

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 023

REGISTERED TEACHER: LKT

PANEL MEMBERS

Peter RYAN, Chairperson

Polly FLANAGAN, Registered Teacher

Kathleen BRAGGE, Specialist Member

ATTENDANCE: The teacher was represented by Mr Richard Niall of Counsel with instructing solicitor Mr B Moxham of Ryan Carlisle Thomas

Counsel Assisting: Ms Anne Sheehan with Ms C Pickett solicitor instructing

DATE OF HEARING: 20 July 2005

DECISION OF THE PANEL:

On 20 July 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 remains registered to teach in the State of 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 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.

The Victorian Institute of Teaching (the Institute) was advised by the employer by letter dated 12 November 2004 that the employer had taken action against the teacher because she had been found guilty of indictable offences. Under sections 27 and 28 of the Act the Institute must conduct an inquiry to assess whether the teacher is fit to teach. At its meeting on 15 March 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 16 June 2005, the teacher was advised that the formal hearing was to be held on 20 July 2005.

The Notice of Formal Hearing set out the following allegations:

On 27 October 2004, at the Magistrates' Court the teacher was found guilty of thirty three counts of obtaining property from the School and three counts of theft from the school between the periods 21 December 2001 and 14 May 2004. The teacher was placed on an Intensive Corrections Order for 9 months and ordered to pay restitution of \$31,106.19.

The issue the Panel must decide is whether these findings of guilt mean that the teacher 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 term *fitness to teach* is not defined in the Act. The Panel was referred to case law in other disciplinary proceedings which refers to the term *fit and proper* person to which the Panel had regard.

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 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

- a) Material released by Victoria Police pursuant to a Freedom of Information request
 - Letter dated 17 September 2004
 - LEAP Incident report dated 17/09/2004
 - Handwritten notes
 - Brief head
 - LEAP – intent to summons
 - Summary of charges
 - Restitution sheet
 - Charge and summons
 - Witness list
 - Exhibit list
 - Statement dated 2 September 2004
 - Statement dated 8 September 2004
 - Exhibits numbered 1 to 61 (68 pages in all)

- b) Material from the employer
 - Letter from the employer to the teacher dated 17 June 2004
 - Letter from the teacher dated 18 June 2004
 - Special investigation into misappropriation of school funds July 2004
 - The school – Summary of Losses 2004
 - Report from medical practitioner dated 26 July 2004
 - Letter from the employer to the teacher dated 4 October 2004
 - Notice dated 25 October 2004
 - Letter from the teacher dated 29 October 2004
 - Note of meeting 26 July 2001
 - Statement of Service from the employer for the teacher

- c) Documents supplied at the hearing
 - Second medical report from medical practitioner dated 21 October 2004
 - Statutory Declaration of Principal 1
 - Statutory Declaration of Principal 2
 - Witness Statement of Director
 - Witness statement of Principal 3
 - Witness statement of the teacher
 - Medical report of medical practitioner 2 dated 18 July 2005
 - Record of Service

THE EVIDENCE

On 27 October 2004, at the Magistrates' Court the teacher was found guilty of thirty three counts of obtaining property from the school and three counts of theft from the school between the periods 21 December 2001 and 14 May 2004. The teacher was placed on an Intensive Corrections Order for 9 months and ordered to pay restitution of \$31,106.19.

The Panel heard evidence under oath from the teacher and witnesses the Director and Principal 3.

The teacher

The teacher admitted that her actions in misappropriating moneys from the school were disgraceful and constituted serious misconduct. She realises what she did impacted severely on the school, her family, her colleagues and on the profession and she feels deep shame and remorse.

The teacher acknowledged a gambling addiction, originating in a social context and escalating to a pathological disorder which came to rule her life. The teacher also acknowledged the illogicality of working hard to improve the school's resources whilst steadily undermining and depleting them.

The teacher claimed to have been under great strain from the demands of her job and from issues arising within her family situation. She sought relief by avoidance, chiefly in gambling. When confronted by the auditors' suspicions, she immediately admitted to all the thefts and forgeries and disclosed others not yet discovered. She made equally full and frank confessions to police when charged with the offences. She testified to feeling relief on being found out.

The teacher sought help promptly and was diagnosed with a long-standing bipolar disorder. She joined Gamblers' Anonymous and has attended regularly since. She has also sought counsel from close colleagues, something she admits she had been too proud to do previously. The teacher has almost completed her Intensive Corrections Order, describing how she found satisfaction in the work, and support and guidance in the regular mandated meetings with her Officer.

No arrangements for restitution have at this point been made by the teacher. She gave evidence that she intends to make full restitution and will begin as soon as her financial situation is less precarious.

The Director

The Director confirmed under oath her written statement. That document described the teacher's worth as Shift Duty Manager and as contributor to the operation of her current place of employment. The Director attributed increased patronage and participation to the teacher's coaching role and expertise with children, and expressed total trust in the teacher's honesty and work ethic.

Principal 3

Principal 3 and colleague of the teacher's, confirmed under oath her written statement. She also testified orally to the teacher's passion as a teacher and her dedication to her students. Principal 3 has observed significant improvements in the teacher's outlook since her diagnosis and treatment program. Principal 3 also indicated a readiness to employ the teacher, should the opportunity arise.

Statutory Declarations were provided by Principal 1 and 2, neighbouring principals. Both attested to the teacher's excellence as a teacher and administrator, commenting on her outstanding leadership qualities, her drive and creativity and her tireless promotion of student welfare. Principal 1 and 3 both indicated a willingness to provide continued support and encouragement to the teacher in her recovery process.

DISCUSSION OF EVIDENCE

The Panel noted that there was a degree of calculation and preparation required to execute the deceptions, unsophisticated though they were and however inevitable their detection by annual audit. It was not a spontaneous offence, nor a one-off episode. Rather this was a series of events escalating over time. The Panel believes that the purpose of the thefts was not to derive material gain in the usual sense of the term, but to feed a gambling habit. Moreover it should be noted that the behaviours exhibited by the teacher over this period were consistent with the pattern of behaviours shown by addicts of all persuasions as their addiction increasingly dictates their every action.

The Panel found the teacher to be a most believable witness. She was honest and open in her account of her offences and in her self-evaluation. The Panel accepts that she still feels distressed by her own actions and the damage thus caused; that she feels most keenly the betrayal of those who placed their trust in her, and that she understands clearly the grave implications of her behaviour for the school, the education community and the profession.

The Panel believes the teacher to be deeply remorseful and anxious to make amends and to rebuild her life. That she has chosen to remain in her community and her desire to seek work as a teacher demonstrates courage and determination as she faces daily those same people whom she has hurt.

The Panel is also satisfied that the teacher has actively sought the means to change her pattern of behaviour. She has been very open to advice and help. She embraced the Intensive Corrections Order provisions as being intrinsically valuable and helpful to her. She attends Gamblers' Anonymous regularly and is appreciative of the support and insights it affords. She has a good relationship with her GP who is providing counselling and monitoring her medical condition. The teacher also has trusted colleagues and friends available to her for support and advice.

The teacher claimed convincingly to have gained an understanding of the triggers and indicators of her stress, along with having learned effective coping strategies. The Panel

found the report from medical practitioner 2 particularly useful. Medical Practitioner 2 is an experienced GP with a special interest in mental health.

Medical practitioner 2 saw the teacher frequently from May 2000 and suspected an underlying mood disorder. In mid 2004 she diagnosed severe bipolar illness, a diagnosis subsequently confirmed by medical practitioner 1. The teacher has been taking a variety of prescribed medications since that time. Medical practitioner 2 described the teacher's compulsive behaviours as commonly seen in people with bipolar illness; she saw a direct connection between the illness, the gambling addiction and the offences.

Medical practitioner 2 feels the teacher has a very good chance of recovery with a good long-term outlook, subject to on-going compliance with mood -stabilising medications and cessation of gambling. The teacher, at the time of the hearing, has not gambled for over 400 days, and testified she no longer felt the need to do so. Medical practitioner 1 believes the teacher's illness should not impair her ability to teach or cause her to re-offend in the same or similar manner, subject to compliance with medical advice regarding the management of her illness.

In relation to restitution, the Panel accepts that the teacher genuinely wants to make good in full the losses suffered by the school. It would be in the best interests of all for her to initiate arrangements with the employer as soon as she can commit to making regular payments.

FINDINGS OF FACT

After considering the evidence the Panel made the following findings:

- the teacher was convicted on 27/10/04 of charges of theft and obtaining property from the school where she was Principal. She was placed on an Intensive Corrections Order for nine months and ordered to pay restitution of \$31,106.19.
- the teacher is deeply remorseful and contrite.
- the teacher suffers from a severe and long-standing bipolar illness. During the period 2000 to 2004 she developed an increasingly severe addiction to gambling.
- the teacher has not gambled for over 400 days.
- the teacher's prospects of recovery are very good.
- the teacher's record prior to these offences was exemplary.
- the teacher has not made any restitution to date.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The teacher's dishonest actions constitute serious misconduct. She has admitted a gross misuse of her position and a betrayal of the trust of those for whose welfare she was responsible.

Serious misconduct of this order is potentially damaging to the whole profession, bringing it into disrepute in the eyes of the public.

CONCLUSION

The teacher is guilty of very serious offences against the school whose interests she was responsible for protecting. The implications of her breach of trust spread into the wider community, which demands the highest standards of ethical behaviour and integrity from the teaching profession. All teachers must be sound role models for students; they must be people in whom parents and society can have confidence.

However, the Panel is also mindful of its obligation to look at all the circumstances surrounding the misconduct. It is noted that there were significant mitigating factors in the case. It is now known that the teacher suffers from a previously undiagnosed mental illness. Her behaviour in committing the offences was uncharacteristic. The Panel believes her to be a person of moral integrity who, at a crisis point, chose a dishonourable course of action. Deeply distressed at where this course led her, she was unable to exercise any real degree of control or judgment. Thus, she continued to compound her crimes in a desperate cycle of more gambling, more misappropriation, all of it concealed, the secrecy exacerbating her feelings of guilt and despair.

Medical practitioner 1 noted in his report that bipolar illness can be intensely self destructive and the self destruction typically occurs with the person becoming more and more mindlessly unaware of the consequences of their actions.

The teacher has embarked on a new life direction and is determined to confront her past and rebuild her future. She now has a variety of supports in place. It is the Panel's strong recommendation that she continue to utilise these supports, medical and otherwise. Further, the Panel is of the view that, as further sign of her commitment, the teacher should negotiate as soon as possible with the employer the process for fulfilling her retributive obligation.

The Panel addressed the questions: Is the teacher currently fit to practise as a teacher? Can she be trusted to perform the duties required of a teacher? Does she have the means to manage her health and family issues in ways that will not impact negatively on her role as teacher?

The medical opinions, the endorsement of her colleagues and most importantly the teacher's own affirmations of her intention to bring about change and reparation all led the Panel, after searching discussion, to the conclusion that she is currently fit to practice as a teacher. Similarly, on the question of whether the teacher would pose any risk to a school in which she was employed, the Panel believes that, on balance of probabilities, she would not.

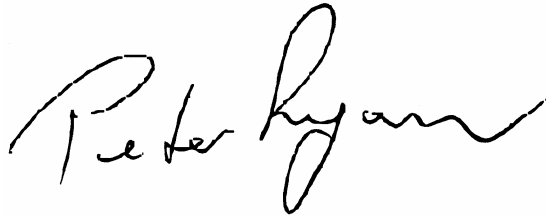
The Panel therefore finds that the teacher should remain registered as a teacher.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

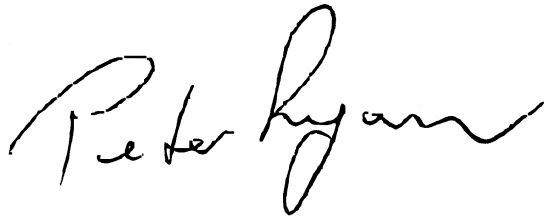
The Panel decided not to make a determination pursuant to section 42(2) of the Act because it did not believe it was appropriate to impose a penalty in this case for the above reasons.

DECISION OF THE PANEL

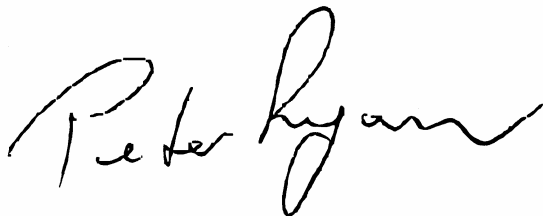
The teacher is fit to teach and will remain registered as a teacher.



Peter RYAN, CHAIRPERSON



Per:
Polly FLANAGAN, REGISTERED TEACHER



Per:
Kathleen BRAGGE, SPECIALIST MEMBER