

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 121

REGISTERED TEACHER: BKP

PANEL MEMBERS: Terry Hayes, Chairperson
Anne Farrelly, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented

Ms Melinda Richards, Counsel Assisting, with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 27 June 2012

DATE OF DECISION: 13 July 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 13 July 2012 the Panel found that the teacher is fit to teach and to remain 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 26 July 2011, the teacher consented to a criminal record check being conducted through CrimTrac, an agency of the Australian Police Services. On 23 August 2011, 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 31 January 2012 and the Committee decided to refer the matter to an investigation.

On 28 March 2012, the Committee considered Information provided by the NSW Police Force and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 14 June 2012 was served upon the teacher by registered post. The teacher attended the Institute on 19 June 2012 and was personally served with a copy of the Notice of Formal Hearing.

THE ALLEGATIONS

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

1. Whilst registered as a teacher in Victoria:
 - (a) On 7 April 2009 you appeared in the New South Wales Downing Centre Local Court and were found guilty without conviction of common assault - T2 under s.61 of the *Crimes Act 1900 (NSW)* for which you received a good behaviour bond for 24 months.

THE EVIDENCE

The teacher made an opening statement to the Panel and then, affirming the oath, submitted himself to cross examination.

The teacher informed the Panel he had been teaching for twenty- one years in a variety of adolescent and adult contexts in Australia, Japan and Hong Kong. His most recent teaching was at school 1 where he had been a CRT teacher on and off for twenty years and at a language school, school 2. His subject methods were English, ESL and Japanese. He said he considered himself to be a committed teacher who was interested not only in his students' intellectual development but in their overall well being. He cited

testimonials from students as evidence of the fact that he took the pastoral care component of his work seriously.

The teacher provided substantial background to the events leading up to the incident and subsequent assault charge. The Panel noted that his evidence provided a starkly different account of the incident to that provided in the Hearing Book which included the witness statement of Ms H (the woman who accused him of assaulting her) and the police fact sheet.

The teacher said the incident occurred at a time in 2009 when he and his Japanese wife were living in a unit in Pyrmont that they shared with other tenants while he was teaching at a Sydney language school. The teacher stated that, having lived in Japan, he was attuned to the cultural sensitivities of Japanese people, especially their unfamiliarity with shared living spaces. He and his wife had previously shared the unit with two female Japanese students and they had successfully made them feel welcome and comfortable in the shared living arrangements. He had assumed he would do the same with Ms H and her Chinese partner when they moved in.

The teacher said that the latter had moved out after three days and this fact he believed had contributed to Ms H showing signs of stress in the two weeks she had occupied the unit prior to the assault charge. During those two weeks, the teacher said he had found Ms H a difficult co-tenant despite his and his wife's efforts to make her feel welcome. She had abruptly left a dinner party they had arranged to allow her to converse with other Japanese speaking people. She did her washing at a time she had been told was reserved for them. She turned the radio off when he and his wife were listening to it. He said overall he found her to be inconsiderate but not enough to make him angry.

The teacher said that on the morning of the incident he had opened the unit gate to allow Ms H to pass through first and she had let it swing back, thereby causing it to hit him. This had been the catalyst for him determining to speak to her about her behaviour. That night he and his wife had attended a travel agent's social function where he drank two glasses of wine and two glasses of beer. On the way home they discussed speaking to Ms H about the incident at the gate and her behaviour in general. When he arrived home he took off his shoes, knocked on her door but received no response. Thinking he heard noises in the room he turned the handle and pushed against the door. He said he stepped up to the door but did not enter the room. When questioned by Counsel Assisting about his action in opening the door he said, from his experience of living in shared accommodation, he did not believe his action to be unusual.

The teacher stated that, in the presence of his wife, he explained to Ms H that unless she could resolve the situation of her behaviour she would have to move out. He did not consider his demeanour confrontational and Ms H listened to him in silence. He stated that at no time did he either physically or verbally abuse her. He and his wife then watched *At the Movies* and went to bed. He was awoken by the police at about 12.30am who informed him that Ms H had complained to the landlord about the teacher assaulting her and the landlord had advised her to call the police. The teacher said he thought it odd that she should speak to the landlord, though him being Japanese may

have explained this. In retrospect, he believed that both Ms H and the landlord saw the incident as an opportunity to ask him to leave the unit.

The teacher said he could not explain the presence of the objects on the bathroom floor or the chair in the bathroom, shown to him in photographs taken by the police, as he had not entered the bathroom. Nor could he explain the bruising on Ms H's wrist.

The teacher said he had seen no reason to inform his current employers of the charge since he had accepted his lawyer's explanation that there would be no record of the conviction, and he did not believe he was legally obliged to inform prospective employers. However, when school 2 required a criminal record check he informed them of his conviction. He then informed the Institute of the fact when applying for registration renewal.

The teacher said he understood why the Institute might be concerned about a teacher's fitness to teach because it had a duty to protect the profession. However, he had not made a connection between behaviour in his personal life and his professional behaviour. He assumed his fitness to teach would be judged in terms of his professional behaviour, not on the conviction for the assault. This was the reason he had not asked his wife to attend the hearing to give evidence to corroborate his version of the incident.

When asked how he would handle the situation if a student, parent, fellow teacher or indeed any member of the community raised the matter of his conviction, he initially expressed surprise that a student might have access to such information. However, on reflection, he said that in such cases he would seek instruction from the principal and/or the VIT about how he should respond to the disclosure. He added that, depending on the age and maturity of a student, he would include the student in any explanation he might give.

DISCUSSION OF THE EVIDENCE

The Panel observed the teacher delivering his evidence in a calm and measured and considered way. The Panel recognised however that his version was starkly opposed to the evidence, the witness statement and fact sheet provided in the Hearing Book. The Panel also noted that the offence had been proven and the Panel were obliged to accept the Court's finding.

The Panel considered that the teacher displayed a certain naiveté about the fact that a teacher's fitness to teach is not judged solely on one's professional behaviour. Given that he showed a ready understanding of why the Institute might be concerned about the impact of a teacher's assault charge conviction on the reputation of the profession, the Panel feels he should have been more alert to the implications of that in his own circumstances.

The Panel also felt that the teacher displayed a similar naiveté regarding the fact that a student might access information about his conviction, though it was impressed by his capacity to reflect on that likelihood when it was brought to his attention and talk about

how he might respond to such an occurrence. To that extent the Panel felt that attendance at the hearing was a salutary experience for the teacher. By alerting him to the fact that the conviction might have wider ramifications than those he initially thought were the case, he might be better prepared for such an eventuality.

FINDINGS

The Panel are obliged to accept the findings in criminal proceedings.

The Panel considered the effect the conviction had on the teacher’s fitness to teach. The assault of Ms H was a solitary event and it did not constitute behaviour of ‘a continuing and persistent nature’.

The offence itself is on the lower end of seriousness as is reflected by the Court’s decision to not record a conviction, instead placing the teacher on a two year good behaviour bond. There has been no subsequent transgression. The offence occurred some three and a half years ago.

The teacher showed insight into why the offence reflects adversely on the reputation of the teaching profession and the importance of the Institute in acting to protect that reputation.

Regarding his own responsibilities as a teacher, the teacher offered an eloquent defence of his commitment to teaching and students in a wide range of contexts. Finally, while the Panel did not expect the teacher to feel remorse or contrition for an act he was adamant he did not commit, it was impressed by his sense of shame that a criminal conviction had been recorded against him.

DETERMINATION

The Panel determined that the teacher is fit to teach and remain registered as a teacher.



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TERRY HAYES, CHAIRPERSON

Lery Hayes

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per:
ANNE FARRELLY, REGISTERED TEACHER

Lery Hayes

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per:
PAUL WILHELM, REGISTERED TEACHER