

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 042

REGISTERED TEACHER: Grant Kenneth ROBINSON

PANEL MEMBERS:

Heather Schnagl Chairperson

Polly Flanagan Registered Teacher

Nicola Sciola Panel Member

ATTENDANCE: MR ROBINSON was represented by SANDRA MacDOUGALL of Counsel

GAIL HUBBLE Counsel Assisting, with Ms Annabel Haslam instructing

DATE OF HEARING: 2 November 2006

DETERMINATION UNDER SECTION 42(2):

On 2 November 2006 the Panel decided that the teacher remain registered as a teacher.

REASONS

BACKGROUND

On 31 December 2002 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.

This inquiry is the result of a notification from the Employer on 1 March 2005 that it took action against the teacher under section 27 of the Act. The teacher had resigned from the Employer effective 7 March 2005 during an investigation into alleged medical certificate fraud. The material provided by the Employer contains evidence of possible serious misconduct and/or lack of fitness to teach.

As the material provided by the Employer on 30 August 2005 referred to criminal proceedings, the Institute requested a copy of the police brief under Freedom of Information. This material was received by the Institute on 4 January 2006. The material provided by Victoria Police indicates that on 19 July 2005, the teacher was found guilty of 3 indictable offences. Under section 28 of the Act, the Institute must conduct an inquiry into the fitness to teach of a teacher found guilty of an indictable offence.

On 17 February 2006, the inquiry was presented to the Disciplinary Proceedings Committee where the Committee referred the matter to formal hearing. The matter was delayed whilst other allegations against the teacher raised by a complainant were investigated.

The allegations in this inquiry relate to the teacher's fitness to teach in light of the findings of guilt for the indictable offences relating to falsification of documents.

Nature of Allegations

The information the Institute has received as evidence of possible serious misconduct and/or lack of fitness to teach:

1. On 19 July 2005, the teacher was found guilty by the Magistrates' Court of the following indictable offences:
 - i) Obtaining financial advantage by deception.
 - ii) Making a false document to prejudice of other.
 - iii) Using a false document to prejudice other.

He was placed on a good behaviour bond for 12 months and ordered to pay restitution to School 1 to the value of \$1,982.00.

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.

(2) The employer of a registered teacher must provide the Institute with any information the Institute may reasonably require to conduct an inquiry under this Part.

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 *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

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.

The Supreme Court noted in *Siguenza v Secretary, Employer 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.

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 unfitness 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 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.

DOCUMENTS CONSIDERED

Counsel has been provided with copies of the following documentary evidence:

- Material from the Magistrates' Court dated 19 July 2005
 - Certified Extract of Court Order re Charge 1 (1 page) **001**
 - Certified Extract of Court Order re Charge 2 (1 page) **002**
 - Certified Extract of Court Order re Charge 3 (1 page) **003**
 - Undertaking with Conditions of the teacher (1 page) **004**
 - Statement of Fines and Penalties Imposed (1 page) **005**
- Material released from Victoria Police pursuant to a Freedom of Information request
 - Magistrates Prosecutions ref no 2005-003511 checking sheet (2 pages) **006-007**
 - Brief header page (1 page) **008**
 - Charge Sequence & Result of Charge Report (1 page) **009**
 - Summary of Charges – VP Form L20 (1 page) **010**
 - Charge – VP Form 401 (2 pages) **011-012**
 - Statement of Teacher 1 dated 24 April 2005 (2 pages) **013-014**
 - List of medical certificates from 13/07/00 to 11/04/03 (1 page) **015**
 - Summary of Letter, Sick Leave Applications and Medical Certificates provided to Victoria Police on Monday 21st February 2005 (1 page) **016**

- Casual Relief Teacher Invoice 40532 (1 page) **017**
- Casual Relief Teacher Invoice 40539 (1 page) **018**
- Casual Relief Teacher Invoice 40544 (1 page) **019**
- Casual Relief Teacher Invoice 64791 (1 page) **020**
- Casual Relief Teacher Invoice 64772 (1 page) **021**
- Record of Interview between Victoria Police Officer 1 and the teacher dated 13 May 2005 (3 pages) **022-024**
- Statement of Victoria Police Officer 2 dated 15 May 2005 (3 pages) **025-027**
- Fax from Teacher 1 to Victoria Police Officer 3 dated 13 July 2005 (2 pages) **028-029**
- Letter from Teacher 1 to the teacher dated 18 February 2005 (3 pages) **030-032**
- Summary of Sick Leave held on file at School 1(1 page) **033**
- Copies of documents provided by the Employer:
 - Fax from the Manager of the Medical Group to Teacher 1 dated 17 February 2005 (1 page) **034** and attachments
 - Certificate from Medical Practitioner 1 for 23 & 24 October (1 page) **035**
 - Certificate from Medical Practitioner 1 dated 11 February 2005 (1 page) **036**
 - Fax from Teacher 1 to the Manager of the Medical Group dated 17 February 2005 (1 page) **037** and attachments
 - Certificate from Medical Practitioner 2 dated 5 March 2004 (1 page) **038**
 - Certificate from Medical Practitioner 2 dated 28 April 2004 (1 page) **039**
 - Certificate from Medical Practitioner 2 dated 3 August 2004 (1 page) **040**
 - Certificate from Medical Practitioner 3 dated 27 October 2004 (1 page) **041**
 - Certificate from Medical Practitioner 3 dated 17 August 2004 (1 page) **042**
 - Fax from the Manager of the Medical Group to Teacher 1 dated 17 February 2005 (1 page) **043**
 - Fax from Teacher 1 to Medical Practitioner 1 undated (1 page) **044**
 - Certificate from Medical Practitioner 1 for 23 & 24 October (1 page) **045**
 - Fax from School 1 to Medical Practitioner 1 dated 16 February 2005 (1 page) **046** and attachments
 - Certificate from Medical Practitioner 1 dated 11 February 2005 (1 page) **047**
 - Letter from Teacher 1 to the teacher dated 18 February 2005 (3 pages) **048-050**
 - Notes by Teacher 1 of phone call from the teacher's spouse of Feb 16th, dated 17 February 2005 (1 page) **051**
 - Letter from the teacher to Teacher 1 dated 23 February 2005 (1 page) **052**

The following exhibits were presented to the Panel:

- A** Report from Medical Practitioner 1 re the teacher dated 1 August 2005
- B** Report from the diabetic educator re the teacher dated 30 October 2006

THE EVIDENCE

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

- Whilst accepting total responsibility for his actions, there were circumstances which contributed to the situation, namely his uncontrolled diabetes with the attendant impact on his behaviour and sleep deprivation and his perceptions of inter-personal conflict at his workplace (school)
- He was a mature age entrant to the teaching profession, completing his initial degree and Diploma in Education whilst working part time to support his family
- The teacher told the Panel that he commenced teaching in 1999, initially on a six month contract teaching Senior Maths at School 2. He then obtained a position at School 3 on a family leave replacement position for two and a half years. At the conclusion of this position he was offered two positions, one at School 1 which involved teaching his first love of Senior Maths but was 100km away from his home necessitating two hours and twenty minutes per day travelling time or a position teaching mainly science and some maths which was considerably closer to home. He chose to accept the School 1 position in 2003 but negotiated a reduction in time fraction to 0.8 (four days per week) and to teach Year 12 Mathematical Methods.
- In 2004 he was asked to take on the position of Maths Coordinator at School 1, demonstrating to the Panel the high regard that he was held in at School 1.
- He told the Panel that the first case of a fraudulent medical certificate was on a day when he had been at home caring for his 10 year old child (of whom he had joint custody). This day was adjacent to a long weekend which meant that he was unable to take a day's sick leave without a medical certificate.
- The teacher told the Panel that prior to his move to School 1, he had taken 'about the usual amount of sick leave' which he suggested was between 5 and 8 days per year.
- The teacher remarried in November 2004 taking a week's leave without pay in December (the last week of the School 1 year). Just prior to his wedding the teacher was given a strong indication by the principal that his teaching allotment for the following year would be changed and that he would lose his senior maths classes.
- At the beginning of the 2005 school year, when his teaching allotment had indeed been changed, the teacher became extremely distressed and needed to go home after telling the daily organiser.
- His competence was never in question and he told the Panel that the Unit 3/4 Maths Methods results had improved from those previously obtained by the School 1 as a result of his teaching in each of the three schools in which he had taught.
- When being questioned about his thinking with respect to the fraudulent medical certificates, he stated that he obviously was not thinking. He was unable to explain to the Panel why he did it, indicating his confused thinking at the

time. Medical Practitioner, in Exhibit A, outlined the possible impact of The teacher's condition on his mental and physical processes. These included fluctuations in blood glucose level draining him of energy, vagueness and confused thinking.

- He has suffered considerable financial consequences as a result of his actions and convictions.
- Since his resignation from School 1 in March 2005, the teacher has supported his family with part time work at a Supermarket (night filler) and as a cook together with some Centrelink support.
- He has made significant efforts to rehabilitate since resigning his teaching position on 4 March 2005
- Supporting evidence was provided to the Panel (Exhibit B) that he had worked hard in recent months to control his diabetes and reduce his weight. He told the Panel that the motivation for this was the birth of his new baby.
- He demonstrated to the Panel significant remorse for his actions and an understanding of these both in a personal sense and their impact on his family, students, the school and the teaching profession as a whole. He told the Panel that he was deeply ashamed of his actions and that the teaching profession deserved better. With hindsight, he also recognised how deeply this affected his students and how it has crippled his family financially. He also conceded that his actions would be a blight on the teaching profession.
- He demonstrated a love of and passion for teaching and a strong desire to continue in the profession. He told the Panel that he was inspired to become a teacher by a couple of good Maths teachers when he was a school. He also informed the Panel that his one of his parents (now retired) and other family members are all teachers and he saw the joy they got from teaching.
- The teacher has considered the possibility that he may be unable to return to teaching and with this in mind has embarked on an Economics degree (part time) with a view to becoming an accountant, being one of the few professional opportunities other than teaching in his region. He told the Panel that this would take him five years.
- He told the Panel that there was no prospect what so ever of re-offending and that he has difficulty accepting that he ever was engaged in such fraudulent activity. His behaviour did not represent him as a person but was the result of a number catalysts, in particular, his diabetes and his perception of interpersonal conflict.
- He told the Panel that he is keen to give back to the community as he has a passion for teaching and gets good results for his students and has a great rapport with them. He feels that he let his students down and stated that that was what hurt him the most.

DISCUSSION OF EVIDENCE

The teacher admitted that between 23 October 2003 and 28 February he submitted 6 medical certificates that were either manufactured or altered by him. His conduct had a direct impact on the budget of School 1 in that he was paid sick leave that he was not

entitled to and that a relief teacher was employed by School 1 to compensate for his absence.

At all the times that the teacher submitted fraudulent medical certificates he was suffering from serious medical conditions, namely unstable insulin-dependent diabetes, hypertension and a stress-related sleep disorder. The teacher conceded that his medical conditions do not excuse his conduct although they provide some mitigating circumstances.

The teacher clearly demonstrated remorse for his conduct, pleading guilty to the criminal charges in the Magistrates Court and admitting his actions when initially questioned by the police. His resignation from School 1 on 4 March 2005 demonstrated his insight that his conduct was unacceptable as a member of the teaching profession. He has made full restitution to School 1 of the amount expended on relief teachers to cover his absences, much of which had been done prior to his court appearance.

Throughout the hearing the teacher demonstrated to the Panel that he is deeply ashamed of his conduct and especially of the disrepute that it brought to a profession which he and his family highly esteem. He clearly recognised that his conduct was detrimental to the repute of the teaching profession, members of whom must possess good character and be able to engender the trust and confidence of students, parents, other teachers and the community more generally. The teacher recognised that his conduct fell far short of that expected as a teacher and was deeply ashamed that he had let his students, colleagues, School 1 and community down.

Evidence presented to the Panel indicated that the teacher has worked hard in recent months, especially since the birth of his baby, to control his insulin-dependent diabetes and to reduce his weight with the assistance of his diabetes educator.

The teacher has also taken responsibility for the ongoing financial support of his family by a combination of private tutoring, stocking supermarket shelves and working in a pizza shop since his resignation from School 1. He has also recognised the possibility that he may not be able to resume his teaching career and commenced a part time degree to become an accountant, one of the few professional opportunities close to where he lives, even though this will take him five years.

The teacher has also suffered embarrassment and shame though his family's knowledge of his offences, which was made all the more significant as his family members being or having been teachers.

He is adamant that there is no risk that he will ever re-offend as he has learned a lesson from his conduct and its consequences.

FINDINGS UNDER SECTION 42(2)

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

- Between 23 October 2003 and 28 February 2005 the teacher produced six forged medical certificates, which had either been manufactured by him or altered, and he used these certificates to claim sick days from School 1, where he was employed;
- He received payment of \$1,595.00 from his employer, School 1 for these days;
- He caused School 1 to incur costs of \$1,982.00, being the cost of replacement teachers to cover his absences;
- On 19 July 2005 he was found guilty of one count of obtaining financial advantage by deception pursuant to section 82(1) of the *Crimes Act 1958*, one count of making a false document to the prejudice of others pursuant to section 83A(1) of the *Crimes Act 1958* and one count of using a false document to the prejudice of others pursuant to section 83A(3) of the *Crimes Act 1958*. Without conviction he was placed on a 12 month good behaviour bond and ordered to pay \$1,982 to School 1.

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

Serious misconduct

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

Fitness to teach

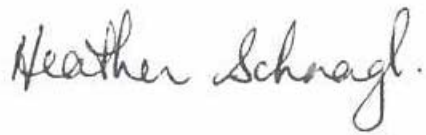
However, the Panel did not consider that because of his misconduct, the teacher is now unfit to teach. It is clear that in considering the issue of fitness to teach, the teacher's conduct is to be assessed at the time of the inquiry and not when the conduct occurred. At the time of the disciplinary proceedings the teacher demonstrated insight into the serious nature of his conduct, as well as genuine distress and remorse over his actions. Evidence suggests that the teacher was suffering from serious medical conditions and under considerable stress at the time the relevant offences occurred, due to the effect of his poorly controlled diabetes, and his perception of conflict with his employer, especially his dispute regarding his teaching allotment. However, the teacher clearly indicated that this in no way excused his conduct. He demonstrated a full appreciation of the standards required of a teacher, acknowledged that his past conduct fell far short of these and further demonstrated his commitment to the maintenance of appropriate standards and moral integrity in his future life and career.

Nevertheless, having found, pursuant to section 42 of the Act that the teacher's actions amounted to serious misconduct it is necessary for the Panel to consider whether it should make a determination imposing a condition upon, or suspending or cancelling the teacher's registration as a teacher. The Act and the case law clearly illustrate that the purpose of disciplinary proceedings is to protect the public, to maintain proper standards of conduct for the profession and to protect the reputation of the teaching

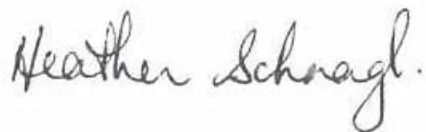
profession. The Panel did not consider that it was necessary to take any action in respect of the teacher's registration for the purposes of protecting the public. It also concluded that he now demonstrates the understanding and commitment necessary for maintaining the proper standards of conduct expected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



HEATHER SCHNAGL, CHAIRPERSON



**Per:
POLLY FLANAGAN, REGISTERED TEACHER**



**Per:
NICOLA SCIOLA, PANEL MEMBER**