

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 080

REGISTERED TEACHER: Stephanus Petrus JANSE VAN VUUREN

PANEL MEMBERS: Terry Hayes, Chairperson
Marilyn Mooney, Registered Teacher
Graham Hault, Specialist Member

ATTENDANCE: The teacher attended the hearing and was self-represented
Gail Hubble, Counsel Assisting with Ms A Haslam and Ms K Magnussen, instructing

DATE OF HEARING: 25 November 2008 and 17 February 2009

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

On 17 February 2009 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 dated 14 November 2007, the school notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. On 9 November 2007, the teacher's employment at the school was terminated as a result of these allegations.

The matter was referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 14 May 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 decided that the matter should be referred to a formal hearing.

The Notice of Formal Hearing dated 17 October 2008 was served upon the teacher by registered post on 20 October 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

- 1.** Letter from the principal of the school to the Institute (1 page) **001**
- 2.** The teacher - Registration Details (4 pages) **002-005**
- 3.** Document entitled 'Chronology' (2 pages) **006-007**
- 4.** Letter from the principal to the Institute dated 6 December 2007 (1 page) **008**
- 5.** Record of interview between the vice principal and students dated 2 November 2007 (1 page) **009**
- 6.** Minutes of hearing re alleged gross misconduct of the teacher held in the principal's study on 9 November 2007 (4 pages) **010-013**
- 7.** The school's Human Resources Policy and Procedure (6 pages) **014-019**
- 8.** Certified Extract of Court Order, Magistrates' Court, 15 April 2008 (1 page) **020**

9. Brief Head re the teacher (2 pages) **021-022**
10. Summary of Charges, Summary of Offence (2 pages) **023-024**
11. Charge and Summons (1 page) **025**
12. Continuation of Charges (1 page) **026**
13. Notice of Formal Hearing dated 17 October 2008.

The following exhibits were accepted by the Panel:

- A. Outline of Submission of Counsel Assisting the Panel
- B. Hearing Book
- C. Character Reference: the teacher, by referee 1, dated 5 March 2008
- D. Letter from referee 2, to the Presiding Magistrate, dated 8 March 2008
- E. Psychological Assessment re the teacher by psychologist 1, a Forensic Psychologist, dated 10 April 2008

THE EVIDENCE

The allegations of serious misconduct 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 in 2007, the teacher:

1. Took photographs up the dresses of female students without them knowing.
 - (a.) On 27 February 2007, whilst on an excursion to Melbourne with year 8 geography students, he took photographs up the dresses of students, viewed them and deleted them shortly after the excursion.
 - (b.) On 29 October 2007, whilst on an excursion to the Marine Discovery Centre in Queenscliff, took photographs under tables and up the skirts of students, viewed them and deleted them shortly after the excursion.

In relation to incident (b.), the teacher pleaded guilty and was convicted of one count of 'upskirting' at the Magistrates' Court on 15 April 2008. He was placed on a community based order for 9 months. The order required him to perform 80 hours of unpaid community work over 6 months and to undergo assessment for programs to reduce re-offending.

The hearing was conducted over two days, on 25 November 2008 and 17 February 2009.

At the opening of the hearing the teacher applied for his personal details to be suppressed. His application was not to minimise his personal embarrassment, but on the grounds that his family had already suffered great humiliation during the court case and they would endure this again if his personal details were made public. The Panel considered, but denied his application on the grounds that there was public interest in maintaining an open justice system and that matters of an intimate, personal or financial nature had not been put forward in support of the application. The Panel also concluded that the teacher's name was already in the public domain through his appearance in the Magistrates' Court.

On day one the teacher gave evidence under oath.

In his opening submission the teacher admitted the allegations as set out by the Institute and acknowledged they constituted serious misconduct. The teacher told the Panel that when confronted with the allegations by the police he made full admissions as he believed it was the right thing to do, taking into consideration the ramifications for the school, the effect of his actions on the students, and to expedite proceedings. He fully cooperated with the school and the police, including confessing to a previous similar incident that the students had been unaware of. He provided his computer and camera for examination. No inappropriate material was found.

The teacher stated he gained a Bachelor of Education from Johannesburg University and taught in South Africa for two years before coming to Australia in February 1995. He taught at school 1 for ten years and school 2 for one year before taking up a position at the school where he taught geography, biblical education, computer science and junior science and history. The teacher told the Panel that he now worked in a management position for an insurance company and had been promoted during his time of employment.

The teacher said he wished to return to teaching because he believed he had the skills and calling for it. He believed he had in his teaching career impacted positively on young people's lives.

The Panel heard that on 27 February 2007, on an excursion to Melbourne with Year 8 geography students, the teacher took photos up the dresses of students.

On 29 October 2007, the teacher took a camera to the Queenscliff Marine Discovery Centre to record activities of a Year 10 geography excursion. Four classes of 20-25 male and female students attended. On this occasion he also took inappropriate 'upskirting' photos on two occasions, once at the tactile pool and the second time at the laboratory. Each time he took 2-3 photos.

The teacher said, after he had been confronted by the police, he approached his church council and admitted to the allegations to senior members and the full body of the church. He relinquished all roles within the church although he was still a church member. The teacher stated that he had also made a full confession to his family both in Australia and South Africa. He said he was careful at all times to in no way infer that the actions were the consequence of circumstances, but that he was entirely responsible.

The teacher stated that he attended the Magistrates' Court and was required to complete 80 hours of community service over a six month period which he did in an exemplary manner according to his evidence.

The teacher stated that he initially attended psychologist 1, a forensic psychologist, prior to the Magistrates' Court hearing. After the court hearing he had undertaken a treatment program with psychologist 2, where he said he was still actively addressing his problems. The Panel was told that this treatment would continue until mid January 2009 when his community based order expired. The teacher stated that he would see psychologist 2 on a periodic basis if needed and this would continue on a review basis. The Panel heard that the teacher intended to obtain a report from psychologist 2.

In response to questioning from Counsel Assisting concerning the impulses, drivers and triggers that caused the teacher to act inappropriately, he said that he was not prepared to divulge what he had discussed with psychologist 2 until he had both discussed the matter with psychologist 2 and until after he had completed his treatment.

The hearing was adjourned during the teacher's evidence when he sought and was granted an adjournment to allow further consideration by him as to professional witnesses he might call.

On the second day of the hearing the teacher told the Panel he first saw psychologist 2 in February 2008 and continued seeing him for ten sessions. He had a further two sessions in 2009 with the last session being in January. He stated that he and psychologist 2 agreed that no further sessions were required and that the teacher would now self-manage. He said that psychologist 2 made it clear that he would not attend the hearing due to patient/professional confidentiality.

In response to Counsel Assisting's questions regarding the issues covered in his treatment program, the teacher declined to elaborate, 'because this information will be public and it will hinder my progress and affect my employment prospects.' He said that he did not agree with this level of personal disclosure. The teacher told the Panel that he had identified the drivers of his condition and identified and implemented strategies that he now used in the stage of self-medication and treatment.

The teacher stated that in the context of teaching, he had suffered from the voyeurism disorder only very recently and that he had not had a pattern of voyeurism in a 15-year teaching career. He stated that he had not taken photos before or after the two incidents. He stated that while he was taking the photos he knew he was doing something wrong but he did not stop to think of the consequences. He was concerned, however, that someone would see him and so was aware of the risk. In both incidents he had immediately deleted the photos.

The teacher said he had engaged in some reflection on his behaviour at the time of the incidents but he did not immediately put any strategies into place because he believed he could control the impulses. When asked if there were any other instances of voyeurism related to incidents other than taking photographs, the teacher stated there would have been others such as 'looking at girls in ways I shouldn't.'

In response to questioning from Counsel Assisting regarding the existence of underlying impulses, the teacher stated that he could identify them and deal with them. The teacher told the Panel that strategies he used to deal with his issues included using the deterrent of public humiliation and of not putting himself into situations of temptation. Regarding the latter, he said he would avoid school camps and excursions in any future school employment and certainly make sure if he did attend them that he was not the only teacher present at events involving students. Nor would he allow himself to be placed in a situation where he was required to take photographs of students. In response to questioning from Counsel Assisting about how he might react in the context of a school sports day (such as a swimming carnival) to the presence of female students running around in sporting gear and bathing costumes The teacher replied, 'I need to see it for what it is, that is students and staff and parents engaged in a completely legitimate, everyday activity and not think of it as anything else that would put myself or others at risk.' He added that he would remind himself of his position of trust so that no one would doubt the 'purity of my motives.' Another strategy was to not just rely on his own insight and understanding but to remember 'I have a sufficient enough deterrent, i.e. public humiliation.'

The teacher stated that he would not seek employment without disclosing his history to any future employer and the steps he had taken to address his condition and that he had the 'blessing of the Victorian Institute of Teaching.' He believed he could, because of his experience, do good work in ensuring teachers and schools were able to address the kinds of problems he had to deal with. He did not, however, believe that he had to explain to colleagues his reservations about matters such as not wishing to photograph students.

The teacher stated he could very much understand why a parent committee might express reservations about him teaching their girls but he believed, because of the 'healing process' he had gone through and his Christian perspective, that he lived 'in an environment of forgiveness'. He said he was also aware that there were many instances where people, including teachers, had made mistakes in life and there was nothing he could do if people chose to treat such mistakes as a 'life sentence'.

DISCUSSION OF THE EVIDENCE

The Panel was conscious from the commencement of the hearing that it was bound by the principles of natural justice. It was satisfied that the principles had been applied throughout the preparation for the hearing, and to the fullest extent possible, given the teacher elected to represent himself throughout the hearing. The Panel was also conscious that it was not bound by the rules of evidence and was able to choose ways in which to be informed of the matters before it.

The facts in this case are not in issue. The teacher was convicted of 'upskirting' at the Magistrates' Court on 15 April 2008 and was placed on a community based order for 9 months. The offence occurred when the teacher was employed as a teacher. He admitted to taking photographs up the dresses of female students on an excursion. At the time he took the photographs the teacher, as their teacher was responsible for their care and welfare.

The Panel found that the school had handled the matter promptly, sensitively and appropriately. The school documentation was thoroughly prepared and consistent with its well developed policies and procedures.

The Panel found the teacher to be articulate, forthright, sincere, co-operative and remorseful, but also adamant in his refusal to disclose the nature of his treatment with psychologist 2. To that extent the Panel found itself in agreement with Counsel Assisting's comment that the teacher's evidence stopped short of 'full candour'.

The fact that the teacher was not prepared to discuss the details of his treatment with psychologist 2 as well as the fact that psychologist 2 was not prepared to give evidence or furnish a report, was of utmost concern to the Panel. The Panel recognised that in the teacher's case it was dealing with a psycho-sexual disorder. A professional opinion regarding the efficacy of the treatment and/or the likely recurrence of the behaviour was deemed to be crucial in determining the teacher's current fitness to teach.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel finds the teacher guilty of serious misconduct as described in *Parr v Nurses Board of Victoria* – VCAT (2 December 1998):

"It must be a departure, in a substantial manner from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure".

The Panel was of the clear view that the conduct that resulted in the offences met this description. It reflected a gross breach of trust and a failure of ethical judgment on the part of the teacher. The teacher agreed and was acutely aware of the actual and potential damage his conduct caused the students, the school and the profession. In particular he expressed insight and remorse about the fact that the students would have felt violated because of his behaviour.

The Panel also determines that the teacher is unfit to teach at the present time. In making this determination the Panel was mindful of 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):

"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".

The Panel makes clear that in determining the teacher's unfit to teach it is not seeking to punish him for his misconduct or to pass judgment on his character. The Panel was impressed by the teacher's forthrightness and remorse, and the sincerity of his conviction that he had sufficient strategies in place to ensure that he would not offend again. However, his personal conviction, given the nature of his disorder, is not a sufficient guarantee for the Panel that he will not re-offend. The Panel could not accept it would be

fulfilling its responsibilities to simply accept his assurances on this matter. Voyeurism is a serious condition for a member of the teaching profession. The Panel had no corroborated evidence regarding the efficacy of the treatment the teacher had received or the likelihood of his re-offending. In the absence of any such evidence from a person qualified to give medical or psychological evidence to that effect the Panel must express 'doubt on how The teacher would conduct himself in future in the classroom.' In stating this the Panel was aware of the ruling in *Jones v Dunkel (1959) 101 CLR 298* that the unexplained failure by a party to give evidence, to call witnesses or to tender documents or other evidence or produce particular material from an expert witness may, not must, in appropriate circumstances lead to an inference that the uncalled evidence or missing material would not have assisted the party's case. The Panel determined that the teacher's registration should be cancelled because it did not have medical or psychological evidence showing that he was fit to return to the classroom.

The teacher is able to seek re-registration with the Institute at any time in the future. The registration process will enable the Institute to assess the teacher's fitness to teach at that point in time. In doing so the Institute would be fulfilling its duty to consider both the public interest and the reputation of the profession, as well as being mindful of the well being and livelihood of the teacher.



TERRY HAYES, CHAIRPERSON



per:
MARILYN MOONEY, REGISTERED TEACHER



per:
GRAHAM HOULT, PANEL MEMBER