

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 106

REGISTERED TEACHER: GENE DE WILDE

PANEL MEMBERS: Heather Schnagl, Chairperson
Terry Hayes, Registered Teacher
Leneen Forde, Specialist Member

ATTENDANCE: The teacher attended the hearing and was self-represented

Simone Bingham, Counsel Assisting with Ms Lucy Turonek, instructing solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 20 January 2011

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006* the Panel found on 4 February 2011 that the teacher is not fit to teach.

The Panel determined to:

1. suspend the teacher's registration for a period of six months from 22 February 2011 until at least 22 August 2011.
2. place the following conditions on the teacher's registration
 - a. The teacher is to attend a minimum of three counselling sessions with his treating psychologist during the six month period when his registration is suspended, at his own expense. The sessions should address the following objectives:
 - to continue to identify the underlying issues which contributed to the teacher's offence

- to continue to identify strategies to ensure the teacher's conduct is not repeated
 - to identify the personal stressors that caused the conduct that caused the offence and to develop strategies to respond to stressful situations, especially in relation to teaching
 - to understand the Victorian Institute of Teaching Code of Conduct, especially section 2.1a & b and the consequences of breaching the Code;
- b. The teacher is to provide his treating psychologist with a copy of this decision and reasons;
- c. At the end of the six month period, the teacher is to provide, at his own expense, a detailed report to the Panel by his treating psychologist, setting out the dates when the sessions occurred and whether he has met the objectives set out above.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 17 July 2003.

By letter dated 30 June 2010, the employer notified the Institute that it had taken action in relation to the alleged lack of fitness to teach of the teacher. The teacher's employment with the employer was terminated as he had been convicted and sentenced in the County Court of Victoria of one charge of intentionally causing serious injury.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 8 September 2010 and the Committee decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 13 December 2010 was served upon the teacher by registered post on 14 December 2010.

THE ALLEGATIONS

The allegation of a possible lack of fitness to teach as set out in the Notice of Formal Hearing is:

The information the Institute has received as evidence of possible lack of fitness to teach is:

1. Whilst registered as a teacher in Victoria, the teacher:
 - a. Appeared in the County Court of Victoria on 19 January 2010 charged with one count of the indictable offence of intentionally causing serious injury. The teacher was convicted and sentenced to three years imprisonment. It was directed that 30 months of the sentence be suspended with an operational period of 3 years.

THE EVIDENCE

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

The teacher

The Panel heard evidence under affirmation from the teacher himself. The teacher told the hearing that he commenced his teaching career in 1997 after studying Arts/Law and a Diploma of Education. He taught for a couple of years in South

Australia before moving to NSW for a year and then relocating to Victoria where he taught at school 1 and later school 2, from where he finished teaching at the end of the 2009 school year just prior to his sentencing and subsequent dismissal from the Department. At this time he was the Humanities Coordinator for VCE.

Following his conviction on 19 January 2010, the teacher served a six month custodial sentence, with the remaining two years and six months of his sentence being wholly suspended.

Since his release the teacher told the hearing that he had relooked at his skills and has worked as a hairdresser, undertaken dance classes, and taken in a boarder and let a property in Adelaide to support himself.

The teacher's initial plans prior to the offence were to stay in teaching in Victoria for a couple of years and then travel overseas, working in the UK, Asia and South America. He clearly recognised that his conviction would make travelling overseas difficult.

Prior to undertaking his university studies, the teacher told the hearing that he was a dancer and very motivated to look after his health and hence did not drink at all. He commenced drinking during his Dip Ed year, with his consumption of alcohol being mainly binge drinking on weekends. It was not clear to the Panel whether the teacher's excessive drinking was related to the stressors of teaching, although he did inform the Panel he was regularly exhausted by his teaching load (which in his final year involved four VCE classes and a Year 10 class) and that he had previously unsuccessfully requested to be part time. He had never taken any stress leave.

The teacher told the Panel that he had commenced seeing his treating psychologist, Mr Robert White, very soon after the actual offence took place in April 2008. Since this date the teacher told the Panel that he has distanced himself from those activities which were associated with his binge drinking, restructured his peer group for similar reasons, become involved in activities such as dance classes, swimming, and had more personal time. He told the Panel that he no longer drinks wine or spirits but will drink light beer.

The teacher stated that he did not believe that he had anger issues and told the hearing that neither his psychologist nor his forensic psychiatrist (who provided a report to the County Court hearing but which was not provided to this hearing) did not consider that he had anger management issues nor was he required to undertake an anger management course whilst in gaol.

The teacher's offence of intentionally causing serious bodily harm in which he broke a glass on a woman's face and dragged the broken glass across her face is part of a group of offences colloquially known as 'glassing'. In response to questions as to how he would talk with adolescents regarding his conviction, the teacher recognised the potential for students to 'glorify his offence'. He said that he would talk to students about the issues of alcohol and the impact of his 'glassing' on the victim and assist students to see the ramifications of his actions and hence diffuse any aura associated with having been to prison/'glassed' someone. He envisaged that he might be able to talk with students in a manner similar to that of those convicted of drink-driving trying to prevent adolescents from committing similar offences.

He recognised that his conviction posed a challenge to a teacher who should be a role model for his students but he told the Panel that he would like to think that people needed to see redemption as well. In his own words the teacher told the Panel that 'he had stuffed up, worked on things and redeemed himself' and this was preferable to the alternative that someone in his situation was hated and alienated by society.

When questioned about the offence in light of the Institute's Code of Conduct with particular reference to section 2 Personal Conduct, The teacher recognised that he was in breach of section 2.1 a and b, namely being *a positive role model at school and in the community* and *respect the rule of law and provide a positive example in the performance of civil obligations*. He stated that he would acknowledge that he had broken the law, that he has been punished, had reflected on the incident and made a successful journey into another space where this would not occur again. He felt that his rehabilitation should be taken into account.

In response to questions as how he would manage his stress levels if he were to return to teaching, the teacher told the Panel that he would only teach part time, something he had requested unsuccessfully previously. He would also continue to go to the gym and attend dance classes. He stated that he was not a solitary drinker but was a binge drinker and has learnt to avoid the social situations in which his binge drinking had occurred.

In his final comments to the Panel, the teacher spoke of the range of his experiences before teaching, mainly in the creative areas of dance and drama, and that he had not fallen into any of the pitfalls associated with the club scene. He said that he had chosen teaching because he had a young child at the time who needed caring for during the school holidays. He had received high distinctions for his education subjects and had positive references for his teaching. The teacher told the Panel that he had worked and maintained a high standard in his teaching right up until his sentencing, even during the stressful almost two year period between his offence and the County Court sentencing.

At the time of the hearing the teacher told the Panel that he was still receiving treatment from his psychologist, Mr Robert White, approximately every six weeks. He also indicated that he would continue to receive counselling were he to be able to return to teaching, something he later said that he should have done years ago.

In response to questions from the Panel regarding what information he would supply to a prospective employer regarding his conviction should he return to teaching, the teacher said that he would not disclose it on an application form, unless specifically asked questions regarding any convictions, but would tell the principal if he was offered a position. With respect to the school community, the teacher said that he would use this as an example of what could happen with his students and parents and disclose that he was receiving counselling to parents. He stated that he would need support from the leadership team of the school.

The teacher told the hearing that he was devastated not only about his fall from grace but also for the victim. He said that he was shocked at the time and is very sorry for what he had done. He was lucky that the victim was not extremely seriously injured and had no ongoing psychological issues.

When the offence occurred, the teacher informed the Institute that he was likely to be charged, although he did not inform his principal, school 2 or the employer, until after he was convicted in January 2010. He told the Panel that he did not inform his principal at the time of the offence as there was nothing she could do about it.

DISCUSSION OF THE EVIDENCE

The Panel found the teacher to be a credible witness. He has taken responsibility for his actions and showed insight into how his behaviour reflected adversely on the teaching profession. The Panel accepted the teacher's evidence and noted a clear difference in his lifestyle leading up to the offence and subsequently. Overall the Panel believed that the teacher had shown considerable personal initiative in getting his life in order and in supporting himself after his dismissal as a teacher.

FINDINGS UNDER SECTION 2.6.46(1)

The facts in this matter are not in dispute. The teacher was convicted of intentionally causing serious injury and was sentenced in the County Court to three years imprisonment, 30 months of which was wholly suspended. The charge arose out of an incident whereby the teacher, when affected by alcohol, smashed a glass into the face of a woman causing her serious injury. The issue for the Panel to address is whether this conviction results in the teacher being unfit to teach.

The seriousness of the offence together with the lesser charge of recklessly causing serious harm, are more commonly referred to by the community as 'glassing'. Its prevalence amongst young males, as outlined in *Winch v R [2010] VSCA 141* (Winch), guided the Panel in its decision making.

As outlined in *Winch* 'glassing' cases have a number of common features, namely that:

- they are usually an act of alcohol-fuelled aggression, in disproportionate response to an actual or perceived slight
- the typical offender is young and generally of good character
- the consequences are almost invariably very serious with the victim sustaining severe lacerations, as was the case in this offence (Exhibit B)
- the act is not one of mere carelessness, but rather the offender consciously disregards the risk of serious injury which they knew to exist.

In their sentencing remarks the Court of Appeal in *Winch* noted the importance of general deterrence in cases such as those involving 'glassing', which they recognised as prevalent in the community. This heightened the importance of general deterrence. With respect to a case of intentionally causing serious injury, Chernov JA in *Director of Public Prosecutions v Cook (2004) 141 A Crim R 579* considered the principle of general deterrence of even more importance.

In the Panel's view the seriousness and the prevalence of 'glassing' mean that whilst the Panel (and the trial judge) are of the view that the teacher is unlikely to reoffend, the principle of general deterrence (per Mason P in *New South Wales Bar Association v Hannan [1999] HSWCA 404*) and condemnation of the conduct must be taken seriously.

In common with most 'glassing' offences, the teacher had a clean record prior to this offence. Having grown up under tough circumstances as noted by the Court, it is to the teacher's credit that he put himself through tertiary studies to become a qualified secondary teacher. Whilst no character references were provided to this hearing, the Panel noted the character references referred to by Judge Campton in her sentencing remarks.

The teacher's remorse and guilty plea was noted by Judge Campton, although, to the Panel this appeared to be more in the abstract than by intimate connection. It was, however, recognised that this hearing occurred at the end of a long process and nearly three years after the actual offence.

The teacher remains subject to a suspended sentence for the offence and will do so for a further two years. Should he reoffend at any time in this period he will be subject to a further custodial sentence and the Panel noted that it may trigger further disciplinary action by the Institute.

The Panel had the responsibility of understanding the context of Mr Gene De Wilde's indictable offence of intentionally causing serious injury in its task of determining whether he is currently fit to teach.

The phrase 'fit to teach' was not defined in the *Education and Training Reform Act 2006* (the Act) prior to 1 January 2011 with Panels relying on common law interpretations of fitness to teach, such as those provided by decisions of *Davidson v Victorian Institute of Teaching [2007] VCAT 920 (30 May 2007)* (Davidson), *Marks v Victorian Institute of Teaching [2007] VCAT 1444* (Marks) and *Burgess v Board of Teacher Registration Queensland (2003) QDC 159* (Burgess).

Even though the teacher's offence occurred prior to 1 January 2011, the Panel had to decide whether the teacher was fit to teach at the time of the hearing in January 2011. The statutory definition of fitness to teach provided in section 2.6.1 is:

whether the character, reputation and conduct of such a person are such that they should be allowed to teach in a school

This definition, however, is not inconsistent with the common law interpretations relied on previously.

This hearing was in relation to the teacher's personal not his professional conduct, which has never been in question. As outlined in *Allinson v General Medical Council (1891-4) All ER 768* the standard applied to a medical practitioner is:

'conduct which would reasonable be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'

In *Zeims v Prothonatory of the Supreme Court of NSW (1957) 97 CLR 279* the conduct of the practitioner which resulted in his conviction and prison sentence had nothing to do with his practice as a barrister. However it was noted that:

Personal conduct may no doubt be grounds for disbaring, because it may show that the person guilty of it is not a fit and proper person to practise as a barrister...But the whole approach of a court to a case of personal misconduct must surely be very different from its approach to a case of professional misconduct.

As noted in *A Solicitor v The Council of the Law Society of New South Wales (unreported)*, [2004] HCA 1

.. 'a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise.

That the teacher was convicted of a serious offence and sentenced to imprisonment do not of themselves determine that he is not a fit and proper person to be a teacher. The nature of the crime, namely intentionally causing serious injury, however, is not consistent with either the public perception of the profession or the need for teachers to be role models for their students.

The standard upon which the teacher's conduct must be assessed is the standard of the whole of the teaching profession, and hence the Panel is required to refer to the Institute's Code of Ethics and Code of Conduct, and in this particular case, Principle 2.1 of the Code of Conduct, namely

The Personal Conduct of a Teacher will have an impact on the professional standing of that teacher and on the profession as a whole

The Panel is cognisant of its role to determine the teacher's fitness to teach at this time as opposed to at the time of his offence (nearly three years ago) or court appearance (twelve months ago). In making its determination the Panel is also mindful of the significant steps the teacher has undertaken to rehabilitate himself, and the potential for this case to act as a deterrent and an example for young people in the future.

Whilst Judge Harbison in *Davidson v Victorian Institute of Teaching [2007] VCAT 920*, with respect to fitness to teach, indicated that the conduct must be of a continuing and persistent nature for a teacher to be found not fit to teach, the Panel formed the view that the serious nature of the offence and the need for deterrence to prevent such violent crimes in the community, gave the Panel no option other than to conclude that the teacher is not currently fit to teach.

THE DETERMINATION

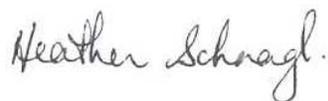
The Panel has found that the teacher is not fit to teach at this time. This does not mean, however, that he will not be so in the future. In fact the Panel was encouraged by the teacher's actions to seek and commence counselling shortly after the actual offence, to remove himself from the social situations which had contributed to his binge drinking and to limit his alcohol consumption, rather than await the outcome of the subsequent court proceedings. This clearly demonstrated his insight into his actions and assisted the Panel to form the view that a period of suspension as opposed to cancellation of his registration was appropriate. Whilst the Panel received a letter from The teacher's treating clinical psychologist stating the he was fit to work as a teacher, this was not able to be tested under oath nor did his treating psychologist provide any indication of the treatment involved or the reasons for his conclusion. In her sentencing remarks, however, Judge Campton referred to reports from both the consultant psychiatrist, Dr Lester Walton and the teacher's treating psychologist, Mr Robert White, and took the changes which the teacher had made to his life into account when determining the appropriate sentence. The Panel too was impressed by the teacher's honesty in facing up to the seriousness of his offence.

As in *Laragy v Victorian Institute of Teaching [2009] VCAT 265*, the Panel has considered the degree to which the teacher has insight into his offence, his acceptance that the conduct was seriously wrong and incompatible with the personal conduct of a teacher, his empathy with his victim and the measures he has taken to avoid similar behaviour. Prior to the incident the teacher had an unblemished record. From his evidence, the teacher has, over time, deepened his awareness of the seriousness of his offence and is in the Court's and the Panel's view unlikely to re-offend. Consequently the Panel is satisfied that this is a one-off offence, albeit a very serious one, and that the teacher has learnt this lesson and is unlikely to re-offend. Suspension for a fixed period indicates a degree of confidence in the teacher's future ability to teach.

In making its determination, the Panel is cognisant of the fact that the teacher has already paid his debt to society and has served a custodial sentence for the offence. However, the Panel is charged with the responsibility of protecting the public and maintaining public confidence in the teaching profession. As well as the general role of deterrence in protecting the public is also a factor to be taken into consideration. The consequence of the Panel's determination is that the teacher is dealt with more harshly for his transgression than other members of the public. This, however, is an unavoidable consequence of the maintenance of the necessary high standards required of the teaching profession (*Burgess v Board of Teacher Registration Queensland (2003) QDC 159*). This principle of deterrence must also, however, be balanced with the principles supportive of rehabilitation.

The Panel's determination has to balance the level of general deterrence with the opportunity for rehabilitation. Given the seriousness and violent nature of the offence, the protection of the public necessitates a strong message being sent to other teachers that such conduct is wholly unacceptable and will not be tolerated.

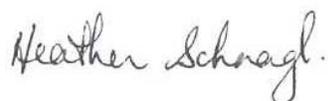
The Panel finds the teacher not fit to teach and has determined to suspend his registration subject to conditions.



HEATHER SCHNAGL, CHAIRPERSON



**per:
TERRY HAYES, REGISTERED TEACHER**



**per:
LENEEN FORDE, SPECIALIST MEMBER**