

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 27

REGISTERED TEACHER: GRANT ADRIAN FAIRLEY

PANEL MEMBERS

Marilyn **MOONEY**, Chairperson

Jenny **WAJSENBERG**, Registered Teacher

Ian **WATKINS**, Registered Teacher

ATTENDANCE: The teacher was represented by Ms Erin Gardner of Counsel with instructing solicitor Ms Amy Barry-Macaulay of Russell Kennedy

Counsel Assisting: Mr Peter Harris with Mr Brent Carey solicitor instructing

DATE OF HEARING: 9 September 2005

DECISION OF THE PANEL:

On 16 September, 2005 the Panel decided that the teacher should remain registered as a teacher.

EFFECT OF THE DECISION

The effect of the decision is that the teacher retains his registration as a teacher in Victoria.

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 Department of Education & Training (the Department) by letter dated 15 October 2003 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 19 January 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 6 July 2005, the teacher was advised that the formal hearing was to be held on 2 August 2005. At the request of the teacher's legal advisors the formal hearing was adjourned to 9 September, 2005.

The Notice of Formal Hearing set out the following allegation:

1. you were convicted by the Morwell County Court of the indictable offence of negligently causing serious injury. The charge arose from you hitting and seriously injuring a pedestrian with your motor vehicle early morning on Sunday 10 December 2000. You were sentenced to a term of imprisonment of 4 years and 6 months with a minimum non-parole period of 3 years.

The issue the Panel must decide is whether these convictions mean 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.

The **test** set out in the case law for professional misconduct 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 Institute must assess the teacher's character or reputation. An assessment can only be made when some knowledge of the underlying facts is known. The question for the Panel is not whether the teacher has been convicted but rather whether the teacher's conduct shows that he is 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. 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: unfitnes 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 unfitnes 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

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 unfitnes to teach.

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 unfitnes 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.

DOCUMENTS CONSIDERED

The Panel had available to it the following documents

- Copy of Court Certificate from County Court Morwell dated 6 June 2005 Attachments:
 - Particulars of Offence from Morwell County Court
 - Charge and Summons sheet from Morwell County Court (2 pages)
- Copy of Police brief obtained from Victoria Police through a Freedom of Information request including
 - LEAP Incident report and case progress dated 09/08/2004 (5 pages)
 - Copy of a letter dated 13 August 2004
 - List of informations (2 pages)
 - Summary (2 pages)
 - Witness list (7 pages)
 - Exhibit list
 - Extracts List
- Statement of Friend 1, dated 9 October 2001, unsigned, (3 pages)
- Statement of Friend 2, dated 26 August 2001, unsigned, (2 pages)
- Statement of Bar Manager, undated, unsigned
- Statement of Service station Duty Manager, undated, unsigned
- Statement of Witness 1, dated 11 December 2000, unsigned (3 pages)
- Statement of Witness 2, dated 10 December 2001, unsigned (2 pages)
- Statement of Witness 3, dated 11 December 2001, unsigned (3 pages)
- Statement of Witness 4, dated 11 December 2001, unsigned (3 pages)
- Statement of Police Officer 1, undated, unsigned (2 pages)
- Statement of Ambulance Officer, dated 29 June 2001, unsigned (2 pages)
- Statement of Police Officer 2, Major Collision Investigation Unit, undated, unsigned (7 pages) Attachments:
 - Map
 - Certificate of Vehicle Registration for the teacher
 - Drivers licence extract for the teacher
 - Collision Report (2 pages)
 - Photographs numbered 1 to 20 the teacher's vehicle
- Statement of Police Officer 3, Major Collision Investigation Unit, dated 6 December 2000, unsigned (4 pages) Attachments:

- Photographs number 1 to 3 taken in The teacher's bedroom
- Statement of Police Officer 4, undated, unsigned (4 pages) Attachments:
 - Photographs numbered 2 to 23 taken of items relevant to the collision
- Statement of Police Officer 5, dated 3 December 2001, unsigned
- Statement of Police Officer 6, dated 17 January 2002, unsigned (3 pages) Attachment:
 - Victoria Police alcotest
- Statement of Police Officer 6, undated, unsigned (5 pages)
- Transcript of Tape Record interview dated 10 December 2000 (22 pages)
- Statement of Police Officer 7, Transport Branch, dated 5 December 2001, unsigned
- Statement of Police Officer 8, Mechanical Investigation Unit, dated 21 December 2000, unsigned (2 pages) Attachment:
 - Mechanical Investigation Unit report (4 pages)
- Statement of Police Officer 9, Major Collision Investigation Unit, undated, unsigned (4 pages)
- Statement of Police Officer 10, Victoria Forensic Science Centre, undated, unsigned (5 pages) Attachments:
 - Photographs 1 to 19 relevant to the collision
- Statement of, Forensic Officer, dated 12 July 2001, unsigned (4 pages)
- Statement, Medical Consultant, undated, unsigned (3 pages)

The following documents were provided on behalf of the teacher:

- Written outline of submission from the teacher's Counsel and Solicitor, dated 7 September, 2005 (9 pages)
- Witness statement from the teacher, signed and dated 7 September 2005 (4 pages)
- Reference for the teacher from Principal 1 dated 5 September 2005
- Psychological Assessment from Psychologist 1 signed and dated 29 July 2003. (4 pages)
- Transcript of criminal proceedings – Morwell County Court (46 pages)
- Statement of results from Teacher 1 and Corrections Education Manager, TAFE signed and dated 19 August 2005. (12 pages)
- Relapse Prevention Certificate from Psychologist 2 and Facilitator, signed and dated 28 March, 2003.
- Amendment to Enrolment from Swinburne University of Technology dated 16 May, 2005 (2 pages)

THE EVIDENCE

On 29 October 2002 the teacher was found guilty of the following indictable offences: negligently causing serious injury, failing to stop after an accident and the summary offence of exceeding the prescribed concentration of alcohol while driving a vehicle. His reading was 114/100ml. On 27 February 2004 at the Court of Appeal considered his original sentence as manifestly excessive and the penalty on the count of failing to stop after an accident was reduced to 12 months' imprisonment, six months of which was to be served concurrently with the sentence of negligently causing injury, making a total

effective sentence of 3½ years with parole eligibility after 2½ years. The teacher was disqualified from driving for the period of 5 years from 29 October 2002. The teacher served part of his sentence in home detention and is currently on parole and will be so until April 2006.

The teacher

The teacher read out a prepared statement under oath. He admitted that his consumption of alcohol at the time of the accident was excessive. While in prison and since his release from prison the teacher has continued studying various courses in anticipation of being able to continue his interrupted study towards qualifying as a teacher. He realises the impact of his actions and the damage done both to the victim and to the victim's family.

The teacher indicated that he has been seen by a psychologist and has been diagnosed as not having any alcohol related disorder. He asserted that the incident was an isolated incident and a serious error of judgement and that he has learnt a great deal about alcohol use and abuse which can now assist him in becoming a better, more effective teacher. He undertook a drug and alcohol rehabilitation course in prison. Whilst this course was mandatory as a prerequisite to eligibility for parole, he undertook the course as soon as possible during his prison term.

The teacher felt that his experience in prison was formative in increasing his understanding of the effects of alcohol, but also in enabling him to learn more about others' alcohol use and the link between education, alcohol abuse and crime. The teacher told the Panel that whilst in prison he not only continued his own studies, but also helped other prisoners in literacy and numeracy studies.

The teacher claimed that he pleaded guilty to all charges at the earliest opportunity, notwithstanding his initial denial of the incident when police came to his home on the day of the accident to question him. Further, the teacher took up employment as an instructor at the school in 2002 but did not reveal the situation to his employer at any time even when he was stood down pending the Court hearing of the matter. The teacher claimed to have learnt the importance of acknowledging the situation later and did inform his most recent employer of his conviction before he was offered his current position with a marketing firm.

Whilst the teacher has not made any attempts to contact the victim - or the victim's family since the accident, he told the Panel that he feels deeply remorseful about the incident and about his actions in concealing it. The teacher stated that he finds it "very difficult" to think about the accident and that when he does "I stew about it and the more guilty I become." The teacher explained that he found it too confronting to make contact. He also felt that the victim and the victim's family would probably not want any contact with him at all.

The teacher gave evidence that it took him some time to come to grips with the depth and seriousness of what he had done but felt he has grown as a person and learnt his lesson. He felt that he can convey what he learnt from his own experience to young people he teaches so that they do not drink and drive and that he can better guide

others in similar situations by sharing his experiences with them and is now strong enough to openly admit his past.

The teacher reiterated that his feelings of remorse increase with time and that he now feels greater guilt and shame about his actions – both in causing the accident and then in concealing his involvement in it – than previously. The teacher indicated to the Panel that he hoped his teaching and his efforts to become “the best teacher” he could, would help him gain the respect of his teaching colleagues. The teacher further explained that he had a good upbringing where he learnt right from wrong and to respect other people. He felt that he made one, very big mistake but that he had learnt from that mistake.

In addition to undertaking the alcohol and drug rehabilitation program, the teacher continued TAFE studies whilst in prison and is intending to re-enrol in his Bachelor in Education in 2006. He explained to the Panel that he was unable to complete this qualification in prison, as he was unable to do any teaching practicum.

The teacher’s record in prison was exemplary and he is currently meeting with his parole officer every two months. He has been subject to random breath tests and now drinks moderately and responsibly at all times. He gave evidence that although he currently does not have a licence, he would not drink and drive again and indeed he would counsel students using his own experience as an example, as a caution against excessive drinking.

Campus Principal –Senior School

The Senior Campus Principal of the school in which the teacher was employed in 2002 confirmed under oath her written statement. The Principal’s evidence was taken by telephone. The Principal knows the teacher’s family and informed the Panel that the family enjoyed an excellent reputation in the town for involvement in community activities. She gave evidence that the teacher was an outstanding sportsman and was also involved in coaching the younger football team.

The Principal informed the Panel that the teacher had initially been employed at the junior campus of the school. He was recommended by the junior campus principal when the senior campus needed a teacher. No qualified teacher was available, so the teacher was employed as an instructor. The Principal confirmed to the Panel that there were no problems with him in employment. As an instructor, he was under supervision most of the time, mentored by the Yr 10 level coordinator. He was highly responsible at all times, well accepted in the school community, took instruction and engaged well with students. The teacher undertook extra things to assist students with career choices and obviously cared about students. He organised excursions and showed promise to be a talented teacher. The Principal told the Panel that the teacher was put in a position of trust and he “never let her down”. She explained further that he was a friendly staff member, a good communicator, had the respect of team-mates, and was very good at taking/listening to advice. She added that he was “keen to do the right thing professionally”

The Principal had no idea about the offence and remained unaware of the circumstances until she went to Court to give evidence. She was surprised that he had not divulged the circumstances of his criminal charges. She did not discuss the matter with the teacher at the time and, other than regarding being a witness at this hearing, she has had no conversation with him since, although she did visit him with his parents when he was taken to Morwell Police Station after the court case.

The Principal indicated a readiness to employ the teacher should the opportunity arise. She believes that he could return to the community to teach and she believes that the community would forgive and understand him. The Principal further proposed that the teacher would make a conscientious teacher.

DISCUSSION OF EVIDENCE

The Panel noted that there was no dispute as to the facts. The Panel found the teacher to be a believable witness. Whilst he was not forthcoming and showed restrained emotion, the Panel accepts that he feels deep remorse and indeed anguish in respect of the event and his initial response to it. Further the Panel accepts that the teacher has matured a great deal and that he has developed insight and reflection about both himself and others as a consequence of this situation.

The Panel believes that the teacher would make use of his learning and that this would enhance his contribution as a teacher. The fact that he is prepared to return to the community and face people who know of the event is testament to his growth and maturity and his acceptance of responsibility for the accident.

In relation to the victim and any possible assistance he has afforded the victim, the Panel accepts the teacher's position that at present he is not strong enough emotionally to approach either the victim or the victim's family and that he genuinely believes that they would not want any connection with him. The Panel notes that the teacher has made contribution to the community both in respect of the additional assistance he gave to students at risk in the school during his employment, his involvement in community sport, and in the assistance he afforded fellow prisoners during his incarceration.

The Panel is satisfied that the teacher would not pose a risk to students or the school community in relation to alcohol use and that the teacher does drink in moderation at present.

FINDINGS OF FACT

After considering all the evidence the Panel made the following findings:

- The teacher was convicted on 29 October 2002 of the indictable offences of negligently causing serious injury, failing to stop after an accident, and of the summary offence of exceeding the prescribed concentration of alcohol, on which charge he was convicted and discharged. On appeal to the Court of Appeal against his sentence, on 27 February 2004, the sentence on the count of

failing to stop was reduced to 12 months' imprisonment, six months of which was to be served concurrently with the sentence of the count of negligently causing injury, making a total effective sentence of 3½ years, eligible for parole after 2½ years

- The teacher is currently on parole until April 2006
- The teacher is currently employed by a market research firm
- The teacher is deeply remorseful and contrite
- The teacher's record prior to these offences was exemplary
- The teacher has made considerable progress in his own social and psychological rehabilitation

CONCLUSION

The Panel expressed some concern that the teacher concealed the truth from the police on the day of the accident as to his whereabouts at the time, his knowledge of the accident and the causation of the accident; and that he later concealed both the facts and the charges from the School up until the time he was discharged from the School. The Panel believes that the teacher genuinely regrets his decision not to be forthcoming with the police sooner than he was, and also that he was not honest with the school about his circumstances. The Panel notes the teacher has informed his current employer of his convictions.

The teacher is guilty of a very serious offence against the public. Furthermore, by concealing the truth initially when questioned by the police and later by concealing the charges, there was a breach of trust. The implications of this breach of trust in respect of the wider community could call into question the integrity of the teaching profession, where the standards of honesty and integrity are the highest standard of ethical behaviour. Teaching is an honourable profession and teachers serve as significant role models to students. It is important that the community has confidence in its teachers as responsible, trustworthy people.

However, the Panel is mindful of its obligation to look at all the circumstances surrounding the misconduct. The teacher at the time of the misconduct was a young man in a cultural milieu where his drinking behaviour was unexceptional. His untruthful behaviour in the situation may be attributed to his initial shock and fear and to his inebriated state impairing his judgement. His later concealment of the event may be explained by his feelings of remorse and shame which led to reticence to discuss the events openly when he was employed in a small community where he and his family were well known. Whilst these explanations do not justify the teacher's actions, the Panel is satisfied that over time he has reflected deeply on his responses and that his reactions to those circumstances were atypical behaviour.

The teacher has continued with a range of studies believing he was ineligible to return to his B.Ed until such time as a determination is made with respect to his fitness to teach.

The Panel addressed the questions: If the teacher completes his B.Ed studies, is he currently fit to practise as a teacher? Can he be trusted to perform the duties required of a teacher? In the event of unusual or emergency circumstances would he be able to respond level-headedly rather than give way to shock and confusion, given his responsibilities to his students in such a situation?

Having considered the evidence at length, and after much searching discussion, the Panel feels that the teacher has matured sufficiently to have developed skills to respond appropriately and responsibly if an unexpected situation arises. The Panel also feels that the teacher understands and accepts that his actions and responses were inappropriate and that he has developed the insight to behave differently. He is committed to becoming a teacher and the Panel is satisfied that this commitment extends beyond a capacity to engage students in learning. The commitment extends to an understanding of the responsibility associated with the overall pastoral care and well-being of students. The Panel therefore finds that the teacher should remain registered as a teacher.

FINDINGS UNDER SECTION 42(2) OF THE ACT

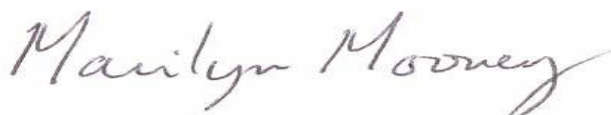
The teacher's actions constitute serious misconduct.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

The Panel decided not to make a determination pursuant to section 42(2) of the Act because it did not believe that it was appropriate to impose a penalty in this case for the above reasons.

DECISION OF THE PANEL

The teacher is fit to teach and will remain registered as teacher.



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Marilyn Mooney, CHAIRPERSON

Marilyn Mooney

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Jenny Wajsenberg, REGISTERED TEACHER

Marilyn Mooney

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Ian Watkins, REGISTERED TEACHER