

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER 018

REGISTERED TEACHER: JS

PANEL MEMBERS

Susan Halliday	Chairperson
Heather Schnagl	Registered Teacher
Kathleen Bragge	Panel Member

ATTENDANCE The teacher

Counsel Assisting, Gail Hubble

DATE OF HEARING: 12 April 2005

DECISION OF THE PANEL:

On 12 April 2005 the Panel decided that the teacher remain registered as a teacher.

EFFECT OF THE DECISION

The effect of the decision is that no further action will be taken and the teacher will remain registered as a teacher.

BACKGROUND

On 31 December 2002 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(3) of the Act because she was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

On the 15 October 2003 Victorian Institute of Teaching (the Institute) was advised by the employer that the teacher had been dismissed from her employment as a teacher on 4 September 2003 because of serious misconduct. The Institute referred this matter to the Disciplinary Proceedings Committee who decided that a formal hearing should be conducted.

On 1 August 2003 the teacher was found guilty without conviction in the Ringwood Magistrates Court of

- (a) Cultivating a narcotic plant – cannabis
- (b) Use – cannabis.
- (c) Possess - cannabis

She was placed on a Community Based Order for 12 months and ordered to perform 200 hours of community work and undergo assessment as directed.

The issues to be determined in this matter are:

- whether the circumstances resulting in the teacher being found guilty of the above offences would constitute serious misconduct or unfitness to teach
- if so, what would be the appropriate penalty.

THE LAW

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

27. Employer to notify Institute of action against teacher

(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

28. Inquiry into criminal conduct

If the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, the Institute must conduct an inquiry under this Part into the registered teacher's fitness to teach .

The terms *serious misconduct* and *fitness to teach* are not defined in the Act. The Panel is aware of case law regarding disciplinary proceedings in other jurisdictions which refers to the terms *professional misconduct* and *fit and proper person*. The Panel has had

regard to those cases and other case law on disciplinary matters to decide what is meant by the terms *serious misconduct* and *fitness to teach*.

According to the High Court, the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public;
- to maintain proper standards of conduct for the profession; and
- to protect the reputation of that profession.

Fitness to teach

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 are 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 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

Serious misconduct

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, the conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998)

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct (see *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242).

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

The **test** set out in the case law is conduct:

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency
Allinson v General Medical Council [1891-4] All ER 768

The conduct which is the subject of the inquiry may indicate a character defect incompatible with a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether the conduct in question amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*).

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 standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established*.

And later:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

The observations of the High Court have been followed in numerous court cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

DOCUMENTS CONSIDERED

The Panel was presented with documentary evidence as follows:

- Police brief (released under FOI)
 - 12 pages of copy photographs
 - Affidavit for search warrant (2 pages)
 - LEAP – criminal history report – 2 pages
 - LEAP – incident report and case progress, 3 pages
 - Victoria Police internal letter 21 April 2003, 2 pages
 - Brief Head, 3 pages
 - Application – forensic procedure
 - Charge, 3 pages,
 - Exhibit list, 2 pages
 - Witness list
 - Photograph log, 3 pages
 - Exhibit log, 4 pages
 - Search warrant 2 April 2003
 - Result of search
 - List of items seized on 2 April 2003
 - Certificate of botanist, 8 April 2003, 2 pages
- Letter from the teacher to DET dated 26 August 2003
- Letter from Dr dated 15 August 2003
- Letter from Dr dated 31 July 2003
- Letter from the College Principal dated 26 August 2003
- Copy Experienced Teacher Performance and Development Plan.
- Written submission by The teacher
- References (12)
- Letter from Lawyer
- Client file

THE EVIDENCE

The Panel heard evidence under affirmation from the teacher, the teacher

The evidence set out in the allegations is not in dispute. On 2 April 2003 Victoria Police executed a search warrant at the teacher's home where they found 76 cannabis plants and dried cannabis leaf weighing a total of 29.39 kg. The teacher was charged by the police with possession, use, cultivating and trafficking cannabis. The charge of trafficking cannabis was later withdrawn. The teacher was found guilty in the Ringwood Magistrates Court on 1 August 2003 and placed on a Community Based Order for 12 months.

The teacher agreed that she had broken the law over a considerable period of time and had behaved in a manner that could bring the teaching profession into disrepute. The teacher discussed the cultivation of cannabis as a wilful exercise that she had undertaken in order to reduce the plant to an oil base to use in cake and cookies. This food was consumed by her father who had cancer for pain relief for a period of years before his death. She also admitted to personally smoking cannabis on a social basis since the late 1970s for relaxation, although she has not used cannabis since 2 April 2003 (the date her premises were searched by police). The teacher cultivated cannabis having had a conversation with her father's GP, who agreed that such pain relief was a worthwhile option for her father.

Following the search of her premises the teacher stated that she had not used cannabis since.

The teacher demonstrated a significant level of remorse and saw fit to apologise given the fact that she was a teacher who had broken the law and that her illegal behaviour was not compatible with her professional reputation and responsibilities.

There was no evidence that her teaching practice was adversely affected, or that her competence was in question, despite her social cannabis use. On reflection the teacher indicated that her time spent with the Counsellor since attending the Magistrate's Court was positive and would enhance her teaching practice in the future. She indicated that she neither smoked cigarettes nor drank alcohol and had embarked on an extensive physical fitness regime as an alternative method for relaxation. That said the teacher gave evidence that she had never been a cigarette smoker nor could she be considered a regular alcohol drinker.

The teacher while acknowledging the seriousness of her offence stated that she did so primarily to alleviate the 26 years of pain and suffering she had witnessed her father endure. On reflection she indicated that if she had her time over she would have investigated alternative methods of pain relief, acknowledging how important it was to

her to provide her father (and mother who had nursed her father for 26 years) some quality of life.

The teacher supplied the Panel with a number of references supporting her claim that she was well regarded as a teacher. A more recent reference indicated that she was 'honest, reliable and hardworking'. The teacher attended for counselling with a Drugs Counsellor in 2003. The Counsellor provided a report in which he stated 'it is likely the teacher was cannabis-dependent for a number of her adult years. In recent times when her father was seriously ill with cancer she administered it to him for pain relief.' Following the court case the teacher had ceased using cannabis altogether and had shown 'an admirable capacity to change, to act on advice' and manage her condition well. The teacher's 'capacity, performance and integrity as a teacher has never been in question.'

DISCUSSION OF EVIDENCE

The teacher was found guilty of possession, cultivation and use of cannabis in the Magistrate's Court. The Panel accepts the teacher's evidence that she has not used cannabis since her house was raided by the police. Her evidence is supported by the counsellor's report. The Panel also accepts that the teacher was a good teacher and that she acknowledges that she has brought her profession into disrepute by committing these offences. At the hearing the teacher showed insight into her misconduct and demonstrated remorse.

FINDINGS

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

- The teacher's cultivation, possession and use of cannabis was determined to be misconduct in that it did not meet the required standards of conduct for a teacher. It was noted that the misconduct was personal, in that it was not connected to her professional practice. This misconduct could however damage the respect and confidence of the teaching profession in the eyes of the general public.

CONCLUSION

The Panel acknowledged the teacher's successful career as a teacher. Her engagement with students and her undoubted enthusiasm in the practice of her vocation was very evident.

She was, however, found guilty of the cultivation, possession and use of illegal drugs. The Panel believes her behaviour was wilful, sustained misconduct.

The Panel recognised the extent of the mitigating circumstances; most notably her father's protracted illness and the role the teacher took in seeking out alternative palliative therapies.

The profession demands the highest standards of ethical behaviour and integrity from its practitioners. The community expects teaching professionals to uphold the law as it stands. The teacher's behaviour departed from these expectations, with disregard for consequence in terms of the profession, viewing the issue only in the light of her personal circumstances and the perceived benefits to her and her family, rather than weighing up the issue in terms of the broader ethical and professional context.

In the Panel's view this constituted foolishness and very poor judgment; she chose not to reflect on the disparity between continuing to break the law and continuing to be part of a profession which must endorse and articulate the ethical standards underpinning both the legislation and school policies.

Teachers must be trustworthy, honest and proper role models for students. The Panel takes a role in protecting the reputation of the profession and in protecting the public in regard to its expectations of teachers. The Panel is conscious of the grave weight of this responsibility.

The Panel does not believe the teacher at this time poses a threat. Nor, is her competence or commitment to the profession or to students in doubt.

The teacher is deemed fit to teach as the Panel believes that she can be trusted to perform the duties and responsibilities of a teacher in the future. It was noted that the misconduct did not indicate a tendency to violence, dishonesty, corruption or exploitation and has no significance for her future professional practice. Therefore the teacher is not guilty of serious misconduct

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

DETERMINATION

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

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Susan Halliday, Chairperson

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Heather Schnagl, Registered Teacher

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Kathleen Bragge, Panel Member