

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 073

REGISTERED TEACHER: Linda Frances VAN DEN BRINK

PANEL MEMBERS: Terry Hayes, Chairperson
Jenny Wajsenberg, Registered Teacher
Andrea Treble, Specialist Member

ATTENDANCE: The teacher attended the Formal Hearing and was unrepresented.
Ms G. Hubble Counsel Assisting with Ms C. Sherman, instructing

DATE OF HEARING: 2 October and 11 December 2008

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

On 11 December 2008 the Panel determined to cancel the teacher's registration to teach on the grounds of unfitness to teach.

The Panel makes clear that this was not a decision based on the teacher's character. The Panel found the teacher to be a dignified and truthful witness who described her commitment to teaching special needs and disadvantaged students, and the circumstances of her difficult and stressful life with forthrightness and honesty. The decision is based on the Panel's awareness of the teacher's mental/psychological health problems, the impact they might have on her capacity to teach as well the need to recognize the public interest.

REASONS

BACKGROUND

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

On 20 July 2007, the teacher consented to a criminal record check being conducted through Crimtrac, an agency of the Australian Police Services. On 9 January 2008, the Institute received the teacher's criminal history.

The details of the teacher's criminal history were referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 13 February 2008 and the Committee decided to refer the matter to an investigation.

Following the investigation, the matter was referred back to the Committee and on 13 August 2008, the Committee determined that the matter should be referred to a formal hearing.

A Notice of Formal Hearing dated 29 August 2008 was served upon the registered teacher by registered post on 2 September 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 29 August 2008.
2. The teacher - Registration Details (4 pages) **001-004**
3. Document entitled 'Chronology of Events' (2 pages) **005-006**

Documents obtained under a Freedom of Information request to Victoria Police:

4. Documents relating to Allegation 1a
 - o Certified extract of Magistrates' Court 1 on 30 May 1996, relating to 5 charges on 7 and 8 February 1996 (5 pages) **007-011**
 - o Material obtained from Victoria Police relating to 5 charges on 7 and 8 February 1996 (3 pages) **012-014**
 - o Certified extract of Magistrates' Court 1 on 30 May 1996, relating to 2 charges on 9 February 1996 (2 pages) **015-016**
 - o Material obtained from Victoria Police relating to 2 charges on 9 February 1996 (5 pages) **017-021**

5. Documents relating to Allegation 1b
 - o Notice of Order Made by Magistrates' Court 2 on 2 December 1998, relating to 1 charge on 5 October 1998 (1 page) **022**
 - o Material obtained from Victoria Police relating to 1 charge on 5 October 1998 (3 pages) **023-025**
 - o Notice of Order Made by Magistrates' Court 2 on 2 December 1998, relating to 1 charge on 30 October 1998 (1 page) **026**
 - o Material obtained from Victoria Police relating to 1 charge on 30 October 1998 (3 pages) **027-029**
 - o Material obtained from Victoria Police relating to 1 charge on 23 February 1998 (3 pages) **030-032**

6. Documents relating to Allegation 1C
 - o Notice of Order Made by Magistrates' Court 2 on 11 May 1999, relating to 1 charge on 6 March 1999 (1 page) **033**
 - o Material obtained from Victoria Police relating to 1 charge on 6 March 1999 (3 pages) **034-036**

7. Documents relating to Allegation 1d:
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 16 March 2002 (1 page) **037**
 - o Material obtained from Victoria Police relating to 1 charge on 16 March 2002 (3 pages) **038-040**
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 4 April 2002 (1 page) **041**
 - o Material obtained from Victoria Police relating to 1 charge on 4 April 2002 (1 page) **042**
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 7 April 2002 (1 page) **043**
 - o Material obtained from Victoria Police relating to 1 charge on 7 April 2002 (4 pages) **044-047**
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 8 May 2002 (1 page) **048**
 - o Material obtained from Victoria Police relating to 1 charge on 8 May 2002 (3 pages) **049-051**
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 7 January 2002 (1 page) **052**
 - o Notices of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 4 charges on 10 January 2002 (4 pages) **053-056**
 - o Material obtained from Victoria Police relating to 4 charges on 10 January 2002 (12 pages) **057-068**
 - o Notice of Order Made by Magistrates' Court 2 on 1 July 2002, relating to 1 charge on 31 May 2002 (1 page) **069**
 - o Material obtained from Victoria Police relating to 1 charge on 31 May 2002 (3 pages) **070-072**

- 8.** Documents relating to Allegation 1e:
- Certified extract of Magistrates' Court 1 on 24 February 2003 relating to 1 charge on 21 February 2003 (1 pages) **073**
 - Material obtained from Victoria Police relating to 1 charge on 21 February 2003 (3 pages) **074-076**
 - Certified extract of Magistrates' Court 1 on 24 February 2003 relating to 1 charge on 24 January 2003 (1 pages) **077**
 - Material obtained from Victoria Police relating to 1 charge on 24 January 2003 (3 pages) **078-080**
 - Certified extracts of Magistrates' Court 1 on 24 February 2003 relating to 3 charges on 22 November 2002 (3 pages) **081-083**
 - Material obtained from Victoria Police relating to 3 charges on 22 November 2002 (7 pages) **084-090**
- 9.** Documents relating to Allegation 1f:
- Certified extract of Magistrates' Court 1 on 24 April 2003 relating to 1 charge on 4 November 2002 (1 page) **091**
 - Material obtained from Victoria Police relating to 1 charge on 4 November 2002 (3 pages) **092-094**
 - Certified extract of Magistrates' Court 1 on 24 April 2003 relating to 1 charge on 19 February 2003 (1 page) **095**
 - Material obtained from Victoria Police relating to 1 charge on 19 February 2003 (5 pages) **096-100**
 - Certified extract of Magistrates' Court 1 on 24 April 2003 relating to 1 charge on 27 November 2002 (1 page) **101**
 - Material obtained from Victoria Police relating to 1 charge on 27 November 2002 (3 pages) **102-104**
- 10.** Documents relating to Allegation 1g:
- Certified extract of Magistrates' Court 1 on 17 October 2003 relating to 1 charge on 8 October 2003 (1 page) **105**
 - Material obtained from Victoria Police relating to 1 charge on 8 October 2003 (3 pages) **106-108**
 - Certified extract of Magistrates' Court 1 on 17 October 2003 relating to 1 charge on 26 September 2003 (1 page) **109**
 - Material obtained from Victoria Police relating to 1 charge on 26 September 2003 (5 pages) **110-114**
 - Certified extract of Magistrates' Court 1 on 17 October 2003 relating to 1 charge on 29 May 2003 (1 pages) **115**
 - Material obtained from Victoria Police relating to 1 charge on 29 May 2003 (3 pages) **116-118**
 - Certified extracts of Magistrates' Court 1 on 17 October 2003 relating to 3 charges on 12 August 2003 (3 pages) **119-121**
 - Material obtained from Victoria Police relating to 3 charges on 12 August 2003 (5 pages) **122-126**

- 11. Documents relating to Allegation 1h:**
- Certified extract of Magistrates' Court 1 on 5 April 2004 relating to 1 charge on 30 January 2004 (1 pages) **127**
 - Material obtained from Victoria Police relating to 1 charge on 30 January 2004 (4 pages) **128-131**
 - Certified extracts of Magistrates' Court 1 on 5 April 2004 relating to 3 charges on 20 December 2003 (3 pages) **132-134**
 - Material obtained from Victoria Police relating to 3 charges on 20 December 2003 (3 pages) **135-137**
 - Certified extract of Magistrates' Court 1 on 5 April 2004 relating to 1 charge on 2 December 2003 (1 pages) **138**
 - Material obtained from Victoria Police relating to 1 charge on 2 December 2003 (3 pages) **139-141**
- 12. Documents relating to Allegation 1i:**
- Certified extract of Magistrates' Court 1 on 10 August 2004 relating to 1 charge on 27 May 2004 (1 pages) **142**
 - Material obtained from Victoria Police relating to 1 charge on 27 May 2004 (5 pages) **143-147**
- 13. Documents relating to Allegation 1j:**
- Certified extracts of Magistrates' Court 1 on 1 February 2005 relating to 3 charges on 22 April 2004 (3 pages) **148-150**
 - Material obtained from Victoria Police relating to 3 charges on 22 April 2004 (13 pages) **151-163**
- 14. Documents relating to Allegation 1k:**
- Certified extract of Magistrates' Court 1 on 24 March 2006 relating to 1 charge on 27 May 2005 (1 pages) **164**
 - Material obtained from Victoria Police relating to 1 charge on 27 May 2005 (3 pages) **165-167**
 - Certified extract of Magistrates' Court 1 on 24 March 2006 relating to 1 charge on 23 November 2005 (1 page) **168**
 - Material obtained from Victoria Police relating to 1 charge on 23 November 2005 (3 pages) **169-171**
- 15. Documents relating to Allegation 1l:**
- Certified extract of Magistrates' Court 1 on 2 June 2006 relating to 1 charge on 8 November 2005 (1 pages) **172**
 - Material obtained from Victoria Police relating to 1 charge on 8 November 2005 (3 pages) **173-175**
- 16. Documents relating to Allegation 1m:**
- Certified extract of Magistrates' Court 1 on 20 December 2006 relating to 1 charge on 2 August 2006 (1 pages) **176**
 - Material obtained from Victoria Police relating to 1 charge on 2 August 2006 (3 pages) **177-179**

- Certified extract of Magistrates' Court 1 on 20 December 2006 relating to 1 charge on 18 August 2006 (1 pages) **180**
 - Material obtained from Victoria Police relating to 1 charge on 18 August 2006 (3 pages) **181-183**
 - Certified extract of Magistrates' Court 1 on 20 December 2006 relating to 1 charge on 21 September 2006 (1 page) **184**
 - Material obtained from Victoria Police relating to 1 charge on 21 September 2006 (3 pages) **185-187**
 - Certified extract of Magistrates' Court 1 on 20 December 2006 relating to 1 charge on 12 December 2006 (1 page) **188**
 - Material obtained from Victoria Police relating to 1 charge on 12 December 2006 (3 pages) **189-191**
- 17. Documents relating to Allegation 1n:**
- Certified extract of Magistrates' Court 1 on 8 October 2007 relating to 1 charge on 23 March 2007 (1 pages) **192**
 - Material obtained from Victoria Police relating to 1 charge on 27 March 2007 (4 pages) **193-196**
 - Certified extract of Magistrates' Court 1 on 8 October 2007 relating to 1 charge on 8 February 2007 (1 pages) **197**
 - Material obtained from Victoria Police relating to 1 charge on 8 February 2007 (3 pages) **198-200**
- 18. Documents relating to Allegation 1o:**
- Notices of Order Made by Magistrates' Court 2 on 15 August 2008, relating to 3 charges on 30 January 2008 (3 pages) **201-203**
 - Material obtained from Victoria Police relating to 3 charge on 30 January 2008 (3 pages) **204-206**

THE EVIDENCE

The allegations of possible lack of fitness to teach are as follows:

1. Whilst registered as a teacher in Victoria, the teacher:
 - (a) On 30 May 1996, appeared in Magistrates' Court 1 charged with seven counts of 'theft'. All charges, without conviction, were adjourned for 12 months.
 - (b) On 2 December 1998, appeared in Magistrates' Court 2 charged with two counts of 'theft from shop (shopsteal)' and without conviction, the matter was adjourned to 2 December 1999.
 - (c) On 11 May 1999, appeared in Magistrates' Court 2 charged with one count of 'theft from shop (shopsteal)'. Without conviction, the teacher was placed on a community based order for 6 months and was required to perform 30 hours of unpaid community work over 6 months. The teacher was ordered to pay \$134.96 compensation.

- (d) On 1 July 2002, appeared in Magistrates' Court 2 charged with ten counts of 'theft from shop (shopsteal)', and was sentenced to an aggregate of 1 month imprisonment to be served concurrently. The sentence was wholly suspended for 2 years.
- (e) On 24 February 2003, appeared in Magistrates' Court 1 charged with one count of 'theft from shop (shopsteal)'. Without conviction the matter was adjourned to 24 February 2004. The teacher was also charged with another four counts of 'theft from shop (shopsteal)', and was sentenced to 4 days concurrent imprisonment on each charge.
- (f) On 24 April 2003, appeared in Magistrates' Court 1 charged with three counts of 'theft from shop (shopsteal)'. The teacher was convicted, placed on a community based order for 6 months and ordered to perform 40 hours of unpaid work over 6 months.
- (g) On 17 October 2003, appeared in Magistrates' Court 1 charged with four counts 'theft from shop (shopsteal)' and one count each of 'go equipped to steal/ cheat' and 'carry controlled weapon without excuse'. The teacher was convicted on each charge, placed on a community based order for 12 months and required to perform 50 hours of unpaid community work over 6 months
- (h) On 5 April 2004, appeared in Magistrates' Court 1 charged with four counts of 'theft from shop (shopsteal)' and one count of 'go equipped to steal/cheat'. The teacher was convicted and sentenced to 7 days concurrent imprisonment. The sentence was wholly suspended for 3 months.
- (i) On 10 August 2004, appeared in Magistrates' Court 1 charged with one count of 'theft from shop (shopsteal)'. The teacher was convicted and sentenced to 7 days concurrent imprisonment. The sentence was wholly suspended for 12 months.
- (j) On 1 February 2005, appeared in Magistrates' Court 1 charged with two counts of 'theft from shop (shopsteal)' and one count of 'go equipped to steal/cheat'. he teacher was convicted and fined an aggregate of \$500.
- (k) On 24 March 2006, appeared in Magistrates' Court 1 charged with two counts of 'theft from shop (shopsteal)' and was convicted. The matter was adjourned to 1 September 2006.
- (l) On 2 June 2006, appeared in Magistrates' Court 1 charged with one count of 'theft from shop (shopsteal)'. Without conviction, the matter was adjourned to 1 September 2006.
- (m) On 20 December 2006, appeared in Magistrates' Court 1 charged with four counts of 'theft from shop (shopsteal)'. Without conviction, the matter was adjourned to 20 June 2007.

- (n) On 8 October 2007, appeared in Magistrates' Court 1 charged with two counts of 'theft from shop (shopsteal)'. With conviction, the matter was adjourned to 7 April 2008.
- (o) On 15 August 2008, appeared in Magistrates' Court 2 charged with one count of 'burglary', one count of 'theft from shop (shopsteal)' and one count of 'go equipped to steal/cheat'. With conviction, the teacher was placed on a community based order for 18 months and is required to perform 120 hours of unpaid community work over 12 months.

The Panel heard evidence from the treating psychiatrist (by telephone)

The teacher gave verbal evidence under oath.

The teacher is currently not teaching. She is undertaking home duties which includes caring for five of her children. The teacher stated she has seven sons aged from fourteen to their early thirties, all of whom suffer from learning difficulties and attention deficit disorder. Until recently she had been home schooling her fourteen year old son who has since been enrolled at a Special School. She stated that her 82 year old mother had offered her strong support, cooking meals for the family and, more recently, providing shelter when the family home caught fire.

The teacher stated that she and her husband had divorced because of his gambling addiction and the subsequent financial difficulties. She stated that, sometime in 2000, she had sought refuge in a women's refuge because of her husband's physical and emotional abuse. The teacher stated that when the behaviour of her older sons, before they were eventually diagnosed with attention deficit disorder, got out of control her husband had become violent. She said her sons' behaviour had improved after medication.

The teacher stated that she graduated from Burwood Teachers College in 1992 with a Diploma of Teaching - Primary. In 1996 she had received a Graduate Diploma in Special Education. She stated that she had been diagnosed with a learning difficulty when doing her Primary diploma. Her lecturers had been very supportive by allowing her to re-submit essays and to sit exams in a room by herself. She had written essays with the aid of a very sophisticated spell checker.

The teacher stated that she began her teaching career at a college which has since closed. She said that she believed that her presence as the only qualified teacher was the only reason the school remained open for as long as it did. She had taught Prep - Year 12 classes and some special needs students. She had lived in at the school and some of her children had attended it.

The teacher stated that on returning to Melbourne she had undertaken voluntary work on and off for four years at primary schools.. She had also taught students with disabilities and behaviour problems at her home.

The teacher stated that she had been employed part time to teach swimming at a swim school for three to four years. She had been given children who were “so called” difficult to teach. She stated she would like to continue to teach students who are terrified of water to swim. She had been particularly pleased about encouraging such a child aged fifteen to swim over a two week period. The teacher also stated that she had taught disadvantaged students free of charge at the swim school. She said she had resigned from the swim school, possibly in 2002-3, because of the politics of the place. She said that she did not believe the needs of the children were being met. As well, she said, the new management had made working there so uncomfortable that other teachers had also left.

The teacher stated that she had been diagnosed with kleptomania and attention deficit disorder as well as the previously mentioned learning difficulty with spelling, though the latter had not proved a barrier to her teaching children. Her kleptomania, she said, had been diagnosed when she was updating her AustSwim certificate. She had had an accident which had left her paralysed down her left side for six months. She said that she was not sure whether the accident might have been the turning point in her behaviour. She said that she was “pretty sure” she had been diagnosed with attention deficit disorder prior to the accident.

The teacher stated that, after her first conviction in 1995, she had worked with a Christian friend and psychologist, but had not found delving into her childhood very helpful. The teacher stated that she began seeing her treating psychiatrist sometime in 1995 because the psychologist said that her problems were beyond her expertise.

The teacher said she had been treated by her treating psychiatrist on a regular basis since then. Initially she had seen him on a weekly basis but it became a bit sporadic in 2007. She had been undergoing new treatment which hooked her up to a computer. This taught how to change the patterns of brainwaves to stop shoplifting by getting her to focus on how she felt when she was in a shop and she felt the urge to shoplift. In 2008 the teacher said she thought she had been seeing her treating psychiatrist about once every six weeks. The treatment involved talking and medication including anti-depressants.

The teacher stated that at first she thought her treating psychiatrist was “nuts” in believing that he could help her. She said that she had felt that she was a bad person and only she could stop her behaviour. She said her Christian background had made her feel she could do something about her behaviour but that this had taken the form of punishing herself. She said she had sometimes taken the saying about “if the hand offends you cut it off” a bit literally and had self harmed by cutting her wrists.

The teacher described the pattern of her shoplifting behaviour. She stated that when she was under a great deal of strain and stress she would disassociate. She would drive to a particular destination but did not know why. This disassociation also occurred in shops. She said that she could sometimes feel the behaviour coming on, sometimes not. She said she could recall some offences but not others. When police had come to her house she had receipts for some items and not others and had not been sure where the stolen objects came from. Sometimes she had taken objects she could not account for to opportunity shops or given them to people she knew could use them. She said she could

understand stealing if you wanted something, otherwise it was “nuts”. The teacher said she had always stolen from stores, never from people she worked for, and deliberately did so in front of security cameras or guards so that she would be caught. She had hoped she might be sent to prison as a sort of “time out” so that “somebody else would have to care for the kids.” She said that even though the thought of prison was distressing because she would have to explain it to her kids the thought was also appealing as it would be “a break from all the things that can go wrong.” The teacher said she had stayed in a remand centre at a police station for four days and had thought of that as a “good holiday”.

The teacher stated that she had been able to associate her behaviour with events in her life. For example, she became upset and stressed when her ex-husband came to stay because of the upsetting effect he had on the children.

The teacher stated that her treating psychiatrist had helped her learn strategies for when she felt unwanted behaviour coming on. She had started to buy food in bulk and had an agreement with a couple of shops that someone would accompany her when shopping. She said she had also thought of ways of getting a break from stressful conditions. She had used Big Brother respite facilities and for a period of time had a lady come in to help with the family. She said that since shifting to the Knox area she had felt less stressed.

The teacher explained that the charges which included an intention to steal component related to the fact that, because of her arthritic hands, she carried with her a number of small items such as scissors and a stanley knife to help her to open packaging. She said she did not know if she had used them for shoplifting. She said she had received a variety of sentences, the latest being a 120 hours Community Service Order which had involved making lunches for poor people in Dandenong and working in Wantirna TAFE sorting plants in the garden centre. The teacher said that the number of court appearances and sentences had not been sufficient to stop her shoplifting and she was afraid that she might break her suspended sentence.

Asked why she had failed to disclose her convictions for stealing when she applied for registration renewal as a teacher, the teacher said that she had misunderstood the question in the form. She thought it was asking about sexual offences. At that stage she was aware of her kleptomania. She had asked her treating psychiatrist whether her problems affected her ability to teach and he had stated that he did not believe they would do so. It was only later that she understood her convictions for stealing were relevant and she had declared them on subsequent forms.

In her concluding submission the teacher stated that she had handled stressful personal circumstances in 2008 without resorting to shoplifting. These were the deaths of three family members and a house fire. She said she would not be comfortable teaching kids if she was going to endanger their moral fibre and if she did relapse while teaching she would resign. She said she would never portray stealing as being right.

The teacher said she was not seeking to teach full time in schools. She would like to help special needs students in a paid or unpaid capacity. She said she got satisfaction from teaching children things and from seeing parents’ relief when she told them good things

about their children. She said she knows from her personal experience that parents need to feel good about their children.

The treating psychiatrist gave evidence by affirmation.

The treating psychiatrist is a qualified psychiatrist with fifteen years experience in general adult psychiatry. He stated he began treating the teacher in 1998, initially on a weekly basis. He said that for the past few years he had seen her for a few times each year and in 2008 had treated her on a monthly basis.

The treating psychiatrist stated that the teacher had a borderline personality disorder which affects women who had suffered abuse and neglect resulting in periods of depression and attempts at self harm and self mutilation as well as drug abuse. The disorder involved unstable moods and difficulties with attention and concentration. He added that there were no issues of drug abuse in the teacher's case.

The treating psychiatrist stated that the teacher had been diagnosed with attention deficit disorder prior to seeing him. There was, he added, a substantial generic component in attention deficit disorder. When treating the teacher, the treating psychiatrist stated that he had become aware that her borderline personality issues involved more than attention deficit disorder. She also suffered from kleptomania. He said that persons with kleptomania suffered from low self esteem and lack of impulse control. The trigger for kleptomania, he said, was depression and stealing "cheered up" those who suffered from it.

The treating psychiatrist said that the teacher found dealing with a large and fairly unruly family stressful and she started to steal basically to get arrested, though she had never been given a custodial sentence. There was, he said, no particular motivation for what she stole, rather it was to satisfy an impulse. He said that the teacher's behaviour was often accompanied by a loss of memory and a dissociative state akin to a feeling of being unreal.

The treating psychiatrist stated that the teacher's shoplifting behaviour had "got an awful lot better" over time as had her borderline personality issues. Ten years ago, he said, she had overdosed and been admitted to hospital several times and had frequently experienced suicidal thoughts. Over the past five years the teacher had shown gradual incremental improvement and her mood had been much more stable. The treating psychiatrist said his treatment had initially involved cognitive behaviour therapy and a lot of medication. He said that he had also used computerized bio feedback techniques which enabled patients to measure physiological variable feedbacks such as sweating and muscle tension to enable them to assert a level of control over their impulses. The treating psychiatrist said the teacher was currently on medication for her attention deficit disorder, as well as anti-psychotic and mood stabilization medications.

In response to questions from Counsel Assisting, the treating psychiatrist stated that kleptomania can prove resistant to treatment and the teacher under stress would always be prone to lapses. The impulses, he said are there, regardless of the stressors, and from time to time she could succumb to them. The treating psychiatrist said he believed that

the teacher is a lot better when she teaches, and particularly when she is teaching swimming, because teaching provides her with a focus and a structure for her day. He said it was a matter of the teacher being better when she is working, not just working when she is better. The treating psychiatrist stated that the teacher's stress had been related to problems she had with her own children and family finances, not with teaching. He said that the teacher had reported to him that she enjoyed teaching and coped with it well, and he has no reason to doubt that. He said that it was possible that her personality disorder could have some impact on students in her care but this was also the case with many teachers he had treated who suffered from depression and bi-polar disorders. He had advised such teachers to take sick leave.

DISCUSSION OF EVIDENCE

The Panel noted that the factual basis of the allegations was not contested. The Panel commended the teacher for the honesty and openness with which she spoke about the difficult and stressful circumstances of her life and her disabilities and illness. Similarly the Panel commended her for the considerable effort she has made through psychiatric counselling and medication to address the shoplifting behaviours brought about by her illness. The Panel also commended the treating psychiatrist for the professionalism of his evidence, as well as the professionalism demonstrated over a considerable number of years in assisting the teacher to understand and cope with the causes of her behaviour.

The Panel's consideration focused primarily on the degree to which it believed that the teacher's shoplifting would be likely to recur and the subsequent implications that might have for her standing as a teacher, the reputation of the profession and the public interest. The teacher made it clear that she thought stealing was wrong even if the causes of her behaviour were illness related. She also said that the stress which triggered her behaviour lay in distressing aspects of her life outside of teaching. The teacher said that she had demonstrated, especially in 2008, given the number of stressors in her life – three deaths in the family, a house fire – that she had not resorted to shoplifting to alleviate that stress. However, she also made it clear that she could not guarantee that her shoplifting would not happen again, or that any convictions and sentences would prevent her from relapsing.

The treating psychiatrist also made it clear that the teacher's shoplifting was illness related and that stresses in her life had been the catalyst for her behaviour. The teaching she had engaged in, he believed, was not one of those stressors. Rather the discipline and structure teaching offered to the teacher's daily life assisted her from reverting to shoplifting. The Panel also noted that much of the teacher's teaching in schools had been on a part time basis, and was of the view that there is a significant difference between the potential stress involved in part time work and that involved in full time employment as a teacher. The treating psychiatrist was "guardedly optimistic" about the possible recurrence of the teacher's behaviour. The Panel believed that it needed a firmer guarantee than that about any potential relapse, given the longevity of the stealing behaviour and the fact that there have been offences in recent times. It was mindful of the problems for the teacher's well being were she to engage in behaviour that would yet again bring her into contact with the criminal justice system, as well as the damage this

would do to the reputation of the profession and the public concern such behaviour might elicit.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel finds all the allegations proved on the teacher's evidence and determines, on the implications it draws from the patterns of behaviour described in them, that at the present time, the teacher is unfit to teach.

In determining that the teacher is unfit to teach 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. 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.

In reflecting on this judgment the Panel is also aware of the mitigating circumstances in the teacher's case. Her conduct was of a "continuing and persistent nature" yet the cause of such conduct can be attributed to her illness. Her behaviour involved "criminal conduct" yet the teacher herself remains severely moral about her behaviour. "Stealing is wrong." Nor is there any evidence that her "whole approach to teaching and to the children in her care is profoundly and irretrievably flawed." Indeed, the opposite is the case. The teacher's commitment to the teaching of disadvantaged children and children with special needs is both credible and admirable.

The Panel was also mindful of the ruling on conduct related to a psychiatric condition in *The Victorian Bar Incorporated v Himmelhoch* [1999] VSC 222 of the need to consider evidence as to current and past treatment, and evidence as to future psychiatric health. The treating psychiatrist and the teacher both agree that even though she has continued to receive treatment there is no guarantee that the teacher will not re-offend. It is for this reason the Panel decided that the most appropriate determination in this case is that the teacher's registration as a teacher should be cancelled.

The Panel makes clear that the cancellation of the teacher's registration does not in any way prevent her from pursuing her desire to work with disadvantaged and special needs students as a teacher's aide in schools or from teaching students to swim. In fact the Panel encourages her to seek such work in the future either in a voluntary or paid capacity.

The Panel also believes that the cancellation of registration gives the teacher a more realistic pathway back into teaching should she seek re-registration, and the Institute a more objective process for assessing her fitness to teach at that time. That process would enable the Institute to seek a second opinion, an independent psychiatric assessment at the time of the teacher's application as a complement to the treating psychiatrist's ongoing assessment. In so doing the Institute would be fulfilling its duty to consider the protection of both the public and the reputation of the profession, as well as being appropriately solicitous of the well being and livelihood of the teacher.



TERRY HAYES, CHAIRPERSON



**per:
JENNY WAJSENBERG, REGISTERED TEACHER**



**per:
ANDREA TREBLE, SPECIALIST MEMBER**