

## **VICTORIAN INSTITUTE OF TEACHING**

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 088

**REGISTERED TEACHER:** Anthony Gerard CRAWLEY

**PANEL MEMBERS:** Kevin Moloney, Chairperson  
Terry Hayes, Registered Teacher  
Anne Farrelly, Registered Teacher

**ATTENDANCE:** The teacher attended the hearing and was self-represented  
Ms Anne Sheehan Counsel Assisting with Ms C Sherman  
instructing

**DATE OF HEARING:** 9 June 2009

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

On 17 June 2009 the Panel decided to cancel the registration of the teacher.

## REASONS

### BACKGROUND

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

On 15 June 2007, the teacher consented to a National Criminal History Record Check being conducted through CrimTrac, an agency of the Australian Police Services. On 3 October 2007, 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 17 October 2007 and the Committee referred the matter to an investigation.

The Institute conducted an inquiry to assess whether the teacher was fit to teach and on 14 May 2008, the Committee decided that a formal hearing be held into the possible lack of fitness to teach of the teacher.

The Notice of Formal Hearing dated 31 July 2008 set out the following allegations:

1. Whilst registered as a teacher in Victoria, the teacher:
  - (a) Appeared in the Magistrates' Court 1 on 13 July 1978 charged with one count of the indictable offence of 'possess Indian Hemp'. The matter was adjourned to 12 April 1979 on a \$100 Good Behaviour Bond.
  - (b) Appeared in Magistrates' Court 2 on 26 September 2003 charged with one count each of the indictable offences of 'possess ecstasy', 'possess amphetamine' and 'possess cannabis'. The matters were adjourned to 24 September 2004 without conviction.
  - (c) Appeared in Magistrates' Court 2 on 31 March 2005 charged with one count of the indictable offence of 'possess cannabis'. The teacher was convicted and fined an aggregate of \$350. A forfeiture order was made by consent.
  - (d) Appeared in Magistrates' Court 3 on 2 June 2005 charged with one count of the indictable offence of 'possess cannabis'. The teacher was convicted and fined an aggregate of \$400. A forfeiture order was made by consent.
  - (e) Appeared in Magistrates' Court 2 on 28 November 2006 charged with one count each of the indictable offences of 'possess methylamphetamine' and 'possess cannabis'. The teacher was convicted, fined an aggregate of \$750 and ordered to pay \$59.80 statutory costs. A forfeiture order was made by consent.

After considering the evidence at a Formal Hearing on 9 September 2008, a differently constituted Panel concluded that the allegations were substantiated and determined that the teacher was unfit to teach.

On 9 September 2008, the Panel determined under section 2.6.46 of the *Education and Training Reform Act 2006* to impose the following conditions on the teacher's registration as a teacher:

1. That the teacher obtain treatment on a regular basis from a counsellor of his choice for counselling in relation to depression and alcohol and substance dependence for a period of at least 18 months from the date of this decision.
2. That the teacher provide to the Panel three detailed reports from his counsellor by:  
1<sup>st</sup> report: 31 March 2009  
2<sup>nd</sup> report: 30 September 2009  
3<sup>rd</sup> report: 31 March 2010
3. Each report must address the following matters:
  - the dates the teacher has attended for treatment;
  - his understanding of personal and social behaviour that could compromise the professional standing of a teacher, and the profession of teaching
  - his familiarity with and understanding of the Victorian Institute Code of Ethics and the Code of Conduct
  - his ability to recognise and deal appropriately with personal stressors; and
  - his development of a repertoire of positive strategies to respond to stressful situations.

The Panel requires a detailed paragraph on each of the dot points identified above and comment on the teacher's progress and his development of personal insight on each of the 4 points. Comment also is required on the likelihood of the teacher re-offending. Such reports must be to the Panel's satisfaction for the conditions to be deemed to be complied with.

4. That the teacher is responsible for the cost of attending treatment and the cost of supplying the reports.
5. That the teacher is to arrange for a registered teacher (either primary or secondary) of at least 5 years experience to act as his professional mentor over the 18 month period. The mentor will through peer support and collegial advice assist the teacher with his professional practice including classroom management strategies and engagement of students.
6. That by 30 September 2009 the teacher is to provide to the Panel a report from his mentor that will attest to the teacher's use of a range of classroom strategies and appropriate curriculum development and delivery.

The teacher was advised by letter dated 25 March 2009 that the Institute had not yet received the first report from a counsellor of his choice, as required by condition (2). The

teacher was reminded that a failure to comply with the conditions on his registration would constitute a failure to comply with the Panel's determination.

By letter dated 8 April 2009, the Institute advised the teacher that he not complied with the conditions imposed on his registration and confirmed that the matter would be referred to the Committee on 22 April 2009.

The teacher provided a response by letter dated 10 April 2009, outlining the circumstances surrounding his failure to comply with condition (2).

According to section 2.6.53(3) of the Act, a registered teacher who does not comply with a determination under section 2.6.46 is guilty of serious misconduct. The matter was referred back to the Committee on 22 April 2009 and the Committee decided to refer to a formal hearing the issue of whether the teacher had complied with the conditions placed on his registration.

A Notice of Formal Hearing dated 6 May 2009 was served upon the teacher by registered post on 7 May 2009.

## **DOCUMENTS CONSIDERED**

The Panel was provided with the following documentary evidence:

- Copy of Decision Number 070 of 9 September 2008 (8 pages) **001 - 008**
- Copy letter to the teacher, dated 10 October 2008 (1 page) **009**
- Copy letter to the teacher, dated 25 March 2009 (2 pages) **010 - 011**
- Copy letter to the teacher, dated 8 April 2009 (2 pages) **012 - 013**
- Copy letter from the teacher, dated 10 April 2009 (1 page) **014**

The following exhibits were accepted by the Panel:

- A.** Letter – Victorian Institute of Teaching to the teacher – sent on 28 June 2007 enclosing brochure entitled 'Renewal of Registration'.
- B.** Letter – Victorian Institute of Teaching to the teacher – sent on 24 August 2007 enclosing Renewal of Registration Application form.
- C.** The teacher Renewal of Registration Form dated 12 February 2009.
- D.** Letter – Victorian Institute of Teaching to the teacher – sent on 26 March 2009 enclosing leaflet entitled 'Returning to Teaching from Non-Practising Registration Notification Form'.
- E.** Information from Victorian Institute of Teaching website entitled 'Professional Learning'.

## **THE EVIDENCE**

The teacher did not have legal representation. The Panel and Counsel Assisting provided guidance as appropriate to ensure that the principles of natural justice were adhered to. The Panel confirmed with the teacher that he had received all the documentation associated with the hearing. Counsel Assisting outlined the chronology of events, the facts associated with the case and submitted exhibits A to E as listed above. These were not disputed by the teacher.

The teacher submitted evidence under oath. The teacher claimed that he was unable to obtain a Mental Health Plan from his treating general practitioner in order to obtain a Medicare rebate for counselling from a psychologist, thereby being unable to satisfy condition 2 of the original determination. The teacher claimed that his treating doctor believed his depression was reactive and that his doctor was of the opinion that he, the teacher, no longer needed counselling. The teacher claimed that since he was registered as non-practising, he believed that he was not able to teach and therefore he could not afford the counselling without the necessary referral from his doctor.

The teacher was cross-examined by Counsel Assisting. The Panel and the teacher were reminded of evidence submitted at the original hearing regarding the willingness of the teacher's counsellor to continue assisting his client in a post support program for up to six months in order to re-enter the profession, indicating that he felt the teacher, at that time, was able to make good decisions. When questioned about what had happened since that time, the teacher admitted he had chosen not to seek support. The teacher told the panel that he had a stable lifestyle, that he agreed with his doctor that he did not need counselling, that he did not need a case worker and that his depression was mainly a function of his marriage breakdown.

Counsel Assisting enquired as to the grounds upon which the teacher continued to receive a disability pension from Centrelink. The teacher admitted that diagnosed depression and stress were the grounds for receiving it and he claimed that he was waiting for notification of a review. The teacher asserted that he had to rely on the pension as employment prospects as a teacher had diminished.

The teacher was asked what he had done since the last hearing. The Panel heard that it was mostly casual gardening and casual relief teaching (CRT) towards the end of 2008. When questioned as to why the CRT work has not continued, the teacher was of the belief that his non-practising registration status prevented him from being employed as a teacher and after it was pointed out that re-entry was relatively straightforward, he claimed that he did not know how to re-enter the profession. Counsel Assisting directly put to the teacher that he had done nothing since September 2008 and the teacher answered in the affirmative.

To establish reasons for the lack of progress in relation to the original conditions on his registration, the teacher was asked about the circumstances surrounding his treating doctor and the teacher's claims that the doctor did not feel that the teacher needed continuing counselling and therefore did not provide a Mental Health Plan for the required counselling. Counsel Assisting enquired as to why the teacher did not seek some

evidence from the doctor to present at this hearing to substantiate the teacher's claims and also as to whether the teacher had presented the original decision to the doctor, with Counsel Assisting pointing out that it was difficult for a doctor to make an assessment without having read the decision. The teacher was unable to provide a direct answer. When pressed about seeking any assistance from another doctor or even from the case work counsellor who gave evidence at the first hearing, the teacher admitted that he had not sought any such assistance.

Counsel Assisting sought clarification about the teacher's understanding of Condition 3; firstly enquiring as to whether the teacher had read and understood the Victorian Institute of Teaching's Code of Ethics and Code of Conduct. The Panel heard that the teacher claimed to have read it from the website and had understood that it required teachers not to bring the profession into disrepute but the teacher did not elaborate. In exploring Condition 3 further, the teacher was asked about what had been done to develop strategies to recognise and deal with stressors. The teacher claimed that he had developed strategies but his response was brief and lacking specificity.

It was put to the teacher that complying with the conditions was not onerous and he was asked what he saw as the impediment, given that all he needed to do was to fill in a form to move from non-practising to practising. The teacher maintained the belief that he was waiting for the Institute to initiate the action.

In relation to Condition 5, the teacher was asked if he was able to establish a mentor relationship given that during the original hearing the teacher stated that he was able to talk to colleagues who understood his situation. The teacher claimed that the teachers he knows have either retired or moved on and that given his inability to find CRT work he felt unable to establish a mentoring relationship. Counsel Assisting put to the teacher that he could have in fact complied with all of the conditions. The teacher disagreed particularly in regard to the counselling. The Panel sought clarification as to whether the teacher was of the belief that he had to comply before being able to teach. The teacher admitted there was a degree of confusion on his behalf and he claimed that this was his belief and that he felt in a bind having to comply with the conditions before he could teach yet he thought he had to do some teaching in order to be able to fulfil the conditions, both in relation to being able to afford the counselling and in relation to establishing the necessary relationships. Counsel Assisting pointed out that his registration had not been cancelled or suspended and that the teacher could have complied with the conditions and submitted that, in short, the teacher had done nothing. The teacher asserted that his presence at this hearing demonstrated a willingness to comply. Counsel Assisting further put to the teacher that there was no report from his doctor and there was no evidence of any active steps being taken and then enquired if the teacher fully understood the notice of the formal hearing and the possibility of being found guilty of serious misconduct. The teacher conceded to not being proactive but asserted his letter to the Institute of 8 April 2009 was further evidence of an intention to comply and that he had not intended to not comply. The Chair clarified that this letter had only been written after the Institute had written to the teacher twice, immediately before and the after the first deadline of 31 March 2009 reminding the teacher of his obligations.

The Panel also put to the teacher that he could have complied with the conditions and the teacher conceded that he could if he had to. Clarification was then sought as to what the teacher meant by this and the Panel heard that he would comply only if he had to but he still maintained that he was able to cope without all of the remedies and assistance that the conditions were designed to achieve.

## **DISCUSSION OF THE EVIDENCE**

The fact that the teacher has not complied with any of the conditions is not in dispute. It is not the role of this Panel to consider the appropriateness of the conditions imposed in the original decision; however, given the evidence presented at this hearing the Panel affirms the intention of the conditions imposed there and commends the wisdom of the choice of conditions.

The contradictions between the evidence presented in the original hearing and in this hearing are of concern. In the original hearing the teacher admitted that he had problems with drug abuse and depression, that there was a cohort of colleagues to turn to for support and that the counselling provided by the case worker was able to be extended. In this hearing the teacher made statements which indicated that he felt that he no longer had a problem even though he was still in receipt of a disability pension on the premise that he suffers from stress and depression, that he no longer needed counselling or treatment, that the support from colleagues could not be sought and that the services of the case worker were no longer needed. There was an assurance in the earlier hearing that the teacher intended to get his act together and get back into teaching. There was no evidence presented at this hearing to support that intention. It also appears incongruous to continue to receive a Centrelink pension for depression and stress when the recipient claims that there is no longer a problem.

The evidence presented by the teacher in claiming that the treating general practitioner was unwilling to complete a Mental Health Plan for counselling was unsatisfactory, particularly as it was not substantiated by any documentary evidence or statement from the doctor. The Panel found it incredulous that a doctor, when presented with the facts and the written decision of the original hearing, would be unwilling complete a Mental Health Plan for counselling. That there were inconsistencies in the evidence provided by the teacher in relation to this matter, casts doubt on the Panel's ability to rely on this evidence.

In relation to the conditions set, there has been no evidence of reflection by the teacher on the Institute's Code of Ethics and Code of Conduct or his past convictions. In the statements and evidence presented, the ability to recognise and to deal with personal stressors has essentially been dismissed as not necessary by the teacher, which affirms the wisdom of the original Panel in imposing the conditions that it did. The only condition where the teacher perhaps could argue some difficulty in complying is in developing an on-going mentor relationship given that he has not been teaching; however, a mentor does not necessarily have to be a current work colleague. Also, the teacher's registration status of non-practising did not preclude him from moving to practising at any time.

The Panel was required to determine whether the failure to comply with the conditions was able to be reasonably explained, whether the teacher understood the conditions and whether the failure was deliberate or inadvertent. The Panel agreed with the submission of Counsel Assisting that the teacher had no intention of complying with the conditions. The fact that the teacher wrote to the Institute after the first deadline outlining his reasons for failing to comply is evidence that he understood the conditions. The extent of the inaction on the teacher's part and the unsatisfactory nature of the reasons presented indicate that the failure to comply was deliberate and not able to be explained away.

It is disappointing that the original conditions imposed were designed to assist the teacher to re-enter the profession and that statements by the teacher indicated that he was dismissive of a process set up both to help him and to assure the public that there were structures in place to deal with personal stressors. The Panel agrees with the submission by Counsel Assisting that the teacher's conduct indicated an attempt by the teacher to shift the blame for non-compliance to the doctor for not providing the Mental Health Plan and to the Institute for not resolving his situation for him. The teacher claimed to want to get off the disability pension and back into teaching but has not taken any action to do so. The hallmark of a professional is to accept personal responsibility and to actively maintain standards. The Panel is not satisfied that this teacher has done either.

Ignoring conditions imposed by a registration authority is serious. If the Victorian Institute of Teaching did not act to enforce the conditions it imposes then it would risk losing the trust of the public for whom the Institute is set up to protect and it would have difficulty upholding standards.

### **FINDINGS UNDER SECTION 2.6.46(1) AND OF THE ACT**

The teacher has not complied with the conditions imposed under Section 2.6.46 (2) of the Act by the decision of 9 September 2008 and has not demonstrated any intention of complying with those conditions in the time since the decision was handed down. Under Section 2.6.53 (3) "*A registered teacher who does not comply with a determination under 2.6.46 is guilty of serious misconduct.*" The Panel has no option but to find the teacher guilty of serious misconduct.

The Panel believes that the teacher has been given an opportunity to comply with the conditions set down in the original decision of 9 September 2008 but has failed to comply with any of them and the evidence demonstrates that this was not inadvertent. The Panel has determined that the teacher's registration should be cancelled. The teacher has shown unwillingness to comply with conditions placed on his registration and to place further conditions on his registration would be ineffective. If the Panel suspended the teacher's registration the teacher would be able to return to teaching at the end of the suspension period without proving to the Institute that he was fit to teach. 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 readiness to re-enter the profession at that point in time.

*Kevin Moloney*

**KEVIN MOLONEY, CHAIRPERSON**

*Kevin Moloney*

**per:  
TERRY HAYES, REGISTERED TEACHER**

*Kevin Moloney*

**per:  
ANNE FARRELLY, PANEL MEMBER**