

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 119

**REGISTERED TEACHER:** AZ

**PANEL MEMBERS:** Heather Schnagl, Chairperson  
Terry Hayes, Registered Teacher  
Penny Webster, Panel Member

**ATTENDANCE:** The teacher attended the Formal Hearing and was self-represented  
  
Ms Simone Bingham, Counsel Assisting with Ms Jennie Somodio, Instructing Solicitor, on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 17 May 2012

**DATE OF DECISION:** 30 June 2012

#### **FINDING AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 30 May 2012 the Panel found the teacher fit to teach and determined that he 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 31 December 2002.

On 2 February 2010 the teacher consented to a criminal record check being conducted through CrimTrac, an agency of the Australian Police Services. On 25 February 2010, the Institute received the teacher's criminal history.

The details of the teacher's criminal history were referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 16 February 2011 and the Committee decided to refer the matter to an investigation.

On 16 November 2011 the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 14 February 2012 was served upon the teacher by registered post on 16 February 2012.

### THE ALLEGATIONS

The allegations of lack of fitness to teach as set out in the Notice of Formal Hearing are:

1. Whilst registered as a teacher in Victoria, the teacher:

(a) *On 11 July 2006, appeared in the Magistrates' Court charged with the following:*

- i. *One count of intentionally threaten serious injury. Without conviction, the matter was adjourned to the Magistrates' Court on 11/07/2007 at 10:00am. The teacher was released upon giving an undertaking starting on 11/07/2006 to appear before the adjourned date if called upon during the period of adjournment and was to be of good behaviour during the period of adjournment. As a further condition, the teacher was to complete a welfare organisation's positive lifestyle course within three months and to provide proof of completion to the Registrar of the Court within that period.*

### DOCUMENTS CONSIDERED

The following documents were tendered as evidence:

1. Hearing Book (Exhibit A)
2. Subpoenaed material from Victoria Police (Exhibit B)
3. Outline of Submission from Counsel Assisting the Institute (Exhibit C)
4. Reference from witness 1 dated 19 April 2012 (Exhibit D)

## **THE EVIDENCE**

The Panel heard evidence from the teacher himself and two colleagues, witness 1 and witness 2.

### The teacher

The teacher, who gave evidence under affirmation, told the Panel that he currently taught a language at school 1, mainly to Year 11 and 12 students, but had also taught Studies of Society and Environment and Information Technology when he was teaching full time.

When asked why he had not informed the Institute of his finding of guilt in 2006, he stated that he did not know that it was related to his teaching until 2009 when he was required to renew his National Criminal History Record Check in order to receive a valid registration card. It was only when talking with the Institute regarding this matter that he became aware of the connection between his personal and his professional life.

Regarding the offence itself, the teacher told the Panel that when interviewed by police he admitted his guilt immediately. He stated that the offence, threatening his wife with a weapon, occurred whilst he was suffering from a bad migraine and that he had then gone to sleep and was not even aware that his wife, who was due to deliver their third child in three days and two young children, had left the house via a window and sought refuge at a neighbour's house. He later slept the night at the police station. He told the hearing that he felt really bad and guilty regarding these events as he did this to someone that was very close to him. He became depressed and really regretted his actions and assured the Panel that it would not happen again.

As part of his sentence conditions, the teacher was required to attend a welfare organisation's Positive Life Style course in anger management which focused on ways in which to deal with anger and how not to be violent either physically or verbally. The teacher told the hearing that this course had taught him other ways to release anger.

The teacher gave evidence that he is able to handle difficult situations in the classroom, especially those faced in special schools, where he stated that he liked the challenging behaviours, even though many other teachers refused to teach such students because of the behavioural issues involved. When questioned as to whether the stresses associated with the classroom might make him react, he explained that the occasion which resulted in his finding of guilt occurred when his wife was pregnant unexpectedly with their third child which had affected her significantly and occurred when he was personally suffering from a very bad migraine. He stressed that this would never happen again and that he had learnt how to release his anger without violence.

When questioned about the Institute's Code of Conduct for the teaching profession, the teacher stated that he was aware of it from his tertiary studies. He did not, however, register that it related to his personal life but had believed that it only related to his professional life. When referred specifically to Principle 2.1 with particular reference to points (a) and (b), the teacher recognised that his act of domestic violence was not good for his personal professional standing as a teacher, nor for the profession as a whole. He indicated that if parents and/or students asked him about his act of family violence, that he

would apologise deeply, state that it was not acceptable and would not recur and that he was not setting a good example for them. He would then go on to state that people make mistakes and that it is important to learn from them how to be a better person and that he hoped that others could learn from his mistakes. He said that ‘experience is a good teacher but it comes too late’!

The teacher told the Panel that he used to work seven days a week, a full time teaching position in which he taught a full school week, then at school 1 on Saturdays and then as a volunteer at the Community Centre (a language) on a Sunday. Since he no longer held a valid teacher registration card, he has not been able to work other than at school 1, which had not asked him to produce a valid registration card.

The teacher was able to articulate a range of strategies he uses to minimise stress in managing student behaviour issues, including being very well organised, having thought through a range of scenarios in advance and having a plan as to how to respond if and when challenges arose. He also told the hearing how important, particularly in a special school setting, it is to react calmly. He appeared to be a committed language teacher who could describe good practice for language teaching to effectively engage students in their learning. He also recognised the importance of developing a good professional relationship with his students and worked with colleagues to share and solve challenges. On further questioning by the Panel he was able to describe how he would deal with students who challenged his authority in an appropriate and professional manner. He outlined the importance of consistency and focusing on the positives but that, where necessary, his goal was not to punish the student but their inappropriate behaviour and to attempt to determine why the student was behaving in this manner.

In response to questions from the Panel, the teacher indicated that if he was asked for a criminal records check, he would tell a future principal of his finding of guilt.

#### Witness 1

Witness 1, who gave evidence under affirmation, told the Panel that he had known the teacher originally in 1996/7 and that they had reconnected in 2002 and since then their families had become friends. When witness 1, who is Year 7 Coordinator at school 2, had taken long service leave the teacher had been appointed as his replacement and the school had actually continued this appointment for a further 12 months.

Witness 1 had been unaware of the offence which led to this hearing until the teacher had asked him to write a reference and was informed of the reason for this reference. The reference was tendered to the hearing as Exhibit D.

In his evidence witness 1, who has been a teacher in Australia since 1998 indicated that he was aware of the Institute’s Code of Conduct for the teaching profession. On being referred specifically to Principle 2.1 points (a) and (b) he stated that an act of domestic violence would not be the way society expects a teacher to behave, but also that it needs to be looked at on a case by case basis.

When asked by the Panel that had he been hypothetically placed in a position where he employed teachers, whether he would employ the teacher, he indicated that he would and

that, if questioned regarding this offence, he would state that he knew him to be a very professional teacher.

#### Witness 2

Witness 2, a retired teacher who is now the area manager for a casual relief teacher (CRT) agency, gave evidence under oath that he first met the teacher when he was on his list of available teachers in 2003/4. He told the Panel that his relationship with the teacher was not purely professional in that he had since become friends with his family.

Witness 2 told the Panel that he was aware of the teacher's finding of guilt, although there had never been a hint of violence in any school. He said that he had received significant feedback from his schools regarding the teacher. He told the Panel that had the teacher held a current teacher registration card, he would have been a highly sought after CRT as a large list of schools had asked to have him back. This included special schools. Witness 2 also stated, should the teacher be found fit to teach, that whilst he is unable to answer for the company for which he worked, he personally would have no hesitation in placing him in a school as a CRT. One special school had told him that the teacher can cope with things that no one else can and that their teachers 'love him'!

### **DISCUSSION OF THE EVIDENCE**

The teacher was before the Panel to determine his whether he is currently fit to teach following a finding of guilt for the offence of 'intentionally threaten serious injury' at the Magistrate's Court on 11 July 2006. He admitted his guilt immediately on being questioned by the police and did not contest the charge at the Magistrate's court.

The Panel noted that the teacher's crime was an act of domestic violence but was considered by the presiding Magistrate to be at the lower end as indicated by firstly, his sentencing remarks, secondly, that no conviction was recorded and thirdly, by the nature of the penalty imposed, namely the requirement to attend an anger management course.

It was clear to the Panel that the teacher benefitted from attending the prescribed anger management course, both in his personal life and that these insights have proved valuable in his professional life as a teacher. This, however, does not alter the circumstances of the actual offence in 2006, which must have been extremely frightening for the teacher's wife, who at the time was within days of delivering her third child and her two children, who were forced to leave the house through a window.

Whilst the Panel heard evidence from witness 1 about the professional standing of the teacher together with his standing within a specific migrant community, it was found that his close personal relationship to him meant that he was unable to be objective in this situation and hence unable to form an impartial view. However, the second witness, witness 2, who had previously employed the teacher as a casual relief teacher, was able to provide the Panel with a more objective professional opinion. He stated that the teacher is a frequently requested casual relief teacher who was highly regarded including at special schools.

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 being required to rely on common law interpretation of fitness to teach, such as those provided by decisions of *Davidson* (*Davidson v Victorian Institute of Teaching* [2007] VCAT 920), *Marks* (*Marks v Victorian Institute of Teaching* [2007] VCAT 1444) and *Burgess* (*Burgess v Board of Teacher Registration Queensland* [2003] QDC 159).

Whilst the teacher's indictable offence occurred prior to the proclamation of amendments to the Act on 1 January 2011, the Panel is obligated to use the statutory definition of fitness to teach provided in the amended section 2.6.1, namely: *whether the character, reputation and conduct of such a person are such that they should be allowed to teach in a school in its determination*. 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 in this case and to many other professionals since is: *'conduct which would reasonable be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'*.

In *Zeims* (*Zeims v Prothonotary 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* [2004] HCA 1 S406/2002, *.. '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 found guilty of an offence involving domestic violence does not of itself determine that he is not a fit and proper person to be a teacher. The standard upon which his 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*.

In this particular case the nature of the indictable offence, namely intentionally threaten serious injury, which whilst at the lower end of offences involving violence and not with malice, is of concern to a profession which has the responsibility of both working with children and acting as a role model for them.

The primary purpose of this hearing was to determine the teacher's fitness to teach to both protect the public and the reputation of the teaching profession as at the date of hearing. In reaching a conclusion about whether he was fit to teach the Panel was guided by *Davidson v Victorian Institute of Teaching* (2007) VCAT 920. The Panel weighed up the

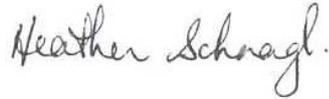
factors provided by that judgment. The Panel accepted that the conduct was not of a continuing and persistent nature and that the events all occurred within a very brief time period on the evening of 12 January 2006. The VCAT decision took the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature, rather than a single act of serious misconduct. In The teacher's case, there was a single offence rather than repeated offences and there have been no subsequent offences in the past six years. The Panel noted that he had demonstrated good relations and significant patience with students in the past, especially in special schools.

**FINDINGS**

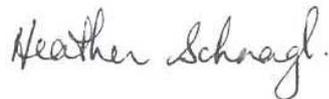
On 30 May 2012 the Panel found the teacher fit to teach.

**DETERMINATION**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 30 May 2012, the Panel found the teacher fit to teach and determined that he remained registered as a teacher in Victoria.



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**HEATHER SCHNAGL, CHAIRPERSON**



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**per:**  
**TERRY HAYES, REGISTERED TEACHER**



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**per:**  
**PENNY WEBSTER, PANEL MEMBER**