

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 114

REGISTERED TEACHER: KT

PANEL MEMBERS: Heather Schnagl, Chairperson
Anne Farrelly, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: Day 1 - The teacher attended the Formal Hearing and was not represented
Day 2 – The teacher attended the Formal Hearing and was represented by Mr Chris Hardman, Solicitor
Ms Simone Bingham, Counsel Assisting with Ms Jen Sheehan, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 15 December 2011 and 17 January 2012

DATE OF DECISION: 31 January 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 January 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 25 January 2011, the teacher consented to a criminal record check being conducted through CrimTrac, an agency of the Australian Police Services. On 9 February 2011, 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 25 May 2011 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 30 November 2011 was served upon the teacher by registered post on 1 December 2011.

THE ALLEGATIONS

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

- (a) Whilst registered as a teacher in Victoria, the teacher appeared in the Magistrates' Court on 7 October 2010, charged with one count of the indictable offence of recklessly causing injury.

The teacher was found guilty and ordered to (without conviction):

- enrol in and complete a program that addresses anger management with the Salvation Army or other like community service and complete within six months and file with the Court evidence of completion. If the course is with the Salvation Army, contribute \$250 towards the cost of the service; and
- pay \$250 to the Court fund.

DOCUMENTS CONSIDERED

The following documents were tendered as evidence:

1. Hearing Book (Exhibit A)
2. Summoned material from Victoria Police (Exhibit B)
3. Submission from Mr Hardman on behalf of the teacher 13/1/12 (Exhibit C)
4. Reference from Dr CFJH (undated, Exhibit D)
5. Outline of the Anger Management Course undertaken (Exhibit E)

6. Curriculum Vitae of the teacher (Exhibit F)
7. Outline of Submission from Counsel Assisting the Institute (Exhibit G)

THE EVIDENCE

The Panel heard evidence from the teacher himself and a colleague, the witness.

The Teacher

In his evidence, given under oath, the teacher continued to maintain his innocence of the offence for which he was found guilty at the Magistrate's Court although he has accepted the court's decision in finding him guilty. He outlined the advice he was given by the Magistrate regarding his finding of guilt. He stated that the Magistrate told him that the finding of guilt would only appear on his record for one year and that if he appealed the decision it would take a lot of time and cost.

The Court ordered the teacher to undertake an anger management course, which he has completed and documentary evidence has been presented to the Court to this effect. He gave evidence that through this anger management course he had learnt that if someone wishes to argue but is not rational, then it is best not to have the argument but defer. This ensures that an argument does not occur when a person is in an unreasonable state. He said that he had also learnt that an irrational state might be triggered by alcohol, drugs, or severe personal issues. In relation to his teaching, should a situation arise where a person was irrational, he stated that he would act to defuse the situation if possible, but if not, send a student for assistance.

In relation to Principle 2.1 of the Code of Conduct, the teacher regretted the impact that his finding of guilt has on the profession of teaching and acknowledged that his criminal record brought the teaching profession into disrepute. He recognised that were a parent, especially a female parent, or a student aware of his finding of guilt with respect to recklessly causing injury, they may feel threatened or intimidated from coming to see him. He stated that he would handle this by assuring them that he was not a violent person and that he had maintained his innocence throughout the criminal proceedings but that he had been found guilty. He not only recognised the impact of his finding of guilt on the profession as a whole but that it may cause concern to a school and that they may not wish to employ him. He was aware that it may require effort on his part to be considered a fit and proper person to be teaching.

The teacher also recognised the effect of his guilt on the morale of the teaching profession as it does tarnish the good name of teachers. Similarly he recognised the effect on the community perception of teachers and that they may not view the profession in the same positive light if they were aware of his criminal record. He stated that he was very sorry that this situation had arisen and he regretted the negative impact of his guilty finding on the professional standing of teachers.

The teacher also stated that it was his intention as a teacher to be a positive role model in the school and the community and that he will respect and obey the law. He further stated that there have been no complaints against him.

The teacher gave evidence under oath that should a school consider employing him in the future that he would disclose his finding of guilt to the Principal, Vice Principal and/or the daily organiser of a school and attempt to explain the circumstances to them.

If he was confronted by a student who was aware of his criminal record, the teacher stated that he would admit that he had been found guilty and explain the situation to them, especially that it was a one off offence and that sometimes these things happen in the course of a separation/divorce. He indicated that he would give a similar explanation to a colleague.

In response to cross examination by Counsel assisting the Institute, the teacher stated that whilst he maintained his innocence, he had accepted that the court has found him guilty of the offence of recklessly causing injury. He would explain this to students and parents by explaining that the law doesn't get it right all the time! He stated that it was only two days prior to the case being heard that he recognised the seriousness of the charge he was facing and hence he felt that he did not receive the best legal representation possible.

In response to Counsel's questions regarding a student reporting domestic violence to him in his role as a teacher, the teacher indicated that he would investigate and his actions would depend entirely on the situation. It was the Panel that was required to stress to the teacher that, as a teacher, he was mandated to report any situation where he formed the belief that a child has been physically or sexually abused, such as the situation proposed by Counsel.

The teacher described his temperament as cool and calm and stated that there have been very few occasions when he has been angry. He gave evidence that he had never used aggression, even in the extremely rare occasions that he lost his temper. He stated that he had faced many stressful situations in a classroom and had coped with them all, providing an example regarding a student using a mobile phone in class. Whilst he had debriefed following stressful situation with colleagues, he told the hearing that he had not specially relied on anyone for support, although he indicated that he would welcome a mentor.

When asked about the difficult time he had experienced regarding both the Magistrate's and divorce court proceedings, the teacher told the Panel that he had had depression, although he had not recognised it at the time. He was not supported by a counsellor, having found his one visit 'useless', or a medical practitioner, but rather by his church which he found very helpful. He did indicate that if his depression recurred he would be open to psychological support.

In response to questions from the Panel, the teacher stated that he had never had any problems with his teaching and that many students had commented positively on it. He tried to impart a desire for learning to his students and present material in an entertaining manner. One of the references provided for the Panel from referee 1, principal of school 1 in 1988 stated that the teacher had been involved in locker allocation. Whilst he was

unable to remember whether he had volunteered or been asked to undertake this role, he told the Panel that he enjoyed it.

When asked by the Panel why he did not inform the Institute of both the charge he was facing and his subsequent finding of guilt on the charge of recklessly causing injury, the teacher told the Panel that 2010 and 2011 were the worst years of his life because of stress and depression. It affected him enormously, especially not seeing his 'four beautiful daughters'. The entire situation was overwhelming and he apologised for not complying with his statutory responsibility to inform the Institute. He stated that in the last 6 – 9 months that he recovered from the depression and felt vastly better.

Under oath the teacher stated that the reference provide by Dr CFJH, Chief Executive Officer of a Registered Training Organisation, (Exhibit D) which is undated, was requested of him and provided in the week preceding day 2 of the hearing.

The Witness

In his evidence given under affirmation, the witness, who is the Daily Organiser at school 2, stated that he had known the teacher since their respective school days. They also worked together at school 1 nearly 30 years ago and have been in regular contact since then. The witness told the Panel that he had employed the teacher as a casual relief teacher (CRT) for two years, presumably 2009 and 2010, at school 2 and would have done so in 2011 had the teacher had been issued with an Institute registration card.

The witness gave evidence regarding the teacher's character. In their community he is known as a hard worker, who carries out what he says he will do. He has never heard of the teacher being violent nor has he heard of any complaints or criticisms of him. Similarly, the witness stated that he has never heard of any criticisms from a parent or student regarding the teacher as a teacher nor is he aware of any complaint from a fellow teacher. He gave evidence that the teacher is regarded very highly in the community.

When asked by Counsel assisting the Institute whether he would employ the teacher as a casual relief teacher(CRT) today, the witness explained how he would choose to employ a CRT in the appropriate subject area first, but if one was not available, that yes he would employ the teacher. He stated that this would be for an average of two days per week. In his role as daily organiser the witness gave evidence that he acts as a mentor for CRTs and they should bring any issues to him. He outlined the procedures to support CRTs where they find themselves in a difficult position in class or under stress, including the support available. Where issues are experiences with a CRT, the witness stated that they were not employed again.

In response to Counsel's questions regarding the Code of Conduct and the teacher's finding of guilt for the offence of recklessly causing injury, the witness stated that he found it of little significance. He gave evidence that being a Legal Studies teacher himself and being aware of his legal obligations, he would not take risks but would not hesitate to employ the teacher. He further stated that, of course, teachers should respect the law but one way to get the law changed was to flout the law.

On being questioned by Counsel as to whether the teacher's finding of guilt brought the profession into disrepute, the witness stated no, with the qualification that had he not known the details of the case intimately, he might have been more wary in his response, but that he was confident in this particular case. When questioned further regarding this, the witness recognised such a finding of guilt as in this case would, in general, bring the profession of teaching into disrepute.

The witness gave evidence that in his roles (both at school 2 and as Principal of a campus of the Victorian School of Languages) he would not hesitate to confront bullying in the workplace. In this specific case, the witness stated that because he was so fully aware of the details of the situation, he did not see it as bullying. In response to a question from Counsel Assisting the Institute, The witness stated that if an incident arose in the future when he employed the teacher as a CRT, he could be objective but that he would also involve both the Principal and seek union assistance. In response to question from the Panel, he also stated that any decision to employ the teacher would have been made in consultation with both the Principal and Assistant Principal.

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 recklessly causing injury at the Magistrate's Court on 7 October 2010. Whilst the teacher continues to maintain his innocence with respect to this charge, he has now accepted that the court found him guilty. 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 and pay a fine. 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 would be valuable in his professional life as a teacher.

Whilst the Panel heard evidence about the professional standing of the teacher together with his standing within their community from his colleague, the witness, it was found that his close personal relationship to the teacher concerned meant that he was unable to be fully objective in this situation and hence unable to form a totally impartial view. However, the Panel did accept his assertion that he would never endanger a child nor open his school to litigation or financial damage. The Panel also accepted that, as daily organiser and employer of CRTs, he had discussed the possible employment of the teacher with the Principal and Deputy Principal and that they were aware of his criminal record and were prepared to employ him if he was found fit to teach.

The phrase 'fit to teach' was not defined in the *Education and Training Reform Act 2006* (the Act) prior to January 1 2011 with Panels being required to rely on common law interpretations 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 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

In this particular case the nature of the indictable offence, namely recklessly causing injury, which whilst at the lower end of offences involving injury 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.

In making its decision the Panel was mindful of the significant delay that the teacher had experienced before this formal hearing could be held. By reason of governmental administrative processes, the Institute was unable to hold any new disciplinary hearings from the time his case was referred to a formal hearing in May 2011 until the commencement of this hearing in December 2011. During this seven month period, the

teacher remained registered but did not hold a valid registration card. The effect of this on a person who works as a CRT, who would be required to show their registration card to any potential employer, effectively prevented him from working as a teacher. One advantage of the delay was that the teacher's fitness to teach was required to be assessed following the completion of his anger management course and the issuing of an order by the Magistrate's Court that the teacher had complied with the requirements specified by the court.

The teacher presented as a somewhat naïve person who has a tendency to be over-trusting of others. His level of understanding of the seriousness of the initial charges he faced and of their implications for him as a professional educator are examples of this, as is his lack of understanding of his mandatory reporting obligations and him requiring the Chair of the Panel to lead him to recognise these responsibilities. The Panel also noted that the teacher appeared to have received poor legal advice prior to his court appearance, and subsequently regarding the finding of guilt and his options regarding any appeal of the court's decision which he accepted without question. (This is not a reference to his current legal representative, Mr Hardman). The teacher showed, when prompted by the Panel, a willingness to recognise all his responsibilities as a member of the teaching profession. He will however need to continue to take a proactive role in staying fully informed of all his obligations.

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 the teacher 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 helpful judgement. It is clear 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 Tuesday 5 January 2010. The VCAT decision also 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 the subsequent resolution of his family court situation gives the Panel comfort that the likelihood of any repeat behaviour is very low indeed. The Panel also noted that the teacher had obviously demonstrated good relations and significant patience with students in the past, as his role in overseeing student lockers, which he told the Panel he enjoyed, required these in abundance!

In making its final decision the Panel was mindful that it does not have the power to impose conditions on the teacher's registration without making an adverse finding under section 2.6.46(1) of the Act as the date of the offence (5 January 2010) was prior to the amendments to the *Education and Training Reform Act* 2006. Had this been possible it is highly likely that conditions would have been attached to the teacher's registration to ensure that he received appropriate support on his re-entry to the teaching profession. Notwithstanding this, the Panel nevertheless considers that he is presently fit to teach. The Panel however, strongly recommends that on his re-entry to the profession the teacher obtain the services of an experienced and highly competent teacher, who is not

close to him but is able to serve as an objective and supportive mentor, to assist him as he returns to the profession. Similarly the Panel strongly advises the teacher to ensure he has additional professional support, such as counselling, to assist his return to the classroom.

FINDINGS

On 31 January 2012, the Panel found the teacher fit to teach.

DETERMINATION

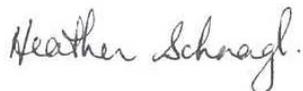
Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 31 January 2012 the Panel found the teacher fit to teach and determined that he remains registered as a teacher in Victoria.



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HEATHER SCHNAGL, CHAIRPERSON



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per:
ANNE FARRELLY, REGISTERED TEACHER



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per:
PAUL WILHELM, REGISTERED TEACHER