

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 084

REGISTERED TEACHER: Peter John MORAN

PANEL MEMBERS: Heather Schnagl, Chairperson
Kevin Moloney, Registered Teacher
Drew Hopkins, Registered Teacher

ATTENDANCE: The teacher attended the formal hearing via telephone
Ms Anne Sheehan Counsel Assisting with Ms K Magnussen instructing

DATE OF HEARING: 7 April 2009

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

On 20 May 2009 the Panel the Panel determined to suspend the registration of the teacher until 31 December 2010.

REASONS

BACKGROUND

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

On 31 July 2007 the Victorian Civil and Administrative Tribunal (VCAT) ordered that the registration of the teacher be suspended until 1 January 2008, and that he attend, at his own expense, such courses as shall be specified by the Institute regarding student discipline as a condition of this order.

On 29 August 2007 the Council of the Institute:

- approved the specified course the teacher is to undertake and satisfactorily complete (with assessment) at his own expense is the Professional Development Program conducted by La Trobe University from 15 to 19 January 2008 entitled Classroom Management and Student Responsibility
- determined that a condition be placed on the teacher's registration from 1 January 2008 that he must satisfactorily complete the specified course by 31 January 2008. The condition will be removed when the teacher provides evidence that satisfies the Institute that he has satisfactorily completed the course.

The teacher was advised of the Council's decision by letters dated 16 August, 3 & 18 September 2007.

On 14 December 2007, VCAT ordered that the teacher's oral application for orders under VCAT Act sections 124 and 119 be refused.

On 7 January 2008 the teacher advised the Institute by telephone that he was unable to attend the nominated course for medical reasons. On that date the teacher requested the nominated course be changed to the course *Classroom Management and Student Responsibility* to be conducted by La Trobe University (Albury Wodonga campus) on 7-11 July 2008.

On 14 January 2008 the Council approved the teacher's request.

On 15 January 2008 the Institute wrote to the teacher to advise that the Council had approved his request, that he was to satisfactorily complete the course before 31 July 2008 and that a condition was to be placed on his registration that he was not to undertake the duties of a teacher until he satisfactorily completed the course.

On 31 July 2008 the Institute wrote to the teacher requesting he provide evidence, in the form of the original document of assessment of his satisfactory participation in the course, a receipt showing payment for the course and an original letter from the lecturer certifying that he attended the course.

The Institute did not receive a response from the teacher. On 16 October 2008 the Institute requested that the teacher provide evidence as requested within 14 days. The Institute did not receive a response from the teacher to that request.

On 21 January 2009, the matter was referred to the Disciplinary Proceedings Committee (the Committee) pursuant to section 2.6.30(1)(c)(i) of the *Education and Training Reform Act 2006* (the ETR Act). The Committee referred the teacher's failure to comply with the condition to formal hearing.

The Committee was advised that the teacher had resigned from the Institute by form dated 12 March 2009. The Committee decided pursuant to section 2.6.47 of the ETR Act to continue with the inquiry.

A Notice of Amended Formal Hearing dated 13 March 2009 was served upon the teacher by registered post on 13 March 2009.

DOCUMENTS CONSIDERED

The Panel was provided with the following documents

- 1.** Copy of Decision the teacher v Victorian Institute of Teaching [2007] VCAT 1311.
- 2.** Copy VCAT Order in matter B58/2006 dated 14 December 2007
- 3.** Copy Extract of Minutes of Meeting of Victorian Institute of Council dated 29/08/2007.
- 4.** Copy letter to the teacher dated 16 August 2007
- 5.** Copy letter to the teacher dated 3 September 2007
- 6.** Copy letter to the teacher dated 18 September 2007
- 7.** Copy letter to the teacher dated 7 January 2008
- 8.** Copy letter to the teacher dated 15 January 2008
- 9.** Copy letter to the teacher dated 31 July 2008
- 10.** Copy letter to the teacher dated 16 October 2008
- 11.** Copy letter to the teacher dated 20 November 2008
- 12.** Amended Notice of Formal Hearing dated 13 March 2009

- 13.** Copy notice of intention to be no longer registered signed by the teacher on 12 March 2009

THE EVIDENCE

The teacher did not have legal representation and was unable to attend the hearing in person. To ensure that he received a proper hearing before the Panel and that the principles of natural justice were adhered to, arrangements were made for the teacher to address the Panel via speaker telephone. This enabled the teacher to be heard by Panel members and others present in the Hearing Room, including Counsel Assisting the Institute and any members of the public present. It also enabled questions to be directed to the teacher by Panel members, and by Counsel Assisting. Through this facility, the teacher made oral submissions to the Panel and gave affirmed evidence.

The Panel confirmed with the teacher that he had received all the documentation for the Hearing, including the Amended Notice of Formal Hearing and the hearing book. Counsel Assisting for the Institute then outlined the chronology of events and the facts associated with the case leading up to this Hearing as documented in the hearing book. This was not disputed by the teacher.

Before the teacher gave evidence, he made an oral submission to the Panel with regard to why he had not attended the course nominated by the Institute as a condition of his registration. The teacher's submissions will be summarised here, as they formed the background to his evidence, and that evidence can be understood more thoroughly when seen in the context of the submissions which preceded it.

The teacher submitted that the question as to what a teacher should do when confronted with brawling students was the crucial issue which should be addressed by any course he was required to attend. He submitted that the course nominated by the Institute Council was on classroom management, and did not deal with student brawls. He submitted that the course was a waste of time since it costs a lot of money, and had nothing to do with the issue of what a teacher is to do when confronted with brawling students, especially a teacher on yard duty by himself, as he had been on the occasion of the incident which led to the original hearing of this matter.

Under affirmation the teacher admitted that he had not attended the course nominated by the Institute Council as a condition of his being registered as a teacher. He said the reason he had not attended this course was that it was not an appropriate course, and that if the Institute had chosen an appropriate course he would have attended it. He said he was willing to attend a course on how a teacher breaks up a brawl, and that the Institute's decision to send him on a course on classroom management sidestepped this issue.

The teacher was cross-examined by Counsel Assisting and in response to her questions, he agreed with the following points:

- That he was present at a hearing at VCAT on 14 December 2007

- At that hearing an argument was put to VCAT by the teacher's Counsel that the teacher did not agree with the course that had been nominated by the Institute
- That this application was refused by VCAT
- That he had been aware since that date that it was the decision of the Institute Council that he attend the course (and this had been confirmed by VCAT)
- That he was aware that the original date of the course had been changed at his request.

In response to a question from the Panel regarding whether he had no intention of attending that course or a similar course, the teacher replied that his intention would have been to attend a course that would give him skills in how to break up a brawl by students, but not the classroom management course as specified by the Institute Council.

In response to further questions from the Panel the teacher confirmed that he had not taught since 25 August 2003 and had not undertaken any professional development activities since then. When asked why he had undertaken no professional learning in that five and a half year period, the teacher stated that if he had been instructed to do a course on how to break up a brawl, he would have done further courses of professional development. He indicated that there was no point in doing other professional development courses if he could not retain his teacher registration because he had failed to do the course nominated by the Institute Council.

It was put to the teacher by the Panel that, in VCAT's original decision of 31 July 2007, the issue of concern was not his response to the student brawl, but rather his failure to provide assistance to the injured student after the brawl. In his answer to this, the teacher indicated that he did not agree with VCAT's original finding in regard to the assistance he had offered.

DISCUSSION OF THE EVIDENCE

The facts which were contained in evidence presented to the Panel are not in dispute. The teacher admitted that he had not attended the course nominated by the Institute Council pursuant to VCAT's order of 31 July 2007. He indicated unequivocally to the Panel that he had no intention of undertaking that nominated course as he regarded it as an inappropriate course. Accordingly, it is clear to the Panel that the teacher has failed to comply with a condition which had been imposed on his registration pursuant to s. 2.6.9(3) of the ETR Act.

It was not the role of this Panel to consider the appropriateness of the course which the Institute Council had nominated as one the teacher should attend to satisfy the condition imposed on his registration by the VCAT decision of 31 July 2007. The teacher made an oral application to VCAT on 14 December 2007 and, through his counsel, put an argument to VCAT that he did not agree with the course that had been nominated by the Institute Council. That application was refused by VCAT. This Panel is therefore bound by the decision of VCAT with regard to the appropriateness of the course. However, despite this, the Panel considers that the teacher, in arguing that the only course which would be appropriate for him to undertake is one which deals with breaking up student brawls, is

actually not addressing the substance of VCAT's finding with regard to his competence as a teacher.

Accordingly, the Panel considers that it is appropriate in this finding to include a consideration of the original VCAT decision of 31 July 2007. VCAT made it clear that it did not regard the teacher's conduct as being incompetent because he did not intervene physically to break up a student fight. At paragraph 88 of the decision the Tribunal states:

... we do not consider that the teacher's failure to physically intervene to break up the fight once it started can be characterised as incompetence, much less serious incompetence. We would expect that it would only be in the rarest situations that failure to physically intervene, once a fight between teenagers had commenced, could be characterised as incompetence, let alone serious incompetence. In this case, the physical fight lasted 30 seconds. We are not prepared to characterise failure to intervene for 30 seconds in a fight involving up to eight mature teenage girls, surrounded by a crowd of up to fifty students, serious incompetence.

VCAT's decision that the teacher's actions amounted to serious incompetence were based on his behaviour after the fight had finished. This is indicated in Paragraphs 93-94 of the decision:

93. We waited with growing dismay whilst viewing the seven full minutes of video after the incident to see the teacher come into view to ascertain the extent of the pupil's injury. He did not come into view at all. He could not possibly have assessed the extent of the pupil's injury from the position in which he said he stood. Luckily, although there was evidence her head had been forced against an iron railing, she does not appear to have suffered significant injuries. It was only that luck which prevented this incident from assuming catastrophic proportions.

94. We find that his failure to investigate B's injuries and make sure she received adequate medical attention was an action of serious incompetence and demonstrates his present serious incompetence as a teacher.

Later in the judgement, at paragraph 112, VCAT stated:

We have noted with some dismay that the Applicant has not taken the opportunity over the last few years to attend any courses on classroom discipline or behaviour. It may be that the grave illness and death of his partner during this period has prevented this. We accept that he would have been hesitant to have spent money on courses before he knew his fate. However, we would generally take into account completion of such courses as showing a genuine desire to improve and to understand standards of teaching practice.

These statements indicate that VCAT was concerned with improvement in the teacher's standards of teaching practice with particular focus on classroom discipline or behaviour, rather than developing skills in stopping brawls, when it ordered that the teacher attend courses in student discipline as a condition of his re-registration.

The Institute Council's decision to require the teacher to attend the particular course as a condition of his registration was required by VCAT's decision of 31 July 2007. In making its determination regarding the teacher's failure to comply with this condition, the Panel was required to consider whether this condition which was imposed on the teacher's registration was unduly onerous. Given the serious nature of his initial serious incompetence, the Panel found that the condition imposed was not onerous and could reasonably be achieved in the time frame given, but rather appropriate to enable the community to regain trust in the teacher's ability to undertake the duties of a teacher, especially his duty of care to students.

In addition, the Panel was required to consider whether the teacher's failure to comply with the conditions was due to an acceptable reason, and whether the failure was inadvertent or deliberate. The Panel finds that the teacher had no intention of complying with the condition. The Panel agreed with the suggestion of Counsel Assisting that there was no reasonable likelihood of the teacher complying with this condition in the foreseeable future and hence they were not prepared to reimpose the original conditions as had occurred in an earlier case of *Victorian Institute of Teaching v Atkin* (Decision No 45).

The Panel was also required to consider whether the teacher had understood the condition imposed. Given that he unsuccessfully challenged this condition in VCAT on 14 December 2007, there can be no doubt that he fully understood the requirements of this condition.

The seriousness of a professional person ignoring the conditions imposed by a registration body was discussed in the following two cases.

In *Coroneos v Medical Board of Qld* [2003] QCA 269 Davies and Williams JJA and Atkinson J referring to the tribunal decision noted:

In the reasons for judgment the provisions of [s 123](#) of the [Act](#) were cited as indicating the "purpose of the disciplinary proceedings". The purposes set out in that section of the [Act](#) are to protect the public, to uphold standards of practice within health professions, and to maintain public confidence in health professions. In dealing with the breaches of the conditions found the Tribunal said: "If medical practitioners are allowed to ignore conditions imposed by the very tribunal set up to discipline registrants then it will be impossible for the Medical Board or any Board of a like nature to uphold standards of practice within the profession". Given that such matters were expressly dealt with in the reasons it cannot be said that the Tribunal erred in law in that it failed to take into account the purpose for which the conditions were imposed.

Similar purposes are provided in the ETR Act and thus in a similar vein if the Victorian Institute of Teaching permitted teachers to ignore conditions imposed by its disciplinary procedures on registered teachers, it too would find it difficult to uphold the standards of professional practice and risk losing the public trust in the teaching profession.

In *Prakash v Health Care Complaints Commission* [2006] NSWCA 153 Santow JA at paragraph 45 refers to a statement adopted by the tribunal from a decision of a Medical

Tribunal in Re Dr Than Le (Medical Tribunal decision, 20 September 2001 at 46 para 95). The Tribunal stated that

Particularly when imposed in a disciplinary context, such restrictions are not lightly imposed nor may they be treated lightly. Any practitioner whose registration is subject to conditions could not reasonably hold any view of those conditions other than they must be scrupulously observed

Consequently the Panel is required to consider a breach of the conditions imposed on a teacher's registration in the most serious light.

A very concerning aspect of this case is the teacher's repeated insistence that he would not undertake the course nominated by the Institute Council because the course was not dedicated to developing teacher's skills in breaking up brawls. The teacher's focus on this issue indicates that he has not acknowledged that the basis of VCAT's initial decision of 31 July 2007 was his apparent lack of concern for a potentially seriously injured student, rather than his skill in dealing with brawls. This inability to acknowledge how he failed in his responsibilities to that student suggests to the Panel that the teacher is not yet ready to accept again the professional responsibilities of a teacher.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel found that the teacher had not complied with nor did it appear that he was likely to comply with the condition imposed on his registration by the VCAT decision of 31 July 2007 and specified by the Institute Council on 29 August 2007. By intentionally failing to comply with his condition of registration, the Panel finds that the teacher has engaged in serious misconduct.

If the teacher was currently registered with the Institute, the Panel would have imposed a period of suspension on his registration until 31 December 2010 and reimposed the original condition, satisfactory completion of the course specified by the Institute Council, also to be completed by this date.

As the teacher is currently not registered as a teacher with the Institute the Panel determined to suspend the teacher's registration until 31 December 2010. The effect of this decision is that should the teacher wish to resume his teaching career, he is not eligible to re-apply for registration as a teacher prior to 31 December 2010. This Hearing Panel agreed with the findings of VCAT that if the teacher wished to return to teaching that he should undertake professional learning with a particular focus on classroom management, student discipline and welfare to enable him to demonstrate that he fully comprehends the responsibilities of a teacher, with specific reference to student management and welfare. Given that the Panel is not able to impose conditions where a teacher is no longer registered, it is strongly suggested to the teacher that, prior to making any reapplication for registration as a teacher, that he needs to demonstrate that he has addressed these concerns.

Heather Schnagl.

HEATHER SCHNAGL, CHAIRPERSON

Heather Schnagl.

**per:
KEVIN MOLONEY, REGISTERED TEACHER**

Heather Schnagl.

**per:
DREW HOPKINS, PANEL MEMBER**