

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 122

**REGISTERED TEACHER:** SJK

**PANEL MEMBERS:** Garry Salisbury, 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 with Ms Jen Sheehan, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 24 July 2012

**DATE OF DECISION:** 24 July 2012

**FINDING AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 24 July 2012 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 7 November 2003.

By letter dated 26 May 2010, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The teacher's employment with the employer was terminated as a result of these allegations.

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 an investigation.

On 16 November 2011, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 9 July 2012 was served upon the teacher by registered post on 12 July 2012.

### **THE ALLEGATIONS**

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

1. Whilst registered as a teacher in Victoria, the teacher appeared in the Dandenong Magistrates' Court on 21 September 2010 charged with the indictable offences of two counts of obtain property by deception, one count of attempt to obtain property by deception and one count of make false document to prejudice other. The teacher was found guilty by the Magistrate, without conviction, and ordered in relation to all charges:

*'Without conviction, adjourned to Dandenong Magistrates' Court on 20 September 2011 at 10.00am. Accused released upon giving an undertaking starting on 21 September 2010. To appear before adjourned date if called upon during the period of adjournment. Accused to be of good behaviour during the period of adjournment. To complete a positive lifestyle program within three months.'*

### **THE EVIDENCE**

In his opening submission, Counsel for the Institute highlighted that while the copy of the Victoria Police brief against the teacher provided evidence of the offences and her

subsequent punishment the purpose of this hearing was not to further punish the teacher but to protect the public and the standing and reputation of teachers. He stated that the offences occurred over an eleven month period between 2007 and 2008 and had been revealed by an internal audit. While there were three proven cases of forged medical certificates he did not believe this constituted extensive fraud. The teacher initially denied the allegations but later pleaded guilty to dishonestly obtaining property to the value of \$378. The teacher remains a registered teacher. There was no allegation of misconduct: the issue for the Panel to decide was the teacher's fitness to teach.

Counsel assisting pointed out that the sanctions available under the amendments to the Act in 2011 could not be used by the panel because the fraud occurred in 2007-08. He said the Panel in the making of a finding could consider such factors as; whether the teacher showed evidence of insight into her behaviour, if in the giving of evidence she displayed candour, the duration of time over which the offences had been committed, the impact of her behaviour on the profession and the public's perception of the profession and whether corrective action was required. Counsel assisting noted that the Victorian Institute of Teaching's Code of Conduct should be also considered, in particular, s.2.1 which referred to the impact of a teacher's behaviour on other teachers and the profession generally. A judgement of the teacher's fitness to teach had to be made based on her current thinking and attitudes.

The teacher, who was representing herself, began her opening remarks but after it became evident that she was providing evidence she elected to enter the witness box to give evidence under oath. She told the Panel that prior to and during the time when the offences were committed she had been suffering severe migraines and her daughter was being bullied at her new school. Her children were now 17 and 19 years old respectively.

Counsel assisted the teacher to provide the Panel with her work history. She was a graduate in marketing but after her divorce she took on the role of a single parent and completed post-graduate work in social work but switched to education. After completing her teaching qualification, she spent three years teaching at a school for students with special needs. During this period she injured her leg and this caused ongoing medical problems. Finding herself no longer able to undertake the physical demands of working in a special school setting, the teacher told the Panel she moved to casual relief teaching at school 1. She stated that she worked there full time for four years without incident. She taught English and humanities to students in years 9/10/11. She suffered bad migraines and that the medication she was required to take caused her to be extremely tired. She told the Panel that she had changed her medication and that the side effects were now minimal.

It was during this period that the teacher said she took substantial amounts of sick leave. The teacher told the Panel said she was affected by the bullying her daughter was experiencing at school and the continual financial pressure she was under to keep the family home. She stated that she went into survival mode but that she was no longer in that position or thought that way now. She stated that she didn't want to use excuses and knew that her conduct was bad because she didn't take responsibility for her own actions. She felt it was hypocrisy on her part to be explaining right and wrong to students if she didn't take the responsibility to be honest herself. The teacher said that the school

had suffered a financial penalty and she had taken time away from the school's ability to focus on students. She also recognised that it was disruptive for students who lost a consistency of approach, due to her high level of absence, that a regular teacher provided.

The teacher stated that she had taught at school1 until May 2010 when her employment was terminated. She told the Panel she had then worked for a tutoring company three nights per week and later an additional tutoring company. She also began casual relief teaching at school 2. She stated school 2 offered her a permanent part-time teaching position and this was supplemented with casual teaching also bringing her load up to full-time. She noted that it had been suggested to her that there could be full time permanent position at the school in 2013. She stated that her conviction had not been raised at her new school and she felt uncomfortable at the thought of having to share them with her new employer. She stated that she could not explain the reasons to her new employer. She said that she had not told her own children about the offences believing that it would be burden for them. When she had lost her job she continued to maintain the same routine in the morning so that her children thought she was heading off for work.

The teacher told the Panel that she was now fitter and healthier than she had been at the time of the offences and she was completing extra studies as a TESOL teacher. She stated that she would now seek help if things started to go wrong. She stated had completed a personal lifestyle program as required by the court and received some financial counselling from the Salvation Army. She had confided to two friends about her offences but refrained from telling her mother as she believed she would be devastated if she were to know of it. The teacher said she was no longer in survival mode, her financial situation had improved and she was currently working two jobs. She noted that in two years she would have a safety net to protect her and her family. She stated that her current school provided her with opportunities for professional development and involvement in the community. She had repaid all the money to her previous employer. When questioned about the possibility of disclosure of the conviction to her new school she stated that she respected the school enormously and would leave, if in some way her offences might damage its reputation. She told the Panel she had started a walking group at the school for interested students and teachers. Her sick leave now was less than a day per term. Her son attends a gymnasium with her every morning and they encourage each other to attend regularly. She said no issues had arisen about her behaviour at her new school.

When questioned by Panel members about the effects of her behaviour on her previous school the teacher said that she had felt guilty about her students not being supervised by her but that she didn't act on it. Her most recent annual review had been a good one, she had been helpful to other students and she felt she was seen in a positive light at the school. She said that should difficult circumstances occur again in her life she would respond to them in a considered way rather than just react to them.

Counsel Assisting, in his final submission, argued that the Panel had to decide on the teacher's candour and while there was no independent evidence to support the teacher's evidence there was also no contrary evidence. He pointed out previous formal hearing decisions; Case Number 008 in 2004, Case Number 042 in 2006 and Case Number 115 in

2012 relating to the forging of medical certificates that may provide assistance and guidance to the Panel. He submitted that the teacher had shown remorse and insight and his assessment was that she had made a remarkable recovery.

In the teacher's final submission she said that she would love to keep teaching and would be happy, if need be, that the VIT receive a regular check on her every week.

## **DISCUSSION OF THE EVIDENCE**

The Panel was guided by the factors relevant to fitness to teach outlined in *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 (169-170). The Panel decided that the teacher's falsification of medical certificates for three days over an eleven month period in 2007-08 and to which she pleaded guilty in the Magistrates' Court did not amount to behaviour which is of a continuing and persistent nature. The teacher's testimony provided evidence of a range of medical, family and financial pressures which explain her behaviour while not excusing it. She became emotional when describing the pressures she had been under and the efforts she had made to maintain the family unit and the Panel gained a good insight into, and understanding of, the context in which she made the decisions to forge the medical certificates. It appeared to the Panel that at the time of the offences the teacher was isolated and spoke to no-one about her problems. The Panel accepted her evidence that she had since confided in two friends and discussed her personal and financial issues with trained counsellors. The Panel was confident that the teacher's isolation had abated and she had a range of strategies and resources to call on if she were faced with problems again. As a result the Panel thought it unlikely she would re-offend.

The teacher outlined the steps she had taken including adopting the insights of the personal lifestyle program as ordered by the court. She had developed a financial plan with assistance from the Salvation Army. She had repaid the money she had obtained by her deception to her previous school. She was now working in a school to which she was committed, her use of sick leave was now no longer an issue and she was clearly able to articulate the standards expected of a teacher and where her previous behaviour had failed to uphold those standards. The panel was impressed with the extent to which the teacher had changed and agreed with Counsel that her recovery had been remarkable. The panel had no doubts about how the teacher would behave in the future considering the positive outlook she now possessed and her shame and regret at her previous behaviour. The teacher said that she didn't want to make excuses and she accepted responsibility for her actions. The panel thought it highly unlikely the teacher would re-offend.

The teacher clearly identified the hypocrisy of a teacher who has a position of trust and authority with students and as part of their everyday dealings with students imparts notions of right and wrong then acts in a criminal way. The panel found that the teacher could now be trusted with children and her whole approach to teaching was not profoundly and irretrievably flawed.

The Panel came to the view that the teacher's oral testimony was honest and reliable. She was able to provide an adequate explanation of her conduct and to minimise and control the factors which had led her to depart from proper professional standards. She had used the period since her dismissal by the employer to reflect on her behaviour and make significant changes in her life. Her evidence indicated a high level of insight and remorse on her part. She was able to articulate the effects of her misbehaviour on the school she had defrauded, the pupils who were deprived of consistent instruction by a teacher who knew them well and the damage she had caused to the standing of the teaching profession. She had clearly made changes in her life since 2007-08 and adopted corrective action to address the issues which had led to her departure from proper professional standards.

The Panel was impressed with the extent to which the teacher had changed and agreed with Counsel that her recovery had been remarkable. The Panel found that the teacher's actions were related to a fixed period of time, not of a persistent and continuing nature and that her approach to teaching was not profoundly and irretrievably flawed. The Panel was confident that the teacher would be unlikely to behave in a similar manner in the future considering the positive outlook she now possessed and her shame and regret at her previous behaviour.

## **FINDINGS**

The Panel found that at the time of the hearing

- The teacher's conduct was not of a continuing and persistent nature
- Her acts were explicable in context, unlikely to re-occur and the panel was fully confident that her future behaviour would be free of such dishonest actions.
- She could be trusted to be placed in a position of trust and authority with children
- Her approach to teaching was not profoundly and irretrievably flawed
- She showed insight and remorse in her testimony
- She understood the effects of her conduct on the standing of the teaching profession

## **DETERMINATION**

The panel determined that the teacher was fit to teach on 24 July 2012 and that pursuant to s 2.6.46 (1) (c) of the *Education and Training Reform Act 2006* that the teacher remain registered as a teacher.



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**GARRY SALISBURY, CHAIRPERSON**



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**per:**  
**ANNE FARRELLY, REGISTERED TEACHER**



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**per:**  
**PAUL WILHELM, PANEL MEMBER**