

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 148

REGISTERED TEACHER: AHE-H

PANEL MEMBERS: Garry Salisbury, Chairperson
Paul Wilhelm, Registered Teacher
Jan Sherry, Panel Member

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

DATES OF HEARING: 26 August 2014

DATE OF DECISION: 12 October 2014

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 12 October 2014 the Panel found the teacher is 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 16 February 2005.

On 23 July 2013, the Institute received a criminal history report which indicated that the teacher had been found guilty and convicted of two counts of an indictable offence.

The criminal history report also revealed that since 1992 the teacher has appeared in court and been found guilty of 24 offences of which nine, including the current offences, are theft related.

The matter was referred to the Professional Conduct Committee (the Committee) of the Institute on 23 April 2014 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing was served upon the teacher by registered post on 31 July 2014 and an amended Notice of Formal Hearing dated 5 August 2014 was served upon the teacher on 6 August 2014.

THE ALLEGATIONS

The information the Institute has received as evidence of possible lack of fitness to teach, as set out in the Notice of Formal Hearing, is that the teacher:

- (a) appeared in Magistrates' Court 1 on 8 April 1992 and was found guilty of 12 counts of fraudulently obtaining a benefit.
- (b) appeared in the Melbourne County Court on 14 June 1994 and was found guilty of one count of shopsteal.
- (c) appeared in Magistrates' Court 2 on 10 July 1996 and was found guilty of one count of theft.
- (d) appeared in Magistrates' Court 3 on 31 August 1998 and was found guilty of one count of shopsteal and one count of theft.
- (e) appeared in Magistrates' Court 2 on 13 September 2004 and was found guilty of one count of shopsteal.
- (f) appeared in Magistrates' Court 3 on 22 February 2005 and was found guilty of one count of theft from a motor vehicle.
- (g) appeared in Magistrates' Court 3 on 13 April 2005 and was found guilty of one count of shopsteal.

(h) appeared in Magistrates' Court 3 on 1 October 2009 and was found guilty of two counts of shopsteal.

THE EVIDENCE

The teacher had been found guilty of 20 counts of theft between 1992 and 2009. In a letter to the Institute dated 23 January 2009 he outlined his family and marital problems and claimed that the cause of his criminal behaviour was depression and the pressure he experienced in his daily life. He stated that he sometimes did things and could not explain why he did it. He described behaviours such as pulling his hair and talking to himself as an indicator of the seriousness of his condition. He said that he was ashamed of his behaviour in the period 2001-2006.

In a subsequent letter dated 27 February 2014 he said the offences occurred when he was under pressure in 2009-2010 from his ex-wife and other family matters. He was of the opinion that because it had been five years since the offences were committed they should no longer appear on his record. In another letter on 26 March 2014 he stated that the context for the 2009 offences was that he was heavily medicated while waiting for a liver transplant. The risk of him re-offending was none because his wife would no longer allow him to go shopping or drive.

A statement from Dr AN dated 6 March 2014 indicated that the teacher was a pleasant man of good character and that he had a wife and family of eight children to support. He said the teacher had been out of the workforce for a few years due to medical issues but that his condition was currently stable.

No evidence was provided of the teacher's employment history.

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.

Fitness to teach is now statutorily defined in s2.6.1 of the Act as:

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 a number of cases including *Davidson v Victorian Institute of Teaching* (2007) VCAT 920, VCAT and *Burgess v Board of Teacher Registration Queensland* QDC 159. *Davidson* 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.

In *Burgess* it was suggested that:

When considering fitness to teach, the focus is on how the character of a teacher is reflected by the behaviour in question.

The Panel gave the teacher some credit for pleading guilty in his ten court appearances since 1994.

In *Collins v Medical Practitioners Board* (2003) VCAT 1755, the tribunal outlined a number of considerations in discussing ongoing registration:

- a) The conduct occurring in the practice of the profession and contact with the public is relevant.
- b) Circumstances where the egregious conduct (shocking and offensive) albeit outside the practice of the profession which would undermine a person's fitness to teach.
- c) The conduct had to be related to an on-going defect in character.
- d) Whether the public would be put at risk due to the conduct under review.
- e) The time that has elapsed and rehabilitation.

The Panel was also aware of *Briginshaw v Briginshaw* (1938) 60 CLR 336 where Dixon J. stated that:

The gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal

The Panel noted that the teacher did not acknowledge the offences that occurred in May 2009 when he renewed his registration even though they were heard and determined in October 2009. The Panel did not find his explanation adequate. The criminal conduct in all of his offences can be characterised as being of a low level although the Panel had concerns about the period of time over which they occurred and that the teacher must have been aware from his court appearances that he was engaging in criminal conduct.

In applying the considerations in *Collins* the Panel found the following:

1. That the teacher's conduct did not occur in the practice of his profession.
2. The criminal conduct for which he was convicted is most accurately described as of a low level.
3. Since there has been no repeat of his criminal behaviour for five years i.e. since 2009, it is unlikely that he has a defect in his character which is ongoing.
4. The public are not at risk.

5. The five year interval since the last offence might be indicative that rehabilitation has occurred.

In applying the considerations of *Davidson* the Panel found the following:

1. That the five year interval since the last offence made it inappropriate to describe the teacher's conduct as continuing and persistent.
2. The teacher's conduct did not raise any doubts about his future behaviour in a classroom.
3. On balance the Panel accepted that the teacher's criminal conduct between 1992 and 2009 could be explained in the context of marital, family and associated mental health issues. The Panel accepted the opinion of his treating physician that the teacher's medical conditions were currently stable, his family issues were being addressed and that he was of good character.
4. There was no evidence to suggest that the teacher could not be a position of trust and authority with children on the basis that his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed.
5. It did appear to the Panel that while the teacher had made serious lapses of judgement leading to his criminal conduct his conduct in other areas of his life was more positive. He placed great importance on supporting his family and was proactive in getting appropriate medical advice and support.

The Panel was guided by the opinion of Warren J. in *Legal Services Board v McGrath* (No.2) [2010] VSC 332 (6 August 2010) where she said in relation to a defendant not attending or contacting the court that:

At the very least, it bespeaks a disturbing degree of indifference to the seriousness of the application which I am required to decide upon. It suggests that that individual does not properly understand or take seriously their obligations of candour to the court, or value sufficiently the benefits and trust conferred on them by being placed on the roll, to overcome whatever reluctance they may feel to appear before the bench, brief another practitioner to make submissions on their behalf, or at least contact the court to explain their decision not to appear in any capacity.

While the obligations of a lawyer to a Court are different to those of a teacher to the Panel, the comments raise some issues of general relevance in considering the teacher's failure to attend. The teacher did not take the opportunity to provide a detailed explanation of his behaviour to the Panel apart from attributing his criminal behaviour to mental health and family issues. He was of the view that his criminal record shouldn't appear on his record because five years had passed. The teacher's limited correspondence and contact with the Institute reflected the Panel's view that he failed to grasp the gravity of the allegations against him. The Panel wrote to the teacher, on the day of the hearing, requesting further information but he did not respond. The Panel noted that although the teacher's employment was crucial to his support of a large family, he appeared to be indifferent to a process which could have had serious repercussions for him personally and professionally.

The Panel gave serious consideration to suspending the teacher's registration, for a period of time, at the end of which he would need to demonstrate that:

- he understands that teachers have to respect the rule of law and provide a positive example in the performance of civic obligations
- he must be a positive role model in the school and community
- that his medical conditions are not affecting his ability to act honestly
- he has taken responsibility for his criminal conduct and shows remorse and insight into his previous conduct.

The Panel had other concerns including the number of offences and the period of time over which they occurred. The Panel decided not to suspend the teacher instead deciding that the low level nature of the criminal conduct and the lack of criminal behaviour since 2009 outweighed these concerns. The Panel placed significant weight on the evidence of the teacher's treating physician that his patient was of good character and his medical situation was stable. The Panel was also guided by other decisions of the Institute such as *Ayres* February 2013, where very serious criminal conduct still resulted in the teacher being regarded as fit to teach. To deprive the teacher of his livelihood would be a severe penalty that is not supported by the evidence.

FINDINGS

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 12 October 2014 the Panel found the teacher is fit to teach.

DETERMINATION

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



GARRY SALISBURY, CHAIRPERSON



per:
PAUL WILHELM, REGISTERED TEACHER



per:
JAN SHERRY, PANEL MEMBER