

**VICTORIAN INSTITUTE OF TEACHING**  
DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 016

**REGISTERED TEACHER:** Suzanne **ZINEDER**

**PANEL MEMBERS:**

Janet <b>SHERRY</b>	Chairperson
Polly <b>FLANAGAN</b>	Registered Teacher
Cathie <b>IRELAND</b>	Registered Teacher

**COUNSEL ASSISTING THE PANEL:** Ms Gail Hubble

**DATE OF HEARING:** 8 March 2005

**DECISION OF THE PANEL:**

On 9 March 2005 the Panel decided to cancel the registration of the teacher from the date of this decision.

**EFFECT OF THE DECISION**

The effect of the decision is that the teacher cannot undertake the duties of a teacher in a Victorian school from 9 March 2005.

# REASONS

## BACKGROUND

On 31 December the *Victorian Institute of Teaching* 2001 (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the Act because she 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.

By letter dated 15 October 2004, the employer of the teacher advised the Victorian Institute of Teaching (the Institute) that the teacher had resigned following an allegation that she had stolen a large amount of money. The Institute considered this information and accompanying documentation and determined to conduct a formal hearing. By a Notice of Formal Hearing dated 14 February 2005 the teacher was advised that a hearing was to be held on 8 March 2005. The Notice was served by registered post on 15 February 2005. Australia Post confirmed that the Notice of Formal Hearing had been collected on 16 February 2005. On 28 February 2005 the teacher was sent a letter confirming that the hearing was to be held on 8 March 2005.

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

That on 6 April 2004 the teacher pleaded guilty and was convicted by the County Court of the indictable offence of theft, in that between 20 July 1999 and 4 March 2003 she stole property being a chose in action namely a debt owed to a professional association (PA) and valued at \$142,379.85. She was sentenced to two years jail (suspended) and ordered to repay \$30,152.94.

## THE ISSUES

The issues to be determined in this matter are whether the teacher's conduct amounts to serious misconduct and/or a lack of fitness to teach and if so, what is the appropriate penalty.

## THE LAW

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

### **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.*

### **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.*

The terms *serious misconduct* and *fitness to teach* is not defined in the Act. The Panel is aware of case law regarding disciplinary proceedings in other jurisdictions which refers to the terms *professional misconduct* and *fit and proper person*. The Panel has had regard to those cases and other case law on disciplinary matters to decide what is meant by the terms *serious misconduct* and *fitness to teach*.

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 that profession.

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 registration authority must determine the facts that lead to the conviction before deciding whether a person should be disqualified from being a member of their profession. The role of the registration authority is not to punish the person. This has been done by the court. The conviction is of secondary importance. What is of significance is the circumstances which lead 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.

Proof of a conviction does not prove a person is unfit because it does not allow the registration authority to assess the person's character or reputation. An assessment can only be made when some knowledge of the underlying facts are known. 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.

An inquiry into a person's fitness to teach will be concerned with the person's character. 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

The approach of the Panel to a case of personal misconduct is different from a case of professional misconduct. In the statutory context a finding of professional misconduct may result in a penalty being imposed that is not cancellation of the teacher's registration. 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. That conduct does not have to arise during a professional relationship but can occur at any time. However if the 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 court 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**

Documents in support of the allegations:

1. Police brief (released under FOI)
  - Brief Head (2 pages)
  - Form 7A (2 pages)
  - Form 4A

- LEAP – identifiers report
  - Charge sheet
  - Statement of material facts (3 pages)
  - Restitution sheet
  - Witness list
  - Exhibit list
  - Statement by the Principal of the school dated 10 September 2003 (numbering 5 pages)
  - Letter dated 29 May 2003 to the Principal of the school from TV Lant and Associates
  - Final audit report dated 27 May 2003 (10 pages)
  - Rules of the PA (20 pages)
  - Statement of purpose of the PA (4 pages)
  - Transcript of police interview on 14 August 2003 (54 pages)
2. Letter from the Department dated 11 June 2003
  3. Letter to the Department dated 14 August 2003

## THE EVIDENCE

The Panel received a summary and submission from Counsel Assisting, Ms Gail Hubble. The teacher was not present. What follows is a summary of the documentary evidence provided.

In March 1999 the teacher was appointed the Treasurer of the PA. PA is an incorporated association whose membership is comprised of some 80 Victorian schools represented by the Principal of each school. The Association's funds are derived from annual membership fees and subscriptions as well as sponsorships, grants etc. The funds are used for stated and approved purposes of the Association including professional development, conferences and the like. All payments are by cheque signed by at least two authorised persons, and must be approved before being made out. As Treasurer, the teacher was responsible for and had authorisation to receive, collect and bank all monies due to the Association and make payments in accordance with the rules. She was also required to keep the books, prepare annual accounts and financial statements and report on the financial affairs of the Association at the Annual General Meeting.

At the time the teacher was Treasurer of PA, and up until August 2003, she was the Principal of the School.

Between July 1999 and March 2003 it is estimated that the teacher wrote 126 PA cheques, which were not co-signed, payable to herself. She recorded false details on the cheque butts and produced financial reports in her role as Treasurer that concealed her thefts from PA including the Committee of Management. Initially the cheques were for relatively small amounts but grew larger over time.

The PA cheques, the total value of which was \$142,869.85, were deposited in the teacher's personal account at the Commonwealth Bank and drawn on for personal expenses. These expenses appear to be predominantly for gambling on poker machines.

In March 2003 an authorised PA cheque was dishonoured. This prompted a former member of the Committee of Management to contact the President. On 28 March 2003 the President interviewed the teacher who revealed she had 'borrowed' money from the PA account and that she had a gambling problem. That evening the teacher was admitted to

the Victorian Clinic as a voluntary patient for psychiatric assessment. She remained there, as an in-patient, for one month. The matter was reported to police on 29 March who advised that the exact extent of irregularities should be ascertained before a formal statement was made. An audit of PA accounts was arranged and subsequently a formal statement made to police on 10 September 2003.

On 14 August 2003, the teacher was arrested at Melbourne Airport as she attempted to board a plane for Hong Kong. She was subsequently interviewed in relation to theft. She was cooperative with the police, making a full admission, but stated that she was not aware of the total amount.

During her Record of Interview on 14 August 2003 the teacher stated, amongst other things, the following:

- she had been employed by the Department of Education and Training for about 30 years including six years as a Principal
- when she put the first PA cheque through to herself she did not really expect it to go through .... because of the need for two signatures ..... but it did
- when she wrote the first PA cheque she had no money, she thought she could tide herself over by writing a cheque, could repay it later and nobody would notice
- that at one stage she approached her brother and told him what had happened and he deposited \$20,000 into the PA account on condition that she undergo counselling and address her gambling problem (bank statements indicate that this deposit was made on 4 February 2002)
- she closed her personal bank account and opened a new one with her brother as co-signatory
- her gambling ceased for some time
- she attended counselling from the end of 2001 and at some time subsequently moved from one-on-one counselling to a group therapy session with other gamblers
- the group sessions encouraged her to resume gambling
- she had no idea that the amount of money involved was as large as it was
- she thought she could make restitution by accessing her superannuation
- her lawyer's advice was to go to Hong Kong and take up the employment contract she had been offered, leaving her details with him so that when the police made contact, her daughter, who had power of attorney, could sign the necessary authorisation to access the money from superannuation
- that in leaving for Hong Kong she was not 'running away' but leaving to take up work as she knew she would not be employed in Victoria again
- that since her admission to the Victorian Clinic she had discovered that she had a number of other issues in her life she needed to address
- that she continued to regularly see the psychiatrist
- she felt she had been given excellent treatment by her psychiatric team and had been able to deal with a number of other issues, had got her life in order and hasn't needed to escape to gambling.

On 6 April 2004 the teacher pleaded guilty in the County Court to theft valued at \$142,379.85. She was sentenced to two years jail (suspended) and ordered to pay \$30,152.94. It is not clear from the documentation whether this amount has been repaid.

## **DISCUSSION OF THE EVIDENCE**

The evidence presented to the Panel indicates that between July 1999 and March 2003 the teacher engaged in a prolonged and serious theft, which she systematically covered up, from PA where she held the position of Treasurer. Her position as Treasurer is closely connected to her professional duties as the Principal of the School.

The evidence indicated that the teacher's misappropriation of funds appears to be directly related to a gambling problem which left her with no money of her own. She acknowledged this problem when she revealed to her brother in late 2001 or early 2002 that she was taking funds from PA. However, despite the fact that he deposited \$20,000 into the PA bank account on condition she received counselling for her gambling and became a co-signatory to her bank account, she stopped writing cheques payable to herself from PA for only a short period of time. The counselling she received at this time seems to have had little effect on her behaviour and she asserts that it led to further gambling. Regardless of whether this is true or not, her behaviour certainly did not change in the long term. The teacher only ceased writing PA cheques to herself because a cheque was dishonoured, the subsequent meeting with the President of PA and information being PAed on to the police.

The evidence indicates that the teacher was admitted to the Victorian Clinic where she has stated she received psychiatric treatment which was ongoing after her release. The nature of this treatment is unknown as are the underlying psychiatric problems which she states were uncovered at the time. The Panel had no evidence that the underlying causes of her problem are being addressed or treated.

The teacher was arrested boarding a plane for Hong Kong. Her motives in doing so were not clear. The Panel noted her assertion that she was not running away and that she had discussed leaving with her lawyer however the Panel also noted that she stated that she knew that she would not be able to work in Victoria again.

The evidence shows that the teacher was cooperative with the police and was intending to make restitution at least to the extent ordered by the court.

## **FINDINGS OF FACT**

After consideration of all the evidence before it, the Panel made the following findings:

- The teacher engaged in a prolonged and serious theft from the PA where she held the position of Treasurer
- The teacher's position in the PA was directly related to her position as a Principal of the school
- On 6 April 2004 the teacher pleaded guilty and was convicted by the County Court of the indictable offence of theft, in that between 20 July 1999 and 4 March 2003 she stole property being a chose in action namely a debt owed to the PA and valued at \$142,379.85. She was sentenced to two years jail (suspended) and ordered to repay \$30,152.94.

## **CONCLUSION**

The Panel concluded that the teacher was guilty of serious misconduct. Her behaviour was of a sustained and serious nature and, although her conduct did not arise as a result of her


duties as a Principal, it took place when she was placed in a position of trust and responsibility to look after funds for an Association which represented schools where students of a particularly vulnerable nature attended. Her standards of honesty and ethical behaviour were a substantial departure from accepted standards of the teaching profession and betrayed the trust of her colleagues and the community in which she worked.

The Panel further considered whether the teacher was fit to teach. The Panel was of the view that the teacher's behaviour would be considered *disgraceful or dishonourable* by her teaching colleagues, notwithstanding her cooperation with the police and her plea of guilty. Elements of her behaviour may have been explained by underlying psychological problems but the Panel had no evidence to support this contention. The Panel were also mindful of evidence which showed that the teacher had prior opportunity to address her problems when she was assisted by her brother and had the opportunity to undertake counselling.

The Panel concluded that the teacher is not fit to teach. She failed to meet her obligations to the teaching profession and the broader education community and in so doing brought the teaching profession into disrepute.

#### **DETERMINATION**

The responsibility of the Panel is to help maintain a high standard of conduct for the teaching profession, and given that the teacher's actions constitute serious misconduct and that by those actions the teacher has demonstrated herself to be a person unfit to teach, the Panel has determined to cancel her registration to teach from 9 March 2005.



**Janet Sherry, Chairperson**



**Per:**

**Polly Flanagan, Registered Teacher**



**Per:**

**Cathie Ireland, Registered Teacher**