

Victorian Institute of Teaching

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 008

REGISTERED TEACHER: Chad INGRAM

PANEL MEMBERS: Ms Peter Ryan, Chairperson
Ms Jeannette Barclay, Registered Teacher
Ms Andrea Treble, Panel Member

ATTENDANCE: The teacher
Ms Gail Hubble – Counsel Assisting
Ms Carolyn Pickett – instructing solicitor with the
Victorian Institute of Teaching

DATE OF HEARING: Monday 25 October 2004

DECISION OF THE PANEL:

On 25 October 2004 the Panel decided NOT to suspend, cancel or impose conditions or restrictions on the registration of the teacher as a teacher.

EFFECT OF THE DECISION:

The effect of the decision is that the teacher will remain registered as a teacher in Victoria under the *Victorian Institute of Teaching 2001 (the Act)*.

BACKGROUND

The teacher was deemed registered as a teacher under the *Victorian Institute of Teaching Act 2001* (the Act) on 31 December 2002 because he had been employed as a teacher by the Department of Education and Training during the two years before the Act commenced.

The Victorian Institute of Teaching (the Institute) received information from the employer that provided evidence of possible serious misconduct and/or unfitness to teach. The Institute considered this information and determined to conduct a formal hearing. By a Notice of Formal Hearing dated 9 September 2004 the teacher was advised that the formal hearing was to be held on 25 October 2004.

The Notice of Formal Hearing set out the following allegations as evidence of possible serious misconduct or lack of fitness to teach:

- Between 25 November 2002 and 27 May 2003 the teacher produced six forged medical certificates and used these certificates to claim sick days from the school, where he was employed;
- He received payment of \$1,100 from his employer, the employer, for these days;
- On 17 September 2003 he was found guilty of six counts of obtaining property by deception pursuant to section 81(1) of the *Crimes Act 1958* and six counts of making false documents pursuant to section 83A(1) of the *Crimes Act 1958*. Without conviction he was placed on a 12 month good behaviour bond and ordered to pay \$600 to the Court fund.

The issues to be determined in this matter are:

- whether the teacher's conduct amounted to serious misconduct and/or lack of fitness to teach; and
- whether it is appropriate to impose conditions upon, suspend or cancel the teacher's registration.

THE LAW

The Disciplinary Proceedings are found in Part 4 of the Act. Section 42 provides:

42. Findings and determinations of a formal hearing into conduct

(1) After considering all the submissions made to a formal hearing into the conduct of a registered teacher the panel may make findings about whether or not-

- (a) the teacher has, whether by act or omission, engaged in serious misconduct; or*
- (b) the teacher has, whether by act or omission, been seriously incompetent; or*
- (c) the teacher is, whether by act or omission, not fit to teach.*

(2) If after considering the submissions made at an inquiry the panel finds that-

- (a) the teacher is seriously incompetent in his or her teaching practice; or*
- (b) the teacher is not fit to teach; or*
- (c) the teacher is guilty of serious misconduct; or*
- (d) the teacher has breached or failed to comply with any provision of this Act; or*
- (e) the teacher has been convicted or found guilty in Victoria of an indictable offence or has elsewhere been convicted or found guilty of an offence which if committed in Victoria, would be an indictable offence and that the teacher is not fit to teach; or*
- (f) the registration of the teacher has been obtained by fraud or misrepresentation or concealment of facts-*

the panel may make a determination to do one or more of the following-

- (g) *impose conditions, limitations or restrictions on the registration of the teacher;*
- (h) *suspend the registration of the teacher for the period and subject to the conditions, limitations and restrictions, if any, specified in the determination;*
- (i) *cancel the registration of the teacher.*

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings of teachers in other jurisdictions and persons in other professions.

According to the High Court, the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public;
- to maintain proper standards of conduct for the profession; and
- to protect the reputation of the teaching profession.

These procedures 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). A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided by VCAT 2 December 1998)).

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct. If the teacher's conduct was caused by their inability to cope with the work situation, this may be incompetence but may also be lack of appropriate support. If the conduct was caused by ill health then it will not be misconduct (see *Re: Christine Trigger and: The Australian Telecommunications Commission* (decided by AAT 17 December 1984)).

The **test** drawn from in the case law is conduct:

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.
Allinson v General Medical Council [1891 -4] All ER 768

The conduct the subject of the inquiry may indicate a character defect incompatible with the duties and responsibilities of a teacher. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether the conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279).

Misconduct may be personal misconduct. That is, the conduct is not necessarily connected to the teacher's professional practice. This is because the teacher's conduct brings disgrace upon the teaching profession (see *NSW Bar Association v Cummins* [2001] NSWCA 284). Counsel Assisting the Panel also referred to the decision of *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA

1 in which it was held that the circumstances of a solicitor's conviction for sexual offences were "so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous." On the other hand she submitted that cases involving dishonesty and deception would always be relevant to a person's fitness to carry out teaching duties, as they are role models for their students.

In *Health Care Complaints Commission v Litchfield* Matter No CA 40748/96 decided 8 August 1997, the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent of the departure from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher.

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation (see *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127).

The teaching profession must maintain the highest standards of integrity. This involves four basic duties:

1. Parents must feel confident the teacher will care for their child appropriately;
2. Other teachers must be able to trust the teacher to behave appropriately with students;
3. The education community must have confidence that those persons engaged as teachers are trustworthy and will act with integrity;
4. The education system must be confident that teachers are capable of fulfilling their fundamental obligation of imparting knowledge to students.

A person who has a complete disregard for their legal and civic obligations brings the teaching profession as a whole into disrepute and would be unfit to teach. A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness (see *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949 and *New South Wales Bar Association v Cummins* (2001) NSWCA 284).

Counsel Assisting the Panel also referred to the decision of *Burgess v Board of Teacher Registration Queensland* [2003] QDC 159 in which the Queensland District Court stated that “any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher. The weight to be attached to that behaviour was a matter for the Board to determine.” The continuity of the inappropriate behaviour was relevant to a finding of unfitness to teach. A teacher’s conduct should not impair “the standards of the profession to which the community entrusts the immensely important task of educating young children and adolescents.”

DOCUMENTS CONSIDERED

- Memorandum dated 22 August 2003 to Victoria Police from a third party
- Letter to the Institute dated 20 October 2003 from the employer
- Document titled Harassment: The teacher, 2002
- Undated letter to the Principal, from the school from the teacher
- Letter dated 20 December 2002 to the teacher from teacher colleague 1
- Statement of events in 2002 commencing 'As of the beginning of November'
- Letter of resignation to the Principal of the school from the teacher
- Letter dated 9 April 2003 to the teacher from the employer
- Letter dated 16 June 2003 to the teacher from the employer
- Letter dated 1 July 2003 to the teacher from the employer
- Emails (20) sent between 1 February 2003 and 28 May 2003 between the teacher and the employer
- Police Brief for the teacher including:
 - Leap - Victoria Police incident report and case progress dated 10 November 2003
 - Magistrates' Court - Prosecutions Office charge sheet
 - Leap - Victoria Police criminal history report
 - Brief Head
 - Undertaking of bail
 - Leap – Victoria Police identifier’s report
 - Summary of charges
 - Charge sheet
 - Witness list
 - Exhibit list
 - Witness cost/restitution/compensation sheet
- Notice of Formal Hearing dated 9 September 2004
- Transcript of police interview dated 3 September 2003.

THE EVIDENCE

The teacher agreed that he had committed the relevant offences of obtaining property by deception and forging of false documents. He then provided the following information to the Panel, in answer to questions put to him:

- He has had to accept responsibility for these offences. He did not feel that they were a true reflection of his character in general.
- As to other circumstances, meaning the matters occurring at the school in 2002 and 2003, he would like to think that these had contributed in some way to his actions, but he regarded his conduct in forging false medical certificates as personally very disappointing.

- He commenced his teaching career at another Melbourne school on a one-year contract, taught at a further school in his second year and spent his third, fourth and fifth year of teaching at the school. He taught a range of subjects.
- In 2002 he taught a particular Year 12 subject. For a considerable period he heard rumours that he would not be teaching that subject in 2003. He had achieved the best results in that VCE subject over the previous two years that the school had ever had. When the allotments for teaching in 2003 came out, his allotments had been changed and he was no longer teaching that particular Year 12 subject. Even the Co-ordinator of that subject from the school was surprised. The teacher felt disillusioned and unhappy.
- He finally found out from the Student Welfare Officer that there was a rumour circulating about him. A teacher had overheard two Year 12 girls speaking, one asking the other "How was the food at the teacher's last night?". This referred to an after school class he took for all the year 12 students, within the school premises. The class had been approved in writing by the principal and permission notices had been signed by parents. However, as a result of the comment overheard by the teacher, a rumour was circulating that the teacher had students at his home for teaching purposes and obviously this was inappropriate.
- When the rumour reached the principal she did not investigate and the teacher believed it affected the teaching allotments given to him for 2003. He had actively sought an appointment with the principal regarding the matter. There was an investigation and the rumour was proved to be entirely false. The principal would not comment when asked whether the rumour had affected the teacher's teaching allotment. In 2003 the teacher was encouraged by other staff members to seek an investigation of the issues surrounding the matter of the 2003 teaching allotments, through the employer. This investigation continued up until June 2003.
- Although it did not affect his classroom performance he felt depressed at home and at school this was noticed by other staff. He was very stressed and even now found it difficult to talk about the events that had occurred. He was probably not thinking clearly during this period. He believed the stress of the dispute between himself and the principal did have an impact on him but to what degree he could not say.
- The day after he found out about the rumour he felt particularly stressed and took a day off. He telephoned at least two medical clinics to obtain an appointment, but had left this until late in the day and found the clinics were booked out. He subsequently applied for sick leave without a medical certificate. Prior to that he had phoned the administrative section of the school to check that he still had a sick day owed to him with out a medical certificate being required. It had been confirmed that he had one such day owing. However, his application for leave came back some weeks later and had been refused by the principal.
- At that time he was fairly tight financially but looking back now he could have got through, he could have borrowed funds. He was not blaming his conduct on any financial problems.
- After that he felt he could not apply for leave without a medical certificate because of his relationship with the principal, although this relationship had previously been very good. On the next occasion that he took sick leave without a genuine medical certificate he again tried to obtain a doctor's appointment without success. On the other occasions he did not attempt to obtain a doctor's appointment. He could not explain why he failed to do this.

On each occasion that he took leave he was suffering from stress. However, he did not want to bother anyone else. He thought he could deal with it himself. He did not discuss his stress with a doctor.

- He scanned a genuine medical certificate, changed the text to reflect the relevant dates and forged the doctor's signature on the documents. He realised this was a serious act. He had never done anything like that before. After the investigation into his dispute with the principal was completed, he applied for sick leave with genuine medical certificates. He felt at that point he had to start again and could not continue with what he had been doing.
- He understood that teachers had power and influence over children and that honesty and integrity was an important part of being a teacher. His conduct during the six-month period in which these offences occurred was very disappointing to him. He did not think a parent would want their son or daughter taught by someone who displayed such conduct. It was not in keeping with the conduct expected of a teacher.
- Although in his mind there may have been contributing factors, his conduct was something he could not get out of his mind and he could not ignore what had happened. He hoped that he would teach again but understood that this might not be possible in the face of his conduct.
- Nevertheless he did consider he was a fit person to teach. He had learned from what he had done. After such an experience, he would never contemplate such conduct in the future. He felt he was still dealing with his misgivings and distress regarding his conduct. His general character was such that he generally put others before himself when it came to teaching, and apart from the circumstances of these offences, he was honest.
- As a teacher he enjoyed the classroom environment and interaction with other staff. He enjoyed curriculum work and the administrative duties associated with teaching but preferred to steer clear of the political side of the school environment. Regarding his ability to manage the political aspects of a school environment, he felt that he had inadvertently got caught up in a political situation within the school, because of the rumours, which he would now handle quite differently.
- He resigned from the school in September 2003. He had since registered a business and did part-time work at another business. He would like to teach in the future but understood the seriousness of his circumstances.

FINDINGS OF FACT

The facts of this matter are not in dispute and the Panel made the following findings on the basis of the material before it:

- Between 25 November 2002 and 27 May 2003 the teacher produced six forged medical certificates and used these certificates to claim sick days from the school, where he was employed;
- He received payment of \$1,100 from his employer, the employer, for these days;
- On 17 September 2003 he was found guilty of six counts of obtaining property by deception pursuant to section 81(1) of the *Crimes Act 1958* and six counts of making a false documents pursuant to section 83A(1) of the *Crimes Act 1958*. Without conviction he was placed on a 12 month good behaviour bond and ordered to pay \$600 to the Court fund.

CONCLUSION

The Panel had to consider whether the teacher had engaged in serious misconduct and/or was unfit to teach.

Serious misconduct

The term *serious misconduct* is not defined in the Act and so the Panel applied the principles from case law outlined above. The teacher's actions were neither trivial or of momentary effect. He agreed that they were of a serious nature and that they represented a substantial departure from the accepted standards of the teaching profession. His conduct reflected attitudes and characteristics inconsistent with the moral qualities required of a teacher. The Panel found that the teacher's actions did constitute serious misconduct.

Fitness to teach

However, the Panel did not consider that because of his misconduct, the teacher is now unfit to teach. It is clear that in considering the issue of fitness to teach, the teacher's conduct is to be assessed at the time of the inquiry and not when the conduct occurred.

At the time of the disciplinary proceedings the teacher demonstrated insight into the serious nature of his conduct, as well as genuine distress and remorse over his actions. Evidence suggests that the teacher was under considerable stress at the time the relevant offences occurred, due to the effect of unfounded rumours amongst school staff, and an ongoing dispute regarding his teaching allotment. However, the teacher clearly indicated that this in no way excused his conduct. He demonstrated a full appreciation of the standards required of a teacher, acknowledged that his past conduct fell far short of these and further demonstrated his commitment to the maintenance of appropriate standards and moral integrity in his future life and career.

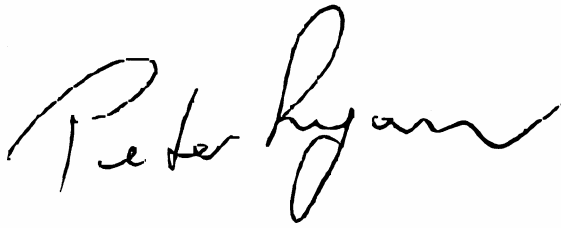
DETERMINATION

Nevertheless, having found, pursuant to section 42 of the Act that the teacher's actions amounted to serious misconduct it is necessary for the Panel to consider whether it should make a determination imposing a condition upon, or suspending or cancelling the teacher's registration as a teacher.

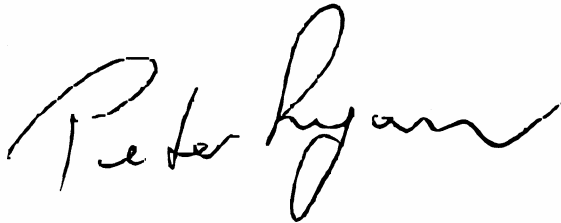
The Act and the case law clearly illustrate that the purpose of disciplinary proceedings is to protect the public, to maintain proper standards of conduct for the profession and to protect the reputation of the teaching profession.

The Panel did not consider that it was necessary to take any action in respect of the teacher's registration for the purposes of protecting the public. It also concluded that he now demonstrates the understanding and commitment necessary for maintaining the proper standards of conduct expected of the teaching profession. Whilst his past conduct does impair the reputation of the profession, the teacher well understands this. There is no meaningful condition which can be imposed on his teacher's registration which would ensure that he upholds the reputation of the teaching profession in the future. Further, neither the suspension nor cancellation of his teacher's registration is warranted in the light of the Panel's finding that he is now fit to teach, despite his past serious misconduct.

The Panel therefore determined not to suspend, cancel or impose conditions or restrictions on the registration of the teacher as a teacher.



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Peter Ryan



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Jeannette Barclay



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Andrea Treble