

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 064

REGISTERED TEACHER: Steven James NEVILLE

PANEL MEMBERS: Terry Hayes, Chairperson
Cathie Ireland, Registered Teacher
Jeanette Barclay, Panel Member

ATTENDANCE: The teacher attended the Formal Hearing and was not represented
Ms Gail Hubble, Counsel Assisting with Ms A Haslam instructing

DATE OF HEARING: 5 May and 14 August 2008

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

On 14th August 2008 the Panel decided to suspend the registration of the teacher from 14th August 2008 until at least 31st December 2008 and imposed the following conditions:

- The teacher undertake a detailed and comprehensive study of the legal obligations of a teacher, particularly in relation to the management of school resources and the conduct and behaviour required of a teacher as outlined in the Victorian Institute of Teaching's Code of Ethics and Code of Conduct.
- The teacher is to provide to the Panel by 15 December 2008 a written report setting out the study he has undertaken in relation to the above matters and his understanding of his obligations as a teacher in relation to the management of school resources and the legal obligations of a teacher.

- The teacher is to provide to the Panel by 1 October 2008 a schedule setting out the dates and amounts he will pay to the school to repay the Compensation Order.
- The suspension on the teacher's registration will not be lifted until the teacher satisfies the first three conditions.

The lifting of the suspension is dependent upon the Panel's decision that its conditions have been met.

REASONS

BACKGROUND

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

By letter dated 19 July 2006, the employer notified the Institute that it had taken action in response to allegations of serious misconduct and/or unfitness to teach of the teacher. The teacher resigned from the employer with effect 11 July 2006.

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

The Notice of Formal Hearing, dated 25 March 2008 was served upon the teacher by registered post on 27 March 2008.

The formal hearing commenced on 5 May 2008 and was adjourned.

On 14 May 2008, the Institute received the results of a criminal record check which showed that the teacher had been convicted of two indictable offences that were not included in the Notice of Formal Hearing.

The matter was referred to the Committee on 25 June 2008 and the Committee decided that these two offences should be added to the allegations in the Notice of Formal Hearing. An amended Notice of Formal Hearing dated 15 July 2008 was served on the teacher by registered post on 18 July 2008. The Formal Hearing resumed on 14 August 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 20 March 2008
2. Letter the employer to the Institute dated 19 July 2006 (2 pages) **001- 002**
3. The teacher - Registration Details (4 pages) **003- 006**
4. Certified Extract of Court Order, Magistrates' Court of Victoria (1 page) **007**
5. Magistrates' Court of Compensation payment due (1 page) **008**
6. Brief Head (2 pages) **009 – 010**
7. Charge Sheet (1 page) **011**

- 8.** Identifiers and result of charge Report (1 page) **012**
- 9.** Summary of Charges (2 pages) **013 – 014**
- 10.** Witness List (1 page) **015**
- 11.** Exhibit List (1 page) **016**
- 12.** Search Warrant (2 pages) **017 – 018**
- 13.** Result of search attaching photos (4 pages) **019 – 022**
- 14.** Transcript of Interview between Police officer and the teacher (15 pages) **023 - 037**
- 15.** Letter from the employer to the teacher dated 15 May 2006, (2 pages) **038 – 039**
- 16.** Fax from the teacher to the employer, (4 pages) **040 – 043**
- 17.** Letter from the employer to the teacher dated 8 July 2006, (1 page) **044**
- 18.** Fax from the teacher to Principal 1 of the school re resignation date 11 July 2006, (1 page) **045**
- 19.** Certified Extracts of Court Orders, Magistrates' Court of Victoria (4 pages) **046 – 049**
- 20.** Victoria Police LEAP database print-out on 20/05/2008 – Incident report and Case Progress **050 - 053**
- 21.** Amended Notice of Formal Hearing dated 15 July 2008.

The following exhibits were tendered at the hearing:

- A.** Letter from the teacher, enclosing employment history and list of referees, to Manager – Enquiries & Litigation, Victorian Institute of Teaching, received on 31/03/2008.
- B.** Letter from the teacher, addressed 'Dear Sir', enclosing employment history, qualifications and Resumé.
- C.** Letter from the teacher to the Panel, dated 24/04/2008.
- D.** Letters of Reference for the teacher from:
 - Principal 2, College 1 dated 12/02/2008
 - Teacher 1, the school, dated 12/02/2008
 - Teacher 2, College 2, undated
 - Teacher 3, College 2

- E.** Letters of Reference for the teacher from:
- Referee 1, Manager, Farm Supply Company, dated 14/04/2008
 - Referee 2, Sales representative, Hotel dated April 2008
- F.** Letter from the teacher to employer, undated, attaching response from the employer dated 05/03/2008.
- G.** Letter from the teacher to the Manager – Enquiries & Litigation, Victorian Institute of Teaching, dated 1 August 2008.

THE EVIDENCE

The Allegations as set out in the Notice of Formal Hearing:

1. Between November 2003 and May 2006, the teacher, a registered teacher employed the school, stole property from campus 1 of the school valued at approximately \$11,500.
 - 1) The stolen property included items from the school's trade workshop areas including hand tools, electrical appliances, an industrial vacuum cleaner, a power drill and a television. The teacher sold or pawned stolen items at a Cash Converters Store.
 - 2) On 17 August 2006 at the Magistrates' Court, the teacher pleaded guilty to one count of theft. He was convicted and sentenced to 3 months' imprisonment, suspended for 15 months. The teacher was ordered to pay \$11,500 compensation.
2. On 17 August 2006 at the Magistrates' Court, the teacher was convicted of two additional indictable offences:
 - 1) One charge of burglary that occurred at town 1 from 1 January 2006 to 25 April 2006.
 - 2) One charge of theft that occurred at town 1 from 1 January 2006 to 25 April 2006.

On 17 August 2006 the teacher was convicted of two counts of theft and one count of burglary in the Magistrates Court. He was sentenced to three months imprisonment wholly suspended for fifteen months and ordered to pay compensation of \$11,500 to the school.

The Panel heard evidence under oath from the teacher. The teacher gave verbal and written evidence to the Panel.

The teacher informed the Panel that he was currently living in town 2 where he was employed as a field mechanic/technician and sales representative by a Farm Supply Company. He stated that he regretted his actions and would welcome the prospect of returning to full time teaching an occupation in which he had been employed for 16

years. He had taught in many trade areas as well as junior music and drama. He said he loved teaching and had a good rapport with the students he taught. He enjoyed watching students grow within themselves and to see them mature and valued his role in passing on knowledge, offering guidance with their career aspirations and leading them in the right direction.

The teacher explained his personal and financial circumstances, which he believed had led him to the thefts from the school. While living in town 3, and following his first marriage breakdown, he had declared himself bankrupt as a way of managing his financial circumstances. In hindsight he regretted doing so because it made him less able to manage them as he was unable to secure credit or loans. He put his financial circumstances down to two factors. One was the unsatisfactory arrangements he had entered into with his first wife regarding child support. The other was the medical needs of his second wife. He told the panel that his son lived with him his former wife had foregone child support payments. However, when her own relationship broke up she insisted on those payments and this had involved him in lengthy and unsatisfying negotiations with children's services bureaucracies in three states. The upshot was that he was required to pay \$110 a week including arrears of \$7000. This occurred at a time when his second wife's illness and treatment was making managing his finances, including making those payments, difficult.

While teaching at the school his financial circumstances got progressively worse. At times he did not have sufficient money for food. Friends were unable to help, though agencies including the Salvation Army, St Vincent de Paul and Outreach did provide support. He had considered getting a second or part time job but his staggered working hours at the school - teaching VET and his wife's illness mitigated against that.

The teacher described the cycle of theft over nearly three years that eventually led to him being charged with the theft of 70 items, though he disputed the number because when the police tallied the items he couldn't distinguish between what were rightfully his and what were the school's. He said that he pawned all the stolen items at Cash Converters rather than sell them because he hoped eventually to purchase them back, but fell behind in payments because of the exorbitant amount of interest required. He did not have receipts to substantiate his claims because he had been burgled. At times he was stealing items and receiving money for them in order to pay the interest on previously stolen/pawned items. As well as school equipment he also pawned or sold his own equipment, especially that related to his work as a musician, to Cash Converters.

He said the stealing was made easy because of the lax auditing/stocktaking procedures regarding equipment at the school. Many of the items were relatively cheap and considered consumables and a high rate of turnover of equipment was the norm. The stolen television set which was the catalyst for his thieving being discovered, was obsolete and had been missing for two years before the theft was discovered. It should have been written off on the assets register and disposed of. It was also relatively easy to fill out requisition orders for replacing equipment though the teacher disputed the claim that he had requisitioned some equipment, purchased it and pawned it before it was even used at school.

The teacher could not recall the first item he stole but he stated that it did not become any easier for him with each successive theft. He never felt good about what he was doing and always thought that it was wrong. He suffered many sleepless nights and guilt about his behaviour but could not see his way “out of the hole I had dug for myself.” He was aware of his wife’s anxiety about what he was doing but could not recall how he responded when she asked him to stop. The teacher agreed with Counsel Assisting that his attitude was a little casual. He also stated that he was not aware of whether others, either staff or students were suspected of the thefts though he occasionally thought that students might be blamed for the theft of small items such as spanners. He admitted that he might still be engaged in thieving if he had not been caught, though two months before he was caught he had requested leave probably because of the guilt he was feeling.

After leaving the school the teacher said he sought commissioned sales work in State 1 having acquired an Australian Financial Services Certificate for which he had to declare his criminal history. That proved to be a disaster and added to his financial woes. However one salutary by-product of that experience was that it taught him the value of seeking out help from welfare organisations, especially their counselling services when one is in dire financial straits. It was he said “a massive learning experience”. Following that work he was employed on a cattle stud in State 1 but that employment was curtailed because of the drought.

The teacher said he then, on his own initiative, contacted the Farm Supply Company for whom he had worked previously and was offered a job in town 2. He said the job entailed considerable financial responsibility. Since moving to town 2 he had also been employed by College 3 teaching automotive in night classes and had been offered further work in welding and TAFE related work. He said he hoped to combine his present job with further night class work. It was these experiences that had lead him to start exploring ways that he might return to teaching full time and what requirements he would have to meet both for the Institute and for the employer. He had been in contact with the employer which had advised him what to do. Subsequently he had sought references from former colleagues and employers which have been tabled at the hearing. All had been made aware by him of his conviction. He said that two of his colleagues who provided references, teacher 3 and teacher 2 had asked him, before writing the references, if he had got his life sorted out. He assured them that he had. He had left it up to them as to whether they mentioned his conviction.

The teacher indicated, in response to questions from Counsel Assisting, that he now understood the significance of his behaviour for the profession, the importance of teachers being a role model for children and the importance, as Counsel Assisting put it, of “moral guardianship for young people”. He would have to prove himself to any parent community of a school in which he worked. He believed he could make use of his past experiences and their repercussions in working with students and had speculated about teaching in youth training centres. He said he was waiting to see if he got a clearance from the Institute and the employer before seeking employment so that in any interview he could provide full documentation of his professional history. He also said he was planning to comply with the court order and start paying back the school next pay.

In his closing statement the teacher admitted he had made a mistake, regretted his actions and affirmed that “I don’t think I’d ever fall back to this situation”.

The Panel reconvened on 14 August to hear evidence related to the teacher’s convictions for theft and burglary from town 1 Historical Society between January and April 2005. These convictions, although they were determined in the same court and on the same date as the theft from the school, had not been referred to in the original Notice of Formal Hearing. The teacher explained that there had been no intention to conceal these convictions from the Panel and Counsel Assisting concurred. He said that he had assumed they were there in the evidence to be considered by the Panel and that he had not read the original Notice of Formal Hearing or the evidence in the Hearing Book as carefully as he might have.

The teacher explained that in the period instanced he had entered, through a side window, the building of the town 1 Historical Society on at least seven occasions and removed a number of items through the window. At the time because of his straitened financial circumstances he was renting an adjoining building in the same yard. He had been on good terms with members of the Historical Society and did minor maintenance and ground keeping for them. The teacher said that he had not forced the window as it had been ajar. The items he stole were two antique chairs, a microwave and a small medical cabinet containing miniature musical instruments and old coins. The items were valued at \$1500. He had repaired the chairs and sold them to a second hand dealer. He had taken out a loan on the microwave from Cash works. The cabinet was found in his possession. A subsequent inventory of the property indicated that the only item unaccounted for was a toilet brush from an outside toilet. The teacher stated that the fact that all the items he had stolen were recovered was probably the reason that the Historical Society did not want to claim compensation. All they required was that he vacate his rental property, a decision that coincided with their wanting to renovate it.

The teacher stated that had he been caught in the act of burgling he would have “died of embarrassment” and would have had a lot of explaining to do. He was adamant that he would “not have got vicious or anything silly like that – that’s not me.”

The teacher, in response to a question from the Panel, stated that since his last appearance before the Panel in May he had made two repayments to the school.

DISCUSSION OF THE EVIDENCE

The Panel found the teacher to be a credible witness. He was forthright about his actions and expressed remorse for them. He described the guilt that enveloped him because of what he was doing. He offered a frank and comprehensive account of the circumstances that led him to undertake such actions, and showed insight into how his behaviour reflected adversely on the profession. The Panel noted, however, that the teacher was somewhat naïve in his understanding of the full import of what burglary, as distinct from theft, entails. Nor was he fully cognisant of the very real possibility of physical violence had he been discovered by members of the Historical Society while burgling even though he said he would have “died of embarrassment.”

The Panel noticed a clear difference between his lifestyle leading up to the thefts from the school and the Historical Society and his lifestyle since moving to town 2 after the difficult but salutary experiences of living and trying to sustain viable employment in State 1. The former lifestyle was characterised by a mixture of unfortunate circumstances and the teacher's rather haphazard and hapless handling of his financial matters. The latter is characterised by a more mature and realistic sense of the importance of a disciplined approach to financial matters and the need to rely on support and networks to help implement and maintain that discipline. The fact that he was no longer paying child support for his eldest son, had regular and responsible employment, and that his wife was also working suggested he was now leading a lifestyle that was more financially manageable than his previous lifestyle. As well the Panel noted the support being provided to the teacher and his family by organisations such as the Salvation Army and their local church as well as by his work colleagues and the teacher's father. The teacher recognised that he was still on the margin financially and that things "might go downhill again." If they did, he stated "I wouldn't be pinching things". The Panel believes that the teacher would benefit from working with a financial planner to enable him to plan for contingencies such as the fact that his wife may cease work because of her pregnancy which the teacher informed the Panel of when it reconvened.

The one caveat the Panel expressed was its concern that the teacher has been tardy in meeting the Magistrates' Court ruling that he recompense the school the sum of \$11,500. At the reconvened hearing the Panel was pleased to note that the teacher had started repayments.

The Panel also considered the references provided by the teacher by former colleagues and employees as well as his current employer, all of whom the teacher assured the Panel had been aware of his conviction. While none of them referred specifically to that matter all of them collectively attested to his competence, his capacity for hard work and his reliability. Two of his former teaching colleagues welcomed the possibility of the teacher's return to teaching.

The Panel was convinced that the teacher had thought carefully about his return to teaching, both in terms of practical strategies for doing so and in terms of what he might do to "redeem himself", including thinking carefully about the importance of teachers providing role models for young people. He had considered actions he would need to take to convince a school community that it was them placing their trust in him. He recognised the need to be open and honest about his past convictions when applying for work and had thought through a strategy for doing that.

Overall, the Panel believed that the teacher had shown considerable personal initiative in getting his life and financial affairs in order and that that initiative was also reflected in the steps he had undertaken to resurrect his teaching career.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel find the allegations proved and determines that the teacher is guilty of serious misconduct and, until he has satisfactorily met the conditions attached to his suspension, is unfit to teach.

In determining that the teacher's behaviour constituted serious misconduct, the Panel considered that his conduct was a substantial departure from the accepted standards for the teaching profession, and the departure was the teacher's fault (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998). The Panel was also mindful of the ruling in *Allinson v General Medical Council (1891) -4 All ER 768* that misconduct encompasses conduct "which would be reasonably regarded as disgraceful by his professional brethren of good repute and competency". The thefts for which the teacher was charged and convicted consisted of a considerable amount of equipment that belonged to the school community. His actions breached a basic trust that school communities place in teachers to ensure the effective management of school resources for the educational good of the students and not for personal gain. As such his actions reflected adversely on the good standing of teachers and ran the risk of bringing the profession into disrepute.

The Panel also determined that the teacher is not fit to teach until the conditions placed on his suspension set out below have been satisfactorily met. In coming to this conclusion the Panel reflected on the words of Justice Harbison, Vice President and Mr. Eccles, Member at [169] when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 (30 May 2007). The Panel noted:

We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct.

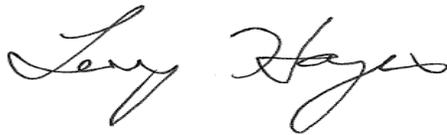
The teacher was a competent and committed classroom teacher and that has never been in question. However, the teacher's behaviour did involve criminal conduct for which he was duly convicted and that behaviour had great potential to harm the status of the profession. The teacher's behaviour was of "a continuing and persistent nature." Given the considerable trust the community places in the role of teacher, the teacher should not be in a position of authority and trust with children until he has demonstrated an awareness of the importance of that trust. He indicated that he had made some progress towards understanding the importance of teachers providing exemplary role models for young people and that, as Counsel Assisting expressed it, "the moral guardianship of young people" is a crucial component of the role of the teacher.

The Panel determines that the teacher be suspended for a period from 14 August 2008 until 31 December 2008.

While the Panel believes that the teacher's remorse is genuine and he is determined to avoid such behaviour in the future, the Panel also believes that he needs to develop both a detailed knowledge of the legal obligations of teachers, particularly in relation to the management of school resources, and a deeper understanding of the ethical dimensions of teaching – the values of integrity, respect and responsibility – in order to maintain the conduct and behaviour that exemplifies those values.

To that end the Panel has imposed conditions on the teacher's suspension. In deciding to suspend with conditions rather than exact the more severe penalty of cancellation of registration, the Panel was mindful of the following:

- The teacher pleaded guilty to the charges of theft and was now in a financially secure position to make reimbursement for those thefts.
- The teacher showed remorse for his actions.
- The teacher had a positive outlook on teaching and the kinds of contributions he might make to young people's lives and education.
- The teacher was determined to avoid the kinds of circumstances and situations which would cause him to offend again. He was now more conscious of personal networks and support agencies which would assist him with that determination.
- The teacher had made significant changes to his lifestyle and the financial management of such.
- The teacher needs to develop a deeper understanding of the legal responsibilities of a teacher and the importance of the values of integrity, respect and responsibility that underpin the ethical dimensions of teaching.



TERRY HAYES, CHAIRPERSON



**per:
CATHIE IRELAND, REGISTERED TEACHER**

A handwritten signature in black ink, appearing to read "Terry Hayes". The signature is written in a cursive style with a large initial 'T' and 'H'.

per:
JEANETTE BARCLAY, PANEL MEMBER