

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 076

REGISTERED TEACHER: Neil Douglas LARSEN

PANEL MEMBERS: Marilyn Mooney, Chairperson
Jane O'Shannessy, Registered Teacher
Ian Watkins, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Ms Melinda Richards Counsel Assisting with Ms C Sherman instructing

DATE OF HEARING: 29 October 2008

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION TRAINING AND REFORM ACT 2006*:

On 29 October 2008 the Panel decided to cancel the registration of the teacher from the date of this decision.

REASONS

BACKGROUND

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

By letter (undated) received at the Institute on 18 October 2006, the employer notified the Institute that it had taken action in response to allegations of serious incompetence of the registered teacher. The teacher resigned from the employer with effect from 2 October 2006.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 14 February 2007 and the Committee decided to refer the matter to a formal hearing.

The Institute arranged for an investigation of the allegations and on 16 April 2008, the Committee considered the investigator's report and confirmed its decision to refer the matter to a formal hearing.

The Notice of Formal Hearing dated 28 July 2008 was personally served upon the registered teacher on 1 August 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Letter the employer to the Institute received 18 October 2008 (2 pages) **001- 002**
2. The teacher - Registration Details (4 pages) **003- 006**
3. Document entitled 'Chronology of Events' (1 page) **007**
4. Notice of Investigation letter the Institute to the teacher dated 19 June 2007 (2 pages) **008- 009**
5. Witness statement of the principal, dated 19 June 2007 (4 pages) **010- 013**
 - Attachment 1 – Letter from teacher 1 to the employer, dated 31 July 2006 (3 pages) **014- 016**
 - Attachment 2 – Letter from the assistant principal to the principal, dated 31 July 2006 (1 page) **017**
 - Attachment 3 – Letter from the principal to the teacher, dated 6 July 2006 (1 page) **018**
 - Attachment 4 – Letter from the principal to the teacher, dated 7 July 2006 (1 page) **019**

- Attachment 5 – Letter from the principal to the teacher, dated 3 August 2006 (2 pages) **020- 021**
- Attachment 6 – Letter from the teacher to the principal, dated 6 August 2006 (1 page) **022**
- Attachment 7 – Letter from the principal to the teacher, dated 16 August 2006 (2 pages) **023- 024**
- Attachment 8 – Monitoring program (1 page) **025**
- Attachment 9 – Employment history (6 pages) **026- 031**
- Attachment 10 – Letter from the employer to the teacher , dated 12 October 2006 (1 page) **032**

6. Witness statement of teacher 1, dated 5 December 2007 (4 pages) **033- 036**

7. Letter the employer to the teacher, dated 12 October 2006 (1 page) **037**

8. Notice of Formal Hearing dated 28 July 2008

The following exhibits were tendered at the formal hearing:

A. Affidavit of Service, dated 4 August 2008.

B. Standards of Professional Practice for Full Registration.

C. Witness Statement of the principal, dated 19 July 2007

D. Witness Statement of the principal, dated 3 June 2008

E. Letter the principal to the teacher, dated 16 September 2005

F. Email the administrative officer to the teacher, dated 15 September 2006

G. Witness Statement teacher 1, dated 5 December 2007

H. Letter teacher 1 to the principal, dated 31 July 2006

THE EVIDENCE

The allegations of serious incompetence and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

Whilst employed as a registered teacher at the school during 2004 – 2006, the teacher:

Failed to effectively plan activities, assess students' work and/or submit reports

1. From about February to June 2006 (inclusive), whilst he was a year 4 teacher at the school, failed to adequately assess students and report students' progress, including:

- i. Failed to correct students' tests, in circumstances where test results were part of students' mid year portfolios.
 - ii. Failed to test students in circumstances where the test results formed part of the students' mid year portfolio.
 - iii. Failed to download data for student assessments in circumstances where the data was required for students' mid year portfolios and despite repeated reminders being provided to the teacher on 8 March 2006, 30 March 2006, and 11 April 2006.
 - iv. Failed to complete student reports to an appropriate standard and according to the set timetable despite repeated reminders, assistance and direction regarding his report writing and assessment duties.
2. During 2004 and 2005, whilst in a designated position of responsibility for organising and arranging school sporting activities, failed to adequately organise or arrange:
- i. The school cross country run.
 - ii. 2004 inter school sports.
 - iii. House sports.
 - iv. House athletics.

DISCUSSION OF THE EVIDENCE

On 18 March 2008 the Victorian Institute of Teaching notified the teacher that a formal hearing would take place in order to consider allegations of possible serious incompetence and/or lack of fitness to teach. On 16 May 2008, after the Institute made telephone contact with him, the teacher informed the Institute that he was travelling overseas and so the initial date of the hearing was postponed. A further Affidavit of Service (Exhibit A) was personally served on the teacher on 4 August 2008. The final hearing date was set for 29 October 2008. The teacher did not attend the hearing.

Counsel assisting the Institute explained that there had been many attempts to contact the teacher by both telephone and letter over a period of approximately eight months but the Institute had experienced difficulty making personal contact although had made indirect contact through his sister on at least two occasions. All mail issued by the Institute was returned on 26 June 2008 by the teacher and one letter was returned unopened. He had made no response to any of the material provided by the Institute. The Panel is satisfied that all efforts have been made to serve notices and to advise the teacher of the date of the Formal Hearing.

The principal

The principal gave evidence under affirmation and affirmed that her written statement dated 19 July 2007 (Exhibit D) and a second statement dated 3 June 2008 (Exhibit E) were true and accurate. She told the Panel that she was principal at the school from October 1994 until March 2006. She resigned in 2006 and was absent from the school for a term until her reappointment in July 2006. She has been the principal since July 2006.

The principal informed the Panel that she had employed the teacher at the beginning of 2004. Although she expressed concerns about his lack of experience she felt that the school could mentor him as they had done with other beginning teachers. The teacher was appointed as the Physical Education (PE) Co-ordinator. A team of teachers was established who would support him in the organisation of whole school events. Although the teacher experienced difficulties in 2004, the principal believed that another year might consolidate his skills and help him develop time management and better organisational processes. In 2005 teaching staff found it more difficult to support him in his role. She said that the teacher never asked for help and when staff offered to help him organise upcoming events, he would reply that everything was under control. A committee of staff supporting him experienced some stress. In 2005 the teacher failed to make vital bus and field bookings. Letters did not go home to parents to inform them about upcoming events nor to ask for helpers. He failed to organise or attend athletics training at lunchtime or after school yet he was given relief from yard duties to do so.

The school followed a program whereby the PE teacher maintained a Work Program and checklist of all students. He struggled to write a program and when requested by the principal to show her his planning he could not. The teacher had no record keeping during 2005.

The teacher had the support of a mentor for the entire year. He received a time allocation for the role as PE co-ordinator and was encouraged to attend professional development activities and regional meetings regarding interschool sport. Unfortunately he did not pass on information regarding interschool sports and that exacerbated stress felt by the teachers in his support team.

In September 2005 the principal sent a letter (Exhibit F) to the teacher outlining his growing difficulties with organisation, communication and curriculum. The principal's view was that the teacher was having difficulties in all areas of his professional life at school and she was concerned that his colleagues were becoming angered by his difficulties, which increasingly, were impacting on their work loads.

The principal informed the Panel that she believed the teacher had good relationships with the students in his care but his poor organisation meant that often staff had to step in and take over activities that he was supposed to have organised. Students were let down by his inability to co-ordinate sports training that many students loved as there had been a history of team sport and competition at the school.

At the end of 2005 the principal believed that it would be in the best interests of students, the teacher and colleagues that he be placed in a grade 4 class of approximately 20-22 students for the year. The teacher welcomed this opportunity. The particular year level was chosen because of the outstanding team he would be working with, their very supportive natures and the mix of ages and experiences. A member of this team mentored the teacher during 2006.

On the principal's return to the school on 4 July 2006 she found it necessary to respond to reports written by the acting principal and the assistant principal expressing concerns about the teacher's organisation, particularly that related to assessment and reporting.

She wrote letters dated July 6 and 7 giving “lawful instructions” to the teacher to bring semester reports and portfolios to school to be checked and distributed. The teacher did not comply and gave a range of excuses including that all work was at home and his flatmate would either bring it to school or put it in a taxi. The work was allegedly placed in a taxi and sent to a school 50 kilometres from where the reports and portfolios were meant to be. The principal believed that he had not actually begun the process of writing reports and had not implemented the portfolio program. She commenced the employer’s Unsatisfactory Performance processes by letter dated 3 August 2008.

The principal began a four-week mentoring program beginning in September. This program was not completed as the teacher did not attend school for the last two weeks of the school term and did not provide an explanation. A number of attempts, both formal and informal, were made to contact him but to no avail.

The principal stated that at no time did the teacher ask for help over the two years and three terms he was employed at the school. She believed him to be less than competent, dishonest in his dealings in the three areas of concern: organisation, communication and curriculum. The principal commented that he ignored all the processes the school put in place to support him. She believed that despite 2 years of mentoring and no negative responses from staff that she felt were patient and supportive, he made no improvement at all. On reflection the principal believed that the school did all they could to support the teacher, and in response to a question from Counsel Assisting, she said she was unaware of any outside circumstances that would have affected the teacher carrying out his professional duties.

Teacher 1

Teacher 1 gave evidence under oath and affirmed that her written statement dated 5 December 2007 (Exhibit H) and her letter to the principal dated 31 July 2006 (Exhibit I) were true and accurate. Teacher 1 said that other than for 2 periods of family leave she had been a teacher since 1976. She said that she was employed at the school from the beginning of 2004 as a leading teacher and became acting assistant principal in 2006. From the second half of 2004 and throughout 2005 her role included Teaching and Learning-Curriculum. Part of her duties was to oversee all programs including the PE program. In 2005 she managed Assessment and Reporting and this included the introduction of a new employer computer package to be implemented state wide.

This program and package included a two-year implementation process. Her role was to ensure consistency of practice and judgement, ensuring fairness in assessment and reporting and that no student “fell through the cracks”. In 2005 common assessment tasks were introduced, moderation occurred on set tasks nominated by teams in February, June and November and teachers began collecting materials to be included in portfolios. The Panel heard that teachers had the support of a technician and regular professional development sessions to familiarise them with the new assessment and reporting package. Teacher 1 told the Panel that she was absolutely confident that the process of support provided to all teachers was sufficient. She said that the feedback from teachers was that they were “familiar with it, happy with it, and using it.”

In 2005 teacher 1 worked closely with the teacher meeting with him on a fortnightly basis. She commented on the various events she would help him schedule and timetable tasks to make things more manageable. Teacher 1 said she found that the teacher was unable to take responsibility for anything: he did not keep to the calendar they had organised, he did not tell staff what they were required to do and did not inform parents about upcoming events. She was surprised at this, as she understood that he had come to the school with a number of years teaching experience in the area of PE. She said that the teacher always had an excuse for not completing tasks and it was usually to do with not being informed or him saying that he couldn't remember being told what and how to do something. Teacher 1 told the Panel that in response to this the school put a process in place whereby every meeting was minuted and the teacher was required to read and sign each page.

The Panel heard that the Cross Country event held in early 2005 was particularly difficult for the supporting team and teacher 1 for the following reasons:

- students did not receive training which resulted in many of them becoming physically distressed
- the district event was brought forward but the teacher failed to tell other staff
- permission letters were sent home late by staff and not by the teacher whose responsibility it was
- parents weren't informed about tasks they needed to complete as helpers
- the course was not marked by the teacher (after he was given release time to do so) and was completed by support staff just prior to the event

Teacher 1 said that she continued working closely with the teacher when he was moved to a Grade 4 class in 2006. In her observations she believed he was engaged with students and moved around the room connecting with different students during lessons. Students were happy, involved and on task. Parents also seemed happy to see him. However teacher 1 told the Panel that she never saw him do any direct teaching during a lesson nor conclude a lesson. She said that he also did not seem to make any improvement as a teacher during this time.

Teacher 1 told the Panel that the teacher was working in a very supportive team and as part of that team he had to devise a Maths task that all Grade 4 students could complete as a common assessment task. He found this profoundly difficult to do and after lengthy delays and a number of drafts was able to produce an appropriate and 'doable' task but only with a great deal of support from teacher 1. Although the Grade 4 team had been waiting on this task for quite some time, they were delighted with, and very encouraging of his efforts. The teacher distributed the task to the team which they finally completed with their classes. He did not have his students complete the task.

On 31 July 2006 teacher 1 sent a detailed letter outlining her concerns about the teacher to the principal. Included in these concerns were that the teacher was unable to deal with the collection of data nor write and present reports on June 14th, which was the designated day for the print run. Teacher 1 outlined a protracted, frustrating and in the end, futile, communication process she had with the teacher in an attempt to obtain assessment and reporting details for his students' reports. The teacher was given CRT

support and days off to write them but this did not improve his output. This set of events meant that other staff members in the Year 4 team and teacher 1 had to write his reports.

During the monitoring period put in place in September 2006 teacher 1 either met with or observed the teacher in the classroom every day over approximately twelve days. Her view was that although the teacher had a good rapport with students he had no interest in improving his knowledge or skills in the areas of curriculum, standards, assessment or reporting. He failed in all aspects of organisational and administrative duties.

Teacher 1 informed the Panel that she did not believe the teacher could recognise or accept his limitations and was unable to act or reflect upon his practice. She told the Panel that she was unaware of any external pressures that may have impacted on the teacher's ability to carry out his professional duties.

DISCUSSION OF THE EVIDENCE

The Panel was at all times mindful of the application of the rules of natural justice given that the teacher was not present or represented. The Panel was satisfied that considerable efforts were made to ensure that the teacher was given every opportunity to address all the relevant issues and to contest the allegations. The Panel noted that the teacher chose not to appear, or give evidence.

The Panel was provided with detailed evidence from the principal who identified and attempted to deal with serious issues in relation to the teacher's organisation and management skills. This evidence outlined a range of formal and informal processes to assist and support him, including support groups, membership of teacher teams, significant time release, mentoring, re-arrangement of classes and duties, and 'buddying up' with a highly experienced teacher.

The Panel noted that the school was extremely supportive and non judgemental and provided extensive assistance to the teacher. His inability to perform his required tasks resulted in significant stress and additional workload for his colleagues. The recurring pattern in the evidence was that the teacher made little if any improvement over the period. The Panel came to the view that the teacher was unable to cope with his work situation despite evidence of significant, sustained and ongoing support.

The Panel accepted the evidence from the principal and teacher 1 that the teacher exhibited limited acceptance of responsibility and used an extensive variety of avoidance techniques to mask his failure to complete standard professional responsibilities. The Panel accepted the view of the principal that at times, the teacher lied about his completion of set tasks and this called into question the fitness of his character for the teaching profession. The Panel heard that the school was so concerned with the teacher's deficiencies in planning and organisation that arrangements were made for teacher 1 to meet weekly with him to map out tasks. The Panel viewed with alarm that even within this tightly controlled process, teacher 1 was eventually required to have the teacher sign each page of the minutes of these weekly meetings to ensure that there was no opportunity for him to deny that the organised task/s were agreed on to be completed.

The Panel considered the evidence concerning the process that the school undertook to implement the new reporting system. The Panel took the view that the professional development, trialling and school support structures developed were appropriate and of such scope to enable the teacher to satisfactorily complete this characteristic of effective teaching. This process was implemented over two years. It included the formation of teacher teams in 2005 to develop and trial common assessment tasks in February, May, June and November, which formed student assessment portfolios. The content of these student portfolios was collaboratively agreed upon by staff and many staff and level meetings were conducted to ensure consistency of content. Each teacher was required to administer and correct and record student performances from a range of tests.

The Panel accepted the evidence that these common assessment tasks and tests were an integral and important part of the student assessment portfolio. The Panel took the view that the teacher demonstrated serious incompetence by not marking the collected student tests. This serious incompetence was further compounded by the teacher not administering the full set of agreed tests.

The Panel acknowledged that a new computerised report writing package was introduced and all staff undertook professional development in its operation. The school technician loaded the program onto all teachers' notebooks and teachers were required to download class assessment items to enable them to complete their reports. The Panel accepted the evidence that despite repeated requests on 8 March, 30 March and 11 April 2006, from both the acting principal and assistant principal, the teacher failed to download the student assessment file. The Panel notes that not only did the teacher not comply, he also gave repeated unfounded assurances and/or untrue explanations as to the true situation of his student records.

The Panel considered the teacher's unfamiliarity with the computerised reporting package balanced against the professional development and support provided by the school over the extended implementation time. The Panel took the view that the teacher's failure to complete this task amounted to serious incompetence and did not demonstrate acceptable standards of professional practice. He was given every opportunity to enlist support but failed to do so.

The Panel was satisfied that the teacher's failure to download student data and his inconsistent administration and non marking of tests and tasks, resulted in his student reports not being completed by him. The Panel accepted the evidence that the task of compiling student reports, including comments, was completed by other teachers.

In considering the evidence in support of Allegation 2, the Panel acknowledged that although the teacher was provided with time release well over and above normal allotments for the planning of whole school events, he still experienced difficulties in organising these activities. The Panel accepts that the teacher failed to organise the 2004 school cross country run and that it was only successfully completed due to a team of teachers organising and arranging the event in the absence of the teacher doing so. The Panel considered that insufficient evidence was presented in support of the allegations that the teacher failed to organise or arrange 2004 Inter school sports, House sports or House Athletics.

Witnesses were credible and convincing and provided detailed and systematic documentation to support their evidence. The Panel accepted the evidence from the principal, the assistant principal and acting principal, which highlighted serious concerns with the teacher's professional practice. The Panel noted their evidence that they were not aware of any outside influences or pressures that would affect the teacher's ability to fulfil his professional duties.

The Panel saw no evidence that the teacher was able to gain insight into his professional responsibilities through reflection on his practice or identifying areas that he needed to improve on. Indeed the Panel noted that in his letter of reply to the principal, rather than respond to each of her concerns covering - Organisation and Planning; Assessment and Reporting; and Communication and Teamwork - he merely acknowledged that he had not "handed things in or completed them."

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel finds Allegation 1 proved and deems it proof of serious incompetence. The Panel concludes that on the evidence presented Allegation 2 is not proved to the *Briginshaw* standard.

In determining matters of serious incompetence the Panel is conscious that 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 for the profession; and to protect the reputation of the profession. The Panel's role is not to pass moral judgement, nor to punish the teacher against whom allegations are raised, (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177).

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

The Panel considers the evidence that the teacher failed to complete assessment and reporting tasks to acceptable professional standards as overwhelming. The Panel expects, in accordance with the Standards of Professional Practice, that a teacher would plan and assess for effective learning. It considers the assessment of student work and reporting on achievement as an integral part of the educative process and the fact that the teacher repeatedly failed to comply with this fundamental professional responsibility demonstrates, in the Panel's view, a serious departure from accepted professional practice. It is also the Panel's view that the teacher is at fault.

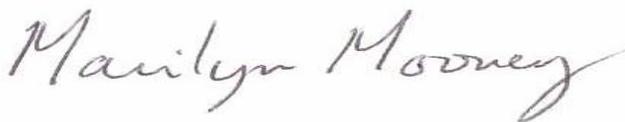
Simple negligence or errors of judgement are not sufficient for serious incompetence. However negligence of a sufficiently high level could amount to incompetence. If a teacher's practice were such that it would defeat the cause of imparting knowledge to

students then this would be serious incompetence. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty or so incompetent in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors* [1999] NZCA 145). The Panel considers that the teacher, despite significant assistance and opportunity to improve his professional performance, repeatedly failed to carry out his professional duties which significantly impacted on his ability to impart knowledge to his students. The Panel also finds that the teacher lacked professionalism in that he frequently relied on his colleagues to complete his work for him despite the detrimental effect the extra workload had on them. The persistence of the issues at hand has added to the Panel's view that the teacher is seriously incompetent.

It is the Panel's view that based on the evidence before it, the teacher's inability to effectively and honestly reflect on his professional practice and to fully accept the responsibilities of the teaching profession means he is seriously incompetent. The Panel also determines that the teacher is unfit to teach because despite significant support by senior staff at the school over several years the teacher failed to improve his professional practice.



MARILYN MOONEY, CHAIRPERSON



**per:
JANE O'SHANNESSY, REGISTERED TEACHER**



**per:
IAN WATKINS, PANEL MEMBER**