

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 144

REGISTERED TEACHER: SMMcF

PANEL MEMBERS: Marilyn Mooney, Chairperson
Peter Howlett, Registered Teacher
Leneen Forde, Panel Member

ATTENDANCE: The teacher was represented by Mr Edward Johnson,
Industrial Officer, Australian Education Union

Mr Rodney Hepburn, Counsel Assisting with Ms Jen
Sheehan, Instructing Solicitor on behalf of the Victorian
Institute of Teaching

DATE OF HEARING: 30 October 2013

DATE OF DECISION: 11 November 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 11 November 2013 the Panel found the teacher fit to teach and determined that he 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.

On 27 December 2012, Victoria Police advised the Institute that the teacher had been charged with indictable offences.

A court certificate dated 20 February 2013 confirmed that the teacher appeared in the Magistrates' Court on 20 February 2013 and was convicted of indictable offences.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 28 August 2013 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 24 September 2013 was served upon the teacher by registered post on 2 October 2013.

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) appeared in the Magistrates' Court of Victoria on 20 February 2013 charged with the indictable offences of recklessly cause serious injury and intentionally damage property (ss17 and 197.1 respectively, *Crimes Act 1958* (Vic)). The Court convicted the teacher and he was fined an aggregate of \$7,600 with \$66 statutory costs, and \$3,153 compensation.

THE EVIDENCE

Teacher 1

Teacher 1 gave evidence under oath and confirmed his written statement as true and accurate. He told the Panel that he has been a teacher for 30 plus years and taught with the teacher at the school from 2004 until he retired in 2006. Teacher 1 said he has since worked as a casual relief teacher (CRT) at the school.

Teacher 1 told the Panel that the teacher had been a Sub-school leader and had a great deal to do with delivering positive outcomes to many students, including some challenging boys. Teacher 1 said that as a CRT he relied on the teacher for support and assistance. He stated that the teacher was calm and resourceful, had a good sense of humour and had a good grip on reality. Teacher 1 said that he was well aware of the

disastrous events that landed the teacher in Court facing serious charges and also of the shattering effect it has had on him. He told the Panel that he believed the teacher had never deluded himself or minimised his role in the harm that his actions had caused. The Panel heard that he believed the teacher to be absolutely aware that the situation got out of hand and that he allowed events to spiral out of control. Teacher 1 said that the teacher regretted his actions and had reflected on what led to this destructive behaviour.

Teacher 1 told the Panel that the teacher had been a role model for many of his students and had demonstrated positive values to students who, in many cases, lacked a positive male role model. He explained to the Panel that although the teacher was guilty of a serious offence, he was able to talk to students about 'thinking before you do something' however, in this instance it got away from him.

Teacher 1 said that the teacher has the respect of the school community, his peers and his students.

Under cross examination the teacher stated that he knew bits and pieces of the incident and that there had been some trouble but it was not until about 2 weeks prior to the hearing that he was told the whole story. He said he understood that the teacher tried to intervene in a domestic dispute involving his ex-partner and her husband. Teacher 1 conceded that although he was aware that the charges the teacher faced were serious, he was not fully informed of the specific details. For example he was not aware that the teacher was guilty of "recklessly causing serious injury". When it was put to him by Counsel Assisting that the teacher also assaulted a female, teacher 1 said he was aware of that but thought the word "assault" was a strong word to use. Teacher 1 stated that he was not aware of the offensive language used by the teacher but understood that the occupants in the house would have been terrified.

Teacher 1 agreed that he was aware that the female in the house had ended the relationship with the teacher. When it was put to teacher 1 that in this case there was no need for the teacher to protect the female, he responded that his understanding was that she had phoned the teacher for help. Teacher 1 stated that he did not know that the teacher had texted and phoned the female to say that he was coming around and was "going to get that maggot". Teacher 1 said that obviously the teacher had a negative view of the male in the house.

Counsel Assisting raised teacher 1's belief that the teacher was a good role model and asked him if students knew of the teacher's charges would they still respect him. Teacher 1 said he believed that they would forgive him. He also thought that the parents would be horrified.

The teacher

The teacher gave evidence under affirmation and confirmed his written statement (signed on October 30, 2013) as true and accurate. The Panel heard that he is currently a teacher at the school and also a Year 7 Level Co-ordinator for student welfare. He stated that from 2004 to 2008 he was the House Co-ordinator for Years 7-10.

The teacher told the Panel that he married in 2003 and divorced in 2011. He said that in mid 2011 he commenced a relationship with person A who, at that stage was separated from her husband, person B. He explained to the Panel that when person B came home from work, at the mines, although separated, he and person A resided in the same home.

The teacher said that before they started a serious relationship, he and person A had been friends for over 15 years and that they had kept in contact since their college days. He told the Panel he knew that she had separated from her husband and that she had told him of person B's violent treatment of her. He said he knew that person A's parents were religious people and because of this she was reluctant to confide in them her failed marriage, her relationship with the teacher and her husband's long-term physical abuse and sexual harassment towards her. The Panel heard that person B had found out about his wife's relationship with the teacher, that he made threats to kill her and demanded to know where the teacher lived. The teacher said that on the night of the incident he received a number of texts from person A that he interpreted as a "cry for help". He said that earlier in proceedings person A had sent him texts asking him to come and help her. The teacher told the Panel that despite making negative comments about him in her statements to police, he and person A (now known by another surname) are reconciled and share a serious relationship again. He said that person A has written a letter of support for him which is available to the Panel.

The teacher stated that on returning to school after his court appearance, he was advised by the Australian Education Union (AEU) representative to keep his Principal fully informed, which he did. He said his Principal consulted with the employer and on their advice allowed him to continue to teach. The Panel heard that his Principal recommended he attend counselling which he did over a number of sessions, both face to face and via telephone. The teacher told the Panel that the anger management counselling process and the intervening time has helped him to understand that he wrongly decided, in the heat of the moment, to rush to assist his girlfriend and confront her husband in a violent manner. The teacher said that he was seriously in error in believing that his actions could ever justify the consequences of that poor decision.

The teacher explained to the Panel that he only had two anger management counselling sessions as he wanted to explore his own issues. He said that it helped him enormously to talk to someone about the frustration of his relationship being kept secret. He stated that on the night of the incident he was under extreme duress and was "propelled out of control" but that it would never happen again. The teacher told the Panel that he understood the seriousness of the incident and that if necessary he would be honest with parents and colleagues and would explain the circumstances leading up to the night. He said he believed he was a fit and proper person to be a teacher and that he has a good reputation with teachers and students and the wider school community.

In response to his representative enquiring as to why his girlfriend changed her statements, the teacher told the Panel that person A was not directly or intentionally assaulted by him. He said that in her first statement to police she did not divulge the true nature of their relationship and her second statement was not entirely accurate. The teacher stated that person is medicated and not able to make an entirely accurate statement.

Under cross examination the teacher was asked if he was familiar with the profession's Code of Conduct. He said he read it some time ago and was aware that his conduct could have a large bearing on his registration. In relation to person A's statement to the police that she was ending the relationship with the teacher he told the Panel that this was incorrect. He also denied her claims that he sent her aggressive and threatening texts and that he threatened to hurt person B. The teacher maintained his comment to her that she was "untrustworthy" as she continued to deny there was abuse in her previous relationship with person B.

The teacher told the Panel that on the night of the incident he had been texting person A and she responded with a text such as "WTF .. he just read that .. you got me into trouble". He said they had been having a running argument for the 5-6 days leading up to the incident and coupled with the history of the abuse and person B's threat, his emotions got the better of him, he reacted badly and made a poor decision. He said he felt that she was in imminent danger and that was when he decided to go over to the house. The teacher stated that person A told him that if she maintained a relationship with him person B said that he would kill her.

Counsel Assisting asked the teacher if the threatening and abusive language directed at person A and the actions of flinging her off him during the violent confrontation were typical behaviours of a romantic relationship. He replied that they were not and he regretted it. When asked how he would respond if the relationship was ended again the teacher told the Panel that at the time of the incident he was of fragile mind however counselling has helped him understand his own actions and he is confident there would not be a repeat of that behaviour.

In relation to the character references he provided, the teacher stated he was unclear whether he divulged the full extent of the charges from that evening. He said some issues were probably not mentioned, for example he would not have divulged that he was in a relationship with person A. The teacher told the Panel he was confident that if under stress again he would not react or behave in a similar manner. He said he understood that if the local community became aware of the matter that it could be quite negative, especially for boys, but he felt that parents would understand the situation if it was explained to them.

He stated that person A was willing to attend the Hearing but she was too unwell with anxiety issues and he would only ask her if it was absolutely necessary.

In response to questioning from the Panel regarding whether students would think his behaviour "cool" and "heroic", the teacher said that he would tell them they were misguided and would talk to them about the consequences. When he was asked if there would be a recurrence of the behaviour and what was different with the relationship now, the teacher responded that person A is more settled and has moved in with her parents. He said that their relationship is still not widely known and is still hidden from her parents.

DISCUSSION OF THE EVIDENCE

The allegations of possible lack of fitness to teach are set out in the Notice of Formal Hearing. Whilst the actual offences of which the teacher has been convicted as outlined above are not in dispute, nor is the teacher's competence as a teacher, the task of the hearing was to understand the context of the offences and to determine whether the teacher is fit to teach.

The teacher's unsworn character references attest to his integrity and good character, his positive role modelling for students, his professional contribution as a colleague, his teaching ability and the constructive relationships he has with students. However, in light of teacher 1's sworn evidence that he was not fully aware of the specifics of the charges, the Panel takes the view that all of these other character referees were also not aware of the full extent of the teacher's offending and the serious nature of the particulars of the conduct. Notwithstanding this, the Panel accepts that his referees trust in the teacher, believe him to be of good character and give him considerable credit for his teaching competence and conduct in a professional setting.

The Panel had difficulty in correlating the three statements of person A. The two statements she made to the police immediately after the incident were damning of the teacher's behaviour both leading up to the night of the offences and on the night itself. The unsworn statement the Panel was presented with is at odds with these statements and portrays the teacher in a very different light. As the Panel's decision does not rely on these statements it accepts that the truth probably lies somewhere in all three statements and is possibly indicative of their complex relationship.

The report prepared by Psychologist, psychologist 1, for the teacher's court appearance indicates that this was an isolated incident as a result of him experiencing many months of being in a relationship where violence and deceit/secretcy were ongoing. Psychologist 1 wrote that on the night of the incident the teacher allowed his protectiveness of person A, his frustration of being in an unreasonable situation, and his intense anger against person B to reach boiling point. She stated that in the teacher's mind he had to make sure person A was safe and not in a situation of being hurt any further. Psychologist 1 was inclined to believe his reasoning for committing the crime but not to condone his actions.

The teacher had two counselling sessions for depression and anger management issues. The counsellor formed the view that the teacher's aggression in this incident was aroused as a protective instinct for his girlfriend and not a typical response of his normal day to day life and relationships. The counsellor felt that as there were no ongoing examples of loss of control offered, it appeared to her that this may have been a one off response to a perceived threat to his girlfriend. She also thought that his depression may be reactive to this event, factors associated with his relationship, and subsequent legal proceedings against him.

The Panel considered the evidence of the teacher to be honest and consistent and accepts that he is genuinely regretful of his violent actions. Although there is some doubt as to the teacher divulging the full extent of his offending to his colleagues, he did keep his Principal informed of the charges and of the court proceedings. The teacher undertook

counselling to help him understand his behaviour and to help him work through depression and anger management issues. The Panel accepts that the teacher's enthusiasm and love of teaching remains undiminished and appears to be sufficient incentive to ensure that he does not reoffend in future.

FINDINGS

The purpose of this hearing was to determine the teacher's fitness to teach so as to protect the public and the reputation of the profession and to maintain the public's trust in the profession. In reaching a conclusion about whether he was fit to teach, the Panel was guided by *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 at 168-170 where 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. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and the children in his care is profoundly and irretrievably flawed. It would often involve criminal conduct.

From the evidence presented to it the Panel believes that the criminal behaviour of the teacher is not indicative of his basic character and that his approach to his professional responsibilities is not profoundly or irretrievably flawed.

The Panel also considered whether the students, parents, other teachers and wider community would accept that the teacher was practising with convictions for indictable offences. In *Ziems v Prothonary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 283 per Dixon CJ, a number of circumstances were outlined as being determinative:

- a. *The fact of a conviction and sentence of an indictable offence are relevant for unfitness for a profession ... but the answer "must surely be that we must look at every fact which can throw any light on that question". Ibid per Fullager J at 288 and Taylor J at 303; and*
- b. *It may be relevant to look at the nature of the crime and the facts of the particular case ... the "approach of a court to a case of personal misconduct must surely be very different from its approach to a case of professional misconduct. Generally speaking, the latter must have a much more direct bearing on the question of a man's fitness to practise than the former". Ibid per Fullager at 290; and*
- c. *"The vital question, in my opinion, in such cases, is not whether a practitioner has been convicted of an offence against the criminal law but whether his conduct*

has been such as to show that he is unfit to remain a member of his profession".
Ibid Per Taylor J at 302

The teacher's offences relate to his personal conduct as opposed to his professional conduct. The Panel is of the mind that the teacher's standing in the school community is such that the criminal behaviour, although not condoned, would be seen as an aberration and not part of his normal pattern of behaviour. The Panel also believes that the teacher will use his experience in a positive manner with students in helping them to understand cause and effect issues and that actions and poor choices have consequences.

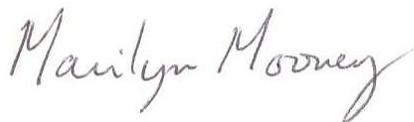
The Panel accepts that the teacher is remorseful over his behaviour and is mindful that prior to this offence he had an unblemished record. The fact that the teacher pleaded guilty to the charges is a factor in his favour. He continues to acknowledge his wrongdoing and lack of self-control and demonstrates a degree of insight into the seriousness of his actions. The Panel is confident that the teacher has taken responsibility for and control over his previous psychological disturbance and volatile nature. Nevertheless the Panel is concerned that the secretive nature of his relationship with person A continues and would counsel the teacher to continue counselling.

The Panel is confident that the teacher will not reoffend in the future, that there is not an inherent flaw in his character and that his conduct in this instance is not of a continuing and persistent nature. After careful deliberation the Panel accepts that rather than a premeditated, jealous, revengeful act of violence towards person B, the teacher believed person A was in imminent danger on the night of the incident and took the action he did based on that belief.

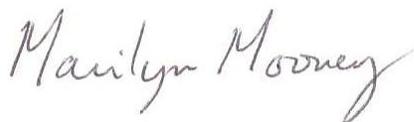
The Panel assessed the teacher's present fitness to teach on the basis of the evidence before it and concluded that his character, reputation and conduct indicated that he was fit to teach.

DETERMINATION

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 11 November 2013 the Panel found the teacher fit to teach and determined that he remains registered as a teacher in Victoria.



MARILYN MOONEY, CHAIRPERSON



per:
PETER HOWLETT, REGISTERED TEACHER

Marilyn Mooney

per:
LENEEN FORDE, PANEL MEMBER