

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 0037

REGISTERED TEACHER: Michael O'HARA

PANEL MEMBERS:

Susan Halliday	Chairperson
Anne Farrelly	Registered Teacher
Terry Hayes	Registered Teacher

ATTENDANCE: MR O'HARA did not attend the Formal Hearing
MS ANNE SHEEHAN Counsel Assisting, with Ms Carolyn Pickett instructing

DATE OF HEARING: 17 August 2006

DETERMINATION UNDER SECTION 42(2):

On 1 September 2006 the Panel decided to cancel the registration of Michael O'Hara from 1 September 2006

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.

On 14 November 2002 the Institute became aware that the Teacher had been convicted of an indictable offence. The Institute deferred making a decision on this inquiry as the Teacher appealed against his conviction. On 1 April 2005, the Supreme Court dismissed the Teacher's appeal.

On 18 January 2006 this matter was referred to the Disciplinary Proceedings Committee where the Committee referred the matter to formal hearing. The hearing was delayed whilst attempts were made to clarify the Teacher's current address. When the Teacher's current address in Queensland was established a date was selected which was convenient for the teacher.

On 27 July 2006 a Notice of Formal Hearing was served on the Teacher by registered post, advising him that the hearing would be held on 17 August 2006. Australia Post advised on 31 July 2006 that the Teacher had received the Notice.

Nature of allegations:

The information the Institute has received as evidence of possible lack of fitness to teach is that :

On 13 November 2002 the Teacher was convicted by the Melbourne County Court of 18 counts of the indictable offence of make a false document. The Teacher was sentenced to a term of imprisonment of 6 months wholly suspended for a period of 24 months.

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.

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.

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 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

The Panel was presented with the following documentary evidence:

- Copy of Court Certificate from County Court Morwell dated 19 July 2006. **001**
- Material released from Victoria Police pursuant to a Freedom of Information request
 - Index of witnesses (3 pages) **002-004**
 - Witness statements cover sheet **005**
 1. Witness statement of Witness 1 (4 pages) **006-009**
 2. Witness statement of Witness 2 (2 pages) **010-011**
 3. Witness statement of Witness 3 (2 pages) **012-013**
 4. Witness statement of Witness 4 (1 page) **014**
 5. Witness statement of Witness 5 P/L (2 pages) **015-016**
 6. Witness statement of Witness 6 (2 pages) **017-018**
 7. Witness statement of Witness 7 (3 pages) **019-021**
 8. Witness statement of Witness 8 (9 pages) **022-030**
 9. Witness statement of Witness 9 (3 pages) **031-033**
 10. Witness statement of Witness 10 (4 pages) **034-037**
 11. Witness statement of Witness 11 (3 pages) **038-040**
 12. Witness statement of Witness 12 (2 pages) **041-042**
 13. Witness statement of Witness 13 (5 pages) **043-047**
 14. Witness statement of Witness 14 (1 page) **048**
 15. Witness statement of Witness 15 (8 pages) **049-056**
 16. Witness statement of Witness 16 (2 pages) **057-058**
 17. Witness statement of Witness 17 (3 pages) **059-061**
 18. Witness statement of Witness 18 (2 pages) **062-063**
 19. Witness statement of Witness 19 (2 pages) **064-065**
 20. Witness statement of Witness 20 (3 pages) **066-068**
 21. Witness statement of Witness 21 (3 pages) **069-071**
 22. Witness statement of Witness 22 (4 pages) **072-075**
 23. Witness statement of Witness 22 (2 pages) **076-077**
 24. Witness statement of Witness 22 (2 pages) **078-079**
 25. Witness statement of Witness 23 (2 pages) **080-081**
 26. Witness statement of Witness 24 (3 pages) **082-084**
 27. Witness statement of Witness 25 (3 pages) **085-087**
 28. Witness statement of Witness 26 (2 pages) **088-089**
 29. Witness statement of Witness 27 (6 pages) **090-095**
 30. Witness statement of Witness 28 (5 pages) **096-100**
 31. Witness statement of Witness 29 (3 pages) **101-103**
 32. Witness statement of Witness 30 (2 pages) **104-105**
 33. Witness statement of Witness 31 (2 pages) **106-107**

34. Witness statement of Witness 32 (2 pages) **108-109**
35. Witness statement of Witness 32 (37 pages) **110-146**
36. Witness statement of Witness 33 (2 pages) **147-148**
37. Witness statement of Witness 34 (2 pages) **149-150**
38. Witness statement of Witness 35 (2 pages) **151-152**
39. Witness statement of Witness 36 (3 pages) **153-155**
40. Witness statement of Witness 37 (1 page) **156**
41. Witness statement of Witness 38 (2 pages) **157-158**
42. Witness statement of Witness 39 (3 pages) **159-161**
43. Witness statement of Witness 40 (5 pages) **162-166**
44. Witness statement of Witness 41 (1 page) **167**
45. Witness statement of Witness 42 (8 pages) **168-175**
46. Witness statement of Witness 43 (2 pages) **176-177**
47. Witness statement of Witness 44 (4 pages) **178-181**
48. Witness statement of Witness 44 (4 pages) **182-185**
49. Witness statement of Witness 45 (1 page) **186**
50. Witness statement of Witness 46 (2 pages) **187-188**
51. Witness statement of Witness 47 (2 pages) **189-190**
52. Witness statement of Witness 48 (2 pages) **191-192**
53. Witness statement of Witness 49 (2 pages) **193-194**
54. Witness statement of Witness 50 (2 pages) **195-196**
55. Witness statement of Witness 51 (1 page) **197**
56. Witness statement of Witness 52 (2 pages) **198-199**
57. Witness statement of Witness 53 (2 pages) **200-201**
58. Witness statement of Witness 54 (1 page) **202**
59. Witness statement of Witness 55 (1 page) **203**
60. Witness statement of Witness 56 (3 pages) **204-206**
61. Witness statement of Witness 57 (4 pages) **207-210**
62. Witness statement of Witness 58 (2 pages) **211-212**
63. Witness statement of Witness 59 (3 pages) **213-215**
64. Witness statement of Witness 60 (4 pages) **216-219**
65. Witness statement of Witness 57 (4 pages) **220-223**
66. Witness statement of Witness 58 (2 pages) **224-225**
67. Witness statement of Witness 61 (5 pages) **226-230**

- Tape recorded interview 5 March 1999 (3 pages) **231-233**
- Tape recorded interview 5 March 1999 (11 pages) **234-244**
- Tape recorded interview 5 March 1999 (14 pages) **245-258**
- Tape recorded interview 5 March 1999 (15 pages) **259-273**
- Tape recorded interview 5 March 1999 (7 pages) **274-280**

The following exhibits were presented to the panel:

- A** VIT letter dated 4 March 2003
- B** Telephone note 11/03/2003
- C** Teacher's email 15/07/2003
- D** VIT letter dated 18 July 2003

- E** VIT letter dated 24 January 2004 *
- F** VIT letter dated 15 March 2006
- G** Telephone note 27/03/2006
- H** VIT letter dated 4 April 2006
- I** VIT letter dated 11 July 2006
- J** VIT letter dated 27 July 2006
- K** Telephone note 02/08/2006
- L** Teacher's letter dated 3 August 2006 received 8 August 2006
- M** VIT letter dated 8 August 2006
(emailed to teacher 8 August 2006 and sent by express mail 8 August 2006)
- N** Teacher's email to VIT dated 08/08/2006
- O** VIT email dated 11/08/2006
- P** Teacher's email to VIT dated 14/08/2006
- Q** Teacher's letter dated 14 August 2006, received 17 August 2006
- R** Copy R v the Teacher [2005] V SCA 62

PRELIMINARY FINDINGS OF THE PANEL

By letter dated 14 August 2006, the Teacher submitted that the Panel did not have jurisdiction to hear this matter, he had been denied natural justice and the hearing should be adjourned. The Panel considered these submissions and made the following findings:

1. The Panel is of the firm view that the principles and practical requirements of procedural fairness have been met and we note that the time frame for this hearing was based on the time frame provided by the Teacher himself.
2. The Panel is of the firm view that it has jurisdiction to hear the matter before it with reference to the registered teacher.
3. The Panel is of the firm view that there is insufficient reason to adjourn and will therefore continue hearing this matter.

THE EVIDENCE

The Panel reviewed all of the available evidence, including relevant correspondence and telephone messages received by the Institute, following the Teacher's court hearing in 2002 up to the date of the Formal Hearing. The Panel noted that the Teacher sought leave to appeal against his conviction of 18 counts of making a false statement with criminal intent, in April 2005. The Teacher's application for leave was refused.

The evidence shows that the Teacher in a calculated and deceitful way concocted a scheme to on-sell two normal guns purchased through regular channels, as guns of great historic significance. The Teacher also went to great lengths to misrepresent how he acquired the weapons. The Teacher claimed that one of the guns in his possession was owned by Adolf Hitler and had been used by Adolf Hitler to commit suicide. The

Teacher claimed that the other gun in his possession was given to, but not used by, Eva Braun for the purpose of committing suicide.

In order to mislead potential purchasers with the aim of on-selling the two guns for large amounts of money, the Teacher manufactured his own 'historical' account and records. The Teacher fabricated a number of documents and purposefully altered a genuine historical document. Included in the false documents were two declarations allegedly made to allied interrogators by Hitler's chauffeur, a letter purporting to come from the armoury of the Nazi party attesting that payment for one of the weapons was not due as it was a gift, correspondence devised by altering a letter from Karl Hoffman providing confirmation that one of the guns in question had been given to Hitler, and a letter allegedly written by Himmler, sent to a member of Hitler's staff, that indicated that both guns had been placed in Hitler's possession in 1935.

In addition the Teacher went to great lengths to falsify the provenance of the guns, by creating a series of photos of the guns with identification cards in Russian, and producing documents written in invisible ink. The Teacher also paid for the production of rubber stamps and seals which were utilised on a false document purporting to be KGB or NSDAP in origin that allegedly recorded an inquiry into Hitler's death with a reference to the serial numbers of the two guns he sought to on-sell. The inquiry file document stated that the two guns had been stolen from Hitler's scene of death.

DISCUSSION OF EVIDENCE

The evidence is not in dispute. The Teacher has been convicted of 18 counts of making a false document by the County Court in November 2002. He was sentenced to six months imprisonment wholly suspended for 24 months. The seriousness of the offences is indicated by the penalty imposed by the Court. The Teacher appealed against his conviction but his appeal was dismissed by the Court of Appeal of the Supreme Court. Although the Teacher still disputes the facts underlying his convictions, the most senior Court in Victoria has affirmed that he was correctly convicted of the 18 offences.

FINDINGS UNDER SECTION 42(2)

Determinations about fitness to teach have been enshrined in law by the Parliament, as the responsibility of the Formal Hearing Panel. In making such determinations, the role of the Panel is not to punish but rather to determine what appropriate measures should be taken to ensure the protection of the public, and to maintain the standards of the teaching profession as a whole. In discussing the evidence the question before the Panel is simply whether or not at the time of the hearing the Teacher is fit to teach.

The Teacher's conviction is directly relevant to his professional credibility and standing as a teacher, despite the fact that the conviction relates to personal matters. The level of calculated deceit, and the lengthy period of time over which the Teacher manufactured his scheme, in order to make large amounts of money by misleading prospective

purchasers and by attempting to recreate modern history, are both relevant to, and in conflict with, the position of trust and academic credibility the community has extended to the Teacher as a teacher.

As the Panel reflected on the evidence, the behaviour of the Teacher has challenged over and over again the integrity of the teaching profession. Issues such as academic rigor and accuracy, and the importance of objective historical fact are critical to a teacher's integrity. Issues associated with cheating and plagiarism, to name but a few, also emerged as significant and relevant concerns, despite the Teacher's conviction being related to personal matters.

To work with children and adolescents as a registered teacher is a privilege granted to the deserving, not a right as purported by the Teacher. Honesty, reliability, sound judgement and integrity are inherent qualities required of teachers. The Teacher has failed to demonstrate that he is fit to teach, in part because he has failed to demonstrate the existence of these key qualities. In addition, his on-going refusal to admit to the creation of his complex scheme and the production of false documentation leaves the Panel in no doubt about his current lack of suitability to be a teacher.

In his latest correspondence with the Institute the Teacher refuted the role, responsibilities and processes of the regulatory authority, and further stated that he would teach in Victoria as and when he chose to do so, defying the legally enforceable regulatory role of the Institute. This attitude indicated to the Panel that the teacher had also shown a lack of personal accountability as a registered professional.

To be acknowledged as fit to teach the Teacher would have had to demonstrate to the Panel that he knew what he ought, and ought not to do. Thus far he has failed to do so. Further the Panel deemed the Teacher to be lacking sufficient moral integrity to be safely accredited to the public as a teacher. The qualities the Panel looked for, that would permit the Teacher to be safely accredited to the public by the Panel, were not evident.



SUSAN HALLIDAY, CHAIRPERSON



**PER:
ANNE FARRELLY, REGISTERED TEACHER**

Susan Halliday

**PER:
TERRY HAYES, PANEL MEMBER**