

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 29

REGISTERED TEACHER: BILL JOHN ATKIN

PANEL MEMBERS

Marilyn **MOONEY**, Chairperson

Stewart **CHEAL**, Registered Teacher

Robin **TUNBRIDGE**, Panel Member

ATTENDANCE: The teacher

Counsel Assisting: Ms Gail Hubble with Ms Carolyn Pickett solicitor instructing

DATE OF HEARING: 8 December 2005

DETERMINATION UNDER SECTION 42(2) OF THE ACT:

On 23 December 2005 the Panel made the following determination:

1. that the teacher will remain registered as a teacher in Victoria
2. that the following conditions be placed on the teacher's registration as a teacher:
 - a. that the teacher is to abstain from gambling for a twelve month period from the date of the determination
 - b. that the teacher attend a psychologist of his choice for counselling in relation to depression for a period of twelve months from the date of this decision
 - c. that the teacher must attend at least two counselling sessions in the twelve month period
 - d. that the teacher must supply two reports from his treating psychologist, the first by 31 July 2006 and the second by 23 December 2006
 - e. that a failure to provide the above reports or if those reports show that the teacher has not abstained from gambling will constitute a failure to comply with this determination.

REASONS

BACKGROUND

On 31 December 2002 most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

The Victorian Institute of Teaching (the Institute) was advised by the teacher's employer by letter dated 17 September 2004 that they had taken action against the teacher because he had been found guilty of an indictable offence. Under sections 27 and 28 of the Act the Institute must conduct an inquiry to assess whether the teacher is guilty of serious misconduct or is not fit to teach. At its meeting on 14 September 2005 the Disciplinary Proceedings Committee, a committee of the Institute Council considered this matter and decided to hold a formal hearing. By a Notice of Formal Hearing dated 25 October 2005, the teacher was advised that the formal hearing was to be held on 8 December 2005.

The Notice of Formal Hearing set out the following allegation:

1. By letter dated 7 September 2004 the employer advised the teacher
 - a. that the teacher misappropriated sports equipment belonging to the School and to the Junior Soccer Club, these goods being 20 soccer balls, 1 high risk survival kit, 2 soccer corner flags, 1 linesman flag, 1 soccer net, 1 aluminium stretcher and 6-25 kg of English whiting chalk.
 - b. that the teacher personally received three cheques totalling \$1,374.80 from the Junior Soccer Club Inc. for sports equipment outlined in (a) that was purchased from the School physical education budget.
 - c. that the teacher receipted \$4,750 from the school's soccer clinic, which has not been accounted for in the school's banking. This amount consisted of 95 students paying \$50 each.
2. That on 23 August 2005 the teacher pleaded guilty to two charges of theft and was convicted and sentenced to a Community Based Order of twelve months commencing on 23 August 2005.

The issue the Panel must decide is whether a conviction of two counts of theft in the above circumstances means that the teacher is guilty of serious misconduct and/or is not fit to teach.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Sections 27 and 28 of that Part provide:

28. Inquiry into criminal conduct

If the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, the Institute must conduct an inquiry under this Part into the registered teacher's fitness to teach.

27. Employer to notify Institute of action against teacher

(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

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 in other jurisdictions.

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). The purpose of these proceedings is to protect students in Victorian schools. 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 VCAT 2 December 1998)

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

The **test** set out 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

A conviction for a criminal offence does not of itself mean that a teacher's registration will be cancelled. As the High Court pointed out in *Ziems v The Prothonotary of the Supreme Court of N.S.W.* (1957) 97 CLR 279, the Institute must determine the facts that led to the conviction before deciding whether a teacher should be disqualified. The role of the Institute is not to punish the teacher. This has been done by the court. The conviction is of secondary importance. What is of significance are the circumstances which led to the conviction. Many convictions would result in the disapproval of the public and colleagues but this does not mean that the teacher is not fit to teach.

The Institute must assess the teacher's character or reputation. An assessment can only be made when some knowledge of the underlying facts is obtained. The question for the Panel is not whether the teacher has been convicted but rather whether the teacher's conduct shows that they are not fit to teach. The Panel must be justified in

holding out a teacher as being fit to be trusted with the duties and responsibilities of being a teacher. Whether a person is a fit and proper person to be a teacher will depend upon the minimum standards demanded by the teaching profession given the particular responsibilities and duties placed on teachers. It is the profession itself that sets the standard. However the Panel must only consider matters that are relevant to the teaching profession. A teacher's fitness is tested at the time of the Panel hearing, not at the time the offence occurred.

As the Supreme Court noted in *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46: *unfitness may be demonstrated by conduct totally unconnected with any such employment or employment at all*. That is, the conduct resulting in the offence does not have to be connected to a teacher's professional responsibilities for the conduct to indicate unfitness to teach. The High Court noted:

Furthermore, even where it does not involve professional misconduct, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise.

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1

For personal misconduct the Panel will analyse the teacher's conduct to see whether it demonstrates some character defect that illustrates that the person is not fit to teach and thus their registration should be cancelled (see *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127).

The person's character is assessed to see if they meet the high standards of honesty and ethical behaviour expected of a teacher and are worthy of the level and extent of trust placed in a teacher by the community. If the teacher's conduct reveals a character defect incompatible with the standards set for teachers this may indicate an unfitness to teach. A teacher's position in relation to students can be described as one of power and influence over those students. A teacher who abuses that power or influence for their own ends is unfit to teach (*Yelds v Nurses Tribunal & Ors* [2000] NSWSC 755).

As stated in *Siguenza* a person who is fit to teach must show that they possess the knowledge to carry out their duties and responsibilities, and that they possess *sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails*.

In *Burgess v Board of Teacher Registration Queensland* [2003] QDC 159 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 persistence 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*.

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any*

tribunal should act with much care and caution before finding that a serious allegation ... is established.

And later

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW*[2001] NSWSC 1191).

DOCUMENTS CONSIDERED

The Panel had available to it the following documents

- Certified extract from the Magistrates Court dated 23 August 2005 (9 pages)
- Copy documents obtained from Victoria Police through a Freedom of Information request
 - Offences & Activities list (2 pages)
 - Prosecution Office sheet (2 pages)
 - Pre Sentence Report (2 pages)
 - Brief Cover Sheet
 - Brief Head (2 pages)
 - Charge Sheet
 - LEAP Intent to Summons
 - Summary of Charges (2 pages)
 - Charge & Summons (5 pages)
 - Witness List
 - Exhibit List
 - Witness statement Vice President of the Junior Soccer Club dated 19 August 2004 (3 pages)
 - Witness statement joint Treasurer 1 of the Junior Soccer Club dated 22 August 2004 (3 pages)
 - Witness statement joint Treasurer 2 of the Junior Soccer Club dated 22 August 2004 (3 pages)
 - Witness statement, Principal of the School dated 5 October 2004 (2 pages)
 - Witness statement police officer dated 21 November 2004 (4 pages)
- Copy documents obtained from the employer
 - Letter dated 7 September 2004 (2 pages)
 - Letter dated 27 July 2004
 - Letter dated 26 August 2004 (2 pages)
 - Letter from the teacher to the employer dated 30 August 2004 (3 pages)
 - Copy Audit Report (4 pages)
 - Copy reference from the Principal, dated 18 August 2004
 - Letter of resignation from the teacher dated 9 August 2004
- Copy transcript of interview of 6 September 2004 (10 pages)
- Report dated 6 May 2005 from Psychologist 1, the employer's Psychologist

- Report dated 18 November 2005 from Psychologist 2, gambling organisation

THE EVIDENCE

Neither the Institute nor the teacher called witnesses. The teacher gave evidence under oath.

The teacher admitted to the theft charges, although he disputed the exact amount stolen, and stated that he was ashamed of his behaviour. He informed the Panel that it was a 'cry for help', and that he was suffering from extreme depression. The teacher said that he had tried to get help prior to offending and that he felt great shame over the incidents. After admitting to misappropriating the funds, his response was to take out a loan and repay the money.

The teacher told the Panel that he had worked hard to become a teacher. He stated that he had returned to night school to complete Year 12 and then studied as a mature age student at University to become a teacher. It concerned him greatly that this episode would cause his teaching career to end.

The teacher informed the Panel that he initially organised after school soccer clinics, which he conducted for 3 years. Following pressure on him to organise a soccer club, he worked with the local Council, councillors and parents to form the Junior Soccer Club. This took 12 months to get up and running.

The Panel heard that around this time the teacher was experiencing several serious personal issues that were impacting on his ability to conduct his day to day life. These included concerns regarding his father's threatened violence towards his mother; a partner who suffered from depression; his own bouts of severe depression; and working 12-hour days.

The teacher stated that from age 12 to 17 he was experiencing difficulties at home and suffered depression, which was formally diagnosed in his early twenties. He was prescribed medication including anti-depressants and migraine medication.

The teacher gave evidence that in the 12 to 18 months leading up to the incident/s he suffered from depression. He was not sleeping well and had feelings of 'things getting on top of me', exacerbated by his parent and partner issues worsening. The teacher told the Panel that he continued at school, as he was generally able to carry on during periods of depression.

The teacher informed the Panel that he identified gambling as a problem 4 years prior to the incidents. The nature of his gambling involved attendance at the TAB. At worst he would attend the TAB 4 or 5 times a week and spend \$50 - \$200 with up to \$300 maximum at any one time. He used personal earnings to cover his gambling and he took out personal loans to finance the habit.

The teacher bought a house in 2003 and at times had difficulty in meeting repayments due to gambling problems. The teacher said that he had periods, such as 3-4 months,

where he could stop gambling. Then periods of depression and sadness would set in and gambling would start up again.

The teacher told the Panel that in approximately 2000-2001 he sought assistance for his gambling problem from the local community centre. In 2004 he saw Psychologist 2. He had 3 or 4 one-on-one sessions and was given strategies to deal with the gambling.

In response to questioning from Counsel Assisting the teacher told the Panel that through counselling he had gained insight into the relationship between his depression and his gambling. He further stated that gambling was a distraction – it did not give him a 'high', rather it caused 'low' feelings in him.

The teacher informed the Panel that no one, including his partner, parents, or friends, is aware of his problems.

The Panel heard evidence that as a result of the Community Based Order that the court imposed in August, he was directed to undertake counselling with Psychologist 2. He has completed this counselling. The Panel noted a letter, dated 18 November 2005 from Psychologist 2 reporting, "he has been able to articulate his gambling behaviour, the precursors to his offending and identify alternative behaviours and support systems. The teacher reports that he has not gambled for in excess of 12 months and is not deemed as needing any further intervention at this time."

A further reference, dated 6 May 2005, from Psychologist 1, supports the teacher in terms of the progress he has made in dealing with his emotional issues. Psychologist 1 states that the teacher "has been open about his problems and has followed through on suggestions I have made."

The teacher confirmed to the Panel that he has not gambled for over a year and is very confident that there would be no relapse. He was able to articulate to the Panel strategies he uses to help with his depression and gambling. They included: focussing on his family; going to the gym; and distancing himself from his parents' issues.

The teacher told the Panel that he took money from the soccer clinic funds as a fee for his services. He acknowledged that as this was not part of any agreement with the Principal or parents and he was wrong to keep the money. He stated that he would do things very differently if in a similar situation again. The teacher gave evidence that although he admitted to taking some of the money, but he disputes that he took all the money of which he was accused. The teacher was charged with nine counts of theft. It was noted by the Panel that seven of the nine charges were withdrawn, and the teacher pleaded guilty to the remaining two charges.

The teacher gave evidence that the fledgling club was growing rapidly and being organised by inexperienced people who had not established appropriate practices for handling the club's finances. He stated that with his inexperience coupled with "dark periods and no one there to help – emotions overcame decisions." The teacher stated that he always had the intention of banking the cheques that he received but as he became more in debt and more depressed it became too hard to deal with. In response

to questioning from Counsel Assisting regarding the teacher ever writing out a cheque, cashing it and spending it on gambling, the teacher responded that he could not recall doing that. He said, "dark moments can cloud memory".

The teacher told the Panel that he was a good and kind person who enjoyed giving of himself to contribute to the community. He believed that he could be trusted with the responsibilities of being a teacher, including handling money. He said he had learnt a very tough lesson. The Panel was provided with a reference, dated 18 August 2004, from the Principal of the School. The Principal states that the teacher was a skilled, enthusiastic, and innovative teacher who was able to develop a warm and positive learning environment, and maintain a sound rapport with the students in his care.

DISCUSSION OF EVIDENCE

The teacher pleaded guilty on 23 August 2005 at the Magistrate's Court to two charges of theft. The teacher was convicted and is complying with the 12 month Community Based Order. The Panel acknowledges that the thefts occurred over a relatively short period of time – three to four months during 2004, and accepts that it was a one-off occurrence.

The Panel accepts the teacher's evidence that the thefts occurred to feed a gambling habit that presented during a very stressful and depressive period in his life. Although there is some discrepancy regarding the specific amounts taken, the Panel believes that the teacher has made restitution for the monies obtained by theft.

The Panel is satisfied that the teacher has sought psychological help in relation to his gambling behaviour and has identified alternative behaviours and support systems. Two psychologists who have treated the teacher provided reports. Both write positively about the teacher's prospects and ability to deal with the issues in his life. The Panel believes that the teacher is working hard to get his life back in order and that he desperately wants to resume his teaching career.

The Panel found the teacher to be a reliable and credible witness and believes that he is very remorseful in relation to the thefts and duplicity against his school and soccer club. An illustration of his shame is that no family member or friend is aware of his present situation. The Panel had some concern that this non-disclosure to family and friends could itself add to personal stress.

FINDINGS OF FACT

Based on the evidence before it the Panel made the following findings:

1. The teacher is a registered teacher.
2. On 23 August, 2005 the teacher pleaded guilty in the Magistrates Court to two charges of theft and was convicted and sentenced to a 12 month Community Based Order to commence on 23 August 2005.
3. The teacher has made restitution to the soccer club and to the school.
4. The teacher is remorseful and feels great shame.
5. The teacher suffers from depression and during a 3-4 month depressive period he stole money to support a gambling habit.

6. The teacher sought professional help for his depression and gambling problems and has not gambled for 12 months.
7. The teacher has not disclosed any of the court or formal hearing proceedings to his family or friends.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The Panel concluded that the teacher is guilty of very serious offences against the public as well as the teaching profession. The standards of ethics and personal and professional integrity that the community and the profession expect from teachers are of the highest order. His actions are a serious departure from these expectations. Indeed, the fact that the offences were against his school and the local soccer club emphasises the fact that the teacher has brought the profession into disrepute in the eyes of the public significantly through his local community.

The Panel believes that members of the teaching profession would regard the teacher's behaviour as dishonourable. The profession relies on the good character of teachers to enhance the standing and reputation of the profession as a whole. This in turn strengthens the trust and confidence that the community is able to place in teachers. The concept of good character includes a degree of ethical integrity; that is a capacity to distinguish right from wrong and exercise moral restraint. The teacher's attitude and behaviour was inconsistent with the principles and veracity required of a teacher. The Panel considers that the teacher's behaviour does constitute serious misconduct as it does represent a substantial departure from the accepted standards of the teaching profession.

In considering the separate question of whether the teacher is fit to teach, the Panel determined that the teacher's serious misconduct did not make him unfit to teach. This decision was made as the Panel took into account: the short duration of the misconduct; that the teacher was ashamed of his conduct and showed remorse; that the teacher was honest in his evidence to the Panel; and that the teacher showed some insight into his serious misconduct.

The Panel considered the teacher's evidence of rehabilitation, which was supported by the references from two psychologists and is reasonably confident that he will not suffer a relapse. Notwithstanding this evidence, the Panel was not confident that the teacher had successfully dealt with his depressive illness, which the Panel believed was a major contributing factor to his gambling problems, which in turn led to the thefts. The Panel is also mindful that the teacher has not been honest with, or sought the support from, family or friends throughout this whole ordeal, and he is still serving the Community Based Order, which runs until 23 August 2006. The Panel has therefore made the decision to give the teacher more time to provide further evidence of his rehabilitation.

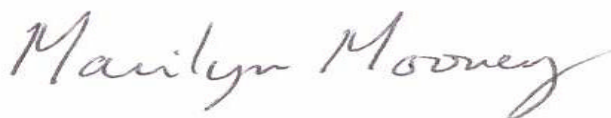
The Panel finds the teacher guilty of serious misconduct and considers him fit to teach with conditions imposed.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

On 23 December 2005 the Panel made the following determination:

1. that the teacher will remain registered as a teacher in Victoria

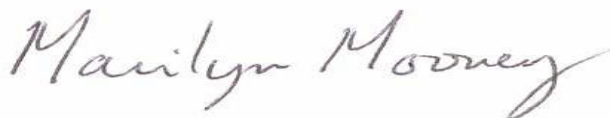
2. that the following conditions be placed on the teacher's registration as a teacher:
- a. that the teacher is to abstain from gambling for a twelve month period from the date of the determination
 - b. that the teacher attend a psychologist of his choice for counselling in relation to depression for a period of twelve months from the date of this decision
 - c. that the teacher must attend at least two counselling sessions in the twelve month period
 - d. that the teacher must supply two reports from his treating psychologist, the first by 31 July 2006 and the second by 23 December 2006
 - e. that a failure to provide the above reports or if those reports show that the teacher has not abstained from gambling will constitute a failure to comply with this determination.



Marilyn Mooney, CHAIRPERSON



**Per:
Stewart Cheal, REGISTERED TEACHER**



**Per:
Robin Tunbridge, SPECIALIST MEMBER**