

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 137

**REGISTERED TEACHER:** RGA

**PANEL MEMBERS:** Garry Salisbury, Chairperson  
Leonie Sheehy, Registered Teacher  
Paul Wilhelm, Registered Teacher

**ATTENDANCE:** The teacher was represented by Mr Ron Meldrum QC  
Mr Rodney Hepburn, Counsel Assisting with Ms Jen Sheehan, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 20 February 2013

**DATE OF DECISION:** 22 March 2013

#### **FINDINGS AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 22 March 2013 the Panel found the teacher fit to teach.

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 31 December 2002.

By letter dated 14 August 2011, the teacher advised the Institute that he had appeared before the Magistrates' Court and pleaded guilty to indictable offences. A certified extract from the Magistrates' Court confirmed that on 24 February 2011, the teacher was convicted of indictable offences and sentenced to an imprisonment term of 12 months, which was wholly suspended for an operational period of 24 months.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 7 December 2011 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 20 January 2012 was served upon the teacher by registered post.

### **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:
  - a. On 24 February 2011, the teacher appeared in the Magistrates' Court of Victoria charged with 41 counts of the indictable offence of obtaining property by deception. The teacher entered a plea of guilty to 41 counts of obtaining property by deception s 81(1), Crimes Act 1958 (Vic).
  - b. On 24 February 2011 the Court ordered that the teacher be convicted on all counts and sentenced to an imprisonment term of 12 months which was wholly suspended under s 27 of the Sentencing Act 1991, for an operational period of 24 months.
  - c. The period of the offences occurred from 9 February 2009 to 18 September 2009.

### **THE EVIDENCE**

Counsel Assisting submitted that the teacher had been forthright in his dealings with the Institute. The Institute did not intend to call any witnesses. Counsel for the teacher submitted that the teacher had been stressed for a long period of time particularly when his offences were revealed by the Police. He submitted that the witness he intended to call had been the teacher's rock over this difficult period.

### The witness

The witness stated that he was a priest at a Parish in suburb A, in Melbourne. He had completed his Diploma of Education and his Bachelor of Arts in 1971 and his Bachelor of Education in 1976 and had been a teacher for forty years. He had taught Politics at year 12 level for many years and saw teaching as a way of meeting young people and assisting in their pastoral care. He had known the teacher's family for a long time, had briefly trained with the teacher's brother at the seminary, had officiated at the teacher's wedding and baptised both his children. He said that the teacher had 'come out' as a gay man to the witness in approximately 2005 and described him as a sensitive man who had felt compassion for his wife and children after he had 'come out' to them. The witness had told the teacher that he had to accept responsibility for his children which he had done. He said he did not know much about the teacher's wife or his children. The witness said that he had often talked to the teacher over the years about teaching in the suburbs and described him as marvellously passionate about teaching.

The witness said that the teacher had told him about his embezzlement because he needed to have a character reference for his court case and said he was open and honest about his crimes and pleaded for his help. He said the effect on the teacher had been worse for him than his marriage breakdown and described the teacher's feelings as turbulent because the police process and the prospect of gaol had led to him having suicidal thoughts. He described him as being deeply disturbed and an emotional mess at the time and he had come to see him every ten days for approximately one hour. The witness said that he did not feel like he was being used by the teacher for the purposes of his court appearance but that he was completely open in his discussions. He said the counselling had continued until the day of the hearing but had tapered off in frequency after he had stabilised and his medical support was achieving success.

The witness said that the teacher's principal was supportive of him and expressed the hope that he would return to the school. The teacher was held in high esteem by other staff at his school and regarded as a competent teacher who was firm but very encouraging with his students. The witness said that the teacher and his psychologist had a close relationship which had been helpful to the teacher. The teacher's 'coming out' had been a traumatic time for him. His family had helped the teacher pay back the money he owed. He said that the teacher provides a stable father figure for his children and continued to pay their school fees. He said that in his opinion the teacher would not re-offend because he had recognised his mistakes and wants to get on with his life. He wanted to remain as a teacher and was of great value to his school. His commitment to teaching was such that he did not want to move into administration. His efforts since had shown no duplicity.

Under cross-examination the teacher stated that did not think that that the teacher's dishonesty would impact on his school because he had been circumspect and only a small number of teachers knew about it. He said that the teacher could teach the difference between right and wrong and his conviction should not interfere with this. He said the teacher had made positive efforts to repay the money he had stolen and his duplicity was over. He said that he had spoken to the teacher's psychologist once at the court hearing but had not spoken to him for three years. The witness said that he had

talked to the teacher's principal three weeks ago and they had only a brief discussion about the teacher. She had indicated that the teacher was going very well. The witness said that he had no contact with other teachers at the teacher's school. He said all the information about the crimes had been gained from the teacher and he had never met the teacher's then partner. He rated the teacher's chances of recidivism as very low and stated that the teacher was not the initiator of the criminal behaviour. When asked how the teacher would cope if the news leaked out to the community the witness said the teacher had shown painful honesty in admitting his own flaws. The witness stated that the teacher's sexual orientation was not a problem in a religious school. He could not recall if he had advised the teacher to seek professional help. He said that he had never taught at the teacher's school. He stated that the teacher had been through a harrowing time but had developed a good relationship with his children and he was stressed about today's hearing. The teacher received good support from medical professionals. He said that he had been in contact with the teacher while he had been committing the offences and reiterated that the teacher had good family support. In his opinion the teacher was not acquisitive by nature but had become entangled with a wealthy partner and been sucked into criminal behaviour. He said the teacher felt like he had messed up and he had shown a strong sense of regret.

#### The teacher

The teacher stated that he is a teacher at the school. He married in 1991 but came out as a gay man in 2001 after struggling with his homosexuality for many years. His family had moved around a great deal in his childhood. He had won many dancing competitions. In 1998 he had ceased teaching to become a full-time dancer which he did so for five years until 2003 and said he had earned much more from dancing than teaching, competing and teaching overseas. He said that he had wanted to be a teacher since university where he completed a science degree majoring in genetics. He decided not to enrol in a Masters degree but completed his Diploma of Education instead and then taught at school 1 senior classes for fifteen years and then when the school amalgamated with another school, taught junior classes as well. He had held a number of positions of responsibility such as subject coordinator, been a member of the consultative committee, the Year 11-12 coordinator and had occupied leadership positions for seven years. He had assumed a pastoral care role as a home room teacher and as a year level coordinator. He had told some of the staff at school 1 of his sexual identity and no gossip had resulted. He had not experienced any pressure or conflict and had told people in confidence.

In 2004 he was appointed to a teaching position at the school after informing the interviewing panel that he was gay. He had told three teachers he was gay and the principal of the school and was aware that approximately 4-5 other teachers at the school were gay. He said he had a good relationship with the principal who had sent him a best wishes email yesterday. His role at the school, which was a girls' school, included attending Year 12 retreat camps. He had not taken on positions of responsibility because he wanted to teach rather than lead. He felt teaching was not a high paying career but a rewarding one and he loved the impact he could have on adolescents. He said he relates differently to year 7 and year 12 students but his purpose was still to care, nurture and instil a love for science. He kept abreast of his professional reading, regularly attended Professional development activities in particular those run by the Gene Technology Access

Centre (GTAC) and completes more than his minimum professional development requirements. He said that his Year 12 Biology results were positively skewed and improving. He took great satisfaction in helping students achieve beyond what was expected and said that the feedback he received from parent-teacher meetings was positive and he received good support from all parents not just those of high achieving students. He liked to be able to talk about the student as a person and that the growth students showed in a year was wonderful.

The teacher said he had commenced a relationship with his co-offender in 2008 and had eventually asked him where the money was coming from. When asked why he became involved with this person he said it was a need for affection and only later did it become a toxic relationship after he had been arrested. He said that he had freely entered into what he wanted to be a loving, gay relationship. As he became aware of the illegality of his behaviour he became increasingly self-loathing and became depressed and anxious over the seven month period. When asked if he recognised the signs of depression in himself the teacher said that when he was alone he frequently asked himself where he was going. He felt he needed to be in a relationship and felt he was in a dark place that he couldn't get out of. Initially he didn't seek assistance because he thought he could handle it himself but then his doctor had suggested he see a psychologist in 2008. The teacher said he had suicidal ideation and originally thought life wasn't worth living. No one helped him; he had no family help, no gay friends and thought it was time to end his life. He was counselled by doctor 1, a Clinical Psychologist, between six and ten times during 2008. He said this was the best advice he had ever received. When asked to rate his level of depression on a ten point scale when he was offending, he said it was eight and that he had suicidal thoughts, he could not sleep and was constantly worrying. He said his family was now supportive but his ex-in-laws were not. When asked why he persisted with his criminal behaviour when it made him anxious, the teacher said that he paid his children's school fees, child maintenance, half their medical bills, their clothing costs and anything else they needed.

He said that he had been honest with the police and needed to accept that what he had done was wrong. He was not tempted to deny it and was glad it was over. He said he visited his partner in prison but there was no love in the relationship at the end. He stopped attending church because of his guilt feelings although he had continued to attend when he had identified himself as a gay man. He said that he decided that he had no control over his sexual orientation but his decision to commit criminal acts were within his control and he felt more guilty about them. After being charged his GP prescribed medication for him and he has not taken it since January 2011. The only medication he takes is Ventolin and he currently takes no medication for anxiety.

When asked what he had learnt from his experiences the teacher said that he didn't need to prove that he was a good person, a good father or a good provider and was now very independent. One of the coping techniques he had learnt from his psychologist was that he had to give back after having taken and this took the form of cash donations to a religious charitable organisation which his psychologist said had to be sizeable to remind him of his offences. The teacher said he made donations about six times a year of approximately \$200-\$500. His sister had given him the money to pay back the bank and he had extended his house mortgage and it would be paid out in fifteen years. This had

effectively added ten years to the term of the loan. He had told his brothers and sisters, his children and his ex-wife of his offences. He had told his principal and Head of Staffing, teacher 1, when he got the date of his court hearing. He had told one other person, a colleague of his at the school.

The teacher said that if his criminal convictions were revealed he would not deny it but stressed that he is different person now. He wanted to be a positive role model and contribute to other staff. He would be devastated if he could no longer teach. He loved his work and had no plans to retire. He was fit, healthy and keen to keep going. If he has problems he could go to the witness who was non-judgmental, helpful and supportive and good at assisting him with his feelings of guilt. He said his psychologist had given him a range of strategies to cope and had worked on developing his feelings of self-worth. He had assisted his ability to reflect by constant reminders to give back. He currently sees doctor 1 on a needs basis but had not seen him in 2013. When asked about any current feelings of depression and anxiety he said that apart from feeling anxious about the hearing he did not feel depressed. He had a good relationship with his children and his relationship with his ex-wife goes through cycles but is currently good. He said that at some point in the future his financial obligations should reduce.

When asked again about the possibility of the information about his offences coming out at school the teacher said that he had ridden out other upheavals and he was confident he could cope. He said that he would deal in a similar way if he experienced financial problems. When asked to assess his chances of recidivism he said that he was now a very different person, a stronger character with greater self-belief. He recognised that he had a flaw in his character but he would not let himself be drawn back into his past mistakes. He said he was extremely sorry for bringing the profession into disrepute and despite everything, believed he was a good role model. He now received the support of a large family and of his eleven siblings there were six he felt confident to go to if he needed help. He said that part of his problem in the past was that he didn't ask for help. He could now ask his Principal and two colleagues for help. He no longer felt isolated or that he had to cope with troubles on his own.

Undercross-examination, the teacher said that he was aware of the Institute's Code of Conduct but not of the requirement to inform the Institute if he was charged with a criminal offence. When asked if he was aware of his obligations or if he had ever reflected upon them he said that he did not do so at the time but only later. During the court proceedings he said he did not reflect on the Code of Conduct but realised that the criminal matters might affect his registration. He admitted that he did not tell the Institute about the criminal charges. The teacher said that the referees he had provided were disappointed in him but continued to give their support. He discussed his registration with teacher 1 and the principal who indicated that they thought it might be affected. He said that the students held him in high regard and that he had their respect.

The teacher was asked what steps he had taken to avoid another negative relationship and he responded that he didn't need to have a relationship with that level of dependence on the other person. He said he could not believe that he let himself be led the way he was. He repeated that he was not the same person today as he was then. He said that if others didn't accept him he could not control their attitudes. The teacher said

that he came off his medication for depression because he felt ready. When asked how he could function at school at the time he was experiencing external problems he said that he was able to leave all his problems at the door of the school and that it was part of being a professional to be able to do so.

### The Principal

The principal said that she had been Principal of the school in suburb B for nine years and previously a Principal at school 2 in suburb C. She had worked in religious schools for forty years as a teacher, Principal and administrator. She said that she did not know the teacher socially although they had been at the school for approximately nine years. She was aware of his sexual orientation and he had told her in approximately 2007. She said this did not cause any problems for him at school and would only do so if it were made public. She said that four other gay teachers had told her of their sexual orientation. She said the teacher was highly respected as a science teacher and his fourteen VCE Biology students had received a study score between thirty five and forty four. Student comments about the teacher were always positive and parents and students expressed a desire to have him as their teacher. The principal said he had provided her with the details of his Magistrates' Court appearance and she knew most of the details and circumstances. With this knowledge she still offered him a full time position at the school. She had a high opinion of him as a teacher and as a person. She said he had expressed remorse and indicated the trauma he had caused. She said that in the religious system people had a right to be forgiven. She thought there was no risk of re-offending. She observed some signs of depression and anxiety and made regular enquiries as to his health at the time of his court appearance and said that other people might not have realised that he was anxious.

The principal said that she had only realised her and the teacher's connection to the witness at the end of 2012. When asked about the possible effects on the school if the teacher offences became known she said she said that she had two situations in the past where teachers had been guilty of criminal behaviour. She said that if the teachers and community were aware of it they could handle it. She felt that the school could cope if the teacher's offences became publicly known. She said her strategy would be to talk to people and point out the positive aspects of the situation. She said the teacher would have the support of his colleagues and the leadership of the school. She said he was a stronger person as a result of his experiences. The principal stated she discerned a number of changes in the teacher in the last twelve months. She said he was more settled, more confident and made a greater contribution to staff meetings where he was less reserved and more self-assured. She said that her statement was true and correct. The teacher said she was aware of the Code of Conduct. She said that she considered the teacher to be a good role model who related well to students and colleagues. He continued to maintain his professional development and his understanding and approach to assessment was contemporary. He responded well to parents. She felt he deserved a second chance and didn't think his crime would affect his professional standing. She felt that a substantial number of parents would support the teacher. She said that he now talks to a wider range of people than previously.

In his closing submission, Counsel Assisting referred the Panel to his written submission and submitted that the teacher's references as to his professional standing, personal character and the report from his treating clinical psychologist dated back to 2009. He also submitted that the Panel would need to satisfy itself as to the authenticity and integrity of these documents as only one of the referees gave sworn evidence. Counsel submitted that the standard to assess the teacher's conduct was the standard of the whole of the teaching profession and the Panel should consider the teacher's ability to be a positive role model at school and in the community; his ability to respect the rule of law into the future and to provide a positive role model for students. Counsel also submitted that the Panel should consider the Institute's policy on criminal records.

Counsel for the teacher submitted that the Panel should not draw the inference that doctor 1's documents and others were not authentic and it was not appropriate to make the suggestion that fraudulent documents were tendered at the teacher's trial. Counsel submitted that all the documents should be weighed considering that they had not been tested but the Panel should take comfort that they were provided to the Magistrates' Court. Counsel submitted that doctor 1 had emailed a brief statement to the effect that the teacher continued to maintain his mental health. Counsel said that the Panel should consider the issues as of the day of the Institute hearing. He submitted that it was not acceptable to say that because some teachers or parents who were not in possession of all the facts thought that the teacher should not be a member of the teaching profession that that should be the judgement applied. He said it was difficult to be a gay man in a homophobic community but the teacher had shown courage by telling his wife and telling his parents about his sexual orientation. He said the differences between the teacher at the time of the offences and now was that he had previously been isolated and this was no longer the case. Previously he had fewer resources than he does now. He now has the support of his family and his risk of re-offending is significantly reduced. He now has somewhere to go if he experiences difficulties. Counsel described the teacher as a much stronger man than he was previously. The teacher was now deeply embarrassed and ashamed about what he had done. He said that the teacher had gone through the trauma of a court case where he had been convicted and sentenced. His then partner's role in the crimes was judged to show a greater degree of criminality and he had received a custodial sentence. Counsel submitted that the teacher had learnt a very harsh lesson and now showed much greater self knowledge. He submitted that it was reasonable to say that as far as we could tell that it was unlikely that the teacher's offences would re-occur. Counsel said it was unlikely that the traumatic and scarring events the Panel had heard had not had the effects described on the teacher. Counsel submitted that one serious strike against a person's character was not sufficient itself to take away a teacher's registration. The fact of his conviction was not sufficient in itself and shouldn't rule him out of teaching. He submitted that the teacher had shown honesty and insight and the references from the witness and the principal supported this assessment. Counsel agreed to provide the Panel with a statement from the teacher's GP who was overseas at the time of the hearing. Counsel would ask him to provide all relevant medical details and some comments on his openness and compliance with his medication.

## **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 it was stated that: "when considering fitness to teach, the focus is on how the character of the teacher is reflected by the behaviour in question" and "A teacher may commit a single act of serious misconduct, or a series of acts, but those acts may be explicable in context and unlikely to recur." In *Burgess v Board of Teacher Registration Queensland QDC 159* 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 teacher obtained a substantial amount of money by playing his part in a deception against the bank. The offences took place over a period of seven months and were only revealed by the bank and the police's investigations. The Panel accepted that this series of acts was very serious and occurred over a relatively short period of time and the context and circumstances and the chances of a re-occurrence needed to be considered. Evidence was provided to the Panel that the period after the teacher's marriage breakdown was a turbulent one. Evidence from doctor 1 suggested that the teacher had been suffering from the symptoms of depression that had been untreated from this time and that he had suffered a devastating upheaval to his social and emotional life. The teacher also suffered strong feelings of guilt regarding his decision to identify himself as gay and these feelings centred on his children who he felt he had failed and let down. The teacher outlined to the Panel the considerable financial support he provided to his children including paying private school fees, child maintenance, medical expenses clothing and other items. Doctor 1 considered that the teacher had become an accomplice in crime because it gave him an opportunity to more effectively provide for his children. His feelings of guilt and the need to provide for his children appeared to override more ethical choices. The teacher also explained that after he entered into the relationship with his accomplice he became aware of its illegality and became increasingly self-loathing, anxious and depressed. The teacher admitted that the relationship he had developed with his co-offender was one where he was desperately searching for a loving gay relationship but that his role was a submissive one.

Counsel for the teacher submitted that it was difficult to be a gay teacher in a homophobic community. The Panel found that the teacher's sexual orientation had no effect on his professional life.

He had indicated to the Principal at school 1 that he was gay, he had told some friends there and had fifteen years without any problems occurring including seven years in positions of responsibility. At the school he had admitted his gayness at his employment interview, had told a number of staff including the principal, and was aware that there were a number of gay teachers on the staff. In short, the teacher appears not to have suffered any discrimination or negative incidents over his teaching career in the religious system and had gained a strong reputation as a caring, professional educator. While his sexual orientation created severe issues in his private life it appeared to the Panel that it was the teacher's guilt about his sexual orientation that partially led to his criminal behaviour. The Panel noted that two relationships were described in evidence suggesting that the teacher was heavily dependent on his then partners to feel valued. The witness suggested that the teacher had been sucked into crime by a wealthier, dominating partner. The Panel noted that the teacher was honest enough to admit that even though he was anxious and depressed he continued to commit the crimes because of the financial advantage he received. The Panel came to the view that he committed criminal acts in circumstances where his need to provide for his family overrode his moral scruples. The teacher only stopped when the bank and police interviewed and charged him. The teacher said that he felt he was now a much stronger, resilient person who recognised that he had a flaw in his character which meant he had to be careful that he did not engage in relationships with a high level of dependency on another person. He now knew that that it was possible to have a loving, gay relationship without being led into behaviour he knew was wrong.

The Panel thought the teacher's reactions to being charged were important because it appeared that he accepted his guilt for his wrong doing. He cooperated fully with police, pleaded guilty at his trial, paid back the money he owed and told people what he had done. He accepted that that his acts were within his control and this was why he felt so guilty about them. The teacher's reactions after his detection and conviction suggested to the Panel that his feelings of remorse, shame and guilt were very real once his crimes had been detected. The nature and quality of the teacher's remorse did not appear to the Panel to centre on the fact he had been caught but that he had been experiencing feelings of guilt for his wrongdoing and that it was a relief to be caught. He also exhibited insight into the effect his crimes would have on others. Doctor 1 indicated that the teacher's depression increased at the time of his trial and he was experiencing suicidal ideation throughout October-December 2010. The teacher said his reaction to being charged was one of relief. The Panel came to the view that the teacher's criminal acts were explicable in context but they in no way justify his behaviour. His view at the time appeared to be that he could justify stealing from a bank because it enabled him to support his family. The Panel heard a detailed explanation of his circumstances and the context which enabled him to justify this erroneous, unethical view to himself. The teacher has already been punished by the court and the Panel's role is to assess whether his current character, reputation and conduct make him fit to remain as a registered 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 explicable 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.

The Panel found there was no evidence that the teacher's criminal behaviour was of a continuing and persistent nature outside of the seven month period in 2009. The evidence provided about the teacher's performance in the classroom supported the Panel's view that his behaviour was exemplary and he enjoyed the respect of his students, colleagues, principals and parents. His current principal employed him for a full time position knowing of his criminal convictions but noted that the only comments she had heard about the teacher from students was that they hoped they could get him as a teacher. During the period when the teacher was acting in a criminal way, was caught and then sentenced, his professional department never appears to have wavered. When asked about his, the teacher said that he was able to leave all his problems at the school gate and that it was the role of a professional teacher to be able to overcome any personal problems they might have. The Panel had no fears that the teacher's performance in the classroom would not continue to be to a high standard. The Panel considered evidence from doctor 2 and doctor 1 that the teacher's judgement was affected by a series of factors including his depression and anxiety arising out of the circumstances of his personal life. The teacher stated that he was now no longer the person he had been at the time of the offences and this was supported by the witness and the principal. The teacher was able to indicate a range of factors which made him unlikely to repeat his offences. He now was much healthier; he had support from his family and his GP and his psychologist. He no longer took any medication apart from Ventolin or felt the need to prove he was a good person, a good father or good provider and was more independent. One of the strategies which had been very helpful to him was the suggestion from his psychologist that having stolen from the community he needed to pay it back. The teacher outlined how he makes a significant payment to St Vinnie's on a regular basis. The amount he paid was not so small as to be inconsequential to him and not so significant that it affected his ongoing financial commitments. He had told his ex-wife, his siblings, his children and a number of staff and his current principal of his offences. The Panel was confident it was unlikely that he would re-offend considering that he was less isolated, had a range of ongoing medical supports and had outlined how he had learnt from his experiences. The Panel was confident that the teacher could be placed in a position of trust and authority with children and noted that no questions had been raised about his approach to teaching.

The question which most vexed the Panel was whether the students, parents and wider community would accept the information about the teacher's convictions. Kitto J in *Ziems*

*v Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279* outlined a number of circumstances which were applicable in this matter. These were:

- the fact of a conviction and sentence of imprisonment are relevant, but not determinative of unfitness for a profession
- it may be relevant to look at the nature of the crime and whether it has any connection with or significance for the performance of the profession.

The teacher's conviction is a fact but it cannot be the sole determinant of whether he maintains his registration or not and the circumstances of his crimes have been outlined above. It is clear that the teacher's crime has no connection or significance for the performance of his teaching duties. When asked how he would deal with the news of his crimes becoming common knowledge said that he would not deny it but stressed that he was not the same person now. He said he would be devastated if he could not teach. The witness said that he did not think the teacher's convictions would impact on the school because he had been circumspect and despite his crimes he could still discern the difference between right and wrong and be a good role model for the students. The principal was asked the same question and said that the teacher had expressed remorse and understood the trauma he had caused. She said it was a strongly held belief in religious schools that people had a right to be forgiven and she offered him a fulltime position at the school knowing all the details of his crimes. She rated his chances of re-offending as low. She said that she was confident that she could justify the teacher's ongoing employment in her school if the news were to become public because of the professed values of the school. She said there would be some people who would not accept it but she was confident a substantial number would do so.

The Panel came to the view because of the lack of a connection between his offences and his teaching, his behaviour since the offences and his low risk of re-offending the school community and the wider public should be able to accept the teacher's continuing registration.

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 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 criminal behaviour occurred over a seven month period and there was no evidence of any other criminal matters either before or after. The Panel thought the teacher showed considerable insight into the causes of his behaviour and had addressed these by using his mentor - the witness, his doctor and psychologist and developing new more honest relationships with his ex-wife, children, family friends and colleagues. The

Panel does not wish to underestimate how difficult this must have been for the teacher and thought it indicative of his courage in confronting his problems and building his way out of them. The teacher was candid with the Panel in regard to his feelings then and now, his difficulties, his mental states, his personal financial arrangements and his strategies for overcoming his problems. His commitment and passion for teaching was clear to the Panel. He provided to the Panel an adequate explanation for his previous behaviour and this evidence was corroborated by the witness, doctor 2, doctor 1 and the principal. The teacher's behaviour appears to have had no impact on the school community but the Panel was of the view that the teacher's behaviour would rightly be condemned by the teaching profession as not upholding two key principle of the Institute's Code of Conduct Principle 2.1.a &b. These refer to the need to be a positive role model at school and in the community and to respect the rule of law. The Panel was confident that the teacher had learnt from his mistakes and he could provide a positive role model to young people by showing them how it was possible to re-build your personal life after a criminal conviction. The teacher's journey also reflects the need for all citizens to respect the law because the effects on him and his family and friends were traumatic. The teacher accepted responsibility for his actions and appeared to the Panel to show remorse and insight into his wrongdoing and the effect it could have on the standing of the teaching profession. At the time of the hearing the teacher provided clear evidence that he highly valued the teaching profession and respected the law. It appeared to the Panel that the support the teacher received from his principal and colleagues was critical in assessing his fitness to teach. The Panel noted that it had been four years since the teacher had committed the offences and no other criminal acts had occurred since then. The teacher had taken a number of corrective steps since his convictions. Doctor 2 stated in a medical report dated 13 March 2013 that the teacher had weaned himself off his antidepressant medication within a few weeks and he believed this was an appropriate medical decision. Doctor 2 also completed a formal mental health assessment on the same day which indicated that the teacher had no mental illness present. He had repaid the money he stole with interest, used a range of medical experts to address deep seated personal problems, reorganised his financial affairs, developed more supportive relationships with his family, revealed his convictions to his principal, colleagues and friends and engaged in some deep reflection about his behaviour and character. This evidence, including his plea of guilty to all charges, indicated to the Panel that the teacher's attempts to change his life were real and lasting.

The Panel also had to consider the Institute's policy on criminal records which states that the following factors should be considered:

- The nature of the offence;
- The person's personal circumstances;
- Any other offences committed at the same time;
- Any other prior convictions of guilt;
- The period of time that has elapsed since the offending took place;
- The severity of the penalty imposed by the court including;
  - Whether the court recorded a conviction
  - Whether the court imposed a good behaviour bond or community based order
  - Whether these orders were successfully completed; and
  - Whether the person was referred for treatment or counselling and whether this was undertaken

- Whether the offence is still a crime;
- Whether the offence involved children;
- Whether violence was involved;
- Whether the person history shows a history a pattern of criminal behaviour;
- The circumstances surrounding the offence;
- Whether the person acknowledges the offence and shows remorse;
- The harm to the victim including any injury or loss;
- Whether it is in the public interest for this person to be registered as a teacher; and
- Whether the circumstances reflect badly on the person's standing as a teacher.

Where the offences involved dishonesty the Panel should also consider:

- The amount involved;
- Whether the offence was against a school; and
- Whether restitution has been made.

The evidence showed that the teacher was found guilty and convicted of multiple charges of obtaining property by deception and was sentenced to a period of imprisonment of twelve months. The sentence was wholly suspended for twenty-four months and the certified extract states that had the teacher not pleaded guilty the Magistrate would have sentenced him to eighteen months in prison. The offence was one against property rather than the person. The teacher committed no other offences apart from those for which he was convicted and he had no other prior convictions. It is approximately four years since the teacher committed the offences. The court clearly regarded the offences as serious and the finding of guilt with conviction and the significant period of imprisonment indicated how seriously the magistrate viewed the teacher's crimes. On the other hand His Honour suspended the sentence and did not impose a good behaviour bond or a community based order. The Panel interpreted the orders to indicate that the court viewed the teacher's offences as very serious and the recording of a conviction would stay with the teacher into the future such as to raise questions about his character and honesty. However the suspension of the sentence suggested to the Panel that His Honour could see no good reason to incarcerate the teacher in the light of all the circumstances provided. In addition His Honour did not refer the teacher for treatment or counselling to treat ongoing issues or impose any other orders. The teacher had clearly committed a series of crimes but they did not involve children, any violence or any pattern of criminal behaviour. The circumstances surrounding the offences are elaborated above and they appear to have influenced his Honour's decisions on sentencing. The Panel took the teacher's plea of guilty to all the charges as an indication that he acknowledged the offence and as described above he is remorseful for his actions. The loss suffered by the bank was reimbursed in full including interest and the teacher explained to the Panel how he was able to achieve this. The nature of the offences clearly raises the question whether it is in the public interest for the teacher to remain as a registered teacher and how badly all these circumstances reflect on his standing as a teacher. The Panel also considered whether the continued registration of the teacher would reflect badly on the teaching profession as a whole and whether the public's trust in teachers would be reduced by allowing a teacher to remain registered who had committed such serious crimes.

The teacher's convictions for obtaining property by deception are now matters on the public record for which he has been punished through the criminal justice system. These

convictions raised serious questions about the teacher's character, reputation and conduct but the weight of evidence provided to the Panel on the day of the hearing suggested that there is little likelihood the teacher would re-offend and that he has reformed his character.

## **FINDINGS**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 22 March 2013 the Panel found the teacher fit to teach.

## **DETERMINATION**

The Panel determined that the teacher remains registered as a teacher in Victoria.



**GARRY SALISBURY, CHAIRPERSON**



**per:**  
**LEONIE SHEEHY, REGISTERED TEACHER**



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