

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 113

REGISTERED TEACHER: GJB

PANEL MEMBERS: Garry Salisbury, Chairperson
Anne Sarros, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher was represented by Mr Tim Walsh, Barrister
Ms Alanna Duffy, Counsel Assisting with Ms Lucy Turonek,
Instructing Solicitor, on behalf of the Victorian Institute of
Teaching

DATE OF HEARING: 16 January 2012

DATE OF DECISION: 16 January 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 16 January 2012 the Panel determined that the teacher retain his registration as a teacher without the imposition of any condition arising from this matter.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 17 August 2010, the school notified the Institute that it had taken action in relation to the alleged lack of fitness to teach of the teacher, following advice that the teacher had been charged with indictable offences.

In March 2011, the Institute requested information in relation to these offences from the Magistrates' Court and Victoria Police.

This matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 16 March 2011 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 15 December 2011 was served upon the teacher by express post.

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) Appeared in the Magistrates Court of Victoria on 4 January 2011 charged with one count of the indictable offence of indecent assault. The teacher entered a plea to this charge and the Court ordered that:

- i. Without conviction, the matter be adjourned to the Magistrates' Court on 3 January 2012 at 10:00am.*
- ii. The teacher was released upon giving an Undertaking starting on 4 January 2011.*
- iii. The teacher was to appear before the adjourned date if called upon during the period of adjournment.*
- iv. The teacher was ordered to be of good behaviour during the period of adjournment.*

THE EVIDENCE

Counsel Assisting the Panel said that the teacher had pleaded guilty to the offence and no conviction had been recorded. She said the offence had occurred in 1988, there was no dispute about the circumstances and that the Panel's role was to decide whether the teacher was presently fit to teach.

The teacher's Counsel stated that the teacher had been a teacher for thirty years. He said that the teacher did not dispute that his behaviour amounted to serious misconduct and he accepted that his offence was a serious one. The teacher's Counsel pointed out that the Magistrates' Court penalty was at the lower end of the scale. Counsel said that the victim had left school in the year previous to the offence and the teacher was thirty four years of age at the time of the offence. He said the teacher had travelled after leaving the school and done relief teaching. He had taught at the school since 1999. Counsel said the offence had occurred twenty three years ago and the teacher had maintained high professional standards ever since. He had married and had two young children. He had pleaded guilty at the Magistrates' Court. Counsel argued that in light of these facts it was clear that the teacher was fit at the present time to maintain his registration as a teacher.

The Teacher

The teacher said that he had studied at a Victorian College and graduated in 1978. He taught at school 1 in 1979 as a teacher/librarian. He had then taught at school 2 between 1989 and 1993 which was when the incident occurred. He had pleaded guilty to the charges and his behaviour was out of character and he was ashamed of it. He also said he was disappointed with himself. He now understands the boundary between teachers and students. After leaving school 2 he had travelled and taught overseas. He returned to Australia in 1993. He married in 1994 and did casual relief teaching for a period of time. He began teaching at the school in 1999 where he was the librarian, taught Religious Education, Twentieth Century History and had additional duties as a home room teacher. He was a member of the staff choir, attended retreats and assumed a pastoral role. He had completed a fifty hour course as part of his requirements to teach in a religious school. He now had two children.

When questioned by Counsel Assisting he said he had been counselled by a psychologist and assessed once previously and then after his police interview he reflected on the charges laid against him in five sessions with a psychologist. He now felt that his behaviour was not something a teacher should be involved in. When asked by the Panel if he had any explanation for the twenty three year gap between the event and charges being laid he said he did not. He said the victim had continued to live in the same town and the event was not raised. He said he now keeps students at arm's length. At the time he thought he had done something wrong and was ashamed but didn't talk to anyone about his actions. He told the principal at his school about his police interview on the Friday on the following Monday. He said he enjoyed teaching because of the rewards of seeing a "light turn on" when a student understood the work. He said the challenges he faced were a lack of commitment by students and their lack of general knowledge. He said in the period he had not taught he had become a full-time gardener at home and looked after his two children which he had enjoyed. He had maintained contact with his colleagues at school.

When questioned by the Panel the teacher said that at the time of the incident he knew he had done the wrong thing and had subsequently reflected on his behaviour so that there would never be a repetition.

The Witness

The witness said she had been a library technician at the school for fourteen years and the teacher had been her manager for twelve years. She said he was courteous, polite, hard working and willing to share his knowledge with staff and students. He was with students on a daily basis and she had no cause for concern. She said the teacher was respected by his peers and students and easy to talk to. He was an excellent teacher, a true professional who was everything a teacher should stand for. The witness said that she understood the teacher had been charged with indecent assault twenty three years ago and while not wishing to trivialise the charge she thought the length of time since the offence should be taken into account. The witness was asked by a member of the Panel if she thought the teacher would follow the VIT's Code of Conduct and students and teachers would be safe. She said they would. The witness said 2011 was a tough year without the teacher whose advice was needed and the school community had missed him.

The Principal

The principal said he was the current principal at the school. He said he had no concerns whatever about the teacher's conduct either in or out of school. There were no matters on file that gave rise to concern. He said the teacher had been stood down as a matter of policy but that his job remained open to him to return. He said he was aware of the charges against the teacher. The principal said that the teacher's professionalism was evident in his role as head librarian and his efficient management of staff, His conduct had been exemplary and his relationship with staff was positive and professional. He was well respected by students. The principal could not foresee any difficulties in the teacher returning to the school as staff were not aware of the situation nor were students. He said the teacher had remained interested and concerned about the school in his absence.

DISCUSSION OF THE EVIDENCE

The Panel considered the evidence of the teacher, the principal and the witness to be honest, consistent and reliable. The Panel also accepted that the teacher's behaviour and adherence to professional standards in his fourteen years at the school had been without blemish. The Panel accepted the professional opinion of Doctor SL who attested that the teacher was well adjusted, had a strong private and professional life and posed no threat to students. His assessment was that the teacher was a fit and proper person to teach. He regarded the teacher's two decades of unblemished professional work as further evidence of his fitness to teach.

The teacher appeared to the Panel to be remorseful for his previous conduct. He thought his behaviour at that time was out of character; he was ashamed of it and accepted that it was a clear breach of professional standards. The teacher explained his understanding and the reasons for professional boundaries between students and teachers and that he was constantly aware of the need to maintain them. Witnesses gave evidence in support

of the teacher that he maintained an appropriate physical and professional distance from students.

FINDINGS

The Panel came to the view that the following matters should be considered in assessing the teacher's fitness to teach. These matters were

- The effluxion of time since the incident occurred
- The teacher's insight into the inappropriateness of his behaviour and his genuine remorse
- That the incident, the subject of this hearing, was "one-off"
- The teacher's conduct in the past twenty years during which there had been no similar incident
- The evidence from the principal and the witness in support of the teacher's current professional reputation and performance
- The opinion of Doctor SL as to the teacher's psychological state and fitness to teach
- The Panel accepted Counsel Assisting's submission that there was evidence to support the view that the teacher was contrite and remorseful.

The Panel assessed the teacher's present fitness to teach on the basis of the evidence before it and concluded that his character, reputation and conduct indicated that he was fit to teach. The Panel also concluded that the teacher accepted the seriousness of his offence and that it amounted to serious misconduct. The Panel found the teacher to be remorseful and his good conduct since the offence indicated that the incident was isolated, out of character and unlikely to be repeated. Witnesses provided compelling evidence as to the teacher's good character and the Panel considered their evidence to be honest and reliable. The teacher showed that he now has a clear understanding of the boundaries between teachers and students and insight into his own previous behaviour.

The Panel concluded that the evidence did not establish that the teacher was presently unfit to teach or that any conditions should be placed on his registration.

DETERMINATION

That the teacher retain his registration as a teacher without the imposition of any condition arising from this matter.

Garry Salisbury

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GARRY SALISBURY, CHAIRPERSON

Garry Salisbury

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per:
ANNE SARROS, REGISTERED TEACHER

Garry Salisbury

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per:
PAUL WILHELM, PANEL MEMBER