

## **VICTORIAN INSTITUTE OF TEACHING**

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 055

**REGISTERED TEACHER:** Maria PRODRMOU

**PANEL MEMBERS**

Terry Hayes, Chairperson

Polly Flanagan, Registered Teacher

Andrea Treble, Panel Member

**ATTENDANCE:** The teacher did not attend the formal hearing

Counsel Assisting: Mr S Wilmoth, with  
Ms C Sherman solicitor instructing

**DATE OF HEARING:** 12 November 2007

**DETERMINATION UNDER SECTION 2.6.46 (2) OF THE ACT:**

The Panel decided to cancel the registration of the teacher from 12 November 2007.

# REASONS

## BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 27 June 2006, the employer notified the Institute that they had taken action in relation to the possible serious misconduct and/or lack of fitness to teach of the teacher.

On 11 April 2007, the Institute's Disciplinary Proceedings Committee (the Committee) decided that the matter proceed to a formal hearing.

The teacher resigned as a teacher from the Institute on 6 November 2007.

On 9 November 2007, the Committee decided to continue with the inquiry into the allegations of serious misconduct and/or lack of fitness to teach of the teacher, in accordance with section 2.6.47 of the *Education and Training Reform Act 2006* (the Act).

## Nature of allegations:

It is alleged that:

The teacher, a registered teacher employed at the school during 2003 to 2005:

1. Took property from the school for personal financial gain –
  - a. On a day between 24 March and 28 March 2003, stole a stereo valued at \$127.30 from a school classroom.
  - b. On 28 March 2003, sold the stereo referred to in 1a to Cash Converters for \$50.00.
  - c. In December 2005, at the Magistrates' Court, was found guilty, without conviction, of one charge of theft. The teacher was ordered to pay \$600 to the Court Fund and was placed on a good behaviour bond for one year.
  - d. In December 2005, at the Magistrates' Court, was found guilty, without conviction, of one charge of obtaining property by deception. The teacher was ordered to pay \$600 to the Court Fund and was placed on a good behaviour bond for one year.
2. Misappropriated school funds –
  - a. On or around 11 August 2003, stole a handful of two dollar coins from a coin container in the school canteen.

- b. In 2004, personally received \$220 which she had collected from parents for a sports program.
- c. In 2005, personally received money she had collected from six students for school photos.
3. Failed to pay for items purchased from the school –
  - a. In 2003, took food from the school canteen without offering money, or the full value of money, for payment to canteen staff.
  - b. In 2003, did not pay for food that she had purchased on credit from the school canteen.

## THE LAW

Section 2.6.30 of the *Education and Training Reform Act 2006* (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:

1. Notice of Formal Hearing dated 1 October 2007.
2. The teacher invoice details (2 pages) **001 - 002**
3. Statement of the principal, dated 24 August 2007 (2 pages) **003 - 004**
  - o 1 – Letter from person 1 dated 29 August 2003 (1 pages) **005**
  - o 2 – File note, dated 26 March 2004 (1 pages) **006**
  - o 2 – File note, undated (1 pages) **007**
  - o 3 – File notes, dated 3 May 2005 (2 pages) **008- 009**
  - o 3 – File note, undated (1 pages) **010**
  - o 4 – File note, undated (4 pages) **011- 014**
4. Material obtained from the employer:
  - o Letter, the principal to the employer attaching Investigators Report, dated 20 March 2006 (25pages) **015- 039**
  - o Letter, the employer to the teacher, dated 1 June 2006 (3 pages) **040- 042**
  - o Letter, the employer to the teacher, dated 4 August 2006 (6 pages) **043- 048**
  - o Letter, the employer to the teacher, dated 17 October 2006 (3 pages) **049- 051**
5. Material obtained from Victoria Police pursuant to a Freedom of Information request:
  - o VP Form (1page) **052**
  - o Summary of Charges, dated May 2005 (1 page) **053**
  - o Intent to Summons Report, dated September 2005 (1 page) **054**

- Charge and Summons, dated October 2005 (1 page) **055**
- Continuation of Charges, undated (1 page) **056**
- Charge and Summons, dated October 2005 (1 page) **057**
- Continuation of Charges, undated (1 page) **058**
- Exhibit List (1 page) **059**
- Witness List (1 page) **060**
- Witness Statement, the assistant principal, dated 1 August 2005 (2 pages) **061 - 062**
- Witness Statement, Cash Converters' employee, dated 7 September 2005 (2 pages) **063 - 064**
- Witness Statement, Victoria Police officer, dated 6 September 2005 (2 pages) **065 - 066**
- Archived Loan Details (1 page) **067**
- Record of Interview with the teacher, dated 28 May 2005 (8 pages) **068 - 075**

6. Material obtained from the Magistrates' Court

- Notice of Order made - charge 1, December 2005 (1 page) **076**
- Notice of Order made - charge 1, December 2005 (1 page) **077**
- Notice of Order made - charge 2, December 2005 (1 page) **078**
- Notice of Order made - charge 2, December 2005 (1 page) **079**

The following exhibits were presented to the Panel:

- A. Certified extracts from the Magistrates Court
- B. Statement of the principal with multiple attachments.

## **THE EVIDENCE**

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

- The principal of the school who provided evidence relevant to each of the three allegations.

In relation to Allegation 1, the principal explained that the teacher, in or around March 2003, reported to the assistant principal that a stereo housed in her classroom was missing. The principal subsequently reported this matter to the police.

The Panel was informed that a subsequent police investigation revealed that the teacher had sold the stereo to Cash Converters for \$50.00. In December 2005 at the Magistrates Court, the teacher was found guilty, without conviction, of two charges related to the missing stereo: one of theft; the other of obtaining property by deception. She was ordered to pay \$600 to the Court Fund and was placed on a good behaviour bond of one year. The Panel was informed by Counsel assisting that the \$600 has not been paid to the Court Fund. The Panel was provided with a copy of the teacher's National

Criminal Check issued by CrimTrac indicating that the teacher had been found guilty of the two offences.

In relation to Allegation 2, the principal described the circumstances surrounding each of the incidents involving the misappropriation of school funds. Regarding Allegation 2(a) the theft of money from the school canteen, the principal explained that on or around 11 August 2003 the school Canteen Manager had reported to the staff representative that on or around 11 August 2003 she had observed the teacher take a handful of \$2 coins from the canteen cash drawer. This was one of a series of incidents involving the teacher's behaviour related to the misappropriation of canteen monies and goods. The principal's statement was corroborated by a written statement provided by the school Canteen Manager. The principal indicated she was reluctant to confront the teacher directly. Instead she instigated a set of health and safety procedures regulating staff access to the Canteen, as well as strategies to enable the Canteen Manager to make monies more secure.

The principal outlined the circumstances of Allegation 2(b) as follows. In or around October 2004 she had become aware that the teacher had collected money from four Year 4 students for an amount per student user pay sports program which had not been received by the school's Administration Office. When the non-payment was noticed office staff made contact with the parents of student 1, student 2, student 3 and student 4. Each parent advised the office staff that they or their children had given an amount of cash directly to the teacher. The principal sent the four children to the sports program and attempted to discuss the matter with the teacher. The teacher was not prepared to discuss the matter and the principal without sufficient proof or evidence was reluctant to pursue the matter further.

The principal then outlined the circumstances related to Allegation 2c. In or around March 2005 she had become aware of a further incident involving the teacher and the collection of money from students. Photo day for the whole school was in March 2005. Students pre-ordered photos in envelopes provided by the photographer by indicating on the envelopes the photos they wished to order. They enclosed the amount for the order in the envelopes and gave their envelopes to their class teachers who in turn forwarded them to the office. The envelopes were given to the photographer on the photo day and the orders delivered to students a few weeks later. When the photos were subsequently delivered to the students at the school the parents of six students – student 5, student 6, student 7, student 8, student 9 and student 10 – complained that they had not received their photos. Each of the students was questioned individually and each indicated that they had handed their money in a sealed envelope to the teacher. The teacher took long service leave shortly after the incident and there was no opportunity to formally interview her regarding the photo money incident.

Allegation 3(a) and 3(b) related to a pattern of behaviour regarding the teacher's actions in the school canteen. The principal explained that person 1 had informed the staff representative that the teacher had over a period of months before August 2003 been going into the canteen around 12.45pm to make and/or purchase her own lunch. As this had been a busy period of time canteen staff allowed the teacher to serve herself where possible. Person 1 reported to the staff representative that it was becoming

evident that the teacher was taking more than she had paid for and/or was not offering payment to staff. This situation was corroborated in a statement by person 1 as an attachment to the principal's sworn statement (exhibit B-LW1). As stated previously in relation to Allegation 2(a) the principal did not interview the teacher about person 1's claims. Instead she chose to address the situation by instituting whole staff health and safety procedures regarding staff presence in the canteen. As part of those procedures, staff were able to purchase lunch which was delivered on plates to the staff room. The teacher was always quick to offer to return the empty plates to the canteen, which required the use of a security key, but was denied use of such by the principal.

## **DISCUSSION OF EVIDENCE**

It is not in dispute that the teacher was convicted in the Magistrates' Court in December 2005 of theft of the school stereo and obtaining property by deception.

The teacher's non-attendance at the hearing and lack of any evidence from her meant that the Panel relied largely on the principal's evidence and, in the case of the misappropriation of canteen money and goods, on the supporting unsworn statement of person 1. The principal's evidence was well documented and thorough, both in detailing the specific allegations and in giving the Panel a comprehensive sense of the teacher as a staff member whose ongoing behaviour regarding the collection of monies and potential misappropriation of school funds and equipment was a cause of serious concern. In regards to what might be factors in her personal life which might have contributed to the teacher's professional behaviour the principal offered her perspective discreetly, non-judgmentally and professionally. The Panel found the principal to be a credible witness and accepted her uncontested evidence.

However, much of the principal's evidence in relation to Allegations 2 and 3 was based on hearsay. Although the Panel is not bound by the rules of evidence, there must be sufficient probative evidence for the Panel to be satisfied that an event or occurrence occurred. It is not enough for the Panel to simply believe that an event or occurrence occurred (see *Minister for Immigration and Ethnic Affairs v. Pochi* (1980) 44 FLR 41.) Was it more likely than not the events described in the principal's evidence occurred?

The Panel believes that such events did occur. The school procedures required for collecting the monies for the sports program and the school photos both relied primarily on teachers as the first point of collection. In Allegations 2 and 3, ten students (or their parents) indicated that the teacher had been the teacher to whom they had handed the monies in question. They did so after it was made clear to them that monies they assumed they had forwarded to the school had not been processed either, in the case of Allegation 2 by the school office and, in the case of Allegation 3, by the photographer. While the Panel believes the principal could have investigated the matters more thoroughly and vigorously, especially in following up the students' versions of the events with the teacher, it strains credulity to believe that ten students were either mistaken in the belief that they had given their payments to the teacher or, in fact, had deliberately not given the payments to her and then lied about it. Equally, it strains credulity that two different and independent sources for receiving the payments

– the school office and the photographer – could have been mistaken about not receiving those payments. In the case of the sports payments, only four students' payments were not received by the office. In the case of the school photos, only six students did not receive their photos because the photographer did not receive payment. In each of the ten cases the teacher was the teacher responsible for the collection, and in fact, according to what each of the ten students (or their parents) informed the principal, had accepted their monies.

## **FINDINGS UNDER SECTION 2.6.46 (2) OF THE ACT**

Taking into account the standard of proof cited in *Briginshaw v Briginshaw* (1938) 60 CLR 336 the Panel found that:

Allegation 1 is proved based on the official record of the finding of guilt provided by *CrimTrac*;

Allegation 2 is proved based on the fact that monies given to the teacher by four students for participation in the school sports program were not forwarded to the office as required by school procedures; and

Allegation 3 is proved by the fact that payments for school photos given to the teacher by six students were not received by the school photographer as required by school procedures.

In the light of these decisions the Panel determined that:

The teacher's behaviour was a serious breach of professional trust and, as such, constituted serious misconduct and;

The teacher's character is such that she is deemed unfit to teach.

In making its findings the Panel was guided by previous VIT panel decisions (see VIT 20; VIT 23 and VIT 29). All of these decisions related to matters of dishonesty, theft and deception in relation to school monies and/or equipment; and the responses of the teachers to the allegations concerning their professional behaviour and fitness to teach. Teachers need to be able to trust one another in the sharing and care of equipment and the use of school facilities. The administration and parents need to be able to trust teachers when they are the conduit for communication and monies between parents and the school. Any serious misconduct which contributes to a breakdown of this trust has a deleterious effect on the morale of the school, undermines teacher-parent relationships and brings the profession into disrepute.

A key element in determining the fitness of a teacher who has breached such trust is the degree and sincerity of the remorse shown regarding that breach, the degree of insight into the consequences of such a breach, the circumstances which contributed to its occurrence and possible remedies to ensure that such a breach does not occur again. In the case of *VIT 23* and *VIT 29*, genuine remorse and insight into the consequences,

circumstances and remedies were apparent. Consequently their registrations were not cancelled though, in *VIT 29's* case, conditions were placed on his continuing registration. In the case of *VIT 20* genuine remorse and insight were not apparent. Consequently his registration was cancelled.

The teacher's demonstrated reluctance to challenge the allegations, to defend and/or explain her actions, or to express remorse for her behaviour made it difficult for the Panel to make a judgment about her current fitness to teach. However, the Panel believes that the evidence presented demonstrated a pattern of repeated behaviours on the teacher's part which strongly suggested her reluctance or inability to contemplate the consequences of her actions, to express remorse for them, or to seek remedies to control her behaviour. The Panel concluded that the teacher is unfit to teach and her registration should be cancelled.

### **DETERMINATION UNDER SECTION 2.6.46 (2) OF THE ACT**

The teacher's registration is cancelled from 12 November 2007.



**TERRY HAYES, CHAIRPERSON**



**per ,  
POLLY FLANAGAN, REGISTERED TEACHER**



**per ,  
ANDREA TREBLE, PANEL MEMBER**