

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 126

REGISTERED TEACHER: LJB

PANEL MEMBERS: Garry Salisbury, Chairperson
Heather Schnagl, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher was represented by Mr Edward Johnson,
Industrial Officer, Australian Education Union

Mr Chris Enright, Counsel Assisting, with Ms Katrina
Galanos, Instructing Solicitor on behalf of the Victorian
Institute of Teaching

DATE OF HEARING: 2 October 2012

DATE OF DECISION: 2 October 2012

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 2 October 2012 the Panel found that the teacher was fit to teach.

The Panel determined that the teacher 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.

By letter dated 4 September 2011, the teacher advised the Institute that she had been convicted of an indictable offence.

On 11 November 2011, the teacher consented to a criminal record check being conducted through Crimtrac, an agency of the Australian Police Services. On 6 December 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 7 December 2011 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 17 September 2012 was served upon the teacher's representative by express post.

THE ALLEGATIONS

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

Whilst registered as a teacher in Victoria:

1. On 1 October 2009, the teacher appeared in the Moorabbin Magistrates' Court and was found guilty with conviction of theft (shopsteal) pursuant to s.74 of the *Crimes Act 1958 (Vic)* for which she received a Community Based Order and was ordered to undertake 50 hours of unpaid community work over a period of 12 months and further ordered to undergo assessment for treatment of alcohol and drug addiction or to submit to medical/psychological/psychiatric assessment and treatment.
2. On 2 August 2004, the teacher appeared in the Heidelberg Magistrates' Court and was found guilty but without conviction of 2 counts of theft (shopsteal) pursuant to s.74 of the *Crimes Act 1958 (Vic)* for which she received a 6 month Community Based Order and ordered to seek treatment and counselling from Dr KF (or nominee) and to continue with antidepressant medication as directed by her psychiatrist.
3. On 31 August 2000, the teacher appeared in the Heidelberg Magistrates' Court in relation 2 counts of theft (shopsteal) pursuant to s.74 of the *Crimes Act 1958 (Vic)* and 1 count of possessing the proceeds of crime pursuant to s.123 of the *Confiscation Act 1997 (Vic)* and was found guilty but without conviction, for which she were placed on a Good Behaviour Bond/ Undertaking for a period of 1 year and further ordered to continue to follow the lawful directions of Dr MS or her nominee. The charges were

dismissed on 30 August 2001 in compliance with the teacher's Undertaking to the Court.

4. On 10 December 1993, the teacher appeared in the Prahran Magistrates' Court and was found guilty without conviction of theft pursuant to s.74 of the *Crimes Act 1958 (Vic)* for which she was placed on a Good Behaviour Bond/ Undertaking until 9 December 2004. The charges were dismissed on 9 December 1994 in compliance with the teacher's Undertaking to the Court.
5. On 22 October 1992, the teacher appeared in the Heidelberg Magistrates' Court and was found guilty without conviction of theft pursuant to s.74 of the *Crimes Act 1958 (Vic)* for which she was placed on a Good Behaviour Bond/ Undertaking for a period of 1 year. The charges were dismissed on 21 October 1993 in compliance with the teacher's Undertaking to the Court.

THE EVIDENCE

Counsel Assisting the Panel submitted that the teacher's renewal of registration application disclosed four findings of guilt but omitted to mention an additional finding in 2004. In response to a letter from the Chief Executive Officer (CEO) of the Institute regarding the 2004 matter the teacher declared an additional finding of guilt relating to an offence in 2009. The teacher provided substantial explanatory material in relation to these matters and the circumstances surrounding them.

Counsel Assisting submitted that the purpose of the hearing on this day was to consider whether the reputation of the teaching profession was damaged by the teacher's criminal behaviour and whether the teacher was a fit and proper person to maintain her registration. The purpose of the hearing was not to punish the teacher. The teacher had stolen items from Myers, Coles and Safeway over a period of time. The goods were not of any significant value. Counsel Assisting submitted that it was open to the Panel to find that the teacher was not fit to teach but this had to be assessed on the day of the hearing.

The teacher's Counsel submitted that the teacher was a fit and proper person and her registration should continue. There was no question of her competency and there were a range of testimonials attesting to her competence. In her professional life she showed expertise, enthusiasm and probity. She was assessed as being an expert teacher by her employer and her annual reviews were always positive. Significantly, her current principal would give favourable evidence as to her effectiveness as a teacher. She was assessed as having leadership qualities which were recognised within the school and at the regional level. The teacher had been candid and open in relation to her convictions and findings of the courts over a seventeen year period.

The teacher's personal life was affected by misfortune and misadventure and she had been diagnosed by Dr K as having a psychological illness which was now controlled by medication. He was confident that there would be no repetition of her criminal behaviour while she remained medicated. The teacher had regained her self-control and acted on

informed psychological advice. His medical advice was based on his experience over a long period and detailed knowledge of the teacher and other family members.

The teacher's Counsel said there was evidence that the teacher had overcome these personal stressors and that she completely accepted responsibility for her wrong-doing. It was submitted that her offences had all been provoked by the stress of troubling events in her life. Counsel argued that the offences were serious but related to property only and were at the lower end of the indictable offence scale and that the applicability of *Davidson v Victorian Institute of Teaching (occupational and Business Regulation) (2007) VCAT 920* was limited. The teacher had pleaded guilty on all occasions and only once was a conviction recorded.

The teacher's Counsel submitted that the teacher had suffered extensive personal problems over a lengthy period. Her Counsel submitted that while the criminal offences shamed and embarrassed her and the teacher's personal life was very difficult, it was to her credit that she had persevered and addressed her problems. She had been candid and honest. She had on-going employment at the school and over 2009/10 she had been selected as learning leader to work with over ninety schools in the northern region of the employer. Her principal since 2002 at the school would give evidence on her behalf.

The principal

The witness took an affirmation and confirmed that her statement dated 6 May 2012 was true and correct and she did not wish to make any alterations. She stated that the teacher had outlined her problems to her in a long, detailed email (five pages in length) in February 2012. As principal of the school since 2002 she regarded the teacher as a dynamic, outstanding teacher and one of the best in the school. She had assisted graduates and was highly regarded by the school community. She said that the teacher's professional performance had never been affected by her personal problems. She interacted very well with staff and students and was an outstanding teacher who individualised student programs and challenged students while treating them well. The principal said she felt empathy for the teacher because she knew how hard she worked and of her love for teaching. She stated that she had known the teacher for nine and a half years and while they didn't mix socially she felt she knew her and they shared family stories.

When asked if the teacher had been frank with her the principal thought that the teacher had offended two or three times but said she had not re-read the email from the teacher since February 2012 and her memory may well not be accurate. The principal said she felt the teacher had emailed her with the information about her offences rather than talk face to face out of embarrassment. The offences had occurred at a time when the teacher was struggling with various personal issues. The principal felt that the teacher had a strong moral compass and would have been ashamed and embarrassed by her behaviour. When asked whether she had received any warnings about the teacher's criminal offences, the principal said that these events had no impact on the teacher's performance as a teacher. She was surprised by the teacher's behaviour and offences. The teacher continued to be in charge of school budgets and there was no question of impropriety. She stated that The teacher's offences should be interpreted not in isolation but also in terms of her difficult private life while maintaining her professionalism at school. The principal felt she

wasn't sure if the teacher's behaviour brought the profession into disrepute in this particular case and she felt the context in which the teacher had committed the offences had to be considered. She said that the teacher had an ongoing support structure including expert psychiatric advice, was part of a supportive team at school and also had the option of the employer support services. The principal said she would be prepared to hold regular meetings with the teacher to gauge her mental state and receive psychological reports to ensure she was able to monitor the teacher's state of mind. These meetings would also address whether the teacher was maintaining her medication and that she was not being affected by personal pressures. The principal stated she would love the teacher to return to the school and had an expectation that this would occur.

The teacher

The teacher gave evidence under affirmation and was asked what had changed in her life. She stated that after a long process she had found a psychiatrist with whom she felt comfortable and the medication he prescribed for her was very successful. Her son was now working and eight surgeries in five years had corrected his medical issues. Her sister's disorder was now being successfully treated through a new psychiatrist and new medication. Consequently many of the issues in the teacher's personal life were now resolved.

The teacher stated that teaching had been her passion for the last 35 years and that the school gate was the place where she could leave all her personal problems and become the teacher who was doing something she loved and was passionate about. She said that her Learning Leader training reignited her passion and she learned a great deal about teaching which she was able to take back and share with staff. Her role was to model appropriate pedagogy and to keep others enthusiastic. She appreciated the assistance she received from great mentors and that she had a chance to utilise her skills and give something back to teaching.

The teacher said that not telling her principal about the offences was based on her high level of shame and embarrassment and she found it too difficult to share with others at school. She said that she partitioned her life and that school was the one part she felt she could control. She received strong feedback from the school and community about her value as a teacher and the fact that they appreciated her efforts. She was emphatic that her insight into her condition and her situation had greatly improved. She stated that she now had insight into how her behaviour could affect the reputation of the teaching profession and that her depression required her to take medication. She said that the medication had caused her to gain weight and as she became extremely self-conscious about it she would cease taking the medication.

Since 2009 she has realised that she needed to look at what is more important and that she wanted to be functioning well in all aspects of her life rather than focus on one unfortunate side-effect, i.e. her weight gain. Consequently she stated that this would not cause her to cease taking her medication in the future. The teacher had seen a number of psychiatrists and psychologists and tried various medications but her current one was making a significant difference. She said that despite her string of offences and convictions she had never been a dishonest person at work. The teacher stated that she had never been tempted to steal from the school. She knew that a teacher with a string of

offences was not good for the profession and could bring it into disrepute. On the other hand she had completely accepted responsibility for her actions, acknowledged that she had a psychiatric problem and was working very hard to fix it. When asked how she would deal with questions from other teachers about her offences she said that she would be mortified if they knew but she would be prepared to answer honestly and explain her situation, how the offences occurred. She hated the thought of losing their respect but she felt that if she explained the circumstances she expected that her colleagues would understand. She said that she could not justify her behaviour only explain it. Most of her colleagues were aware of the pressures she had been under for seventeen years and coupled with an explanation of her illness she hoped they would understand.

The teacher stated that she had developed a number of strategies and had developed a support network. She stated that she had never before felt that she had people she could talk to or who supported her. She had not been shopping on her own since 2009 and is accompanied either by her mother or her sister. She continues to see the same psychologist since 2009 and he had been supportive. Her doctor continued to be a fantastic help to her. They had discussed ways of controlling her weight without taking her off the medication and the teacher stressed again of the importance of being in control of all parts of her life not just teaching. The principal had been a wonderful support person after the teacher had told her all the details of her offences. She explained that she wrote the five page email because she felt that if she talked to the principal face-to-face she might leave out some matters and she thought it was important to give her a very detailed account. The teacher said that she takes her medication daily and it is stored in a pillbox with each day marked. She sees her psychologist every four to six weeks which he believes is adequate at this stage. She also has regular check-ups with her doctor. Her home life was now calm and enjoyable. She had worked at the Sacred Heart Mission as part of her rehabilitation and when her hours had been completed she returned and did more. The teacher said she did this because she thought it was a place where she was needed and could make a contribution. She stated that if she was able to return to teaching she would do so on a part time basis because she also had a range of other hobbies she would like to explore. She said that she also has a number of friends outside school who knew about her offences and they had been supportive of her. When asked how she would deal with a new trauma the teacher said that she had experienced some problems since 2009 but dealt with them much more effectively, she felt more resilient but again stated that the key for her was to maintain her medication.

The teacher said she did not have a clear recollection how she committed the offences but remembers on occasion getting to her car, unloading her bags and finding goods she had not paid for with no recollection of how she got them. The items she had taken were of little monetary value and things for which she had no need. She said that she had never been motivated by money. She always pleaded guilty and admitted that she had done the wrong thing. In the 2009 offence she had to purchase a DVD for her son but didn't remember going and getting the books which she stole and for which she was charged. She said that medication for her was the linchpin of her attempts to deal with her psychiatric problems.

In his closing submission Counsel Assisting argued there was no allegation of serious misconduct or incompetence, the only issue was whether the teacher was presently fit to

teach. The question was whether the traumatic effect of illness exculpated the criminal offences. He submitted that the teacher was not fit to teach because she might re-offend if she ceased taking her medication and her offences were serious indictable offences that raised questions in regard to the teacher's character. Her crimes of dishonesty threw doubt on her behaviour in a classroom in the future and that her conduct impacted on her professional standing as well as the profession as a whole. Counsel submitted that the teacher's behaviour was not only due to various disabling factors in her life. Counsel stated that the Panel had to decide whether the teacher had showed sufficient insight into her behaviour. He said that it was to her credit that she had been open and honest in her dealings with the Institute.

Counsel for the teacher submitted that the teacher had been absolutely transparent in her testimony and sincere in her answers to questions. He said that both witnesses had been honest and the Panel could not help but be moved about the number and severity of problems the teacher had had to deal with in her life. He argued that there was no attempt to prevaricate on the teacher's part and that *Davidson v Victorian Institute of Teaching (occupational and Business Regulation) (2007) VCAT 920* had any bearing on the assessment of the teacher as a fit and proper person. The teacher had acknowledged that her conduct had brought the teaching profession into disrepute but she had recognised and accepted this. Her offences were at the lower level of indictable offences and her random and erratic behaviour was consistent with an absence of appropriate medication. Counsel submitted that many of the teacher's family issues were resolved; she was committed to regular medication and regular consultations with her psychiatrist. Her excellence as a teacher had not been affected and her current principal had publicly stated that she would make an extra effort to ensure the teacher was coping satisfactorily if she was to return to school. Counsel argued that the teacher had never deliberately shoplifted and confessed on each occasion she had been charged. There was no evidence that she was a risk to children and he urged the Panel to allow the teacher to maintain her registration.

DISCUSSION OF THE EVIDENCE

The teacher had six findings of guilt for theft (shop stealing) over a seventeen year period with the 2009 matter also incurring a conviction. These were matters for which the teacher had been punished by the court. The Panel's role was to assess whether, at the time of the hearing, the teacher was fit to teach. *Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279* outlined the purpose of a disciplinary hearing such as this to protect the public, to maintain proper standards of conduct for the profession and to protect the reputation of the profession. The Panel had to ensure that students in Victorian schools were protected and that the teacher could be entrusted with the work of a teacher.

Davidson v Victorian Institute of Teaching (2007) VCAT 920 (169-170) outlined a series of factors relevant in the demonstration of fitness to teach. Counsel for the teacher argued that *Davidson* was of limited applicability in terms of the seriousness of the teacher's offences but the Panel was of the view that the factors outlined in *Davidson* were helpful.

The first of these factors was that the conduct complained of was of a continuing and persistent nature. The evidence was unequivocal on this point that over the period 1992-2009 the teacher had committed criminal acts persistently if irregularly over that period. It is indicative of the teacher's candour and honesty to the Panel that she admitted all of the offences although she had no recollection of actually taking the items. The Panel was provided with evidence from the teacher, her family physician and her psychologist of a range of major personal problems which in their opinion provided a context for the teacher's behaviour. The teacher's last conviction was in 2009 and she outlined a range of factors explaining her misconduct which she believed had been addressed or resolved. In addition, the teacher had commenced on a new medication for depression which was very successful, she was working with a psychiatrist who she trusted and who had helped her develop a range of supportive strategies. She had developed a range of support networks and interests. The teacher stressed that her medication was absolutely critical to her recovery but she was confident that the removal of previous stressors coupled with the medication would enable her to maintain a positive lifestyle. Dr K (her psychiatrist) and Dr R (her general practitioner) supported her in this belief.

The Panel noted that the gaps between the teacher's offences were as long as seven years (1993-2000) but felt that she had addressed this concern by outlining her changed context, the removal of stressors, greater support and a regular regime of successful medication. In addition the Panel noted that there were now a greater number of people in the teacher's life including her school principal and her friends who knew of her issues and were supportive of her. Her family GP, Dr R, assessed her as being of low risk of re-offending and her psychiatrist, Dr K, regarded her as being a minimal risk of re-offending.

The Panel came to the view, on balance, that the criminal conduct on the teacher's part had been continuing and relatively persistent. Since 2009 she had sought to address the causes of her conduct including a great deal of reflection on her part. The Panel, supported by expert medical evidence, was of the view that as long the teacher maintained her course of medication and continued to develop her strategies for dealing with life's inevitable misfortunes, her criminal conduct would not be repeated.

The second factor outlined in *Davidson* was whether the Panel had any doubt about how the person would behave in the future. The teacher had a significant history of offences but on the other hand was able to outline a range of major changes in her life while explicitly stating that continued medication was critical to her ability to avoid committing criminal acts. The teacher pointed out that she was severely ashamed and embarrassed about her previous behaviour and that the changes in her lifestyle and her new medication were enabling her to live a positive life. The teacher said that one of the side effects of the medication had been weight gain and that as she grew embarrassed about her increased weight she would cease her medication. She said that she had now accepted weight gain as a side effect but the overwhelmingly positive results as well as other ways of dealing with the weight gain suggested by her doctor ensured she was unlikely to cease her medication in the future. The teacher believed, despite her criminal offences that she was an honest person and the principal described her as having a strong moral compass. The Panel believed that this was certainly true in the teacher's professional life but her repeated offences contradicted this view of her personal life. The Panel believed the explanation lay in the connection between the diagnosis of her

suffering from a generalised anxiety disorder which was not being properly treated until recently and the significant traumas in her personal life. The teacher's memory of the committing the offences was hazy but her description of returning to her car and opening her bag to find items she could not remember purchasing was illuminating and illustrative of her illness.

The Panel heard extensive evidence about the context in which the teacher had committed her offences. Counsel Assisting the Panel submitted that while the teacher's personal difficulties undoubtedly affected her behaviour, they did not adequately explain her conduct or remove the likelihood that she would re-offend. This was a difficult matter for the Panel considering the length of time over which the offences were committed but the Panel believed that the teacher in her written and oral evidence was able to demonstrate clear links between traumatic personal events and the criminal offences. She provided evidence, supported by referees, that she had made significant lifestyle changes, had developed a greater support network and was now taking proper medication which, on balance, addressed the Panel's doubts about how the teacher would behave in the future.

Another factor in assessing the teacher's fitness to teach was whether her whole approach to teaching and the children in her care was profoundly and irretrievably flawed leading to the view that she could not be placed in a position of trust and authority with children. The evidence was unequivocally in the teacher's favour. Colleagues such as teacher 1 and teacher 2 variously described her as a highly effective teacher and an excellent teacher possessing impeccable personal properties while having knowledge of her criminal offences. Her principal at the school had observed the teacher for nearly ten years. She described the teacher's professional performance in glowing terms describing her high skill levels, her ability to individualise and differentiate in the classroom, her ability to deal with challenging students, her high levels of commitment and dedication and respect from her colleagues. The principal said the teacher commanded respect and appreciation from students and parents alike and had a significant record of performance as a Learning Leader at the regional level. The principal said she would welcome the teacher back on to her staff and expected her to do so. The teacher was able to compellingly outline her passion and commitment to teaching and this was supported by all those giving evidence. No evidence was led that the teacher could not be completely trusted with students or that her teaching was flawed in any way. Dr K assessed the teacher as being no risk to pupils. Counsel Assisting submitted that the teacher's crimes of dishonesty threw doubts on her behaviour in the classroom in future but there was no evidence that the teacher's personal problems or criminal behaviour had ever impacted on her professional life and this was supported by the principal's testimony.

One of the unusual aspects of the matter was that more or less simultaneously, the teacher was committing criminal offences while she was leading an exemplary professional life. The Panel was struck by this division between the teacher's personal and professional life. She explained to the Panel that when she came to school it felt like teaching and her various other professional duties was the one aspect on her life which she could control. The principal provided evidence that the teacher sometimes had to be stopped from working too hard. In addition, the teacher was put in charge of budgets, a position of great trust and authority in a school and a position of which she never took

advantage. The Panel found that the teacher could confidently be placed in a position of trust and authority with children and that her approach to teaching was exemplary.

The Panel was placed in a difficult position of having to assess the whole of the teacher's conduct where on the one hand the teacher had a significant history over seventeen years of criminal offences albeit at the lower end of indictable offences. On the other hand she had a respected professional career without blemish. The Panel accepted submissions by the teacher's Counsel that she was not motivated by any grievous intent, the items were not of significant value, she had made little effort to avoid detection and she had not contested the charges. The Panel accepted that the teacher had a very difficult personal life for many years but that due to a combination of factors many of the stressors in her life had been removed or addressed and she had made significant progress in dealing with her illness. In addition, the teacher had maintained an unblemished teaching record over the same period.

On this matter, on balance, the Panel found that the teacher was fit to teach.

The teacher showed candour and evidence of insight in the hearing. After some confusion about the number and date of some offences she provided a full explanation to the Institute and accepted her guilt in all matters. Counsel Assisting told the Panel that the teacher was honest and straightforward in all communications and preparations for the hearing. The principal stated that the teacher's long email of five pages laid out in considerable detail information about the teacher's criminal record and the context in which they occurred. The Panel accepted the teacher's submission that her shame and embarrassment about her offences had stopped her from talking to anyone about them rather than it being a deliberate attempt to deceive.

The teacher showed considerable insight into her misconduct and said that she understood how damaging to the reputation of teachers it was if she was identified as a person with criminal convictions. When asked how she would explain her behaviour to parents or colleagues she said that she would and could not justify her behaviour but she would outline the seriousness of the offences and the context in which they occurred and hope that people understood. The teacher said she hated the thought of losing her colleagues' respect. The teacher provided evidence of the corrective action she had taken to address her behaviour and the Panel thought her ongoing professional assistance from her doctor and psychiatrist and her development of a support network including her principal indicated a very serious attempt on her part to change her life.

The Panel at the time of the hearing assessed the teacher's conduct against the standards of the whole of the teaching profession and with particular reference to the Victorian Teaching Profession Code of Conduct and the Code of Ethics.

The Panel viewed the teacher's record of criminal offences as very serious but noted her significant attempts to address her mental health issues, the removal of stressors from her life, her ongoing medical, personal and professional support and her exemplary teaching performance. It was apparent to the Panel that the teacher had made significant attempts to address her personal problems and this was to her credit. The Panel found her to be

honest and candid and showing insight into the causes of her behaviour but also that she understood the damage she had done to the reputation of teachers.

FINDINGS

The Panel found that the teacher was fit to teach.

DETERMINATION

The Panel decided that the teacher remains registered to teach.



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GARRY SALISBURY, CHAIRPERSON



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per:
HEATHER SCHNAGL, REGISTERED TEACHER



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per:
PAUL WILHELM, PANEL MEMBER