

## **VICTORIAN INSTITUTE OF TEACHING**

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 093

**REGISTERED TEACHER:** Carmelo TARASCIO

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Kevin Pope, Registered Teacher  
Marino D'Ortenzio, Registered Teacher

**ATTENDANCE:** The teacher attended the Formal Hearing and was self-represented  
Ms A Sheehan Counsel Assisting with Ms K Galanos, instructing

**DATE OF HEARING:** 23 November 2009

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

On 18 December 2009 the Panel decided to suspend the registration of the teacher for a minimum of six months, from 3 February 2010 to 3 August 2010 and to impose the following conditions. All conditions are to be met prior to the conclusion of the suspension. The teacher is required to attend at his own expense at least eight psychological counselling sessions, and provide this Hearing Report in full to the treating psychologist. The following issues are to be covered in depth during the sessions:

1. The Victorian Teaching Profession Code of Ethics with specific reference to his conduct and views.
2. The Victorian Teaching Profession Code of Conduct with specific reference to his conduct and views.
3. The seriousness and potential legal implications of the calculated and deceptive behaviour.

4. Consideration of the real and potential impacts, from the various positions of all impacted parties, including the school, the various members of the Senior Leadership Team, colleagues in whom he confided about his deception prior to going away, other colleagues, the school community, the Doctor, the Taekwondo community, and the students etc.
5. The concept of self worth and the importance of positive role modelling when working with young people.
6. The drafting of an apology letter to the Doctor who supplied the medical certificate, to be hand delivered, via an appointment made by the teacher, ensuring an explanatory discussion.
7. A report back to the psychologist after the teacher has progressed his explanatory discussion with the Doctor.
8. Workforce re-entry strategies.

The Panel requires the teacher to provide at his own expense a report from the psychologist that speaks to each of the eight points, detailing the psychologist's assessment of the teacher's level of understanding and professional commitment.

The Panel requires the teacher to provide a copy of the apology letter given to the Doctor, accompanied by a statement from the teacher that sets out the nature of the discussion had with the Doctor.

The Panel requires a report from the teacher, that he has personally written, that identifies:

- a. what he has learned about himself
- b. what increased understandings he has gained in relation to his role and responsibilities as a teacher, and
- c. evidence that he has a thorough understanding of the real / potential impact for each of the other parties affected by his conduct.

## **REASONS**

### **BACKGROUND**

The teacher) was provisionally registered with the Victorian Institute of Teaching (the Institute) on 5 February 2003 and was granted full registration on 6 March 2004.

By letter dated 22 January 2009 the employer notified the Institute that action had been taken in relation to the alleged serious misconduct of the teacher. Prior to this, on 10 December 2008, the teacher's employment at the school was terminated.

The matter was referred to the Institute's Disciplinary Proceedings Committee (the Committee) on 11 March 2009. The Committee decided to refer the matter to an investigation. On 24 June 2009 the Committee considered the investigator's report and referred the matter to a Formal Hearing.

A Notice of Formal Hearing dated 8 October 2009 was served upon the teacher, by registered post, on 13 October 2009.

### **The following exhibits were accepted by the Panel:**

- A.** Statement of the principal dated 20 May 2009
- B.** Letter from the principal to the teacher dated 19 August 2008
- C.** Statement of the deputy principal dated 8 October 2009
- D.** Statement of teacher 1 dated 20 May 2009
- E.** Opening Statement of the teacher, undated
- F.** Character reference from student 1 regarding the teacher, undated
- G.** Character reference from teacher 2 regarding the teacher, dated 13 November 2009
- H.** Character reference from teacher 3 regarding the teacher, undated

### **THE EVIDENCE**

The allegations of serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

1. Whilst employed as a registered teacher at the school, you lied about the circumstances when applying for a period of sick leave in November 2008. Prior to, and subsequent to taking leave in November 2008 you advised your colleagues at the school, that the reason for taking sick leave was to have an operation on your knee, whereas you did not have knee surgery but instead participated in the Taekwondo Championships in Canada where you represented Australia:
  - a. On 10 November 2008 you told the deputy principal that you required sick leave from 17 November – 27 November 2008 as you needed to have knee surgery. The School granted you leave on that basis and you were absent from the School between 17 November–27 November 2008.
  - b. You did not have knee surgery but instead participated in the Taekwondo Championships in Canada.
  - c. You provided a medical certificate to the deputy principal for the period 17 November to 21 November 2008.
  - d. On 28 November 2008, when the deputy principal asked you whether you were in Canada and showed you the team list and draw for the 4<sup>th</sup> Commonwealth Taekwondo Championships held in Winnipeg on 21 – 23 November 2008, you lied to the deputy principal and told him that you had not gone to Canada and that your name had not been removed from the team list and draw.
  - e. On 9 December 2008, when teacher 1 asked you at your annual performance review meeting, “how your surgery went” or words to that effect, you lied to her and said it had “gone well”, or words to that effect.

The teacher attended the Formal Hearing on 23 November 2009 and represented himself. The Panel was of the considered view that the preparation of the matter and the associated material, and the presentation of the matter on the day of the Formal Hearing, adhered to the principles of natural justice. Further the Panel noted that the teacher stated that he had been advised to seek legal advice by Institute staff at the point in time when Institute proceedings were initiated.

Opening statements were made by both Counsel Assisting and the teacher. It was made clear to the teacher that ‘evidence’ was given under oath/affirmation from the witness box, and that the content of an opening statement was not evidence, rather a way of providing an introductory overview of his side of events.

The Panel heard evidence under oath/affirmation from the following Institute witnesses:

- The principal
- The deputy principal
- Teacher 1

The Panel heard evidence under oath/affirmation from the following teacher’s witness:

- Teacher 3

## **The principal**

A teacher for 33 years, and a Principal for 18 years, under oath the witness confirmed his signed statement dated 20 May 2009, and its attachments, noting that they were true and correct.

The witness indicated that the teacher was appointed to a 'fixed term' position at the school from 27 March to 13 December 2006, and then to a permanent full-time position effective from 24 July 2006. He detailed the importance of sport to the school's program and noted that the sport that the teacher was proficient in, namely Taekwondo, formed part of the teacher's teaching load. The principal stated that although the teacher's proficiency in the sport was impressive, this was not the reason that he was employed, nor was there any expectation according to the principal, that the teacher should engage in any out of school hours competitions either personally or with students. He stated that the teacher was originally employed as a Maths and Numeracy teacher, and that the school Taekwondo sporting club that the teacher ran was arranged and eventuated at a later stage, as to do so suited both the school and the teacher.

The principal said he was becoming concerned about the teacher's performance and his ability to balance his teaching and sporting interests, around June of 2008. He said the concern led to a discussion with the teacher around early Term 4 at which time the possibility of part-time work for the following year was raised. Part-time work was offered in order that the teacher's personal sporting activity and teaching could both be accommodated. The principal said that the teacher refused the part-time work option. He also stated that the teacher never specifically raised, or mentioned in passing, the pending international championships to be held in November 2008.

The principal stated that the teacher was a satisfactory classroom teacher, although his learning, organisation and commitment to the School were below average compared to other teachers. Further he stated that he did not submit learning plans and was often late with his reports. The principal stated that the teacher *"did initiate a Taekwondo Club after school although this time was allocated in his teaching allotment of 20 hours."*

The principal informed the Panel that the teacher had been granted five days leave in June 2008 to compete in Taekwondo competitions, and that it was after this that he had held his discussion about the teacher's below average practices. He stated that the teacher at the time responded saying *"I have decided that teaching is my career and it must receive priority"*. The Panel viewed a letter to the teacher from the principal, dated 4 March 2008, that granted leave without pay from 23 to 27 June 2008 (inclusive). The letter stated – *This leave is to allow you the opportunity to represent Australia for taekwondo in two European tournaments.*

The principal stated that the deputy principal reported at a staff leadership meeting that the teacher would be away on sick leave due to pending knee surgery from 17 to 21 November 2008, and that he would require an additional week on sick leave to recuperate. The principal stated that the school received a Doctor's medical certificate covering the 17 to 21 November 2008 period and the teacher was paid sick leave for those days. He indicated that the teacher's paid sick leave ran out around the same time

as the period on the medical certificate ended, and that the remaining sick leave, for which the school required a certificate (but did not receive one), was unpaid sick leave. The Panel viewed the Doctor's medical certificate and noted that it covered the period from Monday 17 November to Friday 21 November 2008. The teacher returned to work on Friday 28 November 2008. He had four days unpaid sick leave.

The principal when giving evidence about what led to the teacher's termination noted that the content and deceitful nature of the conversations between the teacher and the deputy principal, and the teacher and teacher 1 informed his decision. However he said he was most heavily influenced by the content of the conversation that the deputy principal had had with an employee of the Australian Taekwondo Association in Brisbane who confirmed that the teacher had travelled to the championships in Canada, and competed as a member of the Australia Team, when the school believed that he was undergoing knee surgery and a period of recuperation.

The principal read from the letter dated 19 August 2008 that he had sent to the teacher regarding his performance. It referred to an eLearning Plan which the teacher had been asked to submit five times, but had failed to do so. The letter was a first warning. The principal said that the performance matter was unrelated to the leave matter, and that he did not use the performance incident as a determinant in his decision to terminate the teacher's employment at their meeting on 10 December 2008.

The principal said that there was no formal leave policy regarding certificates being required for unpaid sick leave, but they were expected.

The principal said that he was unaware of the Taekwondo championship in Canada and had never been asked for leave. He noted that leave approval would have been at his discretion. A factor in determining leave would have been impacted by how much time a teacher had taken previously, the principal stated. He added that he would not have granted the leave for the period of time of the championships in Canada (if he had been asked) if it had been requested at that time of year because the teacher was still teaching junior classes, and he had already had leave without pay in 2008 to tend to his personal sporting interests in June.

The principal stated that teacher 1 employed by the school was advised anonymously in November that the teacher was in Canada at the time that he was supposed to be on sick leave and having knee surgery. Teacher 1 downloaded a list of Australian competitors in Canada from 21 to 23 November 2008 (from the Australian website) and also accessed the 'competition draw' document for 23 November 2008. Both documents listed the teacher. The Panel viewed the documents, noting that the teacher was listed under 'Senior Male' competitors for the 2008 Commonwealth Championships – Australian Team – Winnipeg Canada, and that he was also identified on the 'competition draw' document dated 23 November 2008. The principal stated that accompanied by the deputy principal he also accessed the website material, and confirmed for himself what had been reported to him.

The principal gave evidence that he understood from his colleagues that:

- the teacher returned to school on Friday 28 November 2008 and was asked by the deputy principal if he was in hospital, or in Canada while on sick leave. The teacher replied that he was in hospital
- on 9 December 2008 teacher 1, when doing the teacher's annual performance review asked the teacher if he was in hospital or in Canada competing while on sick leave, and the teacher said he was in hospital
- on 10 December 2008 the deputy principal contacted the employee of the Australian Taekwondo Association and confirmed the teacher's selection for the Australian Team and his participation in the competition
- the deputy principal accessed photos from the event and a report which showed that the teacher was in Canada

The principal stated that on 10 December 2008 he, accompanied by the deputy principal, again asked the teacher if he was in Canada instead of undergoing knee surgery and the teacher again denied he was in Canada. He then presented the teacher with the team photos and report from Canada. The teacher remained silent for some time then stated according to the principal *"yes- I was in Canada and I did not have surgery."* The principal stated that the teacher then informed him that it was his fault that he had lied as he (the principal) would not allow him any more leave to pursue his Taekwondo career. The principal said that he then told the teacher that his employment was being terminated due to his deceit and deception. The Panel viewed the termination letter.

### **The Deputy Principal**

A teacher for 30 years and a Deputy Principal for 15 years the witness under oath confirmed his signed statement dated 8 October 2009, noting that it was true and correct.

The deputy principal stated that as the Head of the School's junior campus teachers applied for leave through him. Further, requests for extended leave without pay could also be taken directly to the principal, or he passed the details of the leave request onto the principal. He said the principal had discretion over the granting of leave. The deputy principal stated that the teacher had requested sick leave from him, from 17 to 27 November 2008 (9 school days) and that the discussion took place around the week of 10 November. He then, as per his usual practice reported the leave at the Senior Leadership Team meeting. The deputy principal told the Panel that he had viewed the leave as a straightforward matter at the time, as he understood that the teacher needed to have his knee surgery done. He stated that he had informed the teacher that he would need a medical certificate to cover the 9 day period. He recalled that the teacher gave him a Doctor's medical certificate on the day of his return. When he checked it he found that it only covered part of the period that the teacher was away. On viewing the certificate he found it covered from 17 to 21 November. He was not given a certificate for 22 to 27 November. He stated that he found that the teacher's paid sick leave entitlement was fully utilised as at 21 November 2008. He informed the principal and it was decided that the remaining four school days (24 to 27 November) would be unpaid sick leave.

The deputy principal said that at no time did the teacher ever request leave (with or without pay) for the purpose of attending Taekwondo championships in Canada in November 2008. He said he was unaware of the championships and it was not until the meeting on 10 December that he heard the teacher state that the leave he had utilised was for a purpose other than the knee surgery. He stated that the day prior to the teacher returning that he was approached by teacher 1 who said that she had been informed that the teacher was in Canada competing in Taekwondo championships at the time that he was supposed to be on sick leave due to knee surgery.

The deputy principal stated that on the teacher's return on 28 November, he presented him with the lists obtained from the internet by teacher 1 that indicated he was competing in Canada. Responding, the teacher told him that he had not gone to Canada and that his name had just not been taken off the team list, and the draw sheet.

On 10 December 2008 the deputy principal contacted the employee of the Australian Taekwondo Association. She confirmed that the teacher was selected for the Australian Team, he went to Canada, he was photographed for the team photo while in Canada, and that was the photo on the Association's website. Later that day, after the principal had terminated the teacher's employment, the teacher told the deputy principal that he had not been up-front about Commonwealth championships in Canada as he wouldn't have been given the leave. He also stated words to the effect that *in Canada he was somebody, people would come up to him and congratulate him about his sport. In Australia he was a nobody - no one cared or understood about his sport.*

The deputy principal said leave was granted to teachers for a variety of reasons but that ultimately it was the principal's decision whether leave was granted, especially if it was personal leave for longer than a day. He stated that teachers who faced difficulties in their personal lives were supported by the school. He told the Panel that he was not aware that the teacher was having any difficulties. When asked he also stated that he did not know that the teacher was unhappy at the school, or unhappy for any other reason.

The deputy principal stated that there was a process for approval of Professional Development activities, and a process that a teacher could follow if they felt their Professional Development requests were wrongly refused. The later process involved a query to the faculty head, and a reason would be supplied for the refusal. The deputy principal said that he was not aware that the teacher was unhappy in regard to a refusal of professional development requests.

The deputy principal stated that he had at times met with the teacher to discuss strategies for dealing with difficult students, and other class room management matters, and that these meetings were at times unhappy events, but these were the only times he could recall that the teacher expressed unhappiness about his role at the school.

The witness said that the school had prepared its own Code of Conduct and that as it was given to all new teachers, he was sure that the teacher would have received a copy. Further he noted that reference was made to the School's Code of Conduct in many school dealings.



## **Teacher 1**

Teacher 1 stated that she had been a teacher at the school for two years, and a career teacher for 16 years. Under oath she confirmed that her statement signed on 20 May 2009 was true and correct.

Teacher 1 said that the teacher taught Maths, Numeracy, IT and Taekwondo at the school, and that he worked with junior and senior students. She stated that she had responsibility for doing the teacher's performance review. She described the school's process for performance reviews noting that teachers were required to provide a portfolio of evidence demonstrating a match to the expected standards.

Teacher 1 met with the teacher on 10 November 2008 for the purpose of a performance review discussion. At the meeting the teacher's performance and interaction with students was discussed. Teacher 1 said that on the whole this was a positive meeting with regard to the teacher's performance, but the teacher did inform teacher 1 that he was disappointed at not being given the opportunity to attend Physical Education Professional Development. The witness said that she informed the teacher at the meeting that the portfolio he had provided was not sufficient to be signed off on, and that they should meet again on 17 November to finalise his portfolio. It was at this point that the teacher informed teacher 1 that he would be unable to attend a meeting on 17 November due to knee surgery. So their next meeting was scheduled for 9 December 2008.

While the teacher was on sick leave, another teacher informed the witness that the teacher in question was not in hospital having knee surgery. Teacher 1 stated that the morale of teachers in the faculty seemed low due to the belief that they had been told an untruth about the teacher's knee surgery. Additionally she noted that teachers in the faculty would not volunteer their own time to cover the teacher's classes as in their view he wasn't sick. She stated that in her experience the normal practice was for teachers at the school to rally together to cover a sick teacher's classes.

Teacher 1 asked the reporting teacher for evidence and a website was mentioned, where the teacher's name and photo relating to a championship in Canada could be found. The dates corresponded with the teacher's sick leave. Teacher 1 passed this information onto the deputy principal.

When teacher 1 met with the teacher on 9 December 2008, she asked the teacher how his knee surgery had gone. The teacher, as she recalled, answered "*very well thanks*". After he had been terminated the teacher spoke to teacher 1. She recalled that he was distressed and that he said that he had been set up, and that evidence had been collected to terminate his employment. She also recalled that the teacher said he was sorry that he had mislead her, and that in fact he was in Canada, not in Australia having his knee operated on.

In relation to the teacher's desire to attend Physical Education Professional Development, teacher 1 recalled the teacher expressing interest in attending, and his disappointment at not being able to attend a previous Physical Education conference. She stated that the

teacher's teaching allotment was made up of maths, numeracy and IT – not Physical Education.

Teacher 1 stated that her role as the teacher's performance reviewer also included a pastoral role. She said that in this capacity she had not been told of any personal issues or work related stresses impacting the teacher by the teacher himself, or anyone else. Further she stated that there were other teachers within the school who the teacher could have approached to discuss personal or work related matters of concern, but if he had done so the information had not been shared with her.

### **The Teacher**

The Panel heard evidence under oath from the teacher. His opening statement was tendered as evidence. The teacher stated that he was a person of good character who had a passion for teaching. He stated that he had commenced Taekwondo aged five, and had dreamed of representing Australia in his chosen sport. He stated that he also knew from an early age that he wanted to be a Physical Education teacher. At university he enjoyed Maths, and in turn Biomechanics where he could combine his Physical Education and Maths interests. While at university he stated that he taught self defence and Taekwondo. He stated that he believed he was someone who could make a difference to people's lives and be a positive role model. He told the Panel that he was an honest, caring, friendly professional who was not only very level-headed, but someone who aimed to carry themselves with integrity at all times. He stated that his chosen sport was a martial art that taught respect and developed character.

In relation to his employment at the school, the teacher confirmed that his teaching load comprised Maths and IT in his first year, and Maths and Physical Education in his second year. In the third year his teaching load comprised Maths, IT and Physical Education. He stated that the Taekwondo sporting club in which he instructed students at the school ran for the entire time he was there. The teacher stated that he had taken students to three competitions which occurred on weekends and that Taekwondo classes ran for 1½ hours after school. The classes were voluntary for students. The teacher said that while working at the school, he was also training and teaching at the Taekwondo sporting club where he worked part time.

Reflecting on his sporting interest, the teacher noted that he was at his peak in his sport in his 20's. He added that he was inspired to strive to represent Australia having watched Lauren Burns win an Olympic Gold Medal in Sydney in 2000. Having dealt with the personal pain of missing out on a representative spot in the 2006 Commonwealth Championships, he became stronger and 2007 was his best year as a Taekwondo athlete. He missed out on qualifying for the world Championships by one spot in 2007, but then qualified for the Olympic Training Squad for the 2008 Olympics. He was asked to move to the Australian Institute of Sport in Canberra. He stated that he decided to stay in Melbourne and continue to teach at the School, as he was committed to his teaching career.

In 2008 aged 29 the teacher qualified for the Australian National Team to compete in the Commonwealth Championships in Canada. He stated that it was the happiest day of his

life, noting that he knew it would be the first and last time he would represent Australia. *“There was no question that I would be competing in this event because if I didn’t then it would have been something that I would have regretted for the rest of my life later as I would have been selling myself short. Representing Australia at this event is something that I am extremely proud of...the fact that I went Canada to compete is not something that I regret. What I do regret is the manner in which I went about it.”*

The teacher told the Panel that at the beginning of Term 4 he had a conversation with the principal that he considered *“really quite surprising ... he told me that I needed to make a decision between my taekwondo and my teaching which I was shocked by since I did not see how my taekwondo interfered with my teaching ... he also told me that he was not prepared to give me anymore time off for my taekwondo commitments...he made it clear that this was not negotiable and that if I intended to compete in future events that he would not retain me as a full time teacher next year.”*

When asked if he had considered the part time option the school offered, the teacher stated that he had not wanted to give up his full time employment. He said that he was unaware that there were concerns about his performance except for not progressing eLearning Plans for which he received a warning letter. He said that at the time he received the warning letter he realised that the un-submitted work was a serious matter. He said that he felt the balance he had between work and Taekwondo training was working for him, and was not impacting on his performance at the school. He stated that he had been granted five days leave without pay in June 2008 to travel to Europe to compete. The teacher agreed that there had been a conversation with the principal regarding the need for teaching to be the focus of his efforts from then on, rather than his sport being the priority. He said that he knew his sporting career was ending, and teaching was going to be his priority in the future.

The teacher said the principal did not make it clear to him in their meeting that his performance was suffering as a direct result of his involvement in his sport, despite the principal telling him that he needed to make a choice between the sport and the job. He said he was unfairly targeted in relation to being told he would not get further leave. The teacher confirmed that he had also taken two days sick leave in the past, on two separate Monday’s after tournaments to recover from injury.

The teacher said that the meeting with the principal put him in an *“uncompromising position as I knew I had qualified for the Australian Team”* to compete in Canada in mid November 2008. The teacher said that he had only had five days unpaid leave off that year. He said that he felt the principal was being *“unfair and discriminatory towards me with the personal interests that I have .... I think he failed to understand the importance of these events for me on both a personal and professional level as often these events provided me with professional learning opportunities.”*

The teacher noted that he was *“extremely overwhelmed and did not know what to do ... I had to rethink through everything and make the decision on whether or not I would compete in Canada ... after training for 25 years and finally qualifying for an Australian Team after many attempts I felt that this was too good an opportunity to pass up.”*

The teacher stated that he arranged a meeting with the deputy principal to organise leave for when the championships were on. He stated that he told the deputy principal that he needed leave as he was having knee surgery. *“I felt it only fair that the school knew in advance that I would be away so that they could prepare for my absence, and also so that I could leave work for my classes.... I had a medical certificate for the first 5 school days and the remaining 4 days were unpaid.”*

Upon my return the deputy principal called me into his office and *“to my surprise quizzed me on my whereabouts during my time away. He showed me team photos of the Australian Team and asked me if I was in Canada on 23 November ... because I had lied in the first place about getting knee surgery I felt that I had to keep what I had said in tact, so I denied that I went to Canada and told him that the photos were taken earlier.”*

The teacher stated that he then attended an urgent meeting arranged by the principal on 10 December 2008. The deputy principal was also there and they asked if he had been in Canada during his time away. *“I replied that I hadn’t; the discussion went further and they provided me with evidence from the internet. I then admitted that I had gone to Canada and they terminated my employment immediately.”*

The teacher stated that he was disappointed about what had transpired, and felt that the school was unsupportive of him, on this occasion and others. He stated that he’d been feeling unhappy about his teaching job for about six months prior to going to Canada, and that he was hoping to see the year out and then resign. *“Unfortunately they terminated my employment before I could resign.”* The teacher noted that he was unhappy at the school, but not with the teaching profession.

The teacher stated that the school had also been unsupportive in relation to his professional learning opportunities. He noted that he had applied to go to three Physical Education conferences and one Maths conference, and was rejected on all four occasions which he found very disappointing. The teacher added *“while I was in Canada I actually took it upon myself to participate in the first 2 days of their 1 week training camp. During this we were taught how to use the Dartfish computer program which was something that was being learnt in the Physical Education Department at the school. Upon my return my understanding of this computer program was far superior to the rest of my colleagues in the Physical Education faculty. This is a primary example of a lack of support from the school and also an example of the initiative that I have within myself to gain that extra knowledge.”*

The teacher when questioned agreed that he had lied to a number of school staff members, for an extended period of time in the period leading up to when he took ‘sick leave’ and went to Canada. While acknowledging that he had lied, the teacher simultaneously requested the Panel’s understanding, identifying three reasons for the leniency that he sought:

1. that participating in a sporting team representing Australia was his lifelong dream;
2. that he was having personal family issues during the year the incident occurred, and
3. that the school had been unsupportive in his requests for further professional development.

The teacher told the Panel that he was an honest person, and that he accepted that his actions amounted to misconduct. He stated that he did not believe such an incident would occur again noting that competition at that level had now concluded for him.

The teacher when giving evidence said that he had been unhappy at the school for a while, and that his contributions, with particular regard to his involvement in out of hours sporting competitions overseeing students, were under appreciated. The teacher gave evidence that he felt he had no alternative but to lie as the principal had informed him that leave would not be given for personal sporting events in the future.

After questioning, the teacher admitted that in early October 2008 he had formulated a deceitful means by which to attend his personal sporting activity overseas. The teacher admitted to lying to a number of professional colleagues during the period leading up to his exit on 'sick leave' and also admitted to continuing to lie after returning from competing overseas, through to 10 December 2008.

The teacher had a medical certificate from a Doctor covering the period from 17 to 21 November 2008 stating that he was unable to attend work. The Panel noted the medical certificate. The teacher acknowledged that he had not been honest with the Doctor, as he told the Doctor who supplied the medical certificate that he had a knee injury and a cold. The teacher maintained that he did not actually lie to the Doctor; however he did not tell the Doctor that he was travelling overseas or that he was going to compete at an international sporting event while on sick leave. The medical certificate commenced on 17 November, and the teacher boarded the plane for Canada on 18 November. The teacher said that he did have an on-going medical problem related to his knees that needed attention and that his medical problem with his knees received some attention while he was away and preparing for his competition. The teacher's medical certificate concluded on 21 November while he was in Canada.

The teacher said that there were two people at the school that he felt he could talk to about his personal difficulties, and that he did speak to them. He said that he did what he did as he *"just wanted to represent Australia so badly."* He said that he felt he had no other option, and that he *"was forced to the measures he took because of the actions of those around him."* The teacher said that he did not seek advice about the deception he had planned, and did not give the school any options to consider in relation to his pending competition.

The teacher said that he had an understanding of the impact of his actions and realised that others might have felt unwilling to cover his classes. The teacher said that he had attended a session with a psychologist after his employment was terminated, and that he then felt better. He stated he had not discussed the incident with his new colleagues and that while teaching he was continuing to train and instruct in Taekwondo several nights a week.

When asked directly what he thought he should have done differently, the teacher only raised that he felt unsupported by the school. The teacher had several opportunities to answer the question, but did not do so. At no point did he say that he should have told the truth. The teacher confirmed that his conference rejection in the first instance was for

a conference for a faculty of which he was not a part, and in the second instance for a conference that others in the faculty may or may not have also been rejected, and the third instance for a conference for which he was in the appropriate faculty. The final instance was in relation to a conference that he had previously applied for, and been rejected twice before. The teacher did not know when the decision was made to reject his application for the 2008 conference.

The teacher said that he had attended professional development opportunities at the school, but not external to the school at the school's expense. The teacher stated that conduct and ethics training formed part of his in house professional development done at the school. He agreed that integrity was an important part of the role of a teacher, and a member of a team. He stated that even if he had been accepted for the external professional development conferences by the school that he could not say whether or not he would still have lied about the championships. He agreed that an accurate description of his employment at the time was that of a disgruntled employee. The teacher said he regretted what he had done, and had spoken to family members and a close friend about his actions. He stated that their assessment was that he should have been honest with the school. He said that he agreed with their assessments, but he still believed that he had no other options at the time, and that was still the way he saw it. In relation to the pastoral support the school offered, he said he was aware of it but that he did not utilise it for family upheaval or other issues.

Reflecting on the exact timeframe the teacher stated that he found out he would be a part of the Australian Team at the championships on the day before Term 4 started (3 October 2008) and it was the next day that the principal told him he would not be approving any further leave for sporting competitions. During the time period between this meeting and taking the sick leave the teacher said he felt 'lost' about his decision to lie because he knew it was wrong.

The teacher said that he told two people at the school about his involvement in the championships. He trusted these colleagues and is uncertain how rumours of him attending the championships started. The teacher indicated that despite feeling lost and confused about the lie that he was telling others, that he did not get advice from these two colleagues about what else he could have done.

The teacher provided three character references. One (Exhibit G) referred to the teacher's actions as *'taking the proverbial sickie'*. The teacher agreed that this was an accurate description of what he had done. The Panel raised that *'sickie'* tended to refer to a single day, whereas the leave taken was nine days. The teacher confirmed that of the nine days he only had five days of paid sick leave available to him. He said that the last four days were sick leave without pay. He indicated that he didn't think Doctors generally gave medical certificates for more than five days and that it must have been coincidental that the certificate used up exactly the amount of paid sick leave he had left. He said that he did not seek a Doctor's certificate for the last four days. The Panel noted that the teacher had access to five legitimate days' sick leave, due to the medical certificate (albeit accessed at the teacher's admission in a somewhat misleading manner).

This character reference (Exhibit G) penned by the teacher's former teacher, asked for the teacher to be given the chance to redeem himself in his peer's eyes. However, after questioning the teacher said that he had not discussed the real or potential impact that his actions could/would have had on his peers, with his referee or others.

The teacher said one of his character references (Exhibit F) was supplied by a former student and she supplied it when asked to do so, without knowing the details of why he required the reference.

The Panel noted that the teacher spoke of being responsible for, and feeling remorseful about his actions. The teacher indicated that he knew what he did was wrong, but felt that he was left with no alternative than to be deceitful given that the principal had stated that he would not grant him any further leave for personal sporting activity. He acknowledged that he never raised being selected for the championships with either the principal or the deputy principal.

The teacher also noted that 2008 had been a hard year for him personally. He detailed a level of family upheaval and noted that he had moved house twice. He added that in his view his stressful and unsettling personal life *"may have clouded his judgement."* He stated that he had engaged in misconduct and noted that what he did was not acceptable practice for a teacher. He said he had made a mistake for which he took ownership. He stated that having looked at Victorian Institute of Teaching disciplinary cases he was of the view that the term 'serious misconduct' seemed to apply more to cases involving sexual misconduct and inappropriate teacher/student relationships. He summed up his position by stating *"I would like to think that my actions do not represent serious misconduct in comparison to these other cases. It's not a situation where you are protecting the public from someone, and I am fit to be a teacher."*

The teacher also noted that losing his job was punishment enough and that his resultant stress had been excruciating. He stated that in his view he was fit to teach in 2010.

### **Teacher 3**

The Panel heard evidence under oath from one of the teacher's referees who was also employed by the school. He had been teaching since 1995. Teacher 3 had supplied an undated signed character reference that he stated was true and correct.

Teacher 3 stated that he had known the teacher since 1991 and had played a significant role in him obtaining his job at the school. He indicated that he had on many occasions observed the teacher in action and found the teaching style of the teacher to be age and issue appropriate. He also noted that in his view the teacher was competent, as well as someone who adhered to the set curriculum. He stated that if his registration was cancelled that it would be a great loss to the teaching profession as he was an effective teacher, and an exemplary role model.

Teacher 3 stated he thought the teacher's honesty was impeccable and that the deceit he'd displayed on this occasion was out of character. He said that he could understand the circumstances the teacher experienced and the choice that the teacher had to make.

He agreed that the teacher had a number of options to choose from, but did not think that being honest with the school was one of them. He said he held this view because the teacher had informed him that the principal had said that he would not approve future leave for sporting tournaments. He said the teacher had not told him that there had been an offer of part time employment. He agreed that the teacher did have the option of resigning, instead of doing what he had done, but that they had never discussed it.

Teacher 3 stated that he knew that the teacher was going to travel overseas to compete and that he gave the teacher some advice which consisted of *“if you feel you’ve got to do what you’ve got to do...do it quietly and get it over and done with”*. Teacher 3 agreed that in hindsight his advice was terrible. He said that he realised this on the day that the teacher’s employment was terminated, and it was at that point that he told the teacher that his advice may not have been so good. He said that while the teacher’s actions were deceitful, they were understandable in his view. He said he would have given different advice if he had his time over, now that he knew the outcome of the teacher’s actions, but at the time he was more concerned with his own teaching load and responsibilities. He indicated that any alternative he may have proposed to the teacher would probably not have had any effect given the teacher was a strong minded and independent person.

He stated that he felt the teacher was treated somewhat differently to other teachers in that they were permitted to go on five day professional training courses and this competition the teacher attended amounted to a professional development opportunity in his view. He agreed that his personal experience of these five day training courses was that the training was done on weekends to minimise the impact to the school program and students, or that the leave from school that staff had taken was in relation to taking students to a camp or to a competition, as opposed to a teacher competing personally. Teacher 3 was unable to give an example of any teacher being given extended leave for professional development for nine days. He said he could see how the term ‘serious misconduct’ could be used but that he did not think the deceit was serious.

He stated that he knew of the personal stresses the teacher faced at the time, and that as he knew the personality of the teacher he was aware that he kept things bottled up. He did not advise the teacher to see someone to talk to about his stresses. He said that during the period of time leading up to the championships he knew that the teacher would be applying for leave on medical grounds, in order to be able to compete, but he did not ask how he would obtain a medical certificate.

In relation to the rejection of professional development applications the witness said there was no formal process for review, rather teachers just accepted ‘no’ was a ‘no’ and got on with their lives.

## **DISCUSSION OF THE EVIDENCE**

The Panel noted that the teacher admitted to lying to his employer. That said the Panel was of the view at the end of the Hearing that while the teacher knew what he had done was wrong, he had not really moved far from still feeling justified when it came to lying. The Panel was not convinced that if he had his time over, the teacher would have actually



behaved differently given his ultimate priority was to compete. Further the teacher did not demonstrate to a satisfactory level that he had reflected on the alternatives he had open to him, since the incident. The Panel considered at a minimum the teacher should have done so and been able to articulate the range of alternatives that he could have pursued, in a credible manner.

There was very little evidence of objective analysis on the part of the teacher, in relation to what was fair, reasonable and professional treatment of his school/employer, leadership team, colleagues and students. The Panel expected that the teacher would have engaged in a greater level of reflection with respect to the bigger picture and wide range of real and potential impacts, before the Formal Hearing and in turn voice in a genuine manner a willingness to make sacrifices and compromises if he wanted to compete/continue his sporting involvement and remain employed.

What the Panel consistently did sense, and hear however, was a level of remorse about being caught and suffering the associated embarrassment, which extended to being terminated. The Panel noted that the teacher saw a psychologist on one occasion, and on his own admission personally felt better after doing so. The Panel did not hear that the teacher in any reasonable depth understood that he was in part engaged in a Formal Hearing because it wasn't all about him. He evidenced very little contemplation of, or understanding about the broader impacts of his behaviour, including and specifically the impact on the teaching profession and how his conduct fell well short of the requirements of the Victorian Teaching Profession's Code of Ethics and Code of Conduct. The Panel also noted that the teacher did not seem to grasp to an appropriate extent that his lack of truthfulness had an impact on work colleagues. Further, there had been no substantial evidence that he had thought about how his conduct may have tarnished the status of the medical profession, or for that matter the Taekwondo sporting community and Australian Team. In the eyes of the Panel his reflection was narrow and self orientated, as it seemed was his remorse.

The Panel noted that there was some discrepancy with regard to the dates that the teacher and the principal stated that they met. It was either around the beginning of Term 4 or in Term 3. Both parties agreed that the discussion had occurred. Further the Panel noted that the parties' recollections regarding the content of the discussions were very similar.

The Panel did not view the teacher's action as something that amounted to the taking of the '*proverbial sickie*' but rather a calculated plan to deceive and mislead, concocted many weeks prior to the event, in order that he might satisfy his own requirements. The Panel is very clear that there were a range of feasible, responsible, professional and 'grown-up' alternatives. Possible fallout/detriment to student learning, colleagues and school finances did not appear to factor into the teacher's thinking when he was planning his time away, nor his post incident reflections, which unfortunately were experienced by the Panel as superficial and self serving during the Hearing.

The Panel noted that there were five days covered by a medical certificate for which the teacher was entitled to legitimate sick leave. However the Panel was mindful of the sneaky, exploitative and calculated manner in which the medical certificate was acquired

given the teacher's planned activity. This conduct informed the Panel's assessments in relation to the teacher's credibility, integrity and character. The teacher talked about being a good role model, honest and also categorised himself as someone of good character. The Panel were not necessarily convinced. The teacher also talked about having through his martial art of Taekwondo learnt much about respect and personal and professional discipline – the Panel was of the view that he needed to learn more, and could do so by seriously viewing what had transpired from the positions of all others impacted/potentially impacted by his actions.

The Panel felt that the teacher had a number of alternative options. He could have told the principal the truth about the competition and revisited the earlier discussion; he could have progressed the part-time employment option and asked to start in Term 4; he could have resigned his employment given he had seven weeks notice before leaving Australia; or he could have decided not to go. While some of these options may not have been favourable in the eyes of the teacher, it is particularly unreasonable to project that there was really no other option available other than to lie, and further to do so because of the content of the principal's discussion and decision about further leave. There is no blame to be extended to the principal in the Panel's view, and to do so in the manner that the teacher did, even at the Hearing, was unreasonable and professionally immature. All blame rests with the teacher, but as yet the teacher has not evidenced that he really has fully understood or digested this. While he said he would have gone about what had happened a different way if he had his time over, the Panel felt that the level of resentment displayed, and the continued projection of being hard done by, indicated that the teacher needed to spend some time unpacking the bigger picture with the help of an independent party/psychologist.

The extended period of deceit was of particular concern to the Panel, as were the continual lies on the teacher's return when questioned by members of the Senior Leadership Team. By continuing to focus on personal pressures, and call upon what appeared to be defacto excuses left the Panel feeling that the teacher still did not fully understand the seriousness of his choices.

The Panel considered it appropriate to make it very clear that sick leave is a right that comes with responsibilities, both legal and ethical. It is to be used when people are sick. Teachers are in trusted privileged positions and have a range of legal obligations. All public behaviour is relevant and party to being a good citizen and a sound role model for youth. Serious misconduct extends to a range of behaviours other than inappropriate sexual behaviour and untoward relationships with students. The protection of the public interest extends to many circumstances, including ensuring for example that misappropriation of school funding, theft, fraudulent and misleading behaviour, blackmail, bullying and threatening conduct, abuse of policy and process.

The four days for which there was no medical certificate may ultimately have been sick leave without pay for the teacher, but there are still impacts both practical and financial, for a school in such circumstances given the absence of the regular teacher. Additionally, the teacher talked about it being co-incidental that his medical certificate ran out the day that his paid sick leave entitlement expired, and he indicated that he wasn't really cognisant of this when undertaking his planning and formulating his story to ensure that

he had 'sick leave' to cover his journey to Canada. If of course the entitlement hadn't expired then, based on what the Panel was told the remaining days, or some of them would have been paid sick leave, a situation that the teacher must have understood and seemingly been comfortable with given his actions, at the time of his planning and story fabrication.

Furthermore the professional pressures the teacher identified as circumstances that exacerbated feeling justified about his actions, and his personal issues that he stated clouded his judgement, were found to be largely irrelevant or without credible basis. Such things are not reasonable excuses for the calculated action and continual lying. The Panel noted that there were several times during the teacher's evidence that there was a strong sense that the school had what happened, rightfully coming to it, given how he had been treated. This is particularly given that the teacher stated that he had planned to leave his employment and was not happy at the school well before being selected for the Australian Team. The Panel was very uncomfortable with this and the fact that little if anything was shared by the teacher to counteract the sense that the school was deserving of such treatment.

In relation to the lack of support for professional learning as argued by the teacher, evidence from witnesses showed that the school did not ignore the professional learning needs of the teacher, but rather focused them. While there may have been a perceived lack of support by the teacher, based on the evidence it is clear that the school did support the teacher.

The Panel accepted that participating in an international event representing Australia was a laudable achievement about which an individual, as well as their friends and colleagues should feel proud. Yet the Panel felt that this achievement was greatly diminished by the choices made and through the manner which the teacher obtained his time away from teaching his classes to compete.

Based on the balance of probabilities the Panel determined that the allegations of serious misconduct were proven. It is clear that whilst employed as a registered teacher at the school, the teacher lied about the circumstances when applying for sick leave, and that prior to that, and subsequent to taking the leave in November 2008 the teacher advised colleagues at the school, that the reason for taking sick leave was to have an operation on his knee, when in fact he did not have knee surgery planned, instead he participated in the Taekwondo Championships in Canada representing Australia. It is proven that:

- On 10 November 2008 the teacher told the deputy principal that he required sick leave from 17 November to 27 November 2008 to undergo and recuperate from knee surgery. And further that the school granted the leave on this basis and the teacher was absent from the school from 17 November to 27 November 2008.
- The teacher did not have knee surgery but instead participated in the Taekwondo Championships in Canada.
- The teacher provided a medical certificate to the deputy principal for the period from 17 November to 21 November 2008.

- On 28 November 2008, when the deputy principal asked whether the teacher was in Canada and showed the teacher a team list and draw for the 4<sup>th</sup> Commonwealth Taekwondo Championships held in Winnipeg on 21 – 23 November 2008, the teacher lied saying that he had not gone to Canada and that his name had not been removed from the team list and draw.
- On 9 December 2008, when teacher 1 asked the teacher at his annual performance review meeting, “*how did the surgery go*” or words to that effect, the teacher lied to her and said it had “*gone well*”, or words to that effect.

### **FINDINGS UNDER SECTION 2.6.46(1)**

The Panel noted that under s.2.6.3(1) of the *Education and Training Reform Act 2006* (the Act) the Institute’s functions are clearly stated. Further under clause (h) it is clear that a function of the Institute is to *develop, maintain and promote a code of conduct for the teaching profession*. The Institute has developed the Victorian Teaching Profession Code of Ethics and Code of Conduct. Every teacher was provided with a copy of these documents. Further the School had its own Code of Conduct which the teacher had access to. The Panel is not of the view that the teacher could have at any stage considered what he was doing was acceptable. He knew what he was planning was wrong from the first week in October 2008, and there are no reasonable excuses for the teacher’s actions, despite the fact that he continues to justify them, in the Panel’s view.

In making a determination of ‘serious misconduct’ the Panel was well aware that the standard against which the conduct of the teacher is to be judged is that of the teaching profession at large. Additionally the Panel considered *Allison v General Medical Council* (1891-4) All ER 768 and *Anthony Davidson v Victorian Institute of Teaching* [2007] VCAT 920, *J Harbison & Mr Eccles, Member at* [145] The Panel noted that the teacher’s conduct “*would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.*”

The Panel also reflected on the fact that “*the gravity of professional misconduct is not to be measured by reference to the worst cases, but by the extent to which it departs from proper standards. If this is not done there is risk that the conduct of the delinquents in a profession will indirectly establish the standards applied by the Tribunal.*” Ref *Gleeson CJ, Meagher JA, Handley JA, Health Care Complaints Commission v Litchfield* [1997] 41 NSWLR 630.

The teacher departed from acceptable and important standards in a particularly calculated and deceitful way. Fully cognisant of his iniquitous behaviour at the time, the teacher is professionally blameworthy and accountable for misleading and deceiving members of both the teaching and the medical professions, which of course has potential fall out for the reputation of both professions. The Panel also considered *Domburg v Nurses Board of Victoria* [2000] VSC 369, *per Ashley J at* [57] when making this finding that the teacher was guilty of serious misconduct.

## **DETERMINATION UNDER SECTION 2.6.46(2)**

The Panel is of the view that the teacher, the teaching profession and the public interest are best served by a six month suspension of the teacher's registration. The Panel is not of the view that the teacher is currently fit to teach noting that there is a level of professional development, increased understanding, comprehensive reflection and personal remedial work to be progressed.

There was commentary from the school that there were concerns about the teacher's competence, student management and adherence to work requirements. There was commentary from the teacher's referees that the teacher was an effective teacher who had a passion for education and making a difference. These views have been noted. The Panel is of the considered belief that the teacher did prioritise his personal sporting interests over his teaching responsibilities, to the detriment of himself, his teaching responsibilities and the reputation of his profession, and that this was evidenced by his calculated and deceitful behaviour, for which there are no reasonable excuses.

On 18 December 2009 the Panel decided to suspend the registration of the teacher for a minimum of six months, from 3 February 2010 to 3 August 2010 and to impose the following conditions. All conditions are to be met prior to the conclusion of the suspension. The teacher is required to attend at his own expense at least eight psychological counselling sessions, and provide this Hearing Report in full to the treating psychologist. The following issues are to be covered in depth during the sessions:

1. The Victorian Teaching Profession Code of Ethics with specific reference to his conduct and views.
2. The Victorian Teaching Profession Code of Conduct with specific reference to his conduct and views.
3. The seriousness and potential legal implications of the calculated and deceptive behaviour.
4. Consideration of the real and potential impacts, from the various positions of all impacted parties, including the school, the various members of the Senior Leadership Team, colleagues in whom he confided about his deception prior to going away, other colleagues, the school community, the Doctor, the Taekwondo community, and the students etc.
5. The concept of self worth and the importance of positive role modelling when working with young people.
6. The drafting of an apology letter to the Doctor who supplied the medical certificate, to be hand delivered, via an appointment made by the teacher, ensuring an explanatory discussion.
7. A report back to the psychologist after the teacher has progressed his explanatory discussion with the Doctor.
8. Workforce re-entry strategies.

The Panel requires the teacher to provide at his own expense a report from the psychologist that speaks to each of the eight points, detailing the psychologist's assessment of the teacher's level of understanding and professional commitment..

The Panel requires the teacher to provide a copy of the apology letter given to the Doctor, accompanied by a statement from the teacher that sets out the nature of the discussion had with the Doctor.

The Panel requires a report from the teacher, that he has personally written, that identifies:

- a. what he has learned about himself
- b. what increased understandings he has gained in relation to his role and responsibilities as a teacher, and
- c. evidence that he has a thorough understanding of the real/potential impact for each of the other parties affected by his conduct.



**SUSAN HALLIDAY, CHAIRPERSON**



**per:  
KEVIN POPE, REGISTERED TEACHER**



**per:  
MARINO D'ORTENZIO, PANEL MEMBER**