

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 054

REGISTERED TEACHER: Katherine May SUTTON

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| PANEL MEMBERS | Garry Salisbury | Chairperson |
| | Mick Lester | Registered Teacher |
| | Rhonda Cumberland | Panel Member |

ATTENDANCE: The teacher attended the hearing and was not represented.

Counsel Assisting: Ms G. Hubble with Ms C Sherman solicitor instructing.

DATE OF HEARING: 24 September 2007

DETERMINATION UNDER SECTION 2.6.46(2):

On 24th September 2007 the Panel decided that the teacher remains registered as a teacher in Victoria.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 30 April 2003. The teacher has not paid her registration fee for 2007.

By letter dated 11 January 2006, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. On 28 August 2006, the teacher's employment was suspended as a result of these allegations. The teacher resigned from the employer with effect from 8 September 2006.

The matter was referred to the Disciplinary Proceedings Committee on 14 March 2007 and the Committee decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 31 May 2007 was served upon the registered teacher by registered post on 9 August 2007.

THE LAW

Section 2.6.31 of the *Education and Training Reform Act 2006* (the Act) states:

2.6.31. 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.

Section 2.6.30 of the Act states:

2.6.30 Powers of inquiry

(1) The Institute may in accordance with this Part
(a) inquire into any information it receives under section 2.6.31 or 2.6.32 or;
(b) inquire into any complaint that provides evidence –
(i) of the serious incompetence of a registered teacher;
(ii) of the serious misconduct of a registered teacher;
(iii) that a registered teacher is unfit to be a teacher

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.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 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 the profession.

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

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).

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, 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 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 conduct 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 degree of remoteness of the conduct in question from professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales (2004) HCA 11* which it is stated at paragraph 34:

...the nature of the trust, and the circumstances of the breach, were so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous.

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors (2000) NSWSC 755*; *New South Wales Bar association v Cummins (2001) NSWCA 284*).

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW [2002] NSWSC 191* and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons [1965] 1 All ER 949*).

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 (see *New South Wales Bar Association v Cummins (2001) NSWCA 284* and *Siguenza v Secretary, Department of Infrastructure [2002] VSC 46*).

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

- Notice of Formal Hearing dated 31 May 2007.
- Material from the Magistrates' Court, including attachments numbered **001 – 007**
- Material released from the Victoria Police pursuant to a Freedom of Information request, including attachments numbered **008 – 053**

The following exhibits were presented to the Panel:

- A.** Letter from the teacher to the Tribunal Panel, dated 24 September 2007
- B.** Reference from referee 1, dated 22 September 2007
- C.** Reference from referee 2, dated 1 September 2007

- D. Reference from referee 3, dated 18 September 2007
- E. Reference from referee 4, dated 17 September 2007
- F. Death Certificate, the teachers' parent, dated 3 August 2006

Application for Order for suppression of name of teacher.

The teacher made an application for an Order suppressing her name from appearing in any publication. She did so on the grounds that her three children had already suffered for her actions and they would be further mistreated in their community if her name became public. The panel considered her application but rejected it on the grounds that there was a public interest in maintaining an open justice system and that matters of intimate, personal or financial matters had not been put forward in justification for the application. In addition, the teacher's name was already in the public arena through her appearance in the Magistrates' Court.

THE EVIDENCE

The allegations of possible serious misconduct and/or lack of fitness to teach are as follows:

Whilst employed as a registered teacher at the school in 2006, the teacher provided fraudulent medical certificates to the school to support her applications for sick leave on 3 separate occasions:

1. On 28 April 2006, the teacher produced a medical certificate including dates which she had altered. The certificate purported to be from medical practitioner 1 certifying that due to medical reasons, the teacher was unable to work on 10 March 2007.
 - a. The certificate supported the teacher's application on 28 April 2006 for sick leave taken on 10 March 2006. She was paid \$186.75 gross for the day's wage and a replacement teacher was hired at a cost of \$175.20.
 - b. At the Magistrates' Court on 5 December 2006, the teacher was found guilty of the offence of 'obtain financial advantage by deception' and was placed on a 12 month good behaviour bond.
2. On 9 June 2006, the teacher produced a medical certificate which she had made up on her computer. The certificate purported to be from medical practitioner 2 and stated that the teacher would be unfit for all employment duties from 29 May 2006 to 6 June 2006 inclusively due to medical reasons.
 - a. The certificate supported the teacher's application on 9 June 2006 for 7 days' sick leave taken from 29 May 2006. She was paid \$1,307.00 gross for the period of her absence and a replacement teacher was paid \$1,603.00.
 - b. At the Magistrates' Court on 5 December 2006, the teacher was found guilty of the offence of 'obtain property by deception'. She was placed on a 12 month good behaviour bond and ordered to pay \$2,074.00 compensation.

3. On 3 August 2006, the teacher produced a medical certificate which she had made up on her computer. The certificate purported to be from medical practitioner 1 certifying that due to medical reasons, the teacher was unable to work from 27 July 2006 resuming work on 31 July 2006.
 - a. The certificate supported the teacher's application on 3 August 2006 for 1 day and 4 hours of sick leave beginning at 11am on 27 July 2006. She was paid \$285.03 for the period and a replacement teacher was paid \$210.24.
 - b. At the Magistrates' Court on 5 December 2006, the teacher was found guilty of the offence of 'obtain property by deception' and was placed on a 12 month good behaviour bond.

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

The Teacher

The teacher agreed that she committed the offences outlined in allegations 1, 2 & 3 and that she had been found guilty at the Magistrates' Court on 5 December 2006.

The teacher said that she did not understand why she had committed the offences. She said she was sorry and remorseful for what she had done. She became tearful in explaining the effect her actions had had on students, their families, her fellow teachers and colleagues and the trust she had destroyed with her new Principal. She said the only explanation she could provide was that it had been a very stressful time and that she had since developed more self-respect. She said she had taken nine months off work and instead of running away from her actions had tried to be up-front about them. She said "I am sorry for what I've done."

The teacher said that she had graduated as a mature age student in 2002 and her course included a two year placement at the school. She taught at school 1 after graduating and then took a position back at the school. She did this with some concerns because her eldest child had been bullied at the school and there had been some tension between the teacher and principal 1, the then principal at the school. The teacher said that there had been some animosity between them but they were publicly polite to each other. However she felt that at the time of the offence there was a lack of sympathy towards her (ie the teacher). In relation to the creation of the false documents, the teacher said she didn't remember doing it and she was "...in a state mentally."

The teacher said she now works with an employer as an Education Worker at their regional office where she was training for her Certificate Four in Training and Assessment. She said that she is not in a position where she can teach, she needed the flexibility. She would at some point in the future like to do CRT work because she loved the relationship she had with the primary school students.

The teacher was asked at some length to explain how she created the false medical certificates. The certificates were sometimes original certificates which had then been altered while others appeared to have been created using a computer. The teacher said she did not disagree with the proposition put to her that it would have taken some time and care to create these false documents. She said that she had no memory of how and

when she created them. She agreed that she had altered the certificates at home but reiterated that she had no memory of recollection or memory of manufacturing them. In referring to the record of interview with police, the teacher said she had applied for leave for a medical procedure, but when this was delayed, she did not return to school but instead spent the time at the hospital with her father who had been in hospital for four years. The teacher agreed the offences had occurred between 28 April and 3 August 2006 and that she did not reflect on her behaviour at all at the time. She said that she believes that she was not in a fit state of mind at the time and that it was "...like a blur to me, to be honest."

The teacher said that she now has a criminal record. In response to a question from Counsel Assisting the Panel, she said she accepted that ethical integrity is important for teachers. She said that most of the community knows of her offences and subsequent punishment through the court. She said that most members of the community had been shocked but supportive and no-one had been cruel. She said parents at the school had also been supportive. She said "I don't condone what I did." In response to a question from Counsel asking the extent of the knowledge of her behaviour in the community, she said she had apologised to the staff at the medical centre but not the doctors. She said she had been treated by the doctors subsequently, but had not raised it with them because she had waited for them to raise it with her.

The teacher said she had apologised to the staff at the school, including the student teacher she was supervising at the time. She said that in hindsight she would talk to the principal if she was experiencing problems and not block her problems out as she believed she had done in the past. She had not considered counseling at the time but said that she now talks about her problems. She said that she was paying the school back through an arrangement with the court.

In response to a question from the panel about counseling she had received the teacher said she had done four weeks commencing in November 2006. She said that she talks to one of witnesses, referee 1, who had provided a written character reference. Referee 1 had some counseling experience in another organisation.

The teacher was asked to identify the stresses she was under during the period she committed the offences. She said she had an elderly father suffering from dementia and her mother had developed medical problems as a result. The teacher's marriage was encountering difficulties and she was looking after her three children most of the time. In addition she had taken on the care of her niece who was disabled and her nephew who was having major difficulties. She said that she felt that she had taken on the role of looking after everybody else and in fact took pride that she was holding the family together while working full time and managing a range of difficult issues outside of school.

The teacher was asked how these stresses had changed in the period since her resignation from her position and her subsequent court appearance. She said that she had changed jobs and was now working in a position with an employer which allowed her flexibility of work hours and greatly assisted management of her private life. Her father had passed away after his extended illness and her mother's health had

improved. Her nephew was now living in care and she no longer had responsibility for him. She said that she now made time to play with her children and now no longer took on everyone else's problems. Her marriage had begun to be repaired.

DISCUSSION OF EVIDENCE

The purpose of the hearing was not to further punish the teacher, but to decide if the public needed to be protected, and to ensure the maintenance of proper standards of conduct for the teaching profession and the protection of the reputation of the profession.

The facts of this case were not disputed and the teacher had received a significant penalty in the Magistrates' Court on 5 December 2006 of a 12 month good behaviour bond, the recording of a criminal conviction for an indictable offence and the repayment of \$2074.00 compensation.

The teacher's misconduct was not trivial or of momentary effect. Her behaviour is a serious departure from the proper standards of behaviour expected by the community. The teacher acknowledged that she had let students, staff and the community down by her behaviour. The reputation of teachers was damaged by her behaviour as well as being a serious departure from acceptable behaviour because of the disruption to the students' education, the extra cost incurred to the school, the breaking down of the mutual trust that must exist between her and her colleagues and the leadership of the school. It is an inescapable part of a teacher's role to model strong moral behaviour and the teacher's behaviour undermined this. The teacher falsified the medical certificates in a number of ways and these acts were clearly within her will, power and control. There was also an element of recklessness without regard for the consequences because some of her forgeries were clumsy and amateurish and in a small community, increasing absences in these circumstances would soon be questioned.

While the Panel took the view that the teacher's behaviour amounted to serious misbehaviour there were other factors which were taken into account. The first of these was that the series of offences occurred over a relatively short period of time amounting to months rather than years. The next factor was the teacher's account of her difficult domestic arrangements which were supported by character witness statements. Many of these stressful matters seem to have been resolved or reduced since. The teacher's character references all stressed that she was normally a person of moral integrity, very loyal to family and friends and prepared to help others in time of need. The Panel accepted that the teacher's behaviour at the time of the offences was out of character prior to her committing them and in the period since. Character witnesses provided consistent evidence that in her relatively short career as a teacher the teacher had developed excellent relationships with students, they trusted her and she was fair and firm in her dealings with them. She managed difficult students very well in a variety of settings. One referee, referee 2, testified that the teacher had taught her children and that "...her teaching, ethics, knowledge and practices are beyond reproach." No other evidence was led to counter this very positive characterisation of the teacher's teaching skills and ability.

The teacher clearly understood the enormity of the effect of her behaviour on her family, school and the local community and appeared to the panel to be ashamed and remorseful of her behaviour. Her demeanour at the Panel hearing when she described these effects was emotional. The Panel came to the view that she had taken moral responsibility for her misconduct in confessing immediately to police and then pleading guilty in her court case. She gave evidence that she had apologised to many people in the school and the community indicating her acceptance of her wrongdoing and her willingness to face up to the consequences of it. The teacher admitted her guilt, as she had done all along and was remorseful about her misconduct.

The Panel heard that the teacher had undergone some counselling but the general impression was that this had been informal and not over a long period. The Panel was divided over whether the teacher's inability to remember details of the methods by which she falsified the medical certificates indicated an unwillingness to face up to her actions and indicate her remorse or whether the stress she was under at the time had caused her to block out the details. The Panel recommends to the teacher that she undertake further counselling to assist her to build her understanding of her decision making processes under stress which led to her breach of trust. The Panel did not think that it should be made a condition of her retaining her registration. The Panel heard significant evidence that the teacher had shown great determination to gain her teaching qualifications and to redress the wrongs she had committed. The Panel was confident that while she would not repeat her misconduct, further counselling would be of assistance to her and that she would accept this advice in her own best interests.

Conclusion

The Panel found that while the teacher was guilty of serious misconduct, the evidence suggests that she acted in a way which was out of character over a relatively short period of time and that she has subsequently shown herself to have a good understanding of where she failed in terms of her ethical responsibilities. The Panel could see no justification for removing the teacher's registration to protect the public. There was no claim that her conduct was of a continuing and persistent nature.

The teacher was candid and showed remorse and shame for her behaviour and clearly understands that her behaviour was a breach of the accepted standards of the teaching profession and sullied the reputation of the teaching profession. The Panel found that the teacher suffers no character defect which would bar her from working as a teacher. She had apologised to co-workers and informed her new employer of her misconduct. The Panel was of the view that the teacher, should she ever return to a classroom, would conduct herself properly.

The teacher's skills and attributes as a teacher were praised by her character referees and these need to be balanced against her wrongdoing. The Panel found that the teacher's approach to teaching was not profoundly and irretrievably flawed and that she could be placed in a position of authority and trust with children in the future. The teacher was asked whether she would like to return to teaching. She said she would at some time in the future, she greatly missed the relationship she had with her students but her present position in another allied sector allowed her the flexibility to manage her life in a way that full time teaching would not. The Panel was impressed with this

answer because it provided evidence of the teacher weighing up her responsibilities and ensuring she would not be placed in a situation again where personal and professional stress caused a lack of judgement.

FINDINGS UNDER SECTION 2.6.46(2) OF THE ACT

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

Allegation 1: Proved

Allegation 2: Proved

Allegation 3: Proved

The Panel found that the teacher was guilty of serious misconduct but was fit to teach.

DETERMINATION UNDER SECTION 2.6.46(2) OF THE ACT

On 24th September 2007 the Panel decided that the teacher remains registered as a teacher in Victoria.



GARRY SALISBURY, CHAIRPERSON



**per ,
MICK LESTER, REGISTERED TEACHER**



**per ,
RHONDA CUMBERLAND, PANEL MEMBER**