

**VICTORIAN INSTITUTE OF TEACHING**

**DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 010

**REGISTERED TEACHER:** GJI

**PANEL MEMBERS:** Ms Janet Sherry, Chairperson  
Ms Eileen O'Brien, Registered Teacher  
Ms Jenny Wajsenberg, Registered Teacher

**ATTENDANCE:** The teacher  
Ms Gail Hubble, Counsel Assisting

**DATE OF HEARING:** Monday 6 December 2004

**DECISION OF THE PANEL:**

On 24 December 2004 the Panel decided that the teacher remains fit to teach .

**EFFECT OF THE DECISION:**

The effect of the decision is that the teacher retains his registration as a teacher under the Act.

## 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 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 19 April 2004 the Victorian Institute of Teaching (the Institute) received the completed consent to obtain a criminal record check (CRC) from the teacher. A CRC was conducted on 22 April 2004. The CRC revealed that the teacher had been convicted of the following offences.

5 March 1997 Magistrates Court	Guilty of <b>stalk another person</b> <b>Sentence:</b> eight months imprisonment wholly suspended for two years Guilty of <b>3 X breach intervention order</b> <b>Sentence:</b> Community Based Order (CBO) for eighteen months
9 December 1997 County Court on appeal	Guilty of all offences <b>Sentence:</b> CBO for two years – 100 hours unpaid community work plus medical assessment and treatment
15 March 2000 Magistrates Court	Convicted <b>stalk another person and 39 X breach intervention order</b> <b>Sentence:</b> CBO for 12 months – medical assessment and treatment
12 May 2000 Magistrates Court	Convicted of <b>breach of CBO</b> <b>Sentence:</b> fined \$400
4 July 2001 Magistrates Court	Guilty of <b>breach intervention order</b> <b>Sentence:</b> fined \$400

A freedom of information request was lodged with Victoria Police for a copy of the police brief in relation to each of the above offences. On 17 August 2004 the Institute received the information from Victoria Police. At its meeting on 27 October 2004 the Disciplinary Proceedings Committee, a subcommittee of the Institute Council, decided that this matter should be referred to a formal hearing. By the Notice of Formal Hearing dated 5 November 2004 the teacher was advised that the formal hearing was to be held on 6 December 2004.

The Notice of Formal Hearing set out the following allegations:

1. That following the breakdown of the teacher's relationship with a third party he continued to contact the third party resulting in her obtaining an Intervention

- Order against him on 23 July 1996 prohibiting him from being at or within 200 metres of her home or workplace.
2. That on 30 August 1996 the teacher was arrested for a breach of the Intervention Order and charged with the indictable offence of stalk another person (*Crimes Act 1958*) and three counts of breach of the Intervention Order.
  3. That the teacher was found guilty in the Magistrates Court on 5 March 1997 of the indictable offence of stalk another person and sentenced to eight months imprisonment, with the sentence suspended for two years. The teacher was also convicted of three charges of breaching the invention order and placed on a CBO for 18 months.
  4. That the teacher appealed and his appeal was allowed and the Order of the Magistrate's Court set aside. The County Court on 9 December 1997 found the teacher guilty of all offences and placed him on a CBO for two years to perform 100 hours unpaid community work over 12 months and undergo medical, psychological or psychiatric assessment and treatment as directed.
  5. That on 10 February 2000 the teacher was interviewed by police in relation to breaching the Intervention Order and the offence of stalking. He indicated to police he believed the Intervention Order had expired on 8 December 1999. Police confirmed the order was active and had not expired.
  6. That the teacher was convicted on 15 March 2000 of stalk another person and 39 counts of breach an Intervention Order and placed on a CBO for 12 months and to undergo assessment for alcohol/drug addiction or submit to a medical/psychological/psychiatric assessment or treatment as directed.
  7. That the teacher was convicted on 12 May 2000 of breach of a CBO and fined \$400.
  8. That on 4 July 2001 the teacher was found guilty without conviction of breach of Intervention Order and fined \$400.

## THE ISSUES

The issues to be determined in this matter are whether the teacher's conduct amounts to 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. Section 28 of that Part provides:

**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 term *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 term *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 term *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 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**

- Criminal record check dated 22 April 2004
- Police Brief
  - LEAP Victoria Police – incident report and case progress for report date 20/04/97
  - LEAP Victoria Police – incident report and case progress for report date 05/11/99
  - Brief Head 'the teacher'
  - Charge and Summons
  - Summary of Charges
  - Statement of the third party
  - Statement of officer 1 , Police Officer

- Intervention Order dated 23/07/96
  - Application to vary Intervention Order
  - LEAP Victoria Police – criminal history report 19/10/99
  - Psychological Reports, from Psychologist, dated 09/12/97 and 28/01/97
  - Report from the teacher's Psychologist, dated 08/03/2000
  - Statutory declaration third party dated 29/11/99
  - Statutory declaration third party dated 28/02/00
  - References from
    - Assistant Principal dated 29/08/2001
    - Principal dated 24/10/2004
    - Leading teacher dated 24/11/2004
    - Psychiatrist, formerly Senior Associate (Psychiatry) University of Melbourne, Independent Examiner for health Services Australia, Independent Examiner for the Victorian WorkCover Authority, dated 18 July 2001 and November 15 2004
    - Friend of the teacher
    - Parent of students taught by the teacher between 1985 -1990, dated 30 November 2004
    - Director overseas Language School dated 02/07/2003
    - Colleague, from Overseas Language School, dated 26/06/2003
- were submitted at the hearing.

## THE EVIDENCE

The Panel heard evidence under affirmation or oath from the following witnesses:

- The teacher
- A former colleague and friend of the teacher.

The information the Institute received as evidence of possible lack of fitness to teach was not contested by the teacher.

The teacher is a teacher of some 30 years experience in eight to ten schools. A large part of his time has been devoted to teaching as a Physical Education teacher but he has also worked as a classroom teacher and he would like to return to work in this capacity. His employment with the Department of Education and Training ceased in May 2000 when they became aware of his conviction.

The teacher made a short statement to the Panel in which he acknowledged that he had acted inappropriately and caused pain and suffering. He stated that his behaviour was an attempt to resolve a conflict not escalate it. He drew the Panel's attention to his references, particularly that of the Psychiatrist and that of two senior teachers. He went on to state that he and his family had suffered a great deal of pain and anguish at losing his job, that he wishes to regain personal respect, that he feels capable of resuming his teaching career and that teaching for him is 'not just a job but a privilege'. The remainder of the teacher's evidence was provided in response to questions from Counsel Assisting.

The teacher gave evidence that he and the third party had a relationship which spanned three years and lived within half a kilometre of each other. Their relationship was terminated by mutual consent after difficulties over a period of time.

In July 1996, one to two months after their relationship had broken down, the third party obtained an Intervention Order, which prevented the teacher from going within 200 metres of the third party's home or workplace. Prior to the Order being made the teacher made many attempts to see or speak to the third party in order to 'initiate some sort of mediation'. The Order was put in place because the teacher had, contrary to the third party's wishes continued to try and contact her by going to her home and telephoning her because he wanted 'some kind of reconciliation'. She feared for her safety and that of her children.

The teacher did not contest the Intervention Order on the advice of his lawyer and stated that: he could not recall being given a copy of the Order but was in court when it was made; while the Order was indefinite he was, at the time, unaware of the timeframe although he was aware that he was not to make contact by any means and that he was not to go within 200 metres of the third party's house but that he had interpreted this as 'on foot'.

One month after the Order was granted he was charged with stalking and three breaches of the Intervention Order. One breach was associated with being found in an intoxicated state at the rear (in a vacant lot) of the third party's home. The teacher stated that in relation to these breaches, he had not reflected on the Intervention Order at the time because his judgment was clouded and he did not entertain any consequences of his actions. He did, however reflect, at the time, on his behaviour and come to the conclusion it was making the third party hostile.

The teacher stated that at the time of the Intervention Order he had not considered the impact of his behaviour on the third party although he thought it might be distressing for her but not for her children as he thought she would keep it from them and he could not work out why the third party felt 'fearful' of him particularly as he had never been physically violent towards her or intimidating. He went on to state that he was now well aware that he had caused her fear, and accepted that this was so, but would have found it easier to believe if there had been aggressive behaviour in the relationship. He further went on to state that he did not condone his behaviour but he was concerned that the third party feared for her safety.

In July 1999 the teacher endeavoured to vary the Intervention Order so that he could drive past the third party's home, but was not successful. On 10 February 2000 he was interviewed by police in relation to again breaching the Intervention Order and the offence of stalking; it was his belief that the Intervention Order had expired on 8 December 1999; police confirmed the order was active and had not expired; he was subsequently charged and convicted on 15 March 2000 of the indictable offence of stalk another person and 39 counts of breach of Intervention Order and placed on a CBO for 12 months and required to submit to a medical/psychological/psychiatric assessment. In relation to these matters the teacher told the Panel that he had confused the length of the Intervention Order with the length of the CBO. He had made no

endeavour to check the duration of the Order. He explained that the 39 counts of breach of the Intervention Order related to driving past the third party's home, which had a six foot high fence and gates which were shut the majority of the time, in order to take the shortest route to the shops and other places to which he regularly travelled although he sometimes took a much longer alternative route. In explaining this behaviour to the Panel the teacher stated that he had 'trivialised' the nature of the Intervention Order and not fully understood the nature and consequences of a breach.

The teacher stated that in March 2000 he pleaded guilty to breaching his CBO but he honestly had no idea as to how he had breached it, although it could possibly have been failure to attend a meeting. He had no recollection of going to court in relation to this offence. He further went on to state that in July 2001 he was found guilty without conviction of breach of Intervention Order and fined \$400. As far as he could recollect the breach involved driving past the third party's home; his conduct was again a result of trivialising the order and not thinking.

The teacher confirmed that he had undertaken psychiatric treatment, around which he made the following observations:

- he consulted with the Psychologist in 1997 who indicated he had obsessive thoughts and was suffering from depression
- that the Psychologist had made him aware of how his behaviour could impact on other people
- he believed the medication he was given did not work
- he saw the Psychologist between seven and nine times and then after a gap of six to 12 months he consulted with the Psychiatrist in 2000 or 2001, making seven or eight visits
- he agreed with the Psychiatrist's assessment that he was distressed because he had no work, had lost his house and because of the impact events had had on his family and friends. However he stated that he found the Psychiatrist's statement, 'that he had a seriously dysfunctional relationship with his girlfriend', bewildering
- he saw the Psychiatrist once early in 2002, again after returning from overseas in 2003 and late in 2004
- he stopped taking his anti-anxiety medication just before returning from overseas and feels he can cope without it as he has strategies in place.

The teacher stated that since his return from teaching overseas (1 July 2002 – 30 June 2003) he has worked as a truck driver.

The teacher stated that he wished he had never done the things he had done, that he understood how upsetting it had been for the third party and his family and friends and that he was ashamed of his actions and basically could not believe what he had done. He indicated that he was surprised that he was a recidivist and could only reconcile this with the feelings of remorse that he now had with the belief that he was, for the whole period of time when the offences were committed, not himself and not able to control himself. He now feels after several years that he can look back and see how dreadful the things he did were.

He agreed with Counsel Assisting that the attributes required by a teacher were competence, the ability to be a role model and the ability to act in loco parentis and as an appropriate moral influence on students.

The former colleague and friend gave evidence that she knew the teacher well, as a friend and colleague. She stated that she had found him to be enthusiastic, dedicated, popular, sensitive, patient, caring, empathetic and always professional with staff and children. She told the Panel that she was aware of the offences the teacher had committed, that he had shown remorse and would not put himself in the same position again. She indicated that she thought the teacher's remorse was genuine in that he was upset, ashamed, wished that the events had never happened and was sorry for what he had done. She stated that teaching was a 'way of life' for the teacher, that he was absolutely no risk to children and that she would welcome the opportunity to work with him again. She further went on to say that she felt that the teacher is a good member of society and that his offences seemed to be an aberration of character. He has great strength of character epitomised by his ability to keep on going despite the way in which his convictions affected him as well as the loss of his teaching job, his business and his home. She stated to the Panel that she was a fully trained Lifeline Counsellor.

The Panel considered the following written evidence.

The Psychologist assessed the teacher in January 1997 and concluded that:

- he was not psychotic or schizophrenic and that he did not have a personality disorder but that he did have a dependent personality style and had developed an obsessive- compulsive disorder in relation to the third party and the circumstances under which that relationship ended
- he presented as depressed and anxious and was taking medication at the time including Zoloft and Xanax. He had been taking medication since early 1996
- his current symptomatology namely that of depression and anxiety were reflective of the recent stressors in his life. In other words he did not provide a history indicative of a major depressive disorder.

The Psychologist saw the teacher on the following dates and opined:

- on 24 March 1997 the teacher was in a distraught emotional state following his conviction at the Magistrates' Court
- on 28 April 1997 the teacher was again presenting as being very agitated and said he was relying on more of the Zoloft and Xanax
- on 3 July 1997 the teacher looked and sounded acutely depressed and was talking about the possibility of taking his own life. At about this time the Psychologist contacted a colleague, the teacher's treating general practitioner who indicated that he had recently significantly increased the prescribed dosage of Zoloft and that it was his opinion that the teacher had been suffering from reactive depression from at least early 1996.

On 9 December 1997, after eight visits (22 August – 2 December 1997) the Psychologist observed:

- it is clinically correct to state the teacher has been displaying a clinically diminished level of responsibility – reflective of reactive anxiety and reactive depression
- The teacher's state of mind had become even more fragile given that he recently received correspondence from the Department of Education that they were pursuing an inquiry into his fitness, capacity and efficiency to discharge his duties
- The teacher's psychological state is not only fragile but also quite complicated. He presents as an intelligent and responsible man who appears to be genuinely riddled with shame, guilt, remorse and embarrassment that a conviction was recorded against his name and that he was sentenced to a period of imprisonment.

On 8 March 2000, the Psychologist reported that he had seen the third party on five occasions in his capacity as Counsellor between 24 January and 6 March 2000 and this contact looked likely to continue until a yet to be determined date. He indicated that he could think of nothing substantial in her life that had not been adversely affected by the stalking and likened her condition to a form of emotional incarceration.

In a statutory declaration dated 29/11/99 the third party stated that she was:

- apprehensive in public places for fear of seeing the teacher
- fearful of coming home at night particularly if she was alone
- sleeping very poorly
- deeply concerned as her ex-husband was once again questioning whether her children were safe living with her and she felt he may be considering applying for custody of them

She further stated that her health had deteriorated and that she had taken more than four week's sick leave during the year

In a statutory declaration dated 28/02/2000 the third party stated that:

- the emotional trauma she had suffered, due to the teacher's behaviour, had escalated to the point where she had been physically ill
- her health had continued to deteriorate.

On 18 July 2001, the Psychiatrist reported that he had been involved with the teacher since June 2000 and that in his opinion the teacher

- presented with distress, anxiety and depression stemming from ongoing difficulties with his relationship with his ex-girlfriend
- bore no malice towards the third party
- was a competent and caring individual who unfortunately became involved in a seriously dysfunctional relationship with the third party.

On 15 November 2004, the Psychiatrist, in a review of the teacher's case:

- confirmed that the teacher had not needed to take any psychotropic medications
- that he was generally insightful about the effect of his behaviour during 2001 which led to legal repercussions
- there had been no evidence of further difficulties in his behaviour

- stated that from his knowledge of his character, he could state that he was a genuine person who is very interested in returning to his teaching career
- stated that he was of the opinion that young people and future pupils are not in any danger whatsoever from the teacher
- that he considered the teacher a dedicated and capable person who is ready, willing and able to make a contribution as a teacher in the future.

Professional and personal references attested to the teacher's:

- competency
- collegiality
- exemplary student management skills and an ability to build positive classroom relationships and rapport with all students
- caring and sympathetic attitude towards all children
- dedication
- enthusiasm
- willingness to work extended hours
- conscientiousness, reliability and trustworthiness
- regret as to his past mistakes

## **DISCUSSION OF EVIDENCE**

The information the Institute received as evidence of possible lack of fitness to teach was not contested by the teacher.

The Panel has no questions as to the competency of the teacher as a teacher, indeed his referees indicate that he is an excellent teacher with a good rapport with students, parents and colleagues alike.

By way of explanation as to his behaviour, preceding the Intervention Order, the Panel accepts the teacher's evidence that he thought that there might be some hope of reconciliation if he could speak with the third party.

On the basis of evidence from the Psychologist (written report) and that of the teacher, the Panel accepts that the teacher was suffering from, and receiving treatment for, reactive depression from at least early 1996 following the breakdown in his relationship with the third party. The Panel also accepted that prior to the Intervention Order the teacher made many unwanted attempts to see or speak to the third party in order to initiate some sort of mediation, which resulted in the third party seeking and gaining an Intervention Order against the teacher.

The Panel does not accept the teacher's evidence that he did not understand the conditions of the Intervention Order. He did not contest the Order and was in court when it was granted. It seems unlikely that he did not receive a copy. The Panel does accept that he initially trivialised the nature of the Order and as a consequence flouted it and that his mental state at the time would also seem to provide some explanation for his behaviour. That he continued to trivialise the nature of the Order was of concern to the Panel notwithstanding the evidence as to his continuing psychological problems.

The Panel accepts the evidence of the Psychiatrist that immediately post the Intervention Order in July 1996 the teacher continued to be in an anxious and depressed state, taking medication for depression and anxiety and had developed a compulsive disorder in regard to the third party. The Panel also agreed with the Psychologist summation that following the teacher's conviction in the Magistrates' Court in March 1997 he was in a distraught emotional state, was acutely depressed and by December 1997 was displaying a clinically diminished level of responsibility – reflective of reactive anxiety and reactive depression. The Panel noted that the teacher's shame, guilt and remorse and embarrassment at this time centred more around the fact that a conviction had been recorded against his name and that he had been sentenced to a period of imprisonment rather than the impact he had had on the life of the third party.

The Panel was in no doubt that, as indicated in her written statement, the third party was in fear of the teacher and that her health and other aspects of her life suffered as a result of his behaviour and consistent breaches of the Intervention Order. The teacher gave evidence that he agreed that the third party was in fear of him but he found it difficult to understand why this would be so as he had never displayed any violence towards her or her children. The Panel acknowledges that he was remorseful around his actions as far as the third party was concerned but noted some continuing lack of insight as to why she might feel the way she did.

The Panel placed considerable weight on the evidence of the former colleague and friend as to the teacher's character and professional expertise and noted in particular her explanations around why she felt the teacher's expressions of remorse were genuine. The Panel also noted the observations of the Psychiatrist that the teacher 'was generally insightful about the effect of his behaviour during 2001' noting that the teacher had not committed any further offences since 2001.

The Panel also took note of the testimonials from the teacher's professional colleagues and their willingness to support and accept him as a colleague despite his 'mistakes'.

## **FINDINGS OF FACT**

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

1. That following the breakdown of the teacher's relationship with the third party he continued to contact the third party resulting in her obtaining an Intervention Order against him on 23 July 1996 prohibiting him from being at or within 200 metres of her home or workplace.
2. That on 30 August 1996 the teacher was arrested for a breach of the Intervention Order and charged with the indictable offence of stalk another person and three counts of breach of the Intervention Order.
3. That the teacher was found guilty in the Magistrates' Court on 5 March 1997 of stalk another person and sentenced to eight months imprisonment, with the sentence suspended for two years. The teacher was also convicted of three charges of breaching an Intervention Order and placed on a CBO for 18 months.

4. That the teacher appealed and his appeal was allowed and the Order of the Magistrates' Court set aside. The County Court on 9 December 1997 found the teacher guilty of stalk another person and three counts of breach of Intervention Order and placed him on a CBO for two years to perform 100 hours unpaid community work over 12 months. He underwent medical/psychological/psychiatric assessment and treatment as directed. The teacher successfully completed the CBO.
5. That on 10 February 2000 the teacher was interviewed by police in relation to breaching the Intervention Order and the offence of stalking. He indicated to police he believed the Intervention Order had expired on 8 December 1999. Police confirmed the Order was active and had not expired.
6. That the teacher was convicted on 15 March 2000 of stalk another person and 39 counts of breach of an Intervention Order and was placed on a CBO for 12 months and undertook psychological/psychiatric assessment and treatment as directed.
7. That the teacher was convicted on 12 May 2000 of breach of the CBO and fined \$400.
8. That on 4 July 2001 the teacher was found guilty without conviction of breach of Intervention Order and fined \$400.
9. That the teacher was suffering from reactive depression and anxiety at the time of the offences.
10. That the teacher's behaviour had a serious and ongoing impact on all aspects of the third party's life.
11. The teacher has a long record of exemplary teaching.
12. The teacher has displayed remorse and insight into his behaviour and the impact it had on the third party.

## **CONCLUSION**

A person who has a complete disregard for their legal obligations brings the teaching profession as a whole into disrepute and would be unfit to teach. There is no doubt that the teacher showed no regard for his legal obligations but the Panel accepts, that to a large extent, this was due to his psychological condition prior to, and at the time, of the offences. The Panel also took into consideration that whilst the teacher's offences spanned a period of some five years he has not re-offended since 2001.

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness. The Panel considered that whilst the teacher still cannot fully accept why the third party was in fear of him he does take full responsibility for his actions and well understands their impact and why they were completely inappropriate.

In considering whether the teacher is fit to teach the Panel also had to consider whether his actions would be reasonably regarded as disgraceful or dishonourable by his professional colleagues. In making this assessment the Panel were mindful of the context of the offences and particularly the teacher's state of mind. The testimonials provided by colleagues who currently work in schools and the evidence of his former colleague and friend were sufficiently persuasive and representative of the profession to allow the Panel to conclude that the teacher should be able to command the respect and confidence of the education community in the future.

## **DETERMINATION**

The determination of the Panel is that the teacher remains fit to teach.



**Janet Sherry, Chairperson**



**for Eileen O'Brien, Registered Teacher**



**for Jenny Wajsenberg, Registered Teacher**