

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 095

REGISTERED TEACHER: Steven James NEVILLE

PANEL MEMBERS: Susan Halliday, Chairperson
Michael Butler, Registered Teacher
Anne Sarros, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Ms A Sheehan, Counsel Assisting with Ms K Galanos,
instructing

DATE OF HEARING: 16 December 2009

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

On 16 December 2009 the registration of the teacher was cancelled with effect from 16 December 2009.

REASONS

BACKGROUND

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

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

The Institute conducted an inquiry to assess whether the teacher was guilty of serious misconduct and/or was not fit to teach.

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

The Formal Hearing commenced on 5 May 2008 and was adjourned.

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

The details of the teacher's criminal history were referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 25 June 2008 and the Committee decided that these two offences should be added to the allegations in the Notice of Formal Hearing.

An amended Notice of Formal Hearing dated 15 July 2008 was served upon the teacher by registered post on 18 July 2008.

The Panel reconvened for the second day of the Formal Hearing on 14 August 2008.

On 14 August 2008 the Panel determined that the teacher was guilty of serious misconduct and not fit to teach. On 14 August 2008, the Panel determined under section 2.6.46(2) of the *Education and Training Reform Act* to suspend the teacher's registration from 14 August 2008 until at least 31 December 2008 and impose the following conditions:

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

understanding of his obligations as a teacher in relation to the management of school resources and the legal obligations of a teacher.

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

The lifting of the suspension was dependent upon the Panel's decision that each of its conditions had been met.

By letter dated 16 September 2008, the teacher was provided with a copy of the Panel's decision and reasons.

On 7 January 2009 the Panel determined that the teacher had complied with condition A and condition B by way of supplying the Institute with correspondence on 20 October 2008 and 18 December 2008.

On 7 January 2009 the Panel determined that the teacher had not complied with condition C and this matter was referred to the Committee to decide whether section 2.6.53(3) of the Act applied. On 16 September 2009 the Committee determined that this matter should be referred to a Formal Hearing.

As at 28 October 2009, the date of the Notice of Formal Hearing, the teacher had still not complied with condition C. The Notice of Formal Hearing dated 28 October 2009 was served upon the teacher by registered post on 5 November 2009.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 28 October 2009
2. Decision No. 064 dated 14 August 2008 (00001 – 000012)
3. Various copy correspondence and file notes from the Institute (000013 – 000035)

The following exhibits were accepted by the Panel:

- A. Registered Post Delivery Confirmation Advice Receipt
Date Stamped: 5 November 2009

THE EVIDENCE

The teacher did not attend the Formal Hearing on 16 December 2009, nor did he forward any written contribution for the Hearing Panel's consideration.

The teacher had been subject to a Formal Hearing commencing on 5 May 2008 and concluding on 14 August 2008. Found guilty of serious misconduct and not fit to teach the Hearing Panel suspended the teacher's registration from 14 August 2008 until at least 31 December 2008. The Hearing Panel was clear in its determination that the conditions it had set down would need to be met in full in order for the teacher's suspension to be lifted.

The Panel noted that Institute staff had attempted on several occasions to make contact with the teacher to no avail; however the teacher did collect and sign for his registered post in which the Notice of Formal Hearing dated 28 October 2009 was enclosed.

Documents showing the signature of the teacher were used to make a comparison with the signature on the Registered Post Delivery Confirmation Advice Receipt of 5 November 2009. The Panel was of the view that the signatures were the same, and that the teacher had collected and signed for his registered mail containing the Notice of Formal Hearing dated 28 October 2009.

The Panel was of the view that the Notice of Formal Hearing had been served and that the teacher had had sufficient time to respond to the Notice of Formal Hearing. The Panel considered that the principles of natural justice had been fully adhered to by the Institute in relation to the preparation and presentation of the matter.

The evidence shows that the original Hearing Panel determined on 7 January 2009 that the teacher had complied with conditions A and B, but had failed to comply with condition C, and hence could not comply with condition D.

The evidence showed that Institute staff had attempted to engage repeatedly with the teacher in order to encourage and support his compliance with condition C. The Panel noted that condition C required that the teacher provide a schedule of the dates and monetary amounts that would facilitate his repayment of monies owed, to comply with the Compensation Order ordered by the Court.

In evidence presented by Counsel Assisting it was stated that at his original Formal Hearing the teacher indicated that he would comply with all conditions, and specifically that he would pay for the goods he had stolen. Indeed it was shown in evidence that the teacher did start to pay the compensation monies on 13 October 2008, making two payments of \$50. This was managed with the financial assistance of the teacher's father.

However, with no evidence of any further payments, condition C was not fully adhered to, and hence not fulfilled. There was evidence before the Panel that showed that Institute staff embarked on a series of attempts to contact the teacher in order to progress his adherence to condition C. These approaches were aimed at encouraging the teacher to

meet condition C via the provision of a schedule of compensation payments, to which he would adhere.

The evidence showed that contact attempted by the Institute included letters and phone calls to the teacher's landline and mobile phone numbers. The phone numbers have either been disconnected or did not have the capacity for a message to be left. On 1 and 12 May 2009 letters were sent from the Institute requesting that the teacher comply with the condition C and provide a schedule of payments.

On 22 April 2009, a telephone communication was requested by the Committee, between the teacher and Mr Kevin Moloney (Victorian Institute of Teaching Council Member) to emphasise the importance of complying with all conditions set down by the Panel. This telephone contact occurred on 12 May 2009. It was the last communication the Institute was able to have with the teacher.

In a further attempt to help the teacher meet condition C, on 20 May 2009, a template of a payment schedule that could be filled in by the teacher was sent to him. The teacher did not respond nor utilise the template in order to repay monies, and fulfil the Compensation Order.

DISCUSSION OF THE EVIDENCE

The Panel noted that there were a number of crucial issues in the given circumstances. In particular, the protection of the public and the reputation of the teaching profession were key and directly linked to what had transpired. Further the Panel noted that to have a teacher steal from a school, be convicted of an indictable offence, and then fail to comply with a condition set by a Hearing Panel that he was to comply with a Court ordered Compensation Order that would ensure payment of monies for goods stolen, was very serious.

The teacher's silence was of concern to the Panel as the Panel was unable to consider any points of view or explanation from the teacher. However the Panel was of the view that the teacher was aware that a second Formal Hearing was to take place, and that he had the opportunity to attend the Formal Hearing, but did not.

Mindful that condition C must be met in order that the original suspension be lifted, the fact that condition C had not been met largely dictated the way forward for the Panel. The Panel also noted that under section 2.6.53(3) a teacher who does not comply with set conditions is guilty of serious misconduct.

In past Victorian Institute of Teaching Formal Hearing matters, namely that of *Peter Moran* [2009] VIT 84, *Benjamin Toy* [2009] VIT 85 and *Anthony Crawley* [2009] VIT 88, it is clear that there is a consistent and expected position that conditions as set down by Hearing Panels need to be complied with, and further that it is not acceptable or reasonable to only comply with some of the conditions set down.

In deciding that the teacher's registration should be cancelled due to serious misconduct, the Panel had regard to *Prakash v Health Care Complaints Commission* [2006] NSWCA 153 and *Coroneos v Medical Board of Qld* [2003] QCA 269. These cases confirmed that contravention of a condition is a serious matter, and that conditions must be scrupulously observed. Additionally these cases highlighted the importance of the public interest and maintenance of public confidence as paramount in relation to the standing of persons recognised and registered as discipline based professionals. Further the importance of complying with all conditions was emphasised in *Coroneos* and the case law confirmed that it is not acceptable to have limited or selective compliance with a clearly stated set of conditions.

The Panel was particularly mindful of the seriousness of the conditions set as a result of the teacher's original Formal Hearing, and was also of the firm view that there was a necessity to comply with all of the conditions set by the original Panel, prior to the lifting of his suspension. The teacher had failed to do so, despite repeated requests and generous levels of support and encouragement from Institute staff.

The Panel after thorough consideration determined that placing any further conditions on the teacher would be meaningless. The Panel also considered the option of a period of further suspension of registration; however given the inability to contact the teacher, and the teacher's silence, the Panel viewed the option as unworkable and futile.

The teacher's registration has been cancelled. The teacher can of course apply to be re-registered in the future with either the Victorian Institute of Teaching or within another Australian state/territory or New Zealand teaching jurisdiction. The Panel is of the absolute view that if the teacher wishes to return to the teaching profession, that his re-entry should be conditional, and that he should be required to evidence that he has in fact paid to the school in question the monies owed for the goods that he stole, in turn meeting the original Compensation Order. While the Panel acknowledges that it has no power to enforce this, it is adamant that if the teacher to again be considered a credible professional, worthy of the respect and trust of the broader community and peers, that he should endeavour to do so as a minimum step forward.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

On 16 December 2009, the Panel cancelled the registration of the teacher.



SUSAN HALLIDAY, CHAIRPERSON

A handwritten signature in cursive script that reads "Susan Halliday".

per:
MICHAEL BUTLER, REGISTERED TEACHER

A handwritten signature in cursive script that reads "Susan Halliday".

per:
ANNE SARROS, REGISTERED TEACHER