

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 132

REGISTERED TEACHER: Tuyet Thi Bach PHAM

PANEL MEMBERS: Garry Salisbury, Chairperson
Anne Farrelly, Registered Teacher
Jenny Wajsenberg, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Mr Chris Enright, Counsel Assisting with Ms Jennie Somodio, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 17 December 2012

DATE OF DECISION: 17 December 2012

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 17 December 2012 the Panel found that the teacher was not fit to teach.

The Panel determined to suspend the registration of the teacher from 17 December 2012 to 30 June 2013 and impose the following conditions:

- That the teacher has a minimum of six monthly counselling sessions with a registered psychologist of her choice and at her expense.
- That the psychologist be provided with a copy of this decision.
- That the psychologist be provided with a copy of the letter from the teacher to the Institute dated 14 August 2012.
- That the psychologist be provided with a copy of the Victorian Teaching Profession Code of Ethics and Code of Conduct.

- At the conclusion of the counselling sessions on 30 June 2013 the registered psychologist is to provide a report to the Panel which comments on the following:
 - a. The dates and times the teacher attended for counselling.
 - b. That the teacher accepts and understands her guilt for the offence.
 - c. A detailed explanation of the circumstances of the offence and any underlying causes.
 - d. The teacher's understanding of how her behaviour has breached the Victorian Teaching Profession Code of Ethics and Code of Conduct and in particular her legal obligations as a teacher and the conduct and behaviour required of a teacher.
 - e. What strategies the teacher could implement to ensure she does not repeat the offence.

This report is to be submitted no later than two weeks after 30 June 2013.

- At the conclusion of the counselling sessions on 30 June 2013 the teacher is to provide a report to the Panel which comments, in her own words, on the following:
 - a. The teacher's acceptance and understanding of her guilt for the offence.
 - b. A detailed explanation of the circumstances of the offence.
 - c. How her behaviour has breached the Victorian Teaching Profession Code of Ethics and Code of Conduct and in particular her legal obligations as a teacher and the conduct and behaviour required of a teacher.
 - d. What strategies she will implement to ensure she does not repeat the offence.

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REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 2 September 2008.

On 10 April 2012, Victoria Police advised the Institute that the teacher had been found guilty of an indictable offence.

The details of the teacher's criminal history report were referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 19 September 2012. The Committee decided to defer making a decision to refer the matter to a Formal Hearing pending the provision of further information from the teacher.

The matter was referred back to the Committee on 21 November 2012 and the Committee decided to conduct a Formal Hearing.

A Notice of Formal Hearing dated 5 December 2012 was served upon the teacher by registered post on 13 December 2012.

THE ALLEGATIONS

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

1. Whilst registered as a teacher in Victoria, the teacher:

- (a) On 4 April 2011, appeared in Melbourne Magistrates' Court charged with the following:
- i. One count of theft.

The Magistrate made a finding of guilt without conviction; the matter was adjourned to Melbourne Magistrates' Court on 2/04/2012 at 10:00am. The teacher was released upon giving an undertaking starting on 4/04/2011 to appear before the adjourned date if called upon during the period of adjournment and was to be of good behaviour during the period of adjournment. The teacher was ordered to pay \$500 to the Court fund and \$700 in compensation to the victim.

THE EVIDENCE

The teacher did not appear at the Hearing and was not represented. The Panel noted that every effort was made by the Institute to ensure that the teacher was accorded an opportunity to make representations on her behalf at the Hearing. Unsuccessful attempts were made to contact the teacher by letter, voice mail message and email prior to the

decision to hold a Formal Hearing. After that decision was made on 21 November 2012, unsuccessful attempts were made to contact the teacher by letter, email and phone call. The Institute tracked the delivery of the Notice of Formal Hearing and accompanying documents to the teacher and the tracking summary indicates that the letter and documents were delivered to the teacher on 13 December 2012. The Panel was provided with a sworn affidavit outlining these attempts and accepted that the service had been properly effected in accordance with the Act. The Panel was satisfied that the teacher knew of the allegations against her, the evidence to be presented and the date and time of the Hearing.

The teacher wrote a letter to the Institute explaining her finding of guilt without conviction of one count of theft at the Melbourne Magistrates' Court on 4 April 2011. The teacher asserted her innocence of the charges and stated that she had pleaded guilty on advice from Legal Aid who had told her that she would not be provided with more legal aid if she chose to contest the charge. She said that she pleaded guilty because she could not afford to pay for a lawyer herself. Since this letter, dated 14 August 2012, the teacher has not provided the Institute with any further information. She stated that she has been registered as a teacher for a number of years, she was awarded a Teacher of the Year award in 1998 and that she was still fit to be a teacher.

The Panel noted that the teacher's Provisional Registration formally expired on 19 October 2012 and the Institute's grace period of three months would expire on 19 January 2013.

DISCUSSION OF THE EVIDENCE

The Panel's role, under the Act, is to protect the public, to maintain proper standards of conduct for the profession and to protect the reputation of the profession: *Ziems v The Prothonotary of the Supreme Court of New South Wales (1957)* 97 CLR 279. The Panel's purpose is not to punish the teacher although a determination may have that effect. The definition of fitness to teach is contained in section 2.6.1 of the *Education and Training Reform Act 2006* and in assessing fitness to teach the question to be considered is "whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school." This is consistent with *Siguenza v Secretary to the Department of Infrastructure (2002)* VSC 46 where it states that a person has to have the qualities which would permit him or her to be safely accredited to the public, without further inquiry, as a person to be trusted with the work of a teacher.

In *Davidson v Victorian Institute of Teaching (2007)* VCAT 920, VCAT provided a list of relevant factors that might demonstrate a lack of fitness to teach. These included:

- a) A perception that the conduct complained of is of a continuing and persistent nature.
- b) Conduct which throws light on how the person would behave in future in the classroom will indicate a lack of fitness.
- c) An act or series of acts which is inexplicable in context and unlikely to recur does not of itself demonstrate lack of fitness.
- d) A finding that the person is unfit to teach carries with it an assessment that the person should not be in a position of trust and authority with children because his or her

whole approach to teaching and to the children in his or her care is profoundly and irretrievably flawed.

- e) The whole of the teacher's conduct as found is relevant to a decision as to whether a teacher is fit to teach. Any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher.

In *Victorian Institute of Teaching and Papageorgiou* (26 May 2005, Number 020) other relevant factors to be considered were the duration of the conduct, evidence of insight, evidence of candour during the Panel's Hearing, whether the teacher has provided an adequate explanation of the misconduct and whether that evidence is corroborated by independent evidence, the effect of the teacher's behaviour on the school community and the standing of the profession, the time which has elapsed since the misconduct and evidence of corrective action. The question of fitness is to be determined at the time of the Hearing: *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253. The standard on which the teacher's conduct must be assessed is the standard of the teaching profession and the Panel was guided by the Victorian Teaching Profession Code of Conduct and the Code of Ethics developed and published by the Institute.

The teacher's finding of guilt without conviction cannot be disputed and the Panel noted that in the summary of the offence presented to the court the teacher had spent approximately ten minutes unsuccessfully attempting to remove the wallet of her victim from his clothing and used an oversized handbag to conceal her movements. It appeared to the Panel that rather than being an impulsive act on her part, the teacher had exercised a degree of persistence to complete the theft. Her protestations of innocence were made without any accompanying explanation of the events to the Panel. The Panel was presented with no further evidence that this misconduct was of a continuing and persistent nature and the Panel could find no evidence to support a view that the teacher would behave dishonestly in a classroom in the future. The Panel was not provided with any explanation by the teacher to place her misconduct in context; indeed in her only communication via the Institute she maintained she was innocent of the charge. The Panel could find no evidence that the teacher's whole approach to teaching or the children in her care was profoundly and irretrievably flawed, but the teacher's conduct as a whole needed to be considered in assessing her fitness to teach.

The teacher's misconduct seems to have occurred over a relatively short period of time. By not attending the teacher did not take advantage of an opportunity to explain her misconduct and to indicate whether she had any remorse or showed any insight into the effect of her behaviour on the reputation and standing of the teaching profession. The Panel could find no evidence of any corrective action taken by the teacher. The Panel believes the teacher's misconduct affects the reputation of the teaching profession because the public has a right to expect that teachers who are placed in a unique position of trust and authority with young people in their care will model ethical behaviour. The teacher's misconduct showed a lack of integrity on her part in a way that was a serious departure from the expected standards as outlined in Principle 2.1 of the Victorian Teaching Profession Code of Conduct. This Principle defines an expectation that teachers will be positive role models in the community and respect the rule of law. The teacher's protestations of innocence without any satisfactory explanation of the circumstances of the crime indicated to the Panel a lack of insight and remorse on her part.

It appeared to the Panel that the teacher was not willing to accept responsibility for her misconduct. Although the teacher's performance in a classroom was not raised as an issue in assessing her fitness to teach, her character, reputation and conduct were such as to raise serious questions as to whether she should be allowed to teach in a school. In assessing the teacher's fitness to teach against the factors outlined in *Davidson v Victorian Institute of Teaching* (2007) VCAT 920, VCAT, the Panel found no evidence that the misconduct was of an ongoing persistent nature, there was no evidence led on how the teacher would act in a classroom in future, or that there was any flaw in her approach to teaching. The problem for the teacher was that she had provided no adequate explanation for her misconduct and maintained her innocence despite clear evidence to the contrary and a finding of guilt in the criminal justice system. The teacher gave no indication that she understood the ethical obligations of being a registered teacher, that she was expected to model appropriate ethical behaviour or that her behaviour impacted not only on her reputation and character but on the teaching profession as a whole. There was no evidence that the teacher had taken corrective action and this further added to the Panel's concerns about her fitness. She did not use the opportunity to address any of these issues on the day of the Hearing and it was the Panel's view that her lack of engagement with the Institute after 14 August 2012 did not reflect well on her. Every effort was made to afford her an opportunity to put her actions in context, but the teacher did not address the serious allegations that were made against her.

FINDINGS

The Panel considered that the teacher's finding of guilt had revealed serious flaws in her character making her unfit to teach. While there was no evidence that her teaching approach was profoundly and irretrievably flawed the teacher's lack of insight, remorse and candour, her continued claims of innocence despite the finding against her, her lack of acceptance of responsibility for her misconduct, and her lack of knowledge about how her misconduct reflects on both her and the reputation of the teaching profession supported the Panel's view that the teacher was not fit to teach.

At the time of the hearing the teacher had not paid her registration fee due on 19 October 2012 and had entered a three month grace period due to expire on 19 January 2013. The Chairperson of the Panel wrote to the Chief Executive Officer (CEO) of the Institute requesting that she exercise her discretion to suspend any action against the teacher's registration until the outcome of this hearing was published. The CEO agreed to this by email dated 19 December 2012.

The Panel found that the teacher was not fit to teach and the conditions attached to her suspension provided her with an opportunity to satisfy the Panel that she could be fit to teach.

DETERMINATION

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 17 December 2012 the Panel found that the teacher was not fit to teach.

The Panel determined to suspend the registration of the teacher from 17 December 2012 to 30 June 2013 and impose the following conditions:

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GARRY SALISBURY, CHAIRPERSON

Cathy Salitky

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per:
ANNE FARRELLY, REGISTERED TEACHER

Cathy Salitky

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per:
JENNY WAJSENBERG, REGISTERED TEACHER