

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 133

REGISTERED TEACHER: Carlos DELLAPORTAS

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: 8 February 2013

FINDINGS AND DETERMINATION:

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

The Panel determined to cancel the registration of the teacher from 8 February 2013.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

On 30 July 2012, Victoria Police advised the Institute that the teacher had been convicted 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 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 7 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 13 October 2011, appeared in the Magistrates' Court charged with the following:
 - i. One count of recklessly cause injury

The Magistrate convicted the teacher, imposed a Community Based Order for a period of 12 months and required the teacher to attend the Community Correctional Services. The Magistrate also ordered the teacher to perform 120 hours of unpaid community work over 12 months.

THE EVIDENCE

Counsel Assisting the Panel submitted that the teacher was registered until 31 December 2012 and that the Panel should make a finding regarding the teacher's fitness to teach. Depending on the Panel's findings it would then seek further submissions from both the teacher and the Institute as to penalty. 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.

Counsel Assisting submitted that the Institute had written to the teacher on 31 July 2012 requesting a written explanation in relation to his conviction for an indictable offence and

a follow up letter was sent on 28 December 2012. The teacher did not respond to either of these letters.

Counsel Assisting submitted that the teacher was aware of today's hearing and had been provided with the appropriate information. He tendered a delivery confirmation by registered post to the teacher and submitted that he had been appropriately served. The teachers confirmed by way of a phone conversation on 3 December 2012 that he had received the Notice of Formal Hearing and the accompanying documents. The teacher indicated that he was experiencing some personal difficulties and he was advised by Institute staff that he could request an adjournment if it was going to be difficult for him. He was also urged to seek legal advice in relation to the Formal Hearing.

On 11 December 2012 the teacher contacted the Institute and advised staff of the personal difficulties he was experiencing and that he did not want to go through another proceeding. He was again urged to seek legal advice and told that he could be provided with copies of previous Formal Hearing decisions which could assist him. Counsel Assisting said that the teacher had terminated the phone conversation with a member of the Institute staff who was explaining the factors the Panel had to consider in regard to the concept of fitness to teach.

Counsel Assisting submitted that the teacher had been appropriately served with the Notice of Formal Hearing, was aware of the conduct of the Formal Hearing and that it would be considering his fitness to teach in light of his conviction for an indictable offence. The Panel was urged to consider the decision of *Victorian Institute of Teaching and Connell* (28 September 2012) No. 125 where the teacher did not attend the Formal Hearing.

Counsel Assisting submitted that the role of the Panel is to protect the public, to maintain proper standards of conduct for the profession and to protect the reputation of the profession by applying the appropriate sections of the Act. Counsel Assisting submitted that the teacher's conviction for the indictable offence of 'recklessly causing injury' resulted in him being sentenced to a Community Based Order (CBO) for twelve months which required the teacher to attend the Community Correctional Services and perform 120 hours of unpaid community work. The teacher applied to vary/cancel the Order because of a back injury and he was unable to complete the CBO. The Court granted the application and sentenced him to a term of imprisonment for one month which was wholly suspended for twelve months. In addition the teacher was fined \$100 for being drunk in a public place.

Counsel Assisting submitted that the Police case against the teacher was that he had had a verbal altercation with the victim, a person he had been in a relationship with for two years until it ended in October 2010. This argument grew more heated and then the teacher grabbed the victim by the face and eye gouged her. This occurred in the vicinity of the front entrance of her premises. He then entered her home and hit her over the head six times causing her to fall to the ground. During the assault he bit the victim on her right index finger. When the teacher was arrested by Police he had blood on his clothing and was clearly affected by alcohol. In his subsequent police interview the teacher said that he was blind drunk during the altercation, he had eye gouged the victim

to try and get away from her and that he did not bite her finger hard enough to bite her finger off. The victim's injuries were recorded at the hospital as being a cut to the right scalp which resulted in profuse bleeding, a lump, bruising and a small cut above her left eye, severe bruising and soft tissue injury to her right shoulder and bruising, swelling and bleeding on her second finger on her right hand caused by the bite. Counsel Assisting submitted that the Institute had never received any explanation from the teacher in relation to his conviction for this indictable offence.

Counsel Assisting submitted that the teacher had shown no insight, remorse or candour and had not provided any adequate explanation of his behaviour. The teacher did not attend the Hearing and did not provide any submissions to the Panel. The Panel was not provided with any evidence in the teacher's favour when assessing his fitness to teach. Counsel Assisting submitted that the teacher's conduct in relation to both the offence and subsequent communication with the Institute regarding the proceedings and its effect on the standing of the profession was a very real consideration for the Panel.

In his final submission Counsel Assisting submitted that the sentence of one month's imprisonment (suspended) showed the Court's view of the seriousness of the offence. The teacher's decision not to engage with the Institute's process was significant. He submitted that the Panel should cancel the teacher's registration. When questioned by the Panel about the teacher's final phone conversation with the Instructing Solicitor, the Panel was advised that the conversation had taken approximately 5-10 minutes and the teacher was clearly irritated. The Instructing Solicitor reported that the teacher had clearly indicated that he did not wish to engage in any further formal proceedings.

At the conclusion of the proceedings the teacher was invited to make a submission to the Panel regarding determination. The teacher requested an extension of time which was granted until 7 February 2013, but no submission was received.

DISCUSSION OF THE EVIDENCE

The Panel's role 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 it 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* in considering fitness to teach the question 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 was stated 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.'

The Panel considered the teacher's conviction for 'recklessly causing injury' and the allegations for a previous serious assault on the victim in 2009 outlined in her statement to Police raised questions about his conduct and raised further serious questions about his character and reputation. The violence of the teacher's acts suggested to the Panel, that

without any attempt at explanation by him about his behaviour, his character was such that he could not be entrusted with a position of trust and authority by the public. The Panel was presented with evidence of a violent assault by the teacher on his victim commencing at the entrance to her house and continuing into her hallway where she was hit over the head about half a dozen times. The victim's statement to Police indicated there had been a previous assault by the teacher in 2009 where she had suffered a fractured jaw and broken teeth. She indicated that she did not want to press charges against him because she feared he would hurt her. The Panel believed that this earlier assault had occurred and was proved to the Panel's satisfaction. The victim's evidence regarding both assaults was clear, cogent and as a result of direct experience. The teacher had chosen not to provide the Panel with any explanation of these events and therefore he must bear the responsibility of this negative assessment of his character flowing from the violent nature of the assault and his lack of explanation about a previous assault. He has not taken the numerous opportunities afforded to him by the Institute to explain his behaviour. The Panel considered that his behaviour reflects badly on him and, if seen to be acceptable by the Institute, would reflect poorly on the teaching profession as a whole.

In *Davidson v Victorian Institute of Teaching* (2007) VCAT 920, VCAT provided a list of relevant factors which might demonstrate a lack of fitness to teach. The Panel developed the view that the teacher's violent behaviour had occurred more than once and that this maybe, in the face of no explanation by the teacher, evidence of a continuing and persistent problem when the teacher was affected by alcohol, stressed by personal events in his life or a combination of both. The Panel has seen no evidence that the teacher had behaved badly in the classroom. However the Panel was of the view that his reputation as a violent person was not one that reflected well on the teaching profession as a whole. The teacher's violent acts were not explicable in context and his excuse that he was drunk gave the Panel no confidence about how the teacher would act in the future particularly because he had only given a brief explanation of the stressors in his life and no indication about how he intended to deal with them in the future. The Panel saw no evidence that the teacher's approach to teaching or the children in his care was profoundly and irretrievably flawed but it did consider that his character and conduct raised serious questions about his suitability to be a member of the teaching profession. His violent behaviour on at least two occasions, one of which he was convicted for and the other outlined in the victim's police statement which he did not contest, suggested to the Panel that he is not fit to teach because teachers are expected to be positive role models in the community and to respect the rule of law.

In *Victorian Institute of Teaching and Papageogiou* (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 teacher had been violent on more than one occasion and shown no remorse, insight or candour. He provided no explanation for his behaviour to the Institute and the evidence against him in the criminal process was not disputed by him. The Panel was of the opinion that the teacher's conduct would have a negative

influence on the public's perception of teachers and damage the standing and reputation of the teaching profession.

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* and the teacher gave the Panel no opportunity to hear evidence to his benefit. 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 Panel was referred to principle 2.1 of the Code of Conduct which states that *'The personal conduct of a teacher will have an impact on the professional standing of that teacher and on the Profession as a whole.'*

The Panel concluded that the teacher is not fit to teach and his personal conduct has impacted not only on his own professional standing but on the teaching profession as a whole.

FINDINGS

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

DETERMINATION

The Panel determined to cancel the registration of the teacher from 8 February 2013.



GARRY SALISBURY, CHAIRPERSON



per:
ANNE FARRELLY, REGISTERED TEACHER



per:
JENNY WAJSENBERG, PANEL MEMBER