacher's employment was terminated as a result of these allegations.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 24 June 2009 and the Committee decided to refer the matter to an investigation.

On 7 May 2010, the Institute was provided with information in relation to the allegations from Victoria Police and the matter was referred back the Committee. On 26 May 2010, the Committee decided to refer the matter to a Formal Hearing.

The Institute determined that further evidence was required in order to proceed to a Formal Hearing and the matter was referred back to the Committee to reconsider its decision of 26 May 2010.

On 25 August 2010, the Committee rescinded its decision to refer the matter to a Formal Hearing and the matter was referred back to an investigation.

On 10 October 2010, the teacher's registration with the Institute was suspended due to non-payment of the 2009 annual registration fee.

On 16 March 2011, the Committee decided to continue with the inquiry and referred the matter to a Formal Hearing.

A Notice of Formal Hearing dated 13 December 2011 was served upon the teacher by registered post on 18 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:

1. Whilst employed as a registered teacher at the school, the teacher:-
 - (a) in or around September 2008, used a computer at the school to make 15 false medical certificates in respect of days on which she had taken sick leave and for which she had been paid sick leave entitlement;

- (b) provided the false medical certificates to office staff at the school for the purpose of avoiding having to repay the sum of \$5,316 that she had been paid in respect of sick leave entitlement for the days referred to in the false medical certificates.

THE EVIDENCE

Counsel Assisting said that the hearing arose out of a notification by an employer of action taken under s.2.6.31 of the *Education and Training Reform Act 2006*. No plea was taken from the teacher when she was assessed as being suitable for a diversion program and given the equivalent of a good behaviour bond for twelve months. Counsel said that the information from the Magistrates' Court could be relied upon and that to the teacher's credit she acknowledged her guilt. The teacher made full admissions and fully cooperated with Police and the court. Counsel assisting said that the teacher had unsuccessfully attempted to get legal aid and was unrepresented on the day of the hearing. It was her intention to give evidence on her behalf.

Counsel Assisting said the purpose of the hearing was to protect the public and the professional reputation of the teaching profession. It was not intended as a punitive process. She said the charges were serious because of the dishonesty involved and the public placed trust in the profession to act honestly and according to proper standards of behaviour. The seriousness of the charges was increased because the falsification of documents is anathema and the standards of honesty expected of students are even more rigorous for teachers.

Counsel Assisting said the Panel should consider:

- the age of the offence
- that the teacher has already been through the criminal justice system
- the effect of her behaviour on the reputation of teachers
- the need to deter such behaviour not only on the part of the teacher herself but also to send a clear message to the teaching profession generally
- that unsophisticated fraud is easy to do but teachers should know there is a consequence.

The teacher did not wish to make an opening statement but was invited by the Panel to ask questions if she did not understand the process.

The Principal

The principal said that she has been the principal of the school for fifteen years and a teacher for forty years. She said that her signed statement dated 15 November 2010 was true and correct and she did not wish to make any alterations. She said the school was a multi-campus school with between 180-190 staff including part-time teachers. It operated Saturday programs, was a registered RTO provider and operates a research centre. The school had five assistant principals. It offers courses and qualifications in special education. The principal said she knows the quality of teachers well if not intimately. She said she had no issues with the teacher in 2007 but they began to emerge in 2008 when paperwork was not completed. The principal said that the concerns had

initially been at a low level. She said each teacher was given psychological and welfare support in addition to a mentor. The principal said that because teachers worked in teams any problems tend to surface quickly. The school recognised the difficulty of the teachers' work. She was aware that the teacher was having personal problems during 2008 but they were not related to her professional work. The principal said the teacher continued to meet professional standards. The teacher told the principal of her personal problems after the events. The principal said that the teacher was located at a temporary site which made it more difficult to assist her and the principal could not remember if the teacher had sought help. The principal said that because of her personal problems the teacher had acted out of character.

Teacher 1

Teacher 1 said she had been at the 'L' campus of the school for fourteen years and been in the leadership group for ten years. She had graduated fifteen years ago. She said that her signed statement dated 1 October 2010 was true and correct and she did not wish to make any alterations.

She said that she had had no concerns with the teacher in her two and a half years at the school. She was a good teacher who met deadlines. She suspected that the teacher's personal difficulties stemmed from her partner's mental issues. She said paperwork issues developed in 2008 as the teacher's absences increased and medical certificates were not forthcoming.

The Teacher

The teacher made a brief statement that she had married in October 2007 but quickly realised that she was trapped in a marriage where her husband was abusive. She said her absences increased during a difficult period and she received no assistance with her problems. She had subsequently moved out of the family home, formally separated from him in 2009 and her current location was not known to him. She maintained contact with his two children from a previous marriage but they also had no contact with their father.

When questioned about her subsequent work history by Counsel Assisting the teacher said she was currently working in the cycling industry as a casual. She had attended LaTrobe University Bendigo in 1996-2001 completing a Bachelor of Education in Physical Education in the primary stream. She had subsequently completed casual relief teaching. She then taught mostly physical education at school 1 for three and a half years. She then moved to a Catholic primary school in Maribyrnong but could not remember its name. She found teaching at the school very rewarding although she did not have special education qualifications at that point. She learnt how difficult it was for children with disabilities and felt that her life experience was important in assisting them. She liked the team teaching approach. She continually referred to the school, its parents and the support she received in strongly positive terms. When her difficulties began she said she should have asked for help but was worried about people's reaction. Her response to stress appeared to be a physical one. She said she received four to five sessions of counselling in Point Cook and Werribee. She had subsequently learned that in order to cope she needed to seek help straight away. The teacher said that in 2010 she let her teaching registration lapse but has come to miss teaching and the special needs students. She said teachers were role models and parents entrusted their children to them on that

basis. The teacher said parents would not be happy if they thought their child's teacher was dishonest. The teacher said she had repaid the money and made an additional donation of \$500. The Panel was provided with the documentary evidence that the Diversion Order had been completed.

The teacher said she could not rationalise why she committed the offences but felt that she had panicked and the money was irrelevant. She felt she had no options and just wanted her problems to go away. She didn't consider the consequences of her acts and the possible outcomes. She said she never took out her problems on her students or mistreated them. She didn't want to burden staff with her problems and felt they wouldn't understand. She said she was a different person and there was no way she would do anything similar again. She said that after a period of reflection she was keen to teach again.

Counsel Assisting submitted that the Panel should accept without question that the confronting nature of appearing in the Magistrates' Court is a life-changing experience if the individual has a conscience. She said the Panel should consider the effect on the teacher of her court appearances and weigh this against the need for deterrence. She said there was no doubt that the teacher's act amounted to serious misconduct but she had repaid the total amount of money along with a further donation of \$500. She thought it significant that the court had not recorded a conviction against the teacher.

The teacher did not wish to make a closing submission but said she was aware of how serious her offence was. She was remorseful and very aware of the impact her acts had had on others.

DISCUSSION OF THE EVIDENCE

The Panel heard evidence that the teacher had experienced significant personal difficulties at the time of her offences and that there was a clear link between the committing of the offences and these personal difficulties. She appeared to the Panel to be ashamed and remorseful about her behaviour and had undergone significant lifestyle changes in recognition of this. Her experience of the criminal justice system had been a traumatic one for her because the Panel accepted that she was a fundamentally honest and ethical person who had made some irrational decisions while under severe stress. The teacher's conscience was and remains troubled by the way she behaved.

The Panel viewed the falsification of the medical certificates as one event (although they covered a range of dates between March 3 2008 and August 28 2008) and their clumsy and repetitious appearance immediately made them an object of suspicion. The acts did not appear to be premeditated and did not reflect a general defect of character. This was consistent with the Panel's view that they were produced while the teacher was under stress and she referred in her evidence to producing them with a feeling of panic and without considering the consequences. The teacher said that she had reflected on her behaviour and realised that she had to seek the help and assistance of others rather than trying to keep the causes of her stress secret.

Witnesses gave evidence that the teacher was a good teacher who had not experienced problems before this period in 2008 and was well organised and met deadlines. The teacher spoke of her affection for and interest in special needs students giving support for the Panel's view that the teacher's behaviour leading to the criminal charges was an aberration in an otherwise developing career. The Panel could find no evidence that the teacher's approach to teaching and the children in her care was profoundly and irrevocably flawed or that she could not be trusted to be in a position of authority and trust with students. The Panel thought there was little likelihood of the teacher breaking her professional obligations again because of the insight she has developed into the way she coped with stressful events.

It is to the teacher's credit that she immediately pleaded guilty to the charges, was assessed by the court as suitable for a diversion order and completed all of its requirements. She repaid the money owing (including a donation). The Panel did not consider that the teacher needed to be deterred from repeating the offence and that the issue of general deterrence had already been addressed in the criminal justice system.

FINDINGS

The Panel found that the evidence supported the following conclusions in regard to the teacher:

- Her serious misconduct was an isolated event for which she accepted full responsibility
- She has been punished through the criminal justice system
- Her behaviour was caused by traumatic personal events which she had taken steps to address
- She was ashamed and remorseful for her behaviour and understood its effect on the reputation and standing of the teaching profession.
- She has otherwise been a good teacher with a commitment to special needs students
- She showed insight into her past behaviour and has a range of strategies to deal with stress including talking to her colleagues and principal when she is experiencing difficulties
- The Panel thought it unlikely there would be any repetition of the teacher's dishonest acts
- The Panel could see no useful purpose in attaching conditions to the teacher's registration

The Panel concluded that the evidence did not establish that the teacher was presently unfit to teach or that any conditions should be placed on her registration.

DETERMINATION

The Panel could find no impediment or ongoing issues for the teacher to address should she seek re-registration and determined she is fit to teach.



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GARRY SALISBURY, CHAIRPERSON



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per:
MICHAEL BUTLER, REGISTERED TEACHER



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per:
ALINA JONAS, PANEL MEMBER