

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 127

REGISTERED TEACHER: NJP

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

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

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

DATE OF HEARING: 3 October 2012

DATE OF DECISION: 3 December 2012

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 12 October 2012 the Panel found that the teacher was fit to teach.

On 3 December 2012 the Panel determined that the teacher remains registered in Victoria.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 20 January 2010.

On 21 June 2011, the teacher advised the Institute that she had appeared in the Magistrates' Court on 13 April 2011 and was found guilty of an indictable offence.

On 7 July 2011 the Institute made a Freedom of Information Request to Victoria Police and on 26 August 2011, the Institute received the requested information.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 31 January 2012 and the Committee decided to conduct an investigation.

Following the investigation, the matter was referred back to the Committee and on 22 August 2012, the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 18 September 2012 was served upon the teacher by registered post on 19 September 2012.

THE ALLEGATIONS

The information the Institute has received as evidence of possible lack of fitness to teach is that:

1. Whilst registered as a teacher in Victoria, the teacher appeared in the Magistrates' Court on 13 April 2011 charged with the indictable offence of stalking. The Magistrate convicted the teacher on that charge. The teacher appealed the decision of the Magistrate, which was heard at the County Court on 16 June 2011. The Judge set aside the orders made by the Magistrate, and in their stead ordered:

'Without conviction, serve a community based order for a period of 12 months. The order commences on 16 June 2011, and ends on 15 June 2012. The teacher must attend Community Correctional Services by 20 June 2011. In addition to the core conditions, the teacher must:

- *Perform 100 hours of community work over a period of 12 months as directed by the Regional Manager;*
- *Be under the supervision of a Community Corrections Officer;*
- *Attend education/treatment/other program as directed by the Regional Manager for a period of 12 months; and*
- *Undergo assessment and treatment for alcohol and drug addiction or submit to medical/psychological/psychiatric assessment and treatment as directed by the Regional Manager'.*

THE EVIDENCE

Counsel Assisting submitted that the teacher was a registered teacher who had moved from provisional to full registration. Her conviction at the Magistrates' Court was set aside on appeal to the County Court and a 12 month Community Based Order was imposed with a number of conditions. The teacher's employment was terminated by the employer on 6 January 2012 and a restriction placed on her further employment. Counsel Assisting submitted that the teacher had fully cooperated with the Institute and its Investigator. The teacher had indicated that she wanted the opportunity to respond to the matters which were raised. She had had no employment with the employer since her employment was terminated. Counsel Assisting submitted there were no witnesses because there was no dispute regarding the facts of the case.

Counsel Assisting submitted that the teacher's fitness to teach needed to be assessed in light of the finding of guilt for the offence of stalking. She is a single mother who has been diagnosed with depression and was in a highly emotional state at the time of the offence. The question to be asked is whether the teacher is fit to teach. Counsel Assisting submitted that there was no evidence to suggest that the teacher had put the address of the victim on the website. The teacher had no knowledge of what had happened in the four weeks after she posted the comments. Counsel Assisting submitted that the teacher's lack of consideration as to what might have happened as a result of her actions raised questions about her maturity. Counsel Assisting submitted that the repetition of the offence on 4 November 2010 raised serious questions about her maturity because in subsequent questioning by Victoria Police she indicated that she had not realised her actions amounted to a criminal offence. The police noted that she was genuinely tearful and distressed at the interview.

Counsel Assisting submitted that there were no allegations that the teacher was guilty of serious misconduct or incompetence but only fitness to teach. He stated that there was no question about the teacher's professional competence. He submitted that cyber-bullying was an area where legislators had sought to address changes in technology resulting in a changing of the relevant Act in 2004 to add the offence of stalking. He said there was no evidence that the teacher had misused technology in her professional role.

The teacher

The teacher said she did not dispute anything that had happened. She said she had suffered from depression since the birth of her child five years ago when she was nineteen years old. At the time of the offence the development of a relationship between her partner and the victim had been the catalyst for the teacher ending the relationship with her partner. The teacher had made a suicide attempt and had been forced to expel the drugs from her system but had not attended hospital. During 2010 she was in a 12 month contract at school 1 and had not taken any days off school despite being unwell. She was a graduate teacher required to complete her registration requirements and she was engaged in a custody battle over her child. Her financial situation at the time was poor. The school had told her that there were two graduates competing for one position in the following year. She said that she now realises she should have taken time off. The teacher said she had experienced success as a teacher. She said she did not want to make

excuses and she hoped the Panel could gain some insight into her thinking at the time. She said she was sorry for degrading the profession and realised that it might lead to the community losing trust in the teaching profession and her in particular. She regarded the teaching profession as one of the most important in society.

She said that she had taken steps to ensure she did not place herself in that position again. She said that through mediation during the custody battle she and her child's biological father were now working together to provide a stable family situation for their child. One of the conditions of her Order was that she saw a psychologist once a month. She completed 100 hours of unpaid community work in the 2011 school holidays and the Corrections Officer was pleased with her work. She had written to the victim and apologised by letter and she didn't want to trivialise what she had done. She wanted to accept responsibility for her actions and felt remorse for what she had done. She did not dispute that it had caused anxiety and problems for the victim. The posts had been removed within 2-3 days. She said that it was one occurrence followed by a separate occurrence 5-6 weeks later. The teacher said she was distressed by the pain she had caused. She said she and the victim co-exist in the regional city where they both live and they take exercise classes together.

The teacher said that her partner, whom she described as 'toxic', had removed himself from her life and it had been two years since that relationship had ended. Although he had tried to contact her she did not respond to his attempts to do so. She had continued to see her psychologist, Dr S since the Order had finished and she was pleased with her progress. She said it was difficult to see Dr S at short notice so she did not have a recent, updated report. She now understood how serious Facebook gossip is. She had developed a support group and explained what she had done to close friends. She felt that her behaviour was linked to her depression. The teacher said she did not know in the past how to control her anger and hurt. Her current medication was working well. The teacher said that if her conviction became widely known it would bring discredit on the profession. She had been an active volunteer at her sports club since 2008, coached a junior team and was a contact person for parents. In 2012 she had played for a different club and acted as a referee. She continued in her position as secretary of the water sports club. She said that her offence had not been widely publicised and that she and the victim interact.

Counsel Assisting the Panel submitted that the teacher had not been formally diagnosed with depression. She had experienced some post-natal depression and there was a family history of mental illness. The teacher said she had a 16 month relationship with her partner. She said she had experienced stress as a result of being a graduate teacher and satisfying the requirements to move from provisional to full registration. She said that initially she would have been seen as a normally functioning teacher but in terms 3/4 her stress resulted in a lack of planning leading to her classes being unruly. Her classroom lacked displays of student work and became generally untidy. At the time her principal had raised these matters with her. She said that she had gained insight into her behaviour and realised that when she was stressed she became messy. Looking back she realises that these were indicators for her but at the time she didn't recognise them.

The teacher told the hearing that she now had a support network made up of friends, another graduate teacher and her parents. Previously she had resisted asking for help because she felt she was the one who supported others and if she did, she would be taking a backward step. She had told her parents and her partner because she realised it had gone too far and she needed help. She said that the Principal offered her the position of VCAL coordinator in term 4, 2011 even though he was aware of the employer's investigation. She said she had consulted another psychologist in 2011.

The teacher said that at school 2 she had shown a DVD entitled "Destroying Avalon" to Year 9/10 classes and the Senior Constable who had handled her case came and talked to the students about cyber-bullying. She had then led a class discussion regarding the development of strategies to avoid cyber-bullying and suggested to students they could see the school's Student Welfare Officer if they needed assistance. The teacher said she explained to students the impact cyber-bullying could have on them and their family's lives. She said if students asked her directly she would tell them the story and explain the consequences. The repercussions of cyber-bullying could not be brushed off and perpetrators of it may not be able to work overseas. She urged them to seek help if they were ill. She said that the experience of talking to students had driven home to her how serious her offence was and the hurt it caused.

The teacher said that she did not place the note under the victim's windscreen and it was an unfortunate coincidence. No allegations were made that she had done it and she denied giving out the name of the victim's workplace.

The teacher was asked if she entered a poor relationship again what guarantees were there that she would not react in the same way. The teacher said that she could only give her word but if she started to feel overwhelmed or tried to find a scapegoat for her anger she would talk to somebody. The teacher said she had learnt to manage her mental illness and was confident that it was not something that would happen again. She said that while she may not be able to be cured of her mental illness she could manage it and enjoy her life. She had had to tell people why she was no longer teaching. She said that her support group had supported her in attending today. She had thought that the employer's decision regarding her employment was a final, permanent one but her support group had advised her it was not. The teacher said she had read through the Institute's website and the published findings and found them helpful. She said her last written report from Dr S was 18 months old. The teacher said she needed to discuss her problems with a wider range of people. She had opened up to people and shared her mental health issues. Her aunt had recently been diagnosed with bi-polar disorder and this had encouraged her to be more open about mental health issues. She now realised that she didn't need to be perfect all the time. She had worked for 20 hours per week part time and received the financial support of her parents. She said she had taken a trip to see a friend who was teaching overseas which had assisted her to relax. Dr S had given her strategies one of which was not to try and control other people's actions. The medical reports were 12 months old but the teacher said her medication had been reduced in 2012. She said its side-effects included feeling lethargic and tired. She now understood that diet and exercise helped. She said that once she committed the offence she realised how terrible and frightening it must have been for the victim. When asked if she would go

back on to medication she said she would not hesitate because it made things better and helped adjust the chemistry in her body.

In response to questions from the Panel the teacher said that if she went to a new school she would not tell her colleagues about all her mental health issues but if an employing Principal asked specifically she would tell them. She said that her apology was difficult to write because she did not want it to be seen as explaining away her behaviour. She did not receive a response. She said that her medication was helpful and prevented her from becoming worse. She said that she felt she had had an underlying depressive illness since the birth of her child but now felt more resilient. She said that she was now a stable person.

DISCUSSION OF THE EVIDENCE

The Panel found that the teacher's evidence was credible and consistent and there was convincing evidence that her circumstances at the time were extremely difficult. At the time of the offences she was involved in a difficult relationship and was experiencing mental health issues. At the time of the hearing her evidence indicated that the stressors in her life had been reduced by

- ending her relationship with an abusive partner
- developing a more stable environment for her child by mediating a successful agreement with the child's biological father
- maintaining an ongoing relationship with her general practitioner Dr L and a registered psychologist Dr S who had been successfully treating her for her mental health issues.
- developing a support group

The principal of school 2 was provided with all of the information about the teacher's offence. In a letter requested by the Panel he stated that the teacher

- had always conducted herself with integrity and professionalism at school 2
- had admitted her actions
- was still receiving professional support for her mental health issues
- would be open in her discussions about her offence

The principal stated that he would short list and potentially employ the teacher should she apply for a position at his school.

Dr S, a registered psychologist, made the following observations about the teacher on 28 November 2012

- she had attended 16 sessions since 4 April 2011
- she had shown remorse and insight into her previous behaviours
- she had shown resilience in getting on with her life
- her current symptoms of depression are transitory and will improve as she feels she has opportunities in the future
- she has shown a commitment to her teaching career
- she has shown empathy for others and a focus on her own personal development

- she is aware of the importance of continuing her psychological treatment and Dr S is prepared to keep working with her.

It was Dr S's opinion that the teacher is highly unlikely to ever repeat her previous mistakes and supported her application to retain her teacher registration.

The Panel found the principal and Dr S's evidence supportive of the teacher's circumstances at the time of her offence, her attempts at rehabilitation and her current fitness to teach.

FINDINGS

In terms of the teacher's fitness to teach the Panel was guided by *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 (169-170) which outlined a number of factors which needed to be considered. The Panel thought the teacher's appearance before the Panel and the candour of her testimony showed that she had taken responsibility for her actions. She provided an adequate explanation for her misconduct which was corroborated by independent evidence. While her offences had the potential effect of reducing the reputation of the teaching profession her behaviour since then, including her willingness to explain the circumstances and use these events as an opportunity to talk to students about the potential grave consequences of cyber-bullying, reflected positively on The teacher's current fitness to teach. The Panel decided that the conduct for which she was found guilty in the criminal justice system occurred over a brief period of time when she was experiencing a range of stresses in her life and was not of a continuing or persistent nature. The personal events had no connection with her professional life with the exception that the teacher admitted that she had allowed the personal stresses in her life to affect her classroom preparation resulting in a deterioration of student behaviour. It was to the teacher's credit that she now recognises how stress affected her.

The Principal's reference suggested that he had no concerns that the teacher would allow her personal problems to interfere with her professional duties in the future. The Panel has no reservations that she would perform competently in the classroom provided she remained supported both medically and personally. The Panel was provided with evidence that the teacher had taken significant corrective action in taking control of her life and would urge her to maintain her regular consultations with Dr S and continue to develop her support group.

The Panel could find little evidence that the teacher's approach to teaching and the children in her care was flawed and was of the view that she could be placed in a position of trust and authority with children. Her steps in rehabilitating herself since her finding of guilt reflect well on her. The teacher's remorse was evident in the Victoria Police interview where she was tearful and distressed and was adamant that she would not reoffend. In her testimony to the Panel she expressed both remorse and insight into the effects of her behaviour on her victim but also the reputation of the teaching profession. The teaching profession has become acutely aware of the dangers some new technologies pose, particularly for students in their care. To commit the offence of stalking indicates a

betrayal of the public's expectations that teachers are positive role models in the community who show a respect for the law. Cyber-bullying by a teacher in their personal life is especially troubling because of the heightened community awareness of its dangers for vulnerable children and adolescents and it is part of any teacher's professional responsibilities to be aware of these dangers. To her credit, the teacher appears to have recognised how much her offence has been a significant breach of teaching standards. In her seminar on cyber-bullying to students she indicated to students the negative effects it had on its victims and the repercussions for those who committed it. The Panel was comfortable that the teacher showed remorse and insight and was genuine in her expression of these feelings.

In considering the whole of the teacher's conduct, the Panel considered her reaction to her offences consistent with that of a decent person, affected by a range of stressful factors, who was filled with remorse when she realised the consequences of her actions. The Panel was confident that if the teacher continued her process of rehabilitation, there would be no repetition of her misconduct.

The Panel was of the view that the teacher is fit to teach.

DETERMINATION

The Panel determined that the teacher remains registered in Victoria.



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GARRY SALISBURY, CHAIRPERSON



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per:
HEATHER SCHNAGL, REGISTERED TEACHER



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per:
PAUL WILHELM, REGISTERED TEACHER