

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 138

REGISTERED TEACHER: Milan TOMASEVIC

PANEL MEMBERS: Garry Salisbury, Chairperson
Anne Farrelly, Registered Teacher
Leneen Forde, Panel Member

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

DATE OF HEARING: 28 February 2013

DATE OF DECISION: 6 May 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 28 February 2013 the Panel found the teacher guilty of serious misconduct and not fit to teach.

The Panel determined to cancel the registration of the teacher from 6 May 2013.

REASONS

BACKGROUND

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

By letter dated 1 October 2004, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct, serious incompetence and lack of fitness to teach of the teacher. The teacher's employment with the employer was terminated, effective 2 August 2004.

The employer provided evidence that the teacher appeared in the Magistrates' Court on 23 May 2003 and was found guilty of indictable offences.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 11 May 2005 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 21 February 2006 was served upon the teacher by registered post on 22 February 2006.

The teacher appealed his indictable offence convictions and the Formal Hearing was adjourned until the completion of the appeal.

THE ALLEGATIONS

The information the Institute received as evidence of possible lack of fitness to teach is as follows:

1. That on 23 May 2003 at the Magistrates' Court, the teacher was found guilty without conviction of the indictable offence of making a threat to kill. The teacher was placed on a 12 month good behaviour bond with the condition that he continue with counselling and treatment.
2. That on 25 June 2004 following a hearing conducted pursuant to section 45 of the Teaching Services Act 1981, the delegate found that the teacher continues to demonstrate a pattern of inappropriate behaviour that makes him unfit to discharge his duties and that his character is such that he is not temperamentally qualified for the satisfactory performance of his duties.
3. That on 7 January 2011 at the Magistrates' Court, the teacher was found guilty without conviction of the indictable offences of stalking another person and using a carriage service to menace. The teacher was placed on a ten month good behaviour bond, ordered to pay \$300 to the Court fund and to continue to attend and follow the

clinical recommendations of Dr JC, psychiatrist or his delegate. A stay was ordered until 7 April 2011.

THE EVIDENCE

The teacher did not attend the Hearing, was not represented and did not make any submissions. He did not supply the Institute with evidence of the criminal charges and the findings made against him.

In relation to the teacher's fitness to teach, allegation one is that he was found guilty of one threat to kill directed towards principal 1 and two counts of using threatening words in a public place directed towards teacher 1 and principal 2 on 23 March 2003. The teacher's conduct occurred in front of students and parents. Evidence at his trial indicated that principal 1, the Principal of school 1, arrived at the school on the morning of 1 March 2003 and the teacher said the following words;

" You have three days to tell the truth or you will blink and you'll be dead. My children have suffered because of you. You will be dead and also others will die."

Principal 1 said in his signed statement to the court that during May 2001 the teacher made a number of calls to school 1 where he variously indicated he knew where the principal's daughter went to school, urged him to tell the truth or commit suicide and threatened that various people would be hurt. Principal 1 said that when the teacher made the threats against him and his family on 1 March 2003 he did so in a very calm and deliberate way. Principal 1 regarded these threats as being qualitatively different to previous threats and he interpreted them as serious threats to his life. He also feared for the safety of his family, students and staff. Her Honour sustained the charge of making a threat to kill and found principal 1 to be an entirely truthful, honest and persuasive witness. Her Honour also found that the teacher had used threatening words in a public place. Principal 1 sought and was granted an Intervention Order. The teacher denied all the allegations.

In relation to the charges involving teacher 1, Her Honour found the teacher guilty of using threatening words in a public place but dismissed the charge of threatening to kill teacher 1 because she thought it was not a genuine threat rather the teacher was expressing anger and frustration. Teacher 1 stated in his signed statement that the teacher said;

" ...he started saying I had no balls. He asked me if I knew where my wife was and who was at home fucking my wife. He repeated this last comment about ten times...He repeated saying I was a bad man... He told me that I was dead man about three times."

Teacher 1 interpreted this as a genuine threat because he was aware of the teacher's psychiatric assessment and regarded him as unstable. Teacher 1 said he was shocked and angry by what the teacher had said and believed he wanted to provoke him. The teacher denied all the allegations.

In relation to the charges involving principal 2, Her Honour dismissed all the charges and said that she was not satisfied beyond reasonable doubt that the teacher made a threat to kill principal 2. In his signed statement principal 2 said the teacher had pointed his finger at him and said he was a dead man. The teacher accused principal 2 of emotionally and physically abusing children. Principal 2 then sought and was granted an Intervention Order. The teacher denied all the allegations. The teacher appealed to have the matters reinstated at the Victorian County Court on 13 July 2006, but this was refused and the original orders made by the Magistrate at the Magistrates' Court on 23 May 2003 stand.

The teacher did not make a submission to the Hearing in regard to any of the three allegations.

In relation to allegation two, a hearing was held into the teacher's conduct under section 45 of the Teaching Services Act 1981. The Delegate made a series of findings in relation to the teacher's conduct at school 1, school 2, the regional office of the employer and various other organisations and public places like shopping centres. These findings were that the teacher;

- Demonstrated a pattern of inappropriate behaviour over an extended period of time and the overt manifestation of this only ceased because the external controls of a court were applied.
- Was unable to demonstrate any internal control over his behaviour and this was what had led him to being found guilty by the court of three serious offences. His lack of internal control led to interim orders and court undertakings.
- Was unable to demonstrate any insight into his behaviour and how it might be perceived.
- Continued to blame external causes for what had occurred to him most notably that the report of unsatisfactory performance was motivated by jealousy of the fact that he was excellent with students and an award winning teacher.
- Demonstrated a complete disregard for others that manifested in insults, threats, inappropriate language and particularly wild accusations.
- Demonstrated a continuing disregard for the community's perception of public education.
- Demonstrated a preparedness to use students, parents and the community to further his own goals.
- Demonstrated a continued inability or unwillingness to take responsibility for his own actions and behaviour. The Delegate cited the teacher's lateness to the Hearing as an example.
- Demonstrated a disregard for the authority and processes of his employer the Department.
- Continued to demonstrate that he does not consider himself bound by the standards of behaviour that apply to the members of the teaching service.
- Had serious questions raised about his credibility given the inconsistencies and contradictions he demonstrated as a witness.

The Delegate found that the teacher continued to demonstrate a pattern of inappropriate behaviour that made him unfit to discharge his duties and that his character was such that he was not temperamentally qualified for the satisfactory performance of his duties. The teacher was invited to make a submission as to penalty, due on 16 July 2004. An extension was granted until 23 July 2004 and the teacher's legal advisor was requested to provide a submission by 28 July 2004. No response was provided and the Delegate decided that all reasonable attempts had been made and penalty would be decided in the absence of a submission. The Delegate considered the teacher's mental health and noted that the teacher did not attribute his behaviour to depression. The Delegate decided that she could not accept that the teacher was suffering depression at the time of the offences and that it was not a contributing factor in considering the penalty to be imposed. The Delegate decided that the teacher's ongoing behaviours as outlined above continued to be demonstrated at the time of the hearing and there was no question of any mental health issues. The Delegate recommended that the teacher's employment be terminated.

In the course of the Hearing the Delegate considered a range of matters. By way of background the teacher had raised allegations of misappropriation at school 2. The Delegate decided that the teacher had not been able to produce any evidence of misappropriation at school 2. The Delegate noted that the teacher's assessment of unsatisfactory performance was made as a result of continuous lateness and his behaviour in discharging his duties rather than any rejected sexual proposition, or his misappropriation allegation or his popularity or ability as a teacher. She also noted a lack of insight by the teacher into his behaviour. The Delegate found that in 2000 the teacher harassed senior staff at the Regional Office after he was placed there as a result of having been removed from his duties at school 2. The Delegate accepted that the teacher had threatened an officer of the Regional Office. The Delegate decided that on 21 August 2000 the teacher had entered the Regional Office to show a physical presence to assert his 'rights' against the 'authority' of the Regional Office and this behaviour was unauthorised and inappropriate. On 12 October 2000 the teacher again entered the Regional Office and was aggressive towards a female employee who became frightened and requested that locks be fitted to the office door. When an officer of the Regional Office intervened to stop a difficult situation for the female employee, the teacher 'chested' the officer of the Regional Office and the officer threatened to call the police. The Delegate believed that the teacher had acted in an inappropriate way and this constituted harassment of the Regional Office staff. The Delegate noted a lack of insight on the teacher's behalf, the effect of his behaviour on others and his inability to accept directions.

The Delegate found that the teacher had made inappropriate contact amounting to threats, harassment and intimidation of staff at school 2, the Regional Office, the employer and a branch of the employer. The Delegate stated that the teacher had agreed that he had called school 2 but denied he had made inappropriate comments. The Delegate described his behaviour as juvenile and inappropriate and demonstrated the teacher's need to have an audience for his grandstanding. Principal 2 said that in early 2001 he had received approximately 50 telephone calls from the teacher because the official instruction had been that he was not to talk to anyone else at the school. Although the teacher denied making so many calls the Delegate found that he had. The Delegate found that in this matter the teacher was an unreliable witness and that over a period of twelve months he had wasted the time of staff at school 2 impacting on their efficiency

because they had to spend time listening to what in many cases were insulting remarks. In May 2001 the teacher rang school 1 and made threats and used a false name. Although the teacher agreed that he had made calls he denied using a false name or making threats. The Delegate decided that the teacher's evidence was unreliable. On the Easter 2001 holiday the teacher went to principal 2's home and threatened and insulted him. The teacher agreed it was a mistake to go to principal 2's home but denied threatening or insulting him. The Delegate found on the balance of probabilities that he had. The Delegate found that the teacher refused to attend medical examinations and claimed that he had been given a clearance by four psychiatrists. He refused to provide a report from these psychiatrists to the employer.

In relation to allegation three, the teacher sought advice from an employment organisation in relation to an unfair dismissal claim resulting in correspondence between January and 18 December 2007. On 20 December 2007 the teacher contacted the employment organisation and was allegedly aggressive towards the receptionist and insisted on speaking to the Executive Director of the employment organisation, employee 1. When she returned his call the teacher became aggressive and threatening towards her. Employee 1 recorded his call. On 21 December the teacher contacted the employment organisation and demanded to speak to employee 1 who did not return his call because she was frightened that he would become aggressive again. On the same day, the employment organisation wrote to the teacher to advise it would not be taking his case and explained why. On 4 January 2008 the teacher contacted the employment organisation claiming to be the Manager in the branch of the employer but the call taker recognised the teacher's voice. The teacher allegedly said he was recording the conversation and told the call taker he would track him down. He allegedly made further statements that "he was the chosen one" who would "stop the people on the wrong side" and that he was not "god and forgiveness". Between mid and late January 2008 the teacher made several calls to the employment organisation. On 31 January 2008 employee 1 returned the teacher's call; he made threats against employee 1 which caused her to feel fearful for her staff and family as a result of which she contacted the Police. Further calls were made by the teacher including one on 22 February 2008 he allegedly made from home to the employment organisation. In this call he allegedly told the call taker he was going to deliver employee 1 to hell. As a result employee 1 hired a private security guard at the organisation at a cost in excess of \$2,000. On 26 February 2008 the teacher was arrested and interviewed by police and charged with multiple counts of stalking another person and using a carriage of service to harass. The teacher gave a 'no reasons' response. On 27 February 2008 the teacher allegedly made a phone call to the employment organisation where the sound of a ticking clock could be heard but no words were spoken. This was in breach of his bail conditions and the conditions contained in the interim intervention order. Employee 1 underwent counselling as a direct result of the teacher's alleged intimidation and stalking of her. As a result of breaching his bail conditions and the interim intervention order, the teacher was arrested and remanded in custody until 3 March 2008.

In her statement to the court employee 1 said that the teacher had demonstrated enormous anger towards her and the staff members who have spoken to him in the past. She said he had not shown any ability to control himself which made her feel he was capable of carrying out his threats. Employee 2, employee 3, employee 4 and employee 5

all provided corroborating statements as to these events. The teacher appeared at the Magistrates' Court on 7 January 2011 and pleaded guilty to seven charges of stalking another person and one charge of using a carriage service to harass. The teacher was found guilty without conviction of the eight charges, ordered to pay \$300 to the Court Fund and to continue to attend and follow the clinical recommendations of Dr JC, psychiatrist or his delegate. The teacher then appealed to the Victorian County Court on 25 January 2011. Currently this matter is now to be heard at the County Court on 17 June 2013 and is listed concurrently with a previous appeal from the Magistrates' Court decision of 23 May 2003.

Counsel Assisting provided further evidence that on 12 July 2011 the teacher had been charged with making a threat to kill. He was also charged with making a threat to kill so that another person feared that that the threat would be carried out, and two counts of using a carriage service in a menacing manner. These charges have yet to be tested in court.

The allegations against the teacher needed to be proved on the balance of probabilities and to the reasonable satisfaction of the Panel.

DISCUSSION OF THE EVIDENCE

The Panel was presented with an affidavit from a legal officer at the Institute indicating that the teacher knew the day and date of the hearing and that he had been provided with a copy of the Hearing Book including a Notice of Formal Hearing. The evidence showed that these items were delivered. The Panel was satisfied that all the procedural requirements were met. The teacher did not provide a submission to the Hearing.

The Panel weighed the evidence on the basis of the burden of proof as outlined in *Briginshaw v Briginshaw* (1938) CLR 336 where Dixon J. said;

"When the law requires the proof of any fact the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality."

In relation to serious misconduct, the Panel was guided by a number of authorities and legislation including the *Health Professions Registration Act 2005* (Vic) which observed that:

"conduct that violates or falls short of, to a substantial degree, the standard of professional conduct observed by members of the profession of good repute or competency."

Conduct capable of constituting professional misconduct includes conduct in respect of which there is a finding of guilt for a serious offence. In *Re Parr and Nurses Board of Victoria* (1998) 16 VAR118, Kellam J. concluded that what constitutes serious misconduct;

"is a question of fact to be determined in each case. It denotes something serious in itself and the consequences which, it may be reasonably be anticipated, would be serious."

Professional misconduct was interpreted in *Pillai v Messiter (No2)* (1989) 16 NSWLR 197 and cited in *Mc Grath v Medical Practitioners Board* Unreported, Supreme Court of Victoria 1 November 1996 as more than mere professional incompetence or deficiencies in professional practice but included conduct which was a deliberate departure from accepted standards. *Pillai* also noted that conduct had to be within the will, power or control of the officer, for example wilful disobedience of directions. Kirby P concluded that:

“The Public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent people who are ignorant of basic rules or indifferent as to the rudimentary professional requirements. Such people should be removed from the register or from the relevant roll of practitioners; at least until they can demonstrate that their disqualifying imperfections have been removed”.

In *Health Care Complaints Commission v Litchfield Matter* (1997) NSWSC) 297, it was concluded that the conduct was not to be measured by reference to the worst cases but by the extent to which it departs from proper standards. In *Ziems v. The Prothonotary of the Supreme Court of N.S.W.* (1957) 97 CLR 279, it was accepted that there was no question of punishment because the person had already been punished through the criminal justice system, but the conduct may show a defect of character incompatible with membership of self-respecting profession. The question was not whether a professional had been convicted of a criminal offence but whether his conduct showed that he was fit to remain a member of the profession. In *Yelds v Nurses Tribunal & Ors* (2000) NSWSC) 755, it was concluded that a person could not continue to be registered where the misconduct showed attitudes or characteristics inconsistent with the moral qualities fairly required of a person undertaking the responsibilities of nursing. In *New South Wales Bar Association v Cummins* (2001) NSW CA 284 it was decided that there was authority to show that professional misconduct could be extended to include conduct which did not occur directly in the course of professional practice. In *Davidson v Victorian Institute of Teaching (Occupational and Business Regulation)* (2007) VCAT 920 (30 May 2007) concluded that conduct had to be measured against the standard of conduct of the whole of the teaching profession. It stated that parents had a right to expect that teachers would act with scrupulous integrity towards their children and teachers must not take improper advantage of the trust of parents or of students. Teachers who abuse their position need to be dealt with firmly to signal to teachers, parents and the community that high standards will be maintained.

The teacher was found guilty of three serious offences. The circumstances of these were that in one case he threatened, in a calm and deliberate way to kill principal 1, the Principal of school 1. In the offence against teacher 1 for which he was convicted he made a number of offensive remarks, repeatedly asked him who was fucking his wife and told him he was a dead man. The Panel concluded that teacher 1's account of the teacher's comments was truthful and greatly upsetting to him. The fact of his distress was corroborated by principal 2 who consoled him as they left the area. While Her Honour felt the teacher's comments were expressed out of anger and frustration the Panel felt that the teacher had failed to show the degree of self control required of any professional teacher who as a matter of course will have to deal with difficult situations. The teacher

when given the opportunity could not produce the evidence in support of the allegations he made that would have allowed the Principal to take the matter further.

The Panel found it impossible to accept that the barrage of harassment and threats that began with the misappropriation allegation was acceptable or in any way justified. The Panel found a clear pattern of threats and harassment when the teacher was angry and frustrated and it was unacceptable to the Panel that this lack of self-control appeared to be the teacher's default mode of behaviour. The Panel regarded the teacher's conduct as disgraceful and dishonourable, worthy of strong reprobation and a totally unacceptable departure from the standards which are reasonably to be expected of a teacher. The events for which he was punished in allegation one occurred at both school 1 and school 2. He showed a complete disregard for the Institute's Code of Conduct Principle 2.1 by showing a complete lack of respect for colleagues and a failure to treat them with courtesy. The teacher's conduct occurred in front of students, colleagues, parents and members of the wider community as well as in public places where the public's perception of the teaching profession could be affected. The teacher attended schools prior to the commencement of the day or at lunchtime so that he could achieve maximum disruption and attempt to draw students into his personal agendas. He had also prepared pamphlets to distribute to further add to the disruption he created. It was an indication of the teacher's inappropriate and unprofessional thinking that students and staff should be dragged into supporting him. The Panel accepted that the teacher had threatened principal 2 at his private residence during the Easter 2001 holiday because the Panel was presented with multiple examples of similar behaviour from him and principal 2 was a credible witness. That the teacher denied the allegations did not assist his credibility in the eyes of the Panel.

The Panel found evidence that his behaviour showed a lack of self control, a lack of insight into the effects of his behaviour, a disregard for others manifested in insults and threats and an intention to cause fear and apprehension on their part. He also showed a disregard for the public's perception of public education or any consideration that he was bound by the standards that apply to the teaching profession. The evidence suggests that the teacher shows a continuing tendency to 'grandstand' in order to gain attention for his myriad of unsubstantiated allegations against a wide range of people. The teacher's behaviour resulted in police involvement. The Panel was of the view that the teacher was not a good role model in the school or in the community as outlined in principle 2.1 of the Institute's Code of Conduct. The Panel concluded that the teacher's behaviour showed a serious departure from accepted standards both during and after the suspending of his employment between the end of 1998 and 2004 and continued until the present time. The teacher was not suspended for the range of reasons he continued to maintain, but because of performance issues and continued lateness. He has not provided substantive evidence of the misappropriation of money and equipment he claims was the cause of his dismissal from the teaching service. The original investigation into these matters decided that there was a laxness of standards rather than misappropriation.

The Panel also notes that there has been no evidence of remorse by the teacher and no evidence of an apology given to any of the recipients and victims of his behaviour. The teacher's behaviour resulted in civil action taken against the teacher by colleagues who

were in fear for their safety and that of their families. The Intervention order granted to principal 2 has now lapsed after five years, but the grant of intervention orders to principal 1 is still a live issue today.

The Hearing which resulted in the dismissal of the teacher from the teaching service forms the basis of allegation two. The Delegate in that Hearing concluded that the teacher;

- Demonstrated a pattern of inappropriate behaviour over an extended period of time and the overt manifestation of this only ceased because the external controls of a court were applied.
- Was unable to demonstrate any internal control over his behaviour and this was what had led him to being found guilty by the court of three serious offences. His lack of internal control led to interim orders and court undertakings.
- Was unable to demonstrate any insight into his behaviour and how it might be perceived.
- Continued to blame external causes for what had occurred to him most notably that the report of unsatisfactory performance was motivated by the fact that he was excellent with students and an award winning teacher.
- Demonstrated a complete disregard for others that manifested in insults, threats, inappropriate language and particularly wild accusations.
- Demonstrated a continuing disregard for the community's perception of public education.
- Demonstrated a preparedness to use students, parents and the community to further his own goals.
- Demonstrated a continued inability or unwillingness to take responsibility for his own actions and behaviour. The Delegate cited the teacher's lateness to the Hearing as an example.
- Demonstrated a disregard for the authority and processes of his employer. Department.
- Continued to demonstrate that he does not consider himself bound by the standards of behaviour that apply to the members of the teaching service.
- Had serious questions raised about his credibility given the inconsistencies and contradictions he demonstrated as a witness.

The conclusions made by the Delegate at the employer's Hearing were consistent with all the evidence presented to the Panel and the Panel accepts the truth of allegation two. The teacher's lack of control including threats, the lack of insight into his own behaviour, the attribution of blame to everyone else and an unwillingness to take responsibility for his own behaviour were at the heart of his serious misconduct over a long period. The Panel found the teacher's serious misconduct completely outside the accepted standards of the teaching profession to a high degree. His testimony at Court in regard to allegation one was that he was a victim of injustice who had experienced pain and suffering. His denials that he had made any threats were not accepted by the Panel because the evidence supports the view that the teacher threatened people in a range of settings over

a considerable period of time. His continued denials raised serious doubts in the Panel's mind about the reliability, honesty and credibility of the teacher's evidence. This view that the teacher's evidence was unreliable was supported by the findings of the Hearing which resulted in the teacher's dismissal from the teaching service. His evidence was in stark contrast to the evidence of principal 2, teacher 1 and principal 1 which the Panel found to be credible and which painted a consistent picture of the teacher's behaviour as being out of control and involving a pattern of harassment, threats, deception and insults.

After the teacher's finding of guilt for conduct which forms the substance of allegation one in the present hearing, he then waited three years to appeal the decision of the Magistrates' Court. He has continued to pursue his appeal and since August 2012 the matter has been continuously adjourned at the teacher's request. It is currently listed to be heard on 17 June 2013. The teacher initially entered into a signed undertaking and accepted the bond offered by the Court as part of his penalty. The Panel found it difficult to reconcile how the teacher could sign an undertaking indicating acceptance of his guilt and then dispute it later well after the appeal period had expired. The Panel accepted the submission that the teacher had been given a very light penalty for an indictable offence and has subsequently shown no remorse for his behaviour and continues to frustrate the justice system without any insight into his own behaviour and culpability.

This Panel operates on a different standard of proof than criminal matters and it was satisfied that on the balance of probabilities the teacher was guilty of serious misconduct in relation to his behaviour at school 1 and school 2. The evidence was that, however bizarre the teacher's behaviour appeared, it was always within his will, power or control. The teacher was able to obey the court's intervention order in relation to the 2003 findings, but it was of concern that in the events of 2007-2008 he breached an intervention order resulting in him being placed in the Remand Centre for four days. The Panel was of the view that the teacher's behaviour has not changed over a considerable period of time, he lacks any insight into the effects of his behaviour and displays no remorse. His excessive and unprofessional behaviour appears to be his habitual way of acting. The events of 2007-2008 suggest he was not able to obey the sanctions placed on him where previously he was able to obey court orders.

The Panel came to the view that the teacher's behaviour was a clear departure from accepted standards. The Panel thought that while the teacher's behaviour did not occur directly in the course of professional practice, *New South Wales Bar Association v Cummins* (2001) NSW CA 284 provided authority for the conclusion that professional misconduct could be extended to include his behaviour at school 1, school 2 and the employment organisation. The pattern of his behaviour over a significant number of years led the Panel to believe that the very latest allegations about his behaviour in 2011 could well be true.

In allegation three, the teacher's conduct revealed his anger and aggression, his resort to threats of violence and his somewhat messianic pronouncements when he couldn't get his own way. He pretended to be the Manager in the branch of the employer and made a call where the only sound was a ticking clock which was a breach of his bail conditions and also of the interim intervention order against him. The effect of the teacher's behaviour was that staff were frightened and feared for the safety of themselves and their families and a private security guard was hired at some cost to the organisation.

Employee 1, the Executive Director at the employment organisation, received counselling. This threatening behaviour was consistent with the teacher's behaviour in relation to allegation one and the Panel had little difficulty in accepting the truth of allegation three as did the Court which found him guilty without conviction of seven charges of stalking and one charge of using a carriage service to harass. The Panel concluded that the teacher was guilty of serious misconduct in relation to allegation three. The Panel could find no evidence of any remorse for the effect of his behaviour on the employment organisation staff in a way that was identical to his lack of remorse about his treatment of principal 2, teacher 1 and principal 1.

The teacher has appealed these findings and they are due to be heard concurrently with his previous appeal against the Magistrates' Court decision of 23 May 2003 on 17 June 2013. The Panel regarded the teacher as showing a disregard for the rule of law in a way that supports a finding of serious misconduct and a major deviation from the accepted standards of the teaching profession.

The Education and Training Reform Act 2006 defines "fitness to teach" in s 2.6.1 to mean, in relation to a person, "*whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school.*" The Panel was also guided by *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 where Justice Harbison, Vice President and Mr. Eccles, Member at [169] said;

"We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such 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 to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct."

What must be considered is the fitness of the person concerned to work as a registered teacher. The question of whether the person has the qualities which would permit him or her to be safely accredited to the public, without further inquiry, as a person to be entrusted with the work of a teacher (*Singuenza v Secretary to the Department of Infrastructure* [2002] VSC [33 – 34]).

In the matter of the *Peter Papageorgiou* [2005] VIT 20, the Panel considered relevant factors to be the duration of the incompetence, evidence of insight, evidence of candour during the Panel hearing, whether the teacher has provided an adequate explanation of the incompetence and whether that evidence is corroborated by independent evidence, the effect of the teacher's behaviour on the school community and the standard of the profession, the time which has elapsed since the incompetence and the evidence of corrective action taken by the teacher.

The teacher's fitness to teach is judged on his behaviour over an extended period of time and indicates that there are flaws in his character such that he should not be allowed to teach in any school. The Panel found that he lacks self-control, makes threats which cause people to feel frightened for the safety of them and their families and over the same extended period had shown no remorse or insight into the effects of his behaviour on others. The Panel concluded that the teacher's misconduct showed attitudes and characteristics inconsistent with the moral qualities required of a person undertaking teaching duties. His behaviour has damaged the reputation and standing of the teaching profession.

In assessing whether the teacher is fit to teach the Panel considered that it was quite clear that the teacher's threatening and unprofessional behaviour was of a continuing and persistent nature. The Panel thought it likely that the teacher's behaviour would continue in the future because his overreactions appear to be deeply imbedded in his flawed attitudes. The Panel thought it would be unwise to place the teacher in a position of trust and authority with children because he had showed a significant lack of judgement in trying to involve them in his campaign against schools and individuals.

One particularly inappropriate act by the teacher is reflective of his behaviour. On or about 18 March 2002 he approached a car in the middle lane at traffic lights near school 2 and told a parent, whose daughter was sitting in the front seat wearing a school 2 windcheater, that she was a bad parent, that there were lots of teachers abusing kids at school 2 and that she was a bad parent for sending her there. Her daughter was fearful to attend school because she thought the teacher might be there. The parent was also upset and took the day off work to be with her daughter. The teacher denied making the comments, but the Delegate at the employer's Hearing concluded that the parent was a credible witness who was clear, concise and consistent. On the other hand, the teacher consistently contradicted his own witness statement. The Delegate noted that this event occurred after the teacher had received a second letter from Minter Ellison on behalf of the employer reminding him of the demand to desist his publications and their distribution. The Panel regarded this incident as indicative of the teacher's complete disregard for the standards of the teaching profession, his lack of integrity in the way he treated students, his lack of respect and courtesy towards parents, his inability to be a positive role model, his inability to act with discretion or maintain confidentiality, his inability to maintain objectivity and his willingness to draw students into his personal agendas. It is difficult to underestimate the damage the teacher's behaviour has done to community perceptions of public education in the area.

Considering the whole of the teacher's behaviour over an extended period the Panel came to the inescapable conclusion that he was not fit to teach.

FINDINGS

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 28 February 2013 the Panel found the teacher guilty of serious misconduct and not fit to teach.

The teacher had 28 days from the time he was provided with a copy of these findings to make a further submission as to penalty.

DETERMINATION

The Panel received a submission prepared by the teacher's Counsel inviting the Panel to defer any decision in this matter until the teacher was able to provide 'coherent instructions' for a more detailed submission on the appropriate sanction. The current inability to provide instructions is said to be the result of a medical condition. A brief medical certificate and correspondence between treating medical practitioners was provided in support. The Institute made a submission to the Panel in response.

The Panel has a public protection role which it considers prohibits it deferring action where it has concluded that the teacher is unfit to teach. The Panel cannot therefore accede to the request in the submission. The Panel notes that nothing in its decision in this matter prevents the teacher from applying for re-registration at some future date when his medical condition permits.

The Panel determined to cancel the registration of the teacher from 6 May 2013.



GARRY SALISBURY, CHAIRPERSON



**per:
ANNE FARRELLY, REGISTERED TEACHER**



**per:
LENEEN FORDE, PANEL MEMBER**