

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 136

REGISTERED TEACHER: Aycha MINE

PANEL MEMBERS: Terry Hayes, Chairperson
Jenny Wajsenberg, Registered Teacher
Sophie Panagiotidis, Panel Member

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

DATE OF HEARING: 18 February 2013

DATE OF DECISION: 10 May 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 18 February 2013 the Panel found the teacher guilty of serious misconduct and not fit to teach.

Had the teacher been registered the Panel would have determined to cancel the registration of the teacher from 10 May 2013. As the teacher was not registered at the time of the hearing, no such determination could be made.

REASONS

BACKGROUND

The teacher was deemed to be a registered teacher with the Victorian Institute of Teaching (the Institute) on 31 December 2002. The teacher failed to renew her registration and pay her registration fee in 2007 and her registration lapsed. The teacher re-registered with the Institute on 23 September 2009.

Indictable Offence Matter

By telephone on 17 May 2010, the Principal of the school advised the Institute that the teacher had been arrested at the school in connection with an indictable offence.

A court certificate dated 1 March 2011 confirmed that the teacher appeared in the Magistrates' Court on 21 February 2011 and was found guilty of an indictable offence.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 25 May 2011 and the Committee deferred making a decision and requested an explanation from the teacher.

The teacher did not respond to the Institute's requests and the matter was referred back to Committee on 27 July 2011. The Committee decided to conduct an investigation.

On 16 November 2011, the Committee considered the information provided by Victoria Police and referred the matter to a Formal Hearing.

Action Taken by an Employer

By letter dated 19 April 2011, 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 employer advised that the teacher may not seek employment in Victorian Government schools in any capacity unless and until otherwise advised following her resignation prior to the conclusion of the employer's inquiry.

This matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 27 July 2011 and the Committee decided to conduct an investigation.

On 12 December 2012, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

On 1 January 2013, the teacher's registration was suspended for non-payment of her registration fee.

A Notice of Formal Hearing dated 31 January 2013 was sent to the teacher by registered post on 31 January 2013.

An amended Notice of Formal Hearing dated 13 February 2013 was sent to the teacher by express post on 13 February 2013 and was returned to the Institute. Attempts were also made on 13 and 14 February 2013 to personally serve the teacher with the Amended Notice of Formal Hearing.

THE ALLEGATIONS

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

Whilst registered as a teacher at the school in Victoria, the teacher:

1. *failed to demonstrate courtesy and respect towards colleagues in circumstances where the teacher :*
 - a. *Had an aggressive and protracted discussion with the assistant principal where she made derogatory remarks about the unhappiness of staff towards the administration and told the assistant principal that she was “two faced”;*
 - b. *after the initial discussion at (i) at approximately 10.15 am entered the assistant principal’s office and informed her she was not well, that she would not be well for a further 2 days and told the assistant principal to get a CRT. The teacher then left the school providing no work for her classes; and*
 - c. *was consistently late for class which interrupted the work obligations and commitments of other staff.*
2. *failed to maintain positive relationships with other staff and did not demonstrate collegiality by:*
 - a. *not attending the commencement of semester lunch when invited to do so by the principal*
 - b. *not engaging positively with other staff members but preferred to isolate herself in a classroom, on the school steps or would leave the school premises; and*
 - c. *using abusive language directed at other staff members and the principal.*
3. *failed to provide students with appropriate learning when she:*
 - a. *failed to complete lessons assigned to her by teacher 1 whilst relieving this teacher for other duties but instead allowed the children to colour in while she read a book for 2 hours.*
4. *the teacher (sic) compromised her professional standing as a teacher by:*
 - a. *assaulting police officers when they attended the school to interview her;*
 - b. *using abusive language directed at Police Officers; and*
 - c. *resisting arrest,*
in circumstances where other teachers, parents and children would have witnessed the behaviour.
5. *on 21 February 2011, appeared in the Magistrates’ Court charged with the following:*
 - a. *One count of theft of a motor vehicle from the period 24/12/2009 to 15/2/2010. The Magistrate ordered the teacher to pay \$13,031.67 compensation to the car rental company and further made a finding of guilt without conviction; the matter was*

adjourned to the Magistrates' Court on 2/02/2012 at 10:00am. The teacher was released upon giving an undertaking starting on 21/02/2011 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 a stay was ordered to 21/05/2011.

THE EVIDENCE

Counsel Assisting the Panel submitted that the teacher was registered until 1 January 2013 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.

Counsel Assisting submitted that the Institute had written to the teacher on several occasions between 8 March 2011 and November 2011 requesting further information from her in relation to her indictable offence and her current fitness to teach because of that matter. Counsel further submitted that the Institute had also written to the teacher between 28 July 2011 and November 2012 advising her of the Institute's investigation of the notification taken against the teacher by the employer. The Institute requested further information from the teacher in relation to that investigation. The teacher did not respond to any of the letters sent to her by post or served at addresses registered as hers. Counsel Assisting submitted that the teacher was aware of today's hearing and had been provided with the appropriate notification and information. Counsel tendered confirmation from Australia Post that the address to which notification of the hearing had been sent was a current address according to Australia Post redirection instructions from the teacher. Counsel Assisting tendered an affidavit from the process server that they had attended one of the addresses for the teacher and had spoken to a man who claimed he had no knowledge of the teacher but during this time some mail had been received and returned to the Institute from that address. The Institute subsequently confirmed the returned mail and noted that it had been opened and returned in a different envelope. Counsel Assisting tendered the affidavit of Jennie Somodio a legal officer of the Institute in which the history of attempted service was detailed. On 14 November 2012 the Institute sent the teacher a Final Notice of Allegations. This was returned to the Institute on 29 November in a different envelope. Counsel Assisting also tendered evidence that Process All Over process servers attended at a number of addresses and attempted service unsuccessfully on a number of occasions in January and February 2013. Notwithstanding that service was unsuccessful Counsel Assisting submitted that the teacher had been appropriately served with the Notice of Hearing, was aware of the Formal Hearing and that it would be considering her fitness to teach in light of the indictable offence and the allegations made by the employer.

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 had been working at the school from approximately 1990 to 2006. She then took extended leave returning to the school on 27 January 2010 on a 0.6 part time

fraction where she did remedial teaching and, when required, was the classroom relief teacher for the school computer coordinator, teacher 1, whose class was Grades 3&4.

Teacher 1 attended the hearing and gave evidence that when the teacher took his class she did not plan lessons or actively teach the class. Teacher 1 approached the principal about his concern that the children were not engaged in learning or following the program while the teacher was taking the class. To address this concern teacher 1 left detailed lesson plans for the class which he instructed the teacher to follow. Teacher 1 gave evidence that despite detailed lesson plans left for the teacher, she consistently did not engage with the children nor did she teach the lessons teacher 1 had left for her. Teacher 1 advised the Panel that he did not confront the teacher directly about his concerns because he was afraid of the possible repercussions. He said that he had overheard an angry altercation between the teacher and the principal and that the teacher had shouted abusively at the principal. Teacher 1 told the Panel that the teacher had an extremely high level of absenteeism and that she was frequently late to class when she was doing relief for his Grade 3&4. He told the Panel that he had fears about attending the hearing because he believed that the teacher was capable of violent behaviour but that he felt it incumbent on him and as his responsibility to students to give evidence. This overrode his fears about the possible consequences of attending the hearing.

Teacher 1 told the Panel that on 10 May 2010 he was at school when Victoria Police attended at approximately 3:40pm. He heard screams and thumping coming from the room next door and went to the room to investigate believing that one of the voices was the teacher's. Teacher 1 told the Panel that he had initially gone to the room because he thought that the teacher was shouting at the principal and teacher 1 was going to the principal's assistance. When he entered the room teacher 1 saw the teacher with four police, two of whom were in uniform. The teacher was on the floor struggling with three male police. She was screaming and kicking out at them. Teacher 1 left the room quickly at the point that he saw the teacher put on the floor by the police. He heard handcuffs being used and shortly thereafter teacher 1 saw the teacher being walked out of the classroom handcuffed.

Teacher 1 told the Panel that it was his understanding that the assistant principal at the school during this period, was often abused verbally by the teacher and that the assistant principal declined to attend the hearing because she feared for her safety. Teacher 1 told the Panel that the principal had confided in him that he found the teacher's verbal attacks extremely stressful and of a threatening nature and in teacher 1's view this had taken a toll on the principal's health and confidence.

Teacher 1 told the Panel that the incident on 10 May 2010 was of great concern to him as a teacher of young children because of the effect the teacher's behaviour may have had on any children present.

Counsel Assisting submitted the statement of the assistant principal in support of the allegations that the teacher failed to demonstrate courtesy and respect towards colleagues. In her statement the assistant principal described an incident on 16 March 2010 which she described as 'erratic' where the teacher ripped her photo from the display box where the staff photos were represented. This was done so hard that it had to be

repaired. Following that action the teacher confronted the assistant principal about the discrepancy between her photo and those of the other staff and confronted the assistant principal and other staff members about this and other issues. Counsel Assisting submitted a photocopy of a handwritten record from the assistant principal containing a record of a verbal confrontation on 16 March 2010 when the assistant principal addressed the teacher's absences and lateness to class. Counsel Assisting also submitted a photocopy of the assistant principal's handwritten record of these occurrences between 27 January 2010 and 24 April 2010.

Counsel Assisting submitted sworn statements from the Detective Leading Senior Constable and the Constable which corroborated the evidence of teacher 1 in relation to the incident at the school on 10 May 2010. The police stated that two non-uniformed police initially came to the school in an unmarked car to arrest the teacher for the alleged theft of a rental car because they were mindful that they were coming into a primary school. However, the teacher was so resistant that they had to call in uniformed reinforcements in order to restrain her. In the course of restraining the teacher two of the officers were kicked and they therefore had to push her to the floor to handcuff her. The teacher continued struggling and resisting the arrest and tried to get up from the floor. The Detective Leading Constable then noted swelling to her face and she was taken to hospital for treatment.

Counsel Assisting submitted that the teacher's behaviour compromised her professional standing as a teacher in her behaviours apart from the indictable offence. He submitted that the teacher had shown no insight, remorse or regret about her behaviours and he submitted a letter from the teacher to the principal dated 3 May 2010 in which she took no responsibility for her behaviour. Rather she accused the principal of holding a grudge against her and of unreasonable behaviour. Counsel Assisting submitted that this letter clearly showed that the teacher did not accept that she contributed in any way to the conflict nor did she accept the school's responsibility to hold her to account for absences, lateness and failure to teach students the lessons left for them. Counsel Assisting submitted that there was sufficient evidence supporting allegations 1-4.

With respect to allegation 5, the indictable offence, Counsel Assisting submitted that the teacher was found guilty of the theft of a motor vehicle and was released upon an undertaking and good behaviour for a period of 12 months. She was ordered to pay \$500.00 to the Court Fund and to pay \$13,031.67 compensation to the car rental company. Counsel Assisting submitted the matter was brought before the Courts twice for failure to comply with the Order before being dismissed on 3 December 2012. At the time of the Institute's Hearing, the teacher had not paid the \$13,031.67 compensation to Budget Rentals. Counsel Assisting submitted that these behaviours in relation to the indictable offence collectively show a lack of remorse for her offending and as such represent negative attitudes qualities of character and lack of moral standing such that she is not fit to teach.

In his closing submission Counsel Assisting submitted that the teacher's attitudes and actions in her time at the school and in relation to the indictable offence have been proved and demonstrate that the teacher is not a person of good character and therefore not fit to teach. Counsel Assisting submitted that the teacher had shown no insight,

remorse or candour and had not provided any adequate explanation of her behaviour. In light of which Counsel Assisting submitted that the Panel should cancel the teacher's registration. Counsel Assisting submitted that the Panel needs to accord natural justice to the teacher by giving the teacher the opportunity to respond. (*Dewan v Medical Board of Australia (2011) VSC 588* and supported by *Pharmacy Board of Australia v Kham (2012) VCAT 1316 at 9-11*).

DISCUSSION OF 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 theft and her behaviours in the school towards staff and students raised questions about her conduct and professionalism as well as raising further serious questions about her character and reputation. The teacher's behaviours in relation to incidents submitted in evidence at school, and in relation to the indictable offence itself and her arrest as suggested to the Panel indicate her character was such that she could not be entrusted with a position of trust and authority by the public. The Panel was presented with evidence that the teacher reacted inappropriately to criticism, being held to account and expectations of how she should behave as a teacher. The teacher's response to the principal relating to her absences, failure to engage with students, failure to follow lesson plans and negative behaviours raise serious questions about her character and suitability as a role model for children. The evidence submitted of her failure to teach children in her care as a relief teacher further raises questions about her fitness to teach. Whilst each allegation individually may not be sufficient indication of lack of fitness to teach, the evidence submitted as a whole demonstrates a pattern of behaviour that is inconsistent with the standards and expectations of a member of the teaching profession. The Panel considered that the teacher's behaviour reflects badly on her 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 negative behaviour within the school together with the indictable offence and her failure to pay the compensation was evidence of a continuing and persistent question of integrity, honesty and fitness to teach. The Panel saw evidence that the teacher's approach to the children in her care was profoundly and irretrievably flawed. Her attitude, responses and lack of insight and remorse raised serious questions

about her suitability to be a member of the teaching profession. The vehemence of her reactions when challenged or questioned, and her behaviour when the police attempted to arrest her suggested to the Panel that she 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 v 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 reacted inappropriately at school on more than one occasion and shown no remorse, insight or candour. To date, she provided no explanation for her behaviour to the Institute despite being invited to do so on a number of occasions. 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 teacher was given an opportunity to make submissions to the Panel in relation to this matter after the hearing and before the Panel made its determination. The teacher was given 28 days to make submissions. No submissions were received by the required date 30 April 2013.

FINDINGS

The Panel found all Allegations proved on the following grounds:

Allegations 1 and 2 on the basis of the sworn evidence of teacher 1 and the corroborating evidence of the assistant principal;

Allegation 3 on the basis of the sworn evidence of teacher 1;

Allegation 4 on the basis of statements made by teacher 1, the assistant principal, the Detective Leading Senior Constable, the Constable and the principal;

Allegation 5 on the basis of certified extracts obtained from the Magistrates' Court of Victoria as well as the summary of charges and the Victoria Police Brief of Evidence.

The Panel found, on the basis of the allegations, that the teacher was guilty of serious misconduct, both in her interactions with school personnel and with members of the wider community. In making this determination the Panel considered the statement of Justice Eames in *McGrath v Medical Practitioners Board* where he said serious misconduct "comprised conduct which was more than mere professional incompetence or mere deficiencies in professional practice, but would encompass conduct which included a 'deliberate departure from accepted standards'".

The question of fitness is to be determined at the time of the hearing. The teacher gave the Panel no opportunity to hear evidence to her 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'* and 2.6.1 which now provides a statutory definition of fitness to teach *'Whether the character, reputation and conduct of such a person are that they should be allowed to teach in a school'*. The Panel was referred to *Burgess v Board of Teacher Registration Queensland (QDC) 159* where it was decided that *'any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher'*.

The Panel found conclusive evidence that the teacher was not fit to teach and her personal conduct had impacted not only on her own professional standing but the teaching profession as a whole.



TERRY HAYES, CHAIRPERSON



**per:
JENNY WAJSENBERG, REGISTERED TEACHER**



**per:
SOPHIE PANAGIOTIDIS, PANEL MEMBER**