

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 028

REGISTERED TEACHER: MICHAEL ALEXANDER JACKSON

PANEL MEMBERS

Peter Ryan, Chairperson

Robert Bertagnolio, Registered Teacher

Sophia Panagiotidis, Panel Member

ATTENDANCE: The teacher was represented by Allana Duffy of Counsel

Counsel Assisting: Anne Sheehan with Ms C Pickett
solicitor instructing

DATE OF HEARING: 28 October 2005

DECISION OF THE PANEL:

On 18 November 2005 the Panel determined:

- (1) that the registration of the teacher as a teacher in Victoria be suspended from 1 January 2006
- (2) the suspension of the teacher's registration is subject to the condition that he is to complete, to the satisfaction of the Institute, a professional development course in the management of vulnerable students and the requirements of mandatory reporting in Victoria.
- (3) If the Institute is satisfied that this condition has been fulfilled, the teacher will resume full registration on 27 March 2006.

EFFECT OF THE DECISION

The effect of this decision is that the teacher's registration be suspended from 1 January, 2006 until 26 March 2006 with a condition on his resuming registration, that he complete, to the satisfaction of the Institute, professional development in the management of vulnerable students and in the requirements of mandatory reporting legislation. If the Institute is satisfied that this condition has been fulfilled, the teacher will resume full registration on 27 March 2006.

BACKGROUND

On 31 December 2002 the *Victorian Institute of Teaching Act 2001* (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the Act because he was registered with the Registered Schools Board under section 37 of the *Education Act 1958* immediately before the Act was proclaimed.

On 17 November 2004 the Victorian Institute of Teaching received a complaint from police officer 1, Victoria Police, against the teacher.

On 2 March 2005 the Disciplinary Proceedings Committee, (the Committee), a Committee of the Institute decided that the complaint should be referred for a preliminary investigation. Following the preliminary investigation the complaint was again referred to the Committee and at its meeting on 12 July 2005 the Committee decided to hold a formal hearing. The teacher was sent a Notice of Formal Hearing dated 16 August 2005 with all relevant documents attached advising him that the formal hearing would be held on 13 September 2005.

The teacher requested an adjournment as he was going to be interstate. The adjournment was granted and a new hearing date set for Friday 28 October 2005.

The Notice of Formal Hearing set out the following allegations as evidence of possible serious misconduct and/or lack of fitness to teach:

- 1) That the teacher and a 15 year old student communicated over the internet
- 2) That the teacher allowed the 15 year old female to stay overnight at his house on a number of occasions unknown to her mother
- 3) That the teacher had a sexual relationship with the 15 year old female

The issues the Panel must address in this matter are:

- Did the teacher have a sexual relationship with the student and if so does this show lack of fitness to teach?
- If not does the teacher's conduct none the less amount to serious misconduct and/or lack of fitness to teach?
- If the teacher's conduct is serious misconduct and/or lack of fitness to teach, what is the appropriate penalty?

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 provides:

26. Powers of inquiry

(1) The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public
- to maintain proper standards of conduct for the profession, and
- to protect the reputation of the profession.

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools by ensuring that the teacher is not guilty of serious misconduct and is fit to teach. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established*.

And later

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or 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 observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching

profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided VCAT 2 December 1998)).

The **test** set out in the case law is conduct:

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.

Allinson v General Medical Council [1891-4] All ER 768

The conduct the subject of the inquiry may indicate a character defect incompatible with the teaching profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*). Misconduct would not be serious if it was trivial or of momentary effect at the time. To be serious, misconduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided VCAT 2 December 1998))

In *Health Care Complaints Commission v Litchfield* [1997] 41 NSWLR 630 the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent the conduct departed from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

According to the High Court:

The dividing line between personal misconduct and professional misconduct is often unclear. Professional misconduct does not simply mean misconduct by a professional person. At the same time, even though conduct is not engaged in directly in the course of professional practice, it may be so connected to such practice as to amount to professional misconduct. Furthermore, even where it does not involve professional misconduct, 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

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1.

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South Wales Bar association v Cummins* (2001) NSWCA 284.

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these

obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness (see *New South Wales Bar Association v Cummins* (2001) NSWCA 284 and *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46).

DOCUMENTS CONSIDERED

The following documents were provided to the Panel

- Statement of the mother of the student dated 9 May 2005 (3 pages)
- Statement of the teacher dated 19 May 2005 (3 pages)
- Statement of the Principal of College 2 dated 25 October 2005 (1 page)

DECLARATION

Prior to evidence being heard, the Chair of the Panel, Mr Peter Ryan, declared that he had a professional acquaintance with the Principal of College 2, a witness to be called by the teacher. He stated that, as the Principal was to be called as a character witness and the case did not turn on his evidence, he believed that no conflict of interest occurred. Both parties acknowledged the relationship and accepted that no conflict existed.

ORDERS:

On the request of Counsel Assisting the Panel, the request not being opposed by the teacher, the Panel ordered that:

- The hearing be closed during the evidence of the mother
- That the closure of the hearing not apply to the teacher's father, present in the hearing room
- That the names of the mother and the student be suppressed.

THE EVIDENCE

The mother

The mother had made a statement to the Institute investigator, signed by her on 9 May 2005. In her sworn evidence the mother said that she was a part-time student and the mother of the student, an only child, born on 27 November, 1988. She stated that the student maintained a positive relationship with her father whom she saw each fortnight and with her maternal grandparents, uncles and aunts. She said that the student was achieving academic, sporting and social success as a Year 11 student at College 1.

The mother told the Panel that she had been diagnosed as suffering from bi-polar syndrome in 1993. She was under pharmacological and psychiatric treatment and, although there were good and bad patches, the condition was generally now under control. She has attempted to take her own life on two occasions, the first when the student was 12 and was at her father's house. The student was unaware of her mother's mental health condition until after the second suicide attempt which occurred when she (the student) was 14. The student was accepting and understanding of her mother's illness.

The second suicide attempt occurred when the student was at home, asleep. The student had been woken by the ambulance and, it seems, left alone in the house while her mother was transported to hospital.

The mother told the Panel her relationship with the student was very positive, despite some few ups and downs when she was under some financial pressure, particularly at a time when rent was in arrears and an eviction notice had been served.

The mother had the internet installed in the home to assist both she and the student with studies. She allowed the student considerable privacy in her use of the internet, perhaps "too much" privacy, she acknowledged during the hearing.

Despite the existence of a very positive mother-daughter relationship and a high degree of positive communication between them, the mother noticed that the student was becoming secretive in her use of the computer, blanking the screen or covering it with her hands when her mother approached. She said that, eventually, she sat with the student and went through her MSN Chat-room contact list and email list. It included "Mike" a teacher, to whom the student said she sent work for comment and suggestions. While the student sometimes showed the mother the results of Mike's suggestions, she remained furtive about the communications themselves. This raised the mother's suspicions and she eventually overcame her reservations and managed to access the student's MSN account. Her concern was heightened, she said, when she found a communication from "Mike" that made frequent and excessive reference to "beer". The student was 14 ½ at the time.

She told the Panel that when she tried to discuss this with the student, she "became irate and closed down."

Suspicions were further aroused when a box of chocolates was delivered to the student on Valentine's Day, with a card from Mike that read, "Keep up the good work". The mother made specific mention that there were "no hugs or kisses or anything like that on the card." The student did not hide the card, but rather was happy to show it to her.

During October 2004, the mother became concerned about the "affectionate sort of way" in which the student spoke of Mike. In the course of cleaning her room, she inadvertently came across a diary or journal that the student had been keeping for some 16 – 18 months, with the majority of entries dating from the beginning of 2003. She was distressed to read the student's description of an evening on which the mother had been led to believe that the student was staying with her friend, friend 1. She told the Panel that the diary indicated in considerable detail, that the student had, in fact, spent the night at Mike's where she had four bourbon and cokes and that she had lost her virginity.

The mother said that there were a number of other references to Mike as having assisted with school work, but that she mentioned staying at Mike's house on perhaps six or eight occasions.

The student also wrote in her diary, according to the mother, of a pregnancy scare she had experienced. The mother acknowledged that the diary did not directly implicate Mike in the pregnancy, but that he was mentioned in the surrounding pages, as was another boy at the student's school. The mother said that the diary "gave the impression" that Mike was involved.

The mother told the Panel that as time passed, as recorded by the diary, Mike was mentioned less and less and, in fact, he seemed to have disappeared from the scene as another boy, more appropriate to the student's age received more frequent mention. The mother said that there was still regular chat-room contact between the student and Mike concerning schoolwork.

The mother told the Panel that she was extremely distressed by what she had read. She said that the contents she had read matched her memory of the student's movements during the period and reflected her personality perfectly. "I knew it was true," she told the Panel. "It was the student all over!"

When she finally confronted the student with it, her daughter grabbed the diary and fled in anger from the house. The student stayed with her boyfriend and his mother that night, and the mother informed the Panel that she never saw the diary again.

The student returned home the next evening after school, but refused to discuss the matter. She seemed, according to her mother, more upset about the breach of her privacy than anything else.

After several weeks, according to the mother, the student told her that the entries were "fantasy". Some time later, the mother decided to report the matter to the Police, not for the student's sake, she said, but for the sake of other potential victims. She told the Panel that the student was well and that good communication between them had been restored.

In mid-2005, the mother insisted on the student watching with her, a TV program on internet predators. During this, she said, the student began to cry and told her that the diary entries were, in fact, all true. The student told her mother she would deny it if she told anyone else. The mothers' account is at variance with her written statement, in which she claimed that the student did not actually say that the entries were true but that she "hinted at it". When questioned by Counsel, she suggested that the discrepancy was the result of a "typo".

The teacher

The teacher was given a copy of the statement taken by the Institute investigator and signed by him on 19 May 2005. He accepted the statement, under oath, as authentic, except that he asked that his statement on page two that "She stayed two or three times" be altered to read, "She stayed twice, once for two nights."

The teacher told the Panel that he had started "chatting" to the student on MSN in 2001 or 2002. He told her that he was a teacher and for some time they discussed her school work. They communicated "most days" via MSN. Eventually, the student began to disclose to him various insights into her home life. She told him, he said, that for the

student, home life was “basically good” but that she was having some trouble dealing with her mother’s bi-polar condition. She sought advice from him as to how best to handle it. He suggested that she speak to her mother when things were calm and that she talk to the counsellor at school.

He stated that the student had first stayed at his house in mid 2004 after she had argued with her mother and had been told to “get out of the house.” The second occasion was in approximately July 2004 when she called late at night to tell the teacher that her mother had been taken to hospital. She asked if she could come to his home. He said that he asked if there was anywhere else she could go and she told him that she was unable to stay anywhere else. He eventually agreed she could come over.

The teacher told the Panel that:

- Nothing of a sexual nature ever occurred between himself and the student
- He drank some beer in her presence, but she did not use alcohol at that time
- He did not ever send chocolates to her, nor did he know of any chocolates being sent
- He saw himself as a mentor rather than as a counsellor
- He had some concern when she asked to stay, but was more concerned for her well-being
- In similar circumstances now, he would refer the matter to DHS
- He would know what to do if the student was from his own school (refer to the school’s pastoral team)
- He had learned through this public accountability of the profession and of the need for a clearer definition of the lines of appropriate behaviour.

The teacher indicated that he was quite clear about mandatory reporting responsibilities if the student were from his own school. But as the student was from another school, he did not know what his position was, until later when he was informed by the police.

The teacher told the Panel that from 2001 he helped a number of other students with schoolwork via MSN. These included a number of his past students from his previous school and a number from overseas. The student seemed to be the only local student whom he had not previously taught. He said that, with hindsight, he can see that he was acting in a professional capacity with these students, but that it was not “high in consciousness” at the time.

He had regular contact with the student over a period of two years during which time he assisted her with schoolwork and offered her help with her home circumstances. He became uneasy about the latter role when the issues with the student’s mother’s mental health arose, but he took no action to seek advice. Indeed, he discussed the issue with no one until the police investigation when he was required by circumstances to inform his school principal.

When asked how the student came to have his phone number (which allowed her to call to ask if she could come to his home), the teacher informed the Panel that he had provided it to her at the time she feared she may be pregnant as she was anxious to tell him the result of her test. It was pointed out by Counsel Assisting the Panel that this incident received no mention in his written statement.

When Counsel Assisting the Panel cross examined the teacher on the details of the student’s two visits to his home, he became very unclear and confused. Time and

again, his response was, "I don't remember." He was questioned about the student coming to his home (from Reservoir to Mitcham) by train when she was apparently stressed, rather than him picking her up in his car. He replied that he lived near a station. He was similarly confused when discussing the logistics of the student coming to his home after the late-night (or early morning) phone call.

Counsel Assisting asked the teacher about the pattern of their various times together. The teacher claimed that he could remember few details - other than their talking, watching TV, then the student going to sleep on the couch while he slept in his own room. He insisted that nothing sexual occurred between them. He said that, on the second occasion, when the student stayed two nights after her mother's second suicide attempt, she went by herself to the city to shop on both Saturday and Sunday afternoons, but returned in the evening.

During examination on the details on the student's visits, the teacher continually re-iterated that he did not know what to do, or how to handle the situation. He admitted that he made no effort to contact anyone for advice or assistance, nor did he make real attempts to assist the student to contact family. He also said that he was "not careful enough to take full details. I should have".

The teacher was asked what level of responsibility he took for the situation. "A limited amount," he replied, "as she was not a student at my school."

The Principal

The Principal is the Principal of College 2, where the teacher currently teaches. The Principal acknowledged, under oath, that the written statement placed before him was his and was true. He had taught the teacher when he was a student at College 3 and had known him as a competent and compassionate student during his 6 years at the College.

At College, the teacher is highly regarded as a pastoral teacher of a vertical (7 – 12) group and plays a key role in the Youth Ministry team, who work to develop the spirituality of students. The teacher is one of half a dozen teachers (out of a staff of over 90) committed to this task.

The Principal gave evidence that he had become aware of certain problems with the teacher who had informed him that there had been on-going communication with a person, communication that had come under police scrutiny. The Principal was aware that there had been some necessity to "house the person", whom he understood to be a girl, but was unsure of her age, nor did he know how long the communication had been going on. He was also aware that MSN was the vehicle used and he had been advised that the communication had involved tutoring or counselling in terms of school work.

The Principal indicated that he was unsure about how aware the teacher was about mandatory reporting responsibilities, as it had been some time since the matter had been brought to staff's attention. He was not surprised that the teacher was confused about his responsibilities to a student other than his own, although that matter would be clear if the student were from his own school.

DISCUSSION OF EVIDENCE

The mother presented as a credible witness, driven by a deep concern for the well-being of her daughter. However, the Panel noted one significant discrepancy that emerged during her evidence. Under questioning by Counsel Assisting the Panel, the mother claimed that, as a result of watching a TV program on Internet predators, the student had broken down and told her mother that, despite previous assertions that her diary was fantasy, it "was all true". However, in her statement of 9 May 2005, the mother says, quite clearly that, "she didn't come out and say that the diary was not fantasy but in fact all true, but she hinted at that it was true . . ." (p. 3). Under cross-examination by Counsel representing the teacher, the mother seemed to be at a loss to explain the discrepancy on such a critical matter, but suggested that the written statement was a "typo".

Given the construction of the written sentence, a typographical error seems unlikely. The Panel is more inclined to accept the veracity of the written statement (viz that The student "did not come out and say that the diary was not fantasy") as that statement was made closer to the time and under less stress that is to be experienced in the witness box. The case does not turn on this issue.

The mother referred to the diary she found in the student's room as supporting her suspicions about the relationship between the student and 'Mike'. The diary was not presented in evidence. The mother had not seen the diary since the student had taken it with her to her boyfriend's place. This presented some problems for the Panel. The Panel accept the mother's evidence that she found the diary in the student's room and that she read the diary. The Panel also accepts that the mother believed that the diary described a supposed sexual relationship between the student and 'Mike'.

The student's unwillingness to cooperate with police, the Institute's investigation or to appear before this Panel means that no direct evidence can be given about the relationship between the student and 'Mike' and whether 'Mike' is the teacher.

The teacher's evidence was not of real assistance. His constant refrain of, "I can't remember!" did him no credit and was not helpful. The Panel was anxious to hear his version of events but he appeared to be either unable or unwilling to present it.

Neither did the Panel find convincing the teacher's repeated assertions that he "did not know what to do" when the student called and asked to visit him at his home and then stay, unsupervised and without her mother's knowledge, on at least two occasions (on one occasion for two nights). In this, he demonstrated a lack of professional wisdom and judgement that reflect poorly on him. He appears to have made only cursory attempts to encourage the student to explore options other than staying at his home. Further, he made no attempt to seek advice from colleagues or from any other person as to an appropriate course of action. It left his actions open to the interpretation that he was enjoying the flattery of a young girl's attentions or that his intentions were, in fact, more sinister. Neither is acceptable conduct on his part as a teacher.

In the Panel's opinion the teacher was remiss in not exercising his responsibility to report the student's situation to the Department of Human Services. Clearly, and by his own admission, the relationship had its genesis in a student-teacher relationship. It is unlikely to have developed had the teacher not been a teacher. In the Panel's view, the

teacher's fairly recent teacher training would have left him with the knowledge of the appropriate action to take in such a situation. Contacting the Department of Human Services was a clear option which the teacher seems to have chosen not to take.

There was some confusion about the dates on which the student stayed with the teacher after her mother's second suicide attempt. The Panel was surprised that the student had been left by Ambulance personnel alone in the house after her mother had been taken to hospital and even more surprised that, according to the teacher's account, she had nowhere else to turn, despite apparently having a good and regular relationship with her father, having a number of friends with whom she often stayed as well as grandparents she saw often. Further, it seemed strange to the Panel that no family or hospital authority made any attempt to contact her and that, despite having a good relationship with her mother, the student seemed to make no effort to ascertain her well being, but, rather, went shopping in the city on each of the two days following the suicide attempt.

There were other issues on which the evidence of the mother differed from that offered by the teacher. The delivery of chocolates with a signed card on Valentine's Day is one such incident. The Panel finds itself unable to determine the facts. But, once again, the case does not turn upon this. Similarly, whether the teacher gave the student alcohol remains problematic. The mother read in the diary that 'Mike' supplied "Bourbon and Coke" to the student. The teacher told the Panel that he drank beer, but that the student did not drink alcohol. The Panel is not satisfied that the teacher supplied alcohol to the student because the only reference to alcohol is in the diary which the student told her mother was fantasy.

FINDINGS OF FACT

After considering all the evidence, the Panel made the following findings:

- The teacher is registered as a teacher in the State of Victoria
- He initially met the student via the internet chat-room, MSN.
- The student was approximately 13 or 14 at the time
- Initial "chat-room" conversation centred on the teacher helping the student with her schoolwork
- Over time, he assumed the role of mentor, providing advice on her personal life
- The student's mother found a diary in her room which the mother read. The diary has subsequently disappeared.
- The student stayed for at least three nights on at least two separate occasions at the home of the teacher, unsupervised and without her mother's knowledge.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The teacher admits to allegations 1 and 2, namely that he and a 15 year old student from another school, the student, communicated over the Internet and that he allowed the student to stay overnight at his house on at least two occasions unknown to her mother.

He denies the third allegation, that he had a sexual relationship with the student.

The Panel finds the third allegation unsubstantiated. This was conceded by Counsel Assisting the Panel. It was agreed that the evidence at the hearing did not support this allegation to the degree of certainty required by *Briginshaw*. The student did not give evidence and the teacher denied this allegation. The only evidence in support of the allegation was found in the diary which the student had told her mother was fantasy.

That being said, the Panel is required to determine whether allegations 1 and 2 constitute serious misconduct or render him unfit to teach.

It is the view of the Panel that the teacher's actions in the first matter alleged (viz that he communicated over the internet with a 15 year old student) have been extremely naive and foolish. It is strange that he should have entered into an ongoing conversation with a 13 year old girl from a school other than that at which he taught. It is, perhaps, understandable that such a relationship could continue if it remained at the level of academic tutor. But, in this case, it did not. The relationship developed into a counselling or mentoring relationship which the Panel believes was quite inappropriate for a registered teacher, given that the student's mother was not aware of this relationship. In fact no one else knew that the teacher had taken on this role in relation to a young female student from another school.

More serious, however, is the allegation that he allowed a 15 year old girl to stay overnight at his home on at least two occasions without her mother's knowledge or consent.

It is the Panel's firm view that the teacher was remiss in:

- allowing the internet relationship to move into the personal realm - or at least not actively discouraging that development. He had no valid function as a counsellor in these circumstances
- placing the student at unacceptable risk, in allowing her to remain overnight at his home in an unsupervised situation without her mother's knowledge
- not complying with his mandatory reporting responsibilities by informing the Department of Human Services of the student's home situation. He was clearly acting in his professional capacity as a teacher in their relationship.
- failing to explore fully the options for the student other than staying overnight and unaccompanied on a number of occasions in his home
- failing to seek advice from colleagues or others as this situation developed in what were clearly unacceptable directions

It might be argued that, because the student was not a student at the school where the teacher taught, this relationship occurred outside his professional life as a teacher and thus does not impact on his professional life (see *A Solicitor*). The Panel does not accept that argument. It is of the clear view that the teacher was indeed acting as a teacher within the relationship. It began with his reviewing and making suggestions about the student's school work and it can be surmised that it would never have become established had he not been a teacher and brought his knowledge and skills to those initial conversations. It is clear that there is no separation of personal and professional life needing consideration in this matter.

The Panel was concerned at the apparent lack of insight shown by the teacher into the seriousness of his behaviour. On a number of occasions during the hearing, the teacher made reference to his contrition, but it was always in terms of "I needed to keep better records" and "It has caused so much trouble." There seemed to be no real recognition that his conduct was intrinsically inappropriate.

Indeed, during the course of the hearing, when asked what responsibility he bore for the situation, the teacher replied, "Limited". He saw the student as the instigator of the events in question. He seemed to have little or no understanding that it is *always* the adult who is in the position of power over the child. It is always the responsibility of the adult teacher to manage the student-teacher relationship, by drawing and maintaining appropriate and acceptable boundaries, by moving out of or away from the relationship if the relationship is moving to the more personal, to seek advice if necessary and then referring the student to appropriate professional assistance. Teachers cannot claim that they did nothing to encourage a relationship. Professional judgement requires the teacher actively to discourage an inappropriate relationship, to prevent its developing at all, in fact. These principles are particularly pertinent when the student is vulnerable as the student clearly was. The teacher did none of those things.

The Panel is of the view that the above does constitute serious misconduct on the teacher's part. He abused the position of trust he was in with the student. She trusted him as a teacher and followed his advice in relation to her personal situation. This resulted in her staying at his home on at least two occasions unsupervised and without the consent of either of her parents. There were other alternatives open to the teacher. For his own reasons the teacher chose not explain why he did not take up those options. Allowing a young girl to stay at a teacher's home overnight without the consent of the girl's parents is a departure from the standards of behaviour expected of a teacher. The case law indicates that a departure from that accepted standards for a teacher would not be serious if it was trivial or of momentary effect. This was not a trivial departure and nor was it of momentary effect. It was a substantial departure from the accepted standard of behaviour for teachers (see *Parr*). For the above reasons the Panel finds the teacher guilty of serious misconduct.


DETERMINATION UNDER SECTION 42(2) OF THE ACT

The Panel is concerned about the seriousness of the teacher's behaviour and remains unconvinced about the depth of his insight. At the same time, the Panel is aware of the proximity of the end of the school year and is of the view that the teacher does not represent an immediate threat to students. Accordingly, the Panel makes the following determination:

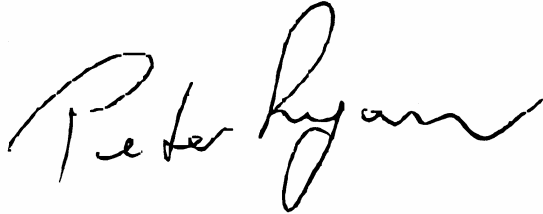
- (1) that the registration of the teacher as a teacher in Victoria be suspended from 1 January 2006
- (2) the suspension of the teacher's registration is subject to the condition that he is to complete, to the satisfaction of the Institute, a professional development course in the management of vulnerable students and the requirements of mandatory reporting in Victoria.
- (3) If the Institute is satisfied that this condition has been fulfilled, the teacher will resume full registration on 27 March 2006.

DECISION OF THE PANEL

It is the decision of the Panel that the teacher's registration as a teacher is suspended with a condition.



PETER RYAN, CHAIRPERSON



Per:

ROBERT BERTAGNOLIO, REGISTERED TEACHER



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SOPHIA PANAGIOTIDIS, PANEL MEMBER