

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 100

**REGISTERED TEACHER:** GDG

**PANEL MEMBERS:** Heather Schnagl, Chairperson  
Paul Wilhelm, Registered Teacher  
Penny Webster, Panel Member

**ATTENDANCE:** The teacher was represented by Mr Tim Bourke, Barrister with Ms Fleur Dillon, Solicitor instructing  
Ms Anne Sheehan Counsel Assisting with Ms N Gingold, Solicitor instructing

**DATE OF HEARING:** 30 April 2010

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

On 30 April 2010 the Panel decided that the teacher remains registered as a teacher in Victoria.

## **REASONS**

### **BACKGROUND**

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 1 September 2004 and was granted full registration on 28 November 2007.

On 4 January 2010, the teacher consented to a National Criminal History Record Check being conducted through CrimTrac, an agency of the Australian Police Services. On 15 January 2010, 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 20 January 2010 and the Committee referred the matter to a formal hearing.

A Notice of Formal Hearing dated 9 March 2010 was served upon the teacher's solicitor on 9 March 2010.

### **EXHIBITS**

The following exhibits were accepted by the Panel:

- A.** Hearing Book
- B.** Letter received by the Institute from the teacher on 5 January 2010
- C.** Undated letter from Psychologist 1
- D.** Bundle of documents including statement of service from employer 1, psychologist's report from Psychologist 2 and various character references
- E.** Statement of Service from employer 2

### **THE ALLEGATIONS**

The allegations as set out in the Notice of Formal Hearing are:

1. Whilst registered as a teacher in Victoria, the teacher:
  - (a) Appeared in the Magistrates Court on 14 December 2009, charged with the following:

- i. Five charges of theft. The teacher was convicted and sentenced to 9 months imprisonment which was wholly suspended for 18 months, concurrent with other sentences and as part of an aggregate sentence.
- ii. Fifteen charges of obtaining property by deception. The teacher was convicted and sentenced to 9 months imprisonment which was wholly suspended for 18 months, concurrent with other sentences and as part of an aggregate sentence.
- iii. One charge of known thief loitering in a public place. The teacher was convicted and sentenced to 9 months imprisonment which was wholly suspended for 18 months, concurrent with other sentences and as part of an aggregate sentence.
- iv. One charge of recklessly dealing with proceeds of crime. The teacher was convicted and sentenced to 9 months imprisonment which was wholly suspended for 18 months, concurrent with other sentences and as part of an aggregate sentence.
- v. Twelve charges of making a false document to prejudice of other. The teacher was convicted and sentenced to 9 months imprisonment which was wholly suspended for 18 months, concurrent with other sentences and as part of an aggregate sentence.

The Panel heard evidence under oath from both the teacher himself and Psychologist 2, consultant clinical psychologist, as a witness on behalf of the teacher:

## **THE EVIDENCE**

The allegations of possible lack of fitness to teach are set out in the notice of formal hearing. Whilst the actual offences of which the teacher has been convicted as outlined above are not in dispute, nor is the teacher's competence as a teacher, the task of the hearing was to understand the context of the offences and to determine whether the teacher is fit to teach.

### **The Teacher**

Under oath the teacher told the Panel that he was one of four siblings, having two older brothers and a younger sister, who grew up in country Victoria. His mother is a registered teacher whilst his father was a disruptive, abusive alcoholic who regularly beat them, especially his older brother C. In this environment, the older brother C was protective of his siblings. It is this older brother C, who is the teacher's co-accused in the offences for which the teacher was convicted. His brother, who has a poor criminal history, is still to face his charges (scheduled for June 2010 for which he has entered a plea of not guilty).

The teacher told the Panel that the offences occurred in the second half of 2008 when C, who was going through some marital issues, 'put it on him' and moved in with him (and his then girlfriend). To the teacher, his brother C appeared both stressed and with heightened senses. C worked a day job as a truck driver at the docks and it was the

teacher's belief that he was also working nights, even though he (the teacher) was encouraging him to stay home and reconcile with his partner.

During this time the teacher received calls from both his mother and C's estranged partner, who asked him to 'to keep an eye out for him (C)'. The teacher was teaching at the time and his offences were conducted at night and did not interfere with his teaching at all. He stated that he did not receive any financial gain from his offences.

Following the teacher's interview with the police regarding these offences on 8 January 2009, his first phone call was to a lawyer and his second was to the Victorian Institute of Teaching to inform them that he was likely to face charges as he had this obligation. He also enquired whether he was allowed to continue to teach and was informed that he was. The Institute solicitor he spoke to was very appreciative of the call and commented that he had shown good character in informing the Institute himself. The teacher also informed his then Principal and his parish priest with the support of a colleague, teacher 1.

The teacher pleaded guilty to the offences on 14 December 2009. He then formally notified the Institute of his conviction in a letter which was received by the Institute on 5 January 2010, a copy of which was tabled as Exhibit B. The teacher had no prior convictions.

An undated letter from Psychologist 1, clinical psychologist, was tendered as Exhibit C. The teacher was referred to Psychologist 1 in February 2009 and attended for six sessions in regard to his elevated anxiety, depression and finding it difficult to cope. In her letter she stated that one of the teacher's major concerns was the impact his criminal conviction may have on his teaching career. She then referred the teacher to Psychologist 2 a forensic psychologist. The teacher stated that he is currently not seeing any psychologist as Psychologist 2 is 'leaving it open to him'. The teacher did, however, tell the Panel that his current partner does want him to see Psychologist 2 as she wants 'his mis-guided loyalty to his brother to end'.

The teacher told the Panel that if his brother came to him again that he would go to the police straight away. Whilst he still has some loyalty to his brother, he is not going to jeopardise his career. He has developed strategies to deal with these issues through his sessions with Psychologist 1 and Psychologist 2. He has also forged strong relationships with his current principal, Principal 1 and a professional colleague, teacher 1, who was his 'buddy' at his previous school. Both these colleagues know of his conviction as he has been open and honest with them. The teacher also told the Panel that if anything happened in the future he would speak to his current principal, teacher 1, his psychologist (Psychologist 2) and his mother (who attended the hearing) for support. He believed that he is more objective than previously in matters such as these.

The teacher provided a summary of his professional teaching career to the Panel, including his qualifications, Bachelor of Arts and Bachelor of Teaching (Deakin) and Post Graduate Certificate in Educational Studies (International Baccalaureate) at the University of Melbourne together with a statement of service from both the employer 2 and employer 1 (in Exhibits D and E).

Under cross examination the teacher admitted that he was aware of his brother's criminal history. He explained that in the October of that year (2008) he received a call from his brother's former partner expressing her worry about his (C's) anxiety and heightened senses. As far as the teacher knew his brother was not on drugs but was rather intrinsically motivated to keep going. The teacher also clarified that the addiction issues that he referred to in his letter to the Institute received on 5/1/09, referred to his brother's gambling on horses.

The teacher said that he was not totally naïve but he did not understand that the events which he had witnessed when keeping 'an eye on his brother' involved theft. He believed that this was his brother's work. He also explained that his elder brother had protected him as a child (from his abusive alcoholic father) and that he was trying to repay this through protecting him from harm now. He told the Hearing that he did not know that his brother was involved in criminal activity until he was interviewed by the police, even though he was aware of his brother's previous criminal activity and that it related to similar offences. He said that he had blocked this out until his sessions with Psychologist 2 (his clinical psychologist) unblocked this. By 2010 the teacher understood that what he had done was wrong. Even though he is still loyal to his family, he is not currently speaking with his elder brother (nor his brother's partner or his niece). The teacher expressed that he was very sorry for what he had done and said that if he could take it all back he would.

The teacher told the Hearing about the severe beatings he had received as a child which led him to be loyal to his protective older brother. He told the Panel that he had been very much under the influence of his older brother but that he was, however, now able to identify this and now has his own support network.

In response to Counsel Assisting's question as to what he had done that was dishonest, the teacher replied that the charges summary was inaccurate. He was of the belief that his brother was employed as a subcontractor. The only dishonest thing he did to assist his brother was to show him how to produce invoices on his computer. After the tenth one, he assumed that he was up to something but still hoped that he was not doing it. He is now able to identify that his brother was a criminal.

The teacher articulated to the Panel what it meant to be a professional and a role model in the community in terms of integrity and responsibility, and being open, honest, passionate, loyal, empathetic and well balanced. When asked about the public perception of a teacher with dishonesty offences, he spoke as to whether it impacted the person's teaching and that parents really wanted to know that their child was enjoying school and learning. In response to questions from the panel as to how he would, if he were a parent, feel if someone with a similar conviction was teaching his child, he did display some understanding of the impact of such a conviction on the reputation of the profession. He was also able to explain to the Panel how he would deal with a student suspected of dishonesty in a highly appropriate and professional manner.

In response to the Panel's questions, the teacher told the Hearing that he had pleaded guilty at his court hearing to get it over with quickly and that he had been guided to do this by his legal advisor.

## **Psychologist 2**

Psychologist 2, a consultant clinical psychologist who has been in practice for 49 years, provided a detailed psychological report on the teacher to the hearing (part of Exhibit D). Under oath Psychologist 2 confirmed all the information in his report which stated that he had seen the teacher for three hours on 15 March 2010. The teacher had outlined the circumstances of his offending which had occurred because he had followed his older brother at night when he said that he was working, but denied having been physically involved in the theft or disposal of containers.

In his report Psychologist 2 indicated that the teacher was the third of four children reared in a home rendered stressful due to his father's alcohol abuse and violence towards all family members. Following completion of Year 12 the teacher worked at Safeway until he was 23 and then undertook a Bachelor of Arts and Bachelor of Teaching at Deakin University. Since then he has been employed as a primary teacher.

Psychologist 2's report indicated that personality testing of the teacher was not indicative of major psychological or emotional disturbance, although responses revealed defensiveness about inner thoughts and feelings.

The report concluded that in view of all the teacher's circumstances, his blameless past and his diligent application to work and studies, that Psychologist 2 hoped that the Hearing would allow the teacher to continue to teach. His plea of guilty in the Magistrates' Court was to avoid prolongation of procedures but that it was evident from the teacher's account and Psychologist 2's knowledge of the older brother's (C's) activities that the teacher was minimally involved to the extent that he was concerned about his brother's functioning.

In his additional evidence to the Hearing, Psychologist 2 also indicated to the Panel that he knew the teacher's older brother, C. He explained that the family setting in which both boys grew up was very stressed and that this would lead to a situation where each sibling would be concerned about the wellbeing of the other and that the older (C) would be protective of his younger brother, the teacher.

Psychologist 2 told the hearing that the teacher pleaded guilty on instruction by his legal advisor. In his professional opinion this was not an unusual course of action. His older brother did not invite the teacher to become involved but did ask for assistance in using the computer (to produce fraudulent invoices). He gave evidence that the teacher, in his own naivety, thought that his older brother C was involved in work but that as time passed did recognise that C was involved in criminal behaviour, although his naivety was such that he did not want to believe this. Psychologist 2 did not believe that the teacher was denying the criminal behaviour to himself, even though he became unwittingly involved. Psychologist 2 told the Hearing that the teacher was naïve, over-trusting and over-confident in believing that all people are trustworthy.

Psychologist 2 told the Panel that he believed that further counselling was not necessary but that it could be useful. On being asked to elaborate, Psychologist 2 explained that the teacher has been traumatised enough by the events to make him averse to being involved again. He stated that the teacher had stabilised his life and is very keen about his teaching and studying, although counselling could be useful regarding his naivety and over-confidence. In comparing the two brothers, whilst Psychologist 2 described the teacher as naïve, he described his older brother C as a more sophisticated and worldly person who is making marked progress with addiction issues.

## **DISCUSSION OF THE EVIDENCE**

The Panel had the responsibility of understanding the context of the teacher's indictable dishonesty offences in its task of determining whether he is currently fit to teach. As outlined in the Victorian Court of Appeal's decision in *Medical Practitioners Board of Victoria v Sabi Lal 2009*, the Panel is required to assess the teacher's moral culpability for the offences, which includes

*...the nature of the offending behaviour, the offender's moral culpability for the offending and the offender's rehabilitation and remorse.*

The Decision goes on to state that to determine the suitability of the applicant (in this case a medical practitioner) to practise that:

*... that question can only be answered after examining the nature and circumstances of the offence, including the particular moral culpability of the applicant and the presence or absence of aggravating and mitigating circumstance. With almost every offence there are so many factual situations that could give rise to a finding of guilt ranging from the minor to the very serious, that the offender's suitability to practise (medicine) could not sensibly be addressed by reference to the finding of guilt alone.*

The Court of Appeal went on to state:

*The variety of circumstances in which most offences come to be committed makes it impossible to determine by reference to the finding of guilt alone whether or not it is in the public interest to allow the applicant to practise (medicine). What is required is an assessment of all of the circumstances of the offence including the moral culpability of the applicant.*

Consequently in determining whether the teacher is fit to teach, the Panel is required to consider all the circumstances of his offences.

Prior to these offences the teacher had a clean record. Having grown up under tough circumstances, it is to the teacher's credit that he put himself through tertiary studies to become a qualified primary teacher who has been fully employed as such since graduation. He presented to the Panel as a passionate teacher, who had a genuine commitment to his students' learning.

His offences, though serious, were committed over a relatively short period of time whilst his elder brother, to whom he had a very strong loyalty by virtue of the difficult circumstances in which they grew up, was living with him. In the eyes of the law, as a co-accused, the teacher was treated as if he was the principal offender irrespective of the actual contribution of each of the co-accused to the offence.

It is clear to the Panel that the teacher pleaded guilty to the offences both to 'make them go away quickly' and on legal advice. Whilst a magistrate does not publish the reasons for his sentencing decision, that the prison sentence was suspended in the teacher's case, is indicative that the magistrate recognised that there were mitigating circumstances behind the teacher's involvement in the offences, even though he pleaded guilty.

From the evidence presented to the Panel, the teacher's actual share of the offences was considerably less than those of his co-accused and primarily involved the use of a computer. Much of what was documented in the offences was in fact a misguided attempt by the teacher to 'keep an eye on' his older brother at the request of his mother and his brother's former partner. The teacher's misguided loyalty to his brother meant that he either did not recognise the criminality of his brother's behaviour until too late or that he was not prepared to accept this. His convictions consequently appear to have been the result of the strong degree of influence that the teacher's older brother held over him, which has been attributed by his psychologist to the abusive family situation in which they grew up.

The Panel is confident that the teacher will not reoffend in the future. His charging and subsequent conviction, his sincere remorse and especially the placing of his teaching career, which he is obviously passionate about, in jeopardy appears to be sufficient incentive to ensure that the teacher does not reoffend in future.

The teacher's offences relate to his personal conduct as opposed to his professional conduct. They do, however, affect the reputation of the profession and the public's trust in the profession. His offences, though serious, were committed over a relatively short period of time whilst his elder brother, to whom he had a very strong loyalty by virtue of the difficult circumstances in which they grew up, was living with him. His previous and subsequent behaviour, and especially his openness regarding his potential and then actual conviction, to both his employers and the Institute would indicate that there is no inherent character flaw and hence no reason to doubt his fitness to teach. Rather, his immediate contacting of the Institute demonstrated the high regard he had for the integrity of his profession and should reassure the public's trust in him as a registered teacher.

The teacher presented as a somewhat naïve person who has a tendency to be over-trusting of others. For a teacher this has advantages in that he is always looking for the best in his students but it is also potentially damaging to him in that he may be 'taken advantage of'. The Panel strongly encourages the teacher to continue to receive professional mentoring and to pursue additional psychological counselling to ensure that he is not led astray in future. As a natural helper, it is important that the teacher learns the boundaries associated with assisting people without putting himself in a vulnerable position or jeopardising himself as a professional.

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

The Panel finds the teacher fit to teach.

*Heather Schnagl.*

**HEATHER SCHNAGL, CHAIRPERSON**

*Heather Schnagl.*

**Per:  
PAUL WILHELM, REGISTERED TEACHER**

*Heather Schnagl.*

**per:  
PENNY WEBSTER, PANEL MEMBER**