

VICTORIAN INSTITUTE OF TEACHING  
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 146

REGISTERED TEACHER: Bandujeeva MUTHUTHANTHIRIGE

PANEL MEMBERS: Heather Schnagl, Chairperson  
Paul Wilhelm, Registered Teacher  
Leneen Forde, Panel Member

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented  
  
Mr Rodney Hepburn, Counsel Assisting with Mr Damien Cricchiola, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 25 March 2014

DATE OF DECISION: 28 April 2014

FINDINGS AND DETERMINATION:

NB: In this decision précis certain elements of the Panel decision have been abridged at the request of the teacher, in order that his medical treatment is not adversely affected. The detail of conditions actually imposed by the Panel can be viewed by inspection of the public register.

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 28 April 2014 the Panel found the teacher not fit to teach.

Pursuant to section 2.6.46 of the *Education and Training Reform Act* on 28 April 2014, the Panel determined to suspend the teacher's registration from 28 April 2014 to 28 October

2015. Prior to reinstating his registration, the teacher is required to attend treatment for his medical condition. The Panel imposed a number of conditions surrounding this treatment, the details of which have been redacted from this published report at the request of the teacher and so as to avoid an adverse impact on the treatment. The teacher is to provide two reports, at the teacher's own expense, clearly addressing all points outlined by the Panel. The reports are to be provided to the Chief Executive Officer of the Institute, one not less than nine months from the date of the decision and the second, prior to 28 October 2015.

## REASONS

### BACKGROUND

The teacher has been a provisionally registered teacher with the Victorian Institute of Teaching (the Institute) since 23 January 2007.

On 9 April 2013, the Institute received a criminal history report which indicated that the teacher had been charged with an indictable offence.

On 28 August 2013, the Institute received a criminal history report which indicated that the teacher had been charged with a further indictable offence.

Court certificates confirmed that the teacher:

1. Appeared in the Magistrates' Court on 5 April 2013 and without conviction, was found guilty of an indictable offence. The court sentenced the teacher to a 12 month Community Corrections order to expire on 5 April 2014.
2. Appeared in the Magistrates' Court on 22 August 2013 charged with one count of an indictable offence. Together with other charges, the teacher was convicted and sentenced to an aggregate period of 10 months imprisonment wholly suspended for an operational period of 2 years from that date.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 27 November 2013 and the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 19 February 2014 was served upon the teacher by registered post on 20 February 2014.

### THE ALLEGATIONS

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

1. Whilst registered as a teacher in Victoria, the teacher:
  - (a) Appeared in the Magistrates' Court of Victoria on 5 April 2013 charged with the indictable offence of intentionally damaging property (offence 1). The Court without conviction sentenced the teacher to a 12 month community corrections order to expire on 5 April 2014.
  - (b) (i) Appeared in the Magistrates' Court of Victoria on 22 August 2013 charged with one count of the indictable offence of intentionally destroying property (offence 2). Together with other charges, the teacher was convicted and

sentenced to an aggregate period of 10 months imprisonment wholly suspended for an operational period of 2 years from that date.

- (ii) Due to a failure to comply with the community corrections order imposed by the Court in relation to offence 1, the teacher was resentenced to 4 months imprisonment wholly suspended for an operational period of 2 years from that date.
- (c) Appeared in the Magistrates' Court of Victoria on 17 October 2013 charged with contravening a family violence intervention order which had the effect of breaching the suspended sentence in relation to offence 2. As a result, the teacher had his suspended sentence partially restored, with a term of 1 month to be served.

## DOCUMENTS CONSIDERED

The following documents were tendered as evidence:

1. Hearing Book (Exhibit A)
2. Documents submitted during the Hearing by the teacher comprising:
  - a. Undated reference from the teacher's son
  - b. reference dated 24/03/14 from the teacher's daughter
  - c. Reference dated 13/03/13 from referee 1 re tutoring of daughter,
  - d. Undated and unsigned references from referee 2, referee 3 and referee 4 re tutoring
  - e. Letter dated 08/03/14 from Ms JC, psychologist
  - f. Letter dated 09/08/13 from Dr MD, Aspendale Clinic
  - g. Letter dated 08/08/13 from Dr MM, Wells Road Medical Centre
3. Report from Ms JC, treating psychologist, dated 4 April 2014

## THE EVIDENCE

The Panel heard evidence from the teacher himself and his wife.

The teacher

The teacher, who gave evidence under affirmation, told the Hearing that following the completion of a Graduate Diploma in Education in 2006, he was first provisionally registered as a teacher in 2007. His provisional registration had been renewed every two years since 2007. Due to his wife's illness, the teacher was effectively a sole parent and consequently had had no opportunity to work as a teacher in schools, other than briefly as a casual relief teacher, but worked as a private tutor at home.

In his evidence the teacher indicated that he was aware of The Victorian Teaching Profession Code of Conduct and the responsibilities of a teacher with respect to their personal conduct and to act as a role model in the community (Principle 2.1a) and a teacher's responsibility to respect the rule of law and provide a positive example in the

performance of civil obligations (Principle 2.1b). He acknowledged that his actions were not in keeping with the Code of Conduct.

The teacher gave evidence regarding the circumstances behind the events of 2013 which brought him before the Hearing. He stated that the offences he committed in 2013 occurred owing to a medical condition and treatment as well as his family circumstances.

He indicated to the Panel that he had taken steps to address these issues and gave detail of those steps.

The teacher also gave evidence that he ceased tutoring in November 2012 at the time when an aspect of his medical condition became worse.

The teacher told the Hearing that he did not notify the Institute of his convictions as he stated that he did not know that he had a responsibility to do so. He also said that he had not received the numerous letters from the Institute as he had moved out of the family home and not notified the Institute of any change of address.

When asked how much of his criminal record would he disclose to a prospective employer, the teacher said that he would if asked but otherwise he would not disclose. If, however, students and/or parents asked whether he had spent time in gaol, he stated that he would tell the truth and explain everything that he had been through and especially tell them that if they were taking medications to be careful. He would be happy to discuss his past medical condition and subsequent engagement in family violence but is now a reformed person.

When asked how he would deal with the pressures associated with teaching, especially in a school, if he was able to secure a position in a school, the teacher told the Panel that his strategies included going for a good walk, meditation to calm his mind and/or talking to family members. He stated that alcohol was not a remedy for any stress but rather a 'problem maker'.

#### The teacher's wife

The teacher gave evidence under affirmation that she was currently separated from her husband, the teacher. She told the Hearing that she was extremely sick in 2003 and that her illness went on for a long time and that during this time her husband had given her great support. She was appearing at the Hearing because she felt partly responsible for what had happened as the teacher had tried to do everything to support her, including looking after their two children, as well as running the house and being the bread winner.

The teacher's wife told the Panel that despite his past difficulties, which were not actually witnessed by her, she could see 'good progress now'.

## DISCUSSION OF THE EVIDENCE

The teacher was before the Panel to determine whether he is currently fit to teach following the findings of guilt and convictions in 2013 for the indictable offences of 'intentionally destroying property'. Whilst these indictable offences brought the teacher's offending to the notice of the Institute, at the same time the teacher was also found guilty and convicted of a number of summary offences, some on multiple occasions, including 'unlawful assault', 'contravening family violence intervention order', 'aggravated cruelty to an animal', 'driving whilst authorisation suspended', 'drive in a manner dangerous', 'drive under the influence of drugs', 'failing to keep left of dividing line' and 'driving whilst under the influence of alcohol' as detailed in Exhibit A. In determining the teacher's fitness to teach, the Panel considered the whole of the teacher's behaviour in 2013.

Whilst the actual Court outcomes were not disputed by the teacher during the Hearing, he maintained on several occasions that he did not assault his wife, despite admitting to pulling her hair, which constituted an assault and two sworn statements in Exhibit A (hers and her son's) to the effect that he slapped his wife's face. These statements call into question the teacher's insight into his criminal actions and whether, as of the Hearing, he had taken full responsibility for them. Of additional concern to the Panel was that the teacher did not comply with the Court imposed Community Corrections Order from his first Court appearance. In addition, the teacher told the Hearing that he did not fully complete the assessment and a treatment program nor did he attend the Family Violence Behavioural Change program as ordered by the Court on 5 April 2013. His failure to complete these requirements tended to suggest that the teacher had yet to take full responsibility for his behaviours or for the underlying factors which he stated were the cause of his criminal behaviours in 2013.

The Panel was also very uncomfortable regarding the evidence given by the teacher's estranged wife, with respect to the difficult power imbalance in which she was placed at the Hearing by being questioned by the teacher, the person who assaulted her twice in 2013. In her evidence the teacher's wife attempted to take responsibility for the teacher's actions on the basis of her earlier serious illness. The Panel found this explanation unacceptable for three reasons. Firstly, the teacher's wife's illness commenced in 2003 and she had substantially recovered by 2006, yet the offences occurred in 2013. Even in his own evidence, the teacher's excessive drinking only commenced in 2007. Secondly, the teacher is the sole person responsible for his actions and thirdly, the teacher's wife's evidence, due to the power imbalance, could not be considered objective by the Panel.

At the date of the Hearing, and by his own admission, the teacher's treatment for the conditions he holds responsible for his behaviour has been limited to, four weeks hospitalisation in August/September 2013 (although no documentation was provided to the Hearing to support this), support group meetings and two sessions with a psychologist in 2014. Despite his hospitalisation in September 2013, the teacher experienced a significant three day relapse in October 2013.

Of additional concern to the Panel was the certified extract of the Magistrates' Court of the last Hearing on 17 October 2013 in which it was stated that the teacher had a medical

condition, however no evidence was presented to the Panel hearing regarding any health condition other than his historical medical issues.

The Panel was, however, encouraged that following his second Court appearance for violence offences (22 August 2013) that the teacher sought professional assistance for his medical conditions. That the teacher did not present any supporting documentation in respect of his medical conditions was disappointing, but on request he did agree to provide a report from his treating practitioner.

The phrase 'fit to teach' was defined in the amendments to the *Education and Training Reform Act 2006*, proclaimed on 1 January 2011, namely *whether the character, reputation and conduct of such a person are such that they should be allowed to teach in a school.*

In assessing the teacher's fitness to teach as of the date of the Hearing, the Panel is conscious that the teacher's offences are of a personal rather than a professional nature.

His professional competence has not been called into question.

The offences do, however, reflect on the teacher's character. As outlined in *Allinson v General Medical Council* (1891-4) All ER 768 the standard applied to a medical practitioner in this case and to many other professionals since is: *'conduct which would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'*.

In *Zeims* (*Zeims v Prothonotary of the Supreme Court of NSW* [1957] 97 CLR 279) the conduct of the practitioner which resulted in his conviction and prison sentence had nothing to do with his practice as a barrister. However it was noted that: *Personal conduct may no doubt be grounds for disbaring, because it may show that the person guilty of it is not a fit and proper person to practise as a barrister...But the whole approach of a court to a case of personal misconduct must surely be very different from its approach to a case of professional misconduct.*

As noted in *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA 1 S406/2002, *'..a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise.*

That the teacher was found guilty of significant offences does not of itself determine that he is not a fit and proper person to be a teacher. The standard upon which his conduct must be assessed is the standard of the whole of the teaching profession, and hence the Panel is required to refer to the Institute's Code of Ethics and Code of Conduct, and in this particular case, Principle 2.1 of the Code of Conduct, namely: *The Personal Conduct of a Teacher will have an impact on the professional standing of that teacher and on the profession as a whole.*

In this particular case the nature of his behaviour is of serious concern to a profession which has the responsibility of both working with children and acting as a role model for them.

The primary purpose of this Hearing is to determine the teacher's fitness to teach in order to protect both the public and the reputation of the teaching profession as at the date of Hearing.

The Panel is conscious of the gravity of the consequences that would flow from a finding that the teacher is currently not fit to teach as this would deprive him of the opportunity to work as a teacher in a school.

In reaching a conclusion about whether he is currently fit to teach the Panel is guided by *Davidson v Victorian Institute of Teaching* (2007) VCAT 920. The Panel weighed up the factors provided by that judgment. The VCAT decision took 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, rather than a single act of serious misconduct. The Panel noted that the teacher's behaviour occurred on a number of occasions in 2013 rather than on a single occasion and were at least in part caused by more than six years suffering from a medical condition which was exacerbated in 2013.

The Panel noted that the teacher had commenced steps to address these issues but that, at the time of the Hearing, concluded that it would be premature to suggest that he has substantially recovered from the medical conditions that led him to commit significant acts and as such would not be comfortable regarding his fitness to teach in a school.

In addition whilst the teacher was first registered as a teacher in January 2007, he has remained a provisionally registered teacher as he is yet to teach in a school and consequently has had no opportunity to complete the requirements to move to full registration. As beginning teachers generally find their first year of teaching in a school challenging, the public needs a level of comfort that the teacher has developed a range of strategies to deal with stressful situations without reverting to the behaviour the subject of the criminal charges.

## FINDINGS

Consequently on the balance of probabilities, on 28 April 2014 the Panel finds the teacher not fit to teach currently but believes that there is still additional work to do before the teacher could be deemed fit to teach. A period of 18 months suspension from the date of the decision is warranted. To provide some comfort to the public that the teacher is at that time fit to teach, a number of conditions must be met before the teacher's registration may be reinstated.

## DETERMINATION

Pursuant to section 2.6.46 of the Education and Training Reform Act on 28 April 2014, the Panel determined to suspend the teacher's registration from 28 April 2014 to 28 October 2015. Prior to reinstating his registration, the teacher is required to attend treatment for his medical condition. The panel imposed a number of conditions surrounding this treatment, the details of which have been redacted from this published report at the

request of the teacher and so as to avoid an adverse impact on the treatment. The teacher is to provide two reports, at the teacher's own expense, clearly addressing all points outlined by the Panel. The reports are to be provided to the Chief Executive Officer of the Institute, one not less than nine months from the date of the decision and the second, prior to 28 October 2015.



HEATHER SCHNAGL, CHAIRPERSON



per:  
PAUL WILHELM, REGISTERED TEACHER



per:  
LENEEN FORDE, PANEL MEMBER