

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 123

REGISTERED TEACHER: PBRF

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

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented
Mr Chris Enright, Counsel Assisting the Victorian Institute of Teaching

DATE OF HEARING: 24 July 2012

DATE OF DECISION: 1 August 2012

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 1 August 2012 the Panel found 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.

By letter dated 15 March 2011, the principal of the school notified the Institute that it had taken action in relation to the alleged lack of fitness to teach of the teacher.

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

A Notice of Formal Hearing dated 10 July 2012 was served upon the teacher by registered post on 13 July 2012.

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 2 March 2011 you appeared in the Moorabbin Magistrates Court and were found guilty with conviction of the following offences for which you were fined \$4,000 as part of an aggregate order, with \$112 costs:
 - (a) On 1 September 1989 making a false statement to obtain a passport.
 - (b) On 11 June 1997 using an Australian passport issued to another person.
 - (c) On 28 June 1997 using an Australian passport issued to another person.
 - (d) On 28 July 1999 making a false statement to obtain a passport.
 - (e) On 5 August 2009 obtaining An Australian travel document dishonestly.

THE EVIDENCE

At the beginning of the hearing Counsel Assisting informed the Panel that there was a disparity between the Commonwealth Director of Public Prosecutions (CDPP) Summary of Facts and the Certified Extracts issued by the Magistrates' Court with respect to the total number of convictions recorded. The former records convictions for four indictable offences with one indictable offence withdrawn because the teacher pleaded guilty to the other four. The Certified Extracts and the Statement of Fines and Penalties Imposed issued by the Magistrates' Court record a total of five convictions with penalties and do not acknowledge the withdrawal of any charges.

Counsel Assisting submitted that no material issue turned on the disparity between records kept by the CDPP and the Certified Extracts issued by the Magistrates' Court in so far as the Panel's role was concerned in considering the teacher's fitness to teach.

The Teacher

The teacher gave evidence under oath.

The teacher began by providing the Panel with his employment history since receiving his Diploma of Education from Monash University. He had initially taught Science at school 1, a 7-10 school for students of normal intelligence but who, because of a range of social and emotional difficulties, are unable to cope with mainstream schooling. He worked there until the school was burnt down by one of the students. Then he took a ten year break from teaching, during which time he ran gymnasiums and worked as a professional sports trainer, often travelling overseas.

The teacher said that since 2003 he had been employed 0.8 as a registered teacher with the school, teaching Maths, English and Sport. During that time he had continued to work as a professional sports coach six days a week.

The teacher explained the special nature of the school, a school which employs five teachers and has an enrolment of 26 boys aged from 12-17. He said mentoring was the main role of the school with the aim of keeping the students on 'the straight and narrow'.

The teacher explained that the initial offence of making a false statement to obtain a passport took place in 1989. He had read Frederick Forsyth's 'The Day of the Jackal', a novel about an attempt to assassinate Charles de Gaulle and believed he could emulate one of the ruses described in the book, that of obtaining a false passport. He did so taking the name of CL, the brother of a friend. He could not recall whether he had been teaching at the time.

The teacher stated that some time later, he could not be sure when, he had used the passport in Mr L's name to obtain a second driver's licence because he was worried he might lose his own on the demerit system. He said he had been informed by friends that he could get another driver's licence simply by moving interstate. The teacher said he had never lost his licence and had never used the false driver's licence.

In response to questioning from Counsel Assisting regarding the teacher stating that his motivation for obtaining the false passport was to enable him to gain another driver's licence, the teacher responded that he had made no such statement to that effect, either to authorities or in submissions to the court. He said that he had requested that an email he had sent to the Victorian Institute of Teaching in which it might have been implied that he had made such statements not be submitted as evidence.

The teacher stated that when the ten year time limit for the false passport was close to expiration in 1999 he simply renewed it without thinking too much about the legal or moral implications of his action in doing so. He had tried to do so again in 2009 when his attempt was apprehended because of developments in photo technology.

The teacher stated that he could not explain why he had undertaken these actions except to say it was possibly because of 'the thrill of getting away with something'. He said his initial act was one of 'thoughtless curiosity' and, once he had the passport, he was 'loath to let go of something he had'.

The teacher admitted that it was only the fact that he was caught which led him to think carefully and deeply about his actions and their consequences.

He said he now recognised that it was very irresponsible for him as a teacher to engage in such actions, especially a teacher engaged in the kind of mentoring which was the staple of his work at his current school. He said he now understood that it was important for a teacher to be honest and beyond reproach in every aspect of his personal as well as his professional life.

The teacher said he felt both embarrassed and ashamed about his appearance in court and before the Panel and remorseful for the actions that had led to that occurrence.

The teacher explained that if his convictions became known to his students he would deal with that by first explaining to them that anyone can make a mistake and then focusing on the punishment involved, including his fines and potential imprisonment as well as his possible deregistration and loss of livelihood as a teacher. He said he would then explore the dishonesty and moral issues involved in his actions. He said that he believed this kind of approach was the most potent and effective way for approaching the kind of students he mentored. He added that it would have been good to have a couple of his students attend the hearing to see the sort of trouble one can get into because of thoughtless antisocial acts.

The teacher stated that he also had to explain his actions and convictions to his own three children, who questioned his behaviour. They had been present when the police raided his house, just after his wife had left him and were still living with him. He had spoken to them about the stupidity of his actions and the fact that he had ignored his responsibilities as a father.

When asked by the Panel, the teacher said he had not considered professional psychological counselling but relied on the support and counselling of the principal. He had discussed his actions in depth with the principal.

The Vice Principal

The vice principal, vice principal of the school for the past ten years, gave evidence by affirmation.

The vice principal said she and the other staff were 'absolutely quite perplexed' by the teacher's actions, which were 'absolutely out of character with the person that we knew.' She said his actions were not easy to understand given that she considered him to be extremely intelligent. Regarding the teacher's role in the school she said he was a valued teacher who had the students' confidence and would be difficult to replace. He was a non-smoker and non-drinker and the students looked to him as a role model in these and other lifestyle choices such as healthy eating habits.

She told the Panel that she thought his actions were not good for the profession. She also informed the Panel that the school had a psychologist attached to it who was available to both students and staff to discuss matters concerning their behaviour. She said she doubted, given the teacher's intelligence and strong character, whether he would require ongoing structured professional psychological counselling to assist him to understand his actions.

DISCUSSION OF THE EVIDENCE

The Panel believed nothing the teacher said to it offered a logical explanation of his actions even though he expressed himself with seeming candour and forthrightness. While the Panel could see something of a juvenile derring-do in the original action, the reasons why the teacher should repeat similar actions over a twenty year period, without seemingly profiting from them, thereby putting his excellent reputation as a teacher of difficult children remained something of a mystery. The character references provided by his school's principal, vice principal and Council Chairman echoed the Panel's belief. They spoke of their 'bewilderment' and 'perplexity' that some-one they considered to be intelligent and an exemplary teacher should behave in such a way.

The Panel also noted a certain vagueness in the teacher's recall of the rationale for his initial action. He informed the Panel that it was based on 'thoughtless curiosity'. He later considered, though not with any great assurance, that there might have been some connection between that and his desire to obtain a second driver's licence though he was sure he had not made such a statement either as evidence or in submissions to the court.

The Panel did not see this as dissembling, simply an example of an alarming casualness with which the teacher proceeded to commit, what he described as 'antisocial acts' but which were in fact criminal ones. The Panel believed that the fact that the teacher sought the false licence some ten years after obtaining the false passport added credence to his belief that there was no immediate causal relationship.

Having said that, the Panel felt that the discovery of the teacher's activity in 2009 may have done him a favour, by removing the source of the temptation. There is no doubt that the experience of being caught and punished was both salutary and possibly cathartic, causing the teacher to examine his actions and his responsibilities as a teacher (and as a parent) in ways he might not have done otherwise. While he was absolutely candid about the fact that he might have gone on renewing the false passport - albeit every ten years - he did say that being caught out and found guilty made him reflect upon his actions. He was certainly able to express embarrassment, shame and remorse for what he had done in ways that the Panel felt to be genuine. He also showed an understanding that such actions bring the profession into disrepute.

The Panel also believed the teacher would not recount his experience in a boastful way to his students. He was very clear about the fact that, were his actions disclosed to his students, he would use his experience to good pedagogical effect by emphasising the humiliation and punishment involved, as well as by examining the dishonesty and moral implications of his behaviour.

FINDINGS

The allegations are based on criminal convictions. The teacher did not contest the allegations.

The Panel determined that the teacher is fit to teach for the following reasons:

Firstly, notwithstanding the fact that the acts were illegal acts committed over a period of twenty years, the Panel does not characterise them as being of a 'continuing and persistent nature.' They were intermittent in nature and there was nothing to suggest that the teacher had sought to profit or benefit from them.

Secondly, the actions were aberrant in the context of his excellent reputation as a teacher of difficult students. There was no evidence that his acts had compromised his conduct with students or would do so in the future.

Thirdly, the teacher showed both remorse about, and insight into, the wrongfulness of his actions. He was able to come to a realisation that they were not simply antisocial acts, but criminal ones which carried potentially severe penalties.

Fourthly, the teacher showed insight into the ways in which his personal behaviour compromised his professional reputation and had the potential to bring the profession itself into disrepute.

Fifthly, the teacher had access to counselling within the school community to which he was very bonded that would enable him to reflect on the personal and professional dangers of such behaviour.

DETERMINATION

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 1 August 2012 the Panel found the teacher is fit to teach and to remain registered as a teacher in Victoria.



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TERRY HAYES, CHAIRPERSON



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per:
ANNE FARRELLY, REGISTERED TEACHER



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per:
PAUL WILHELM, PANEL MEMBER