

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 024

REGISTERED TEACHER: AK

PANEL MEMBERS

Susan Halliday, Chairperson

Stewart Cheal, Registered Teacher

Andrea Treble, Panel Member

ATTENDANCE:

AK was represented by Mr Anthony Odgers,
Industrial Officer, Victorian Independent Education Union
(VIEU)

Counsel Assisting: Ms Ann Sheehan with Ms C Pickett
solicitor instructing

DATE OF HEARING: 11 August, 12 August and 6 September 2005

DECISION OF THE PANEL:

On 17 October 2004 the panel decided that the teacher should remain registered as a teacher.

EFFECT OF THE DECISION

The effect of the decision is that the teacher is registered as a teacher in Victoria.

BACKGROUND

On 31 December 2002 most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was a person who was registered as a teacher under section 37 of the *Education Act 1958* immediately before the commencement of the Act.

By Complaint Form dated 23 September 2004 the complainant lodged a complaint with the Victorian Institute of Teaching (the Institute) against the teacher in relation to serious misconduct and fitness to teach. The complaint was lodged in accordance with section 26 of the Act.

On 3 November 2004 the Disciplinary Proceedings Committee (the Committee), a committee of the Institute considered the complaint and decided that this matter should be referred for a preliminary investigation. The teacher was advised by letter dated 5 November 2004 that the matter would be referred for a preliminary investigation. On 31 January 2005 the report of the preliminary investigator was received by the Institute. The matter was again referred to the Committee and at its meeting on 2 February 2005 the Committee decided to hold a formal hearing. The teacher was sent a Notice of Formal Hearing dated 8 April 2005 with all relevant documents attached advising him that the formal hearing would be held on 31 May 2005.

At the request of Mr Anthony Odgers the formal hearing was adjourned to 11 August and 12 August 2005. The panel requested to hear evidence from student 2 and the formal hearing was reconvened on 6 September 2005 for this purpose.

The Notice of Formal Hearing set out the following allegations:

- 1) That in 1979 the teacher cultivated an inappropriate relationship with the complainant who was then a 17 year old student, which resulted in a later sexual relationship.
- 2) That during 1979 the teacher was inappropriately attentive to the complainant, including making inappropriate comments about the complainant's physical appearance.
- 3) That in 1979 the teacher secretly gave the complainant a copy of the novel *Lady Chatterley's Lover* by DH Lawrence in a brown paper bag in a private area of the school library.
- 4) That the teacher suggested to the complainant that he would take her out to dinner as a reward for every 'A' result in her final marks in 1979.
- 5) That in September or October 1979 the teacher invited the complainant and another student, student 4 to his house. The teacher's wife was not present but returned home later in the day.
- 6) That in September or October 1979 the teacher intimated to the complainant that they could stay together in the city the following year. The complainant became alarmed and confided in student 1. When the complainant advised the

- teacher of her distress he told her that her studies were important and to forget the matter.
- 7) That the teacher took the complainant out for lunch to a Chinese restaurant in a regional city on her final day of school after she had officially departed from the boarding house.
 - 8) That the following day the complainant received a letter from the teacher at her foster family's home in Horsham stating that 'he realized how much he liked her and wanted to make love to her'. The teacher suggested that the complainant could travel to the regional city where arrangements could be made to stay at a hotel on the highway. The complainant showed his letter to student 2. The complainant destroyed the letter as requested by the teacher. The complainant refused the offer to meet and the teacher replied that he could be patient.
 - 9) That in 1980 the teacher sent many letters to a student hostel in the city and the complainant believed he was pressuring her to begin a sexual relationship. The complainant states that the teacher advised her that a sexual relationship with her was separate from his relationship with his wife.
 - 10) That the teacher began a sexual relationship with the complainant in July 1980.

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.

(2) The Institute must in writing notify--

(a) the registered teacher; and

(b) the employer of the registered teacher; and

(c) the person who made the complaint--

of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

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. 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

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).

DOCUMENTS CONSIDERED

The following documents were provided to the Panel

- Copy complaint form by the complainant dated 23 September 2004
- Statement from the complainant dated 16 December 2004
- Statement from student 1 dated 30 December 2004
- Statement from student 2 dated 31 December 2004
- Letter from the teacher to the Institute dated 6 October 2004
- Copy letter and response to allegations to the Institute dated 20 December 2004
- Statement from the teacher dated 21 December 2004
- Letter from the teacher dated 12 February 2005
- Amended statement from the teacher, dated 10 February 2005
- Copy letter to the Institute from Principal 1, Principal regional city

THE EVIDENCE

Allegation 1

The complainant in her initial complaint alleged that the teacher cultivated an inappropriate relationship with her in 1979 when she was a 17 year old student.

It was not in dispute that the teacher and the complainant had a sexual relationship after the complainant left school. The critical issue for the Panel was whether this relationship resulted from an inappropriate relationship when the complainant was at school in 1979 and a student of the teacher. To understand the relationship between the teacher and the complainant in 1979 the Panel must examine the incidents that are the basis of the allegations 2 to 10. It is these incidents which allow the Panel to infer whether the relationship was appropriate for a teacher and student or inappropriate.

After analysing the evidence relating to each allegation the Panel has found that during 1979 the complainant felt uncomfortable at times because of the attention paid to her by the teacher, she visited the teacher's home with another student and she had lunch with the teacher immediately after she left school. Given these findings the Panel could not infer that an inappropriate relationship developed in 1979 while the complainant was still a student.

Allegation 2

The complainant in her initial complaint alleged that the teacher was inappropriately attentive to her whilst she was a year 12 student at the school.

In her statement dated 16 December she said:

"I was aware that the relationship felt different, unusual and that it didn't feel right. But I don't think at the time that I thought it was wrong. I was somehow caught up in it. I felt flattered by his attention... Very quickly we established a connection and he honed in on me as a favourite and someone he would seek me out and talk to me. It was obvious to all

the students. They would say 'Oh he loves you. Last year he loved (someone else)'. He would always come up to me in the classroom and have a chat or in the corridors. It was very open. I was aware that he gave me excessive attention...

I was often encouraged to go and have tête-a-têtes with him in the school library which had a couple of small rooms... I think that he enjoyed my company and talking to me but it would be for an hour where there would be other students who needed his tuition but they didn't get it. I got it.

I was a bright student I think he enjoyed discussing things with me... our discussions were not all work-related. He would ask about my family and I suppose they got a bit philosophical in a sense. They weren't of a sexual intent. But they weren't necessarily about my work but that was the vehicle for the meeting and we certainly would discuss my work but then they would become more like life discussions. On a couple of occasions the librarian came in and I had a sense that she was thinking how long had they been in there. Nothing was said but I wondered even then if teacher 1 was coming in to check. I was kind of aware that we were in there for some time - sometimes even a double period."

In her evidence at the hearing the complainant said that these conversations took place in the classroom or small rooms of the library, in corridors or on the steps in the open area. They took place when she was alone with the teacher and in company with others. Extended conversations were philosophical in nature and often about her work, but they tended to get into discussions about her life. They occurred more towards the end of the year, perhaps once per week.

When conversations occurred in the library, teacher 1, the librarian, came in several times and said nothing. She remembered that teacher 1 was formidable but soft underneath. Teacher 1 enforced the rules of the library. The library was a quiet place. She was sure that she was not mistaken about the location of her discussions with the teacher. There were rooms designated as study rooms off the library which could be used to listen to tapes for French exams. Talking in those areas was permissible.

The teacher, in his written responses to the complaint, denied that he was excessively attentive to the complainant or that he gave her any more attention than other students. He indicated that Year 12 students had few free periods and any spare time during the day was spent in the boarding house working on assignments and general study. Teachers had strictly limited opportunity to see students outside the classroom. It was standard practice to give any additional help requested by students in the open space of the dining room where a nun was always on duty.

He could only recall seeing the complainant once privately during the school year in the dining area of the boarding house, because he wished to discuss a sensitive and personal piece of her creative writing.

In his recollection there was no private area in the library where private conversations could take place. Activities in the library were monitored by the librarian teacher 1. Since the library was a silent area of study he had never met students there for discussion.

In his evidence at the hearing the teacher stated that if an individual student wished to see him he would usually speak to that student in the classroom. The one occasion on which he spoke to the complainant alone was in relation to an essay which referred to her family and personal circumstances and details of her mother's death. He did not think it was appropriate to discuss this essay with the complainant in the classroom and he arranged to meet her elsewhere. He thought he arranged to meet her outside on the lawn as it was a nice day. She became anguished on this occasion and he tried to console her. This was the only time he could recall seeing the complainant alone. It was the only conversation they had about her personal circumstances. Prior to the submission of the essay he had been unaware of her personal circumstances because such matters were not made known to teachers.

In conversations with the complainant they might discuss a point of clarification on her essays. He might have arranged to see her together with other students in the dining room area. Over time he became concerned that the complainant was asking to see him more often than necessary. He continued to give the complainant time but not as much as she requested. This occurred towards exam time and he believed the complainant was simply anxious about the exams. He had other demands on his time and therefore needed to divide his time equitably.

Student 1, a fellow student at the school in 1979, wrote in her witness statement dated 30 December 2004, that:

"My impression is that at the beginning there was a group of students special in some way and I thought at the time that as we moved through the year, the complainant became more special. There were some others that stood out as well but there were levels and it was very clear to me that I, for example, was on one level and the complainant was on another... he did treat people differently. It was more apparent with the complainant by the end of the year... there was a sexual element between the complainant and the teacher, flirting I guess, it would never have occurred to me that this would go any further or anything outside of the classroom."

Student 1 indicated that she had no knowledge of the teacher assisting the complainant in a room off the library. She could recall a "snapshot" of the complainant and the teacher sitting on the verge of the road outside the school grounds together. She recalled thinking this was odd.

At the hearing student 1 stated that there was a group of students the teacher favoured and they enjoyed his attention, wishing to get good marks and write essays that engaged him. The teacher was interested in people who were intelligent or funny or passionate about something. The atmosphere in the classroom was very much about getting attention from the teacher. Although she had used the word flirting in her witness statement, she felt this was too strong. She took the teacher's statements as intended to be humorous.

Teacher 1, former librarian at the school, prepared an undated witness statement in which she indicated that, over time, the configuration of the library at the school had changed. At various stages there were rooms off the library but these rooms were for

the use of students not teachers. She could not recall the exact configuration of the library in 1979. She did not permit teachers to use the library or rooms attached to it for tutorials and on occasions it was necessary for her to point this out to teachers.

She could not remember ever having seen the teacher and the complainant conversing in the library proper or in any of the rooms attached to the library. She felt that had she done so, she would have made it understood that the library was not a place for conversation. She could not recall any occasion when she was librarian during school hours when she permitted tutorials or extended conversations.

At the hearing she agreed that at one point the library configuration included rooms in which students could listen to language tapes. She thought this was after 1979. These rooms could be used by students for discussion. She was not in a position to see who was using those rooms.

Teacher 2, a former teacher at St Martin's, gave evidence at the hearing that tutoring generally took place one-on-one in the boarder's dining area. She could not recall if it was possible to have one-on-one tutorials in the library.

The evidence of both the complainant and student 1 tend to indicate that the teacher's personality and teaching style encouraged students to be motivated and engaged in his classes, and that they wanted to do well to please him. In her witness statement, teacher 2 also described the teacher as a witty and charismatic man. However, the evidence of the former students also tends to indicate that some students were perceived as being favoured, this not being limited to the complainant.

The specific complaint in this case is that in essence the complainant become favoured above all others as the school year progressed, and that this was indicated by a pattern of behaviour in which the teacher would seek out the complainant for conversation, and at times engage her in lengthy conversations not always related to her school work. The complainant stated that these conversations tended to be philosophical life discussions and did not include inappropriate sexual comment, suggestion or innuendo.

The complainant's evidence in this regard was, to a certain extent, supported by the witness statement of student 1. Although student 1 asserted that *"there was always an undercurrent with all our dealings with the teacher not just with the complainant"* she concluded that *"how [the teacher] interacted with the complainant by the end of the year was quite distinct"*, although the reasons for this conclusion are not specifically given. Her witness statement described the interaction between the complainant and the teacher as having *"a sexual element"* and *"flirting"*, but in evidence student 1 resiled from this description, as being too strong. She also said that although by the end of the year it was clear to her that the complainant was a favourite student of the teacher, she thought it meant *"nothing beyond that"* at the time.

In her witness statement student 1 said that she had no knowledge of any conversations between the complainant and the teacher in the library. Neither did she give evidence at the hearing of any extended conversations between the two. The evidence of both

the teacher and the librarian teacher 1, was that the library was not a place for extended conversation. Although teacher 1 conceded that she may not have been in a position to observe the use of language rooms off the main library, she was clear that she would have intervened if any area of the library was being used for extended conversation or tutorials by teachers. This is inconsistent with the complainant's evidence that teacher 1 noted their extended conversations but did not intervene.

The evidence before the Panel does lead to a conclusion that the complainant and other students perceived themselves and were perceived by others as receiving special attention or treatment from the teacher. However, there is insufficient evidence to establish that the teacher undertook a course of conduct in which he specifically sought the complainant out for conversation. The evidence of the complainant in this respect is not supported by student 1, who in essence could only give her subjective opinion, that by the end of the year, the complainant had become more special than other students in the teacher's treatment of her. She was not able to describe any clear and cogent examples of "inappropriate attention" such as those asserted by the complainant.

Moreover, the complainant's evidence is not consistent with that of the librarian teacher 1, regarding any extended conversations in the library.

In the statement dated 16 December 2004 the complainant also alleged that the teacher asked to play tennis a couple of times on the school tennis courts.

In her evidence at the hearing the complainant said that whilst this occurred, she would play tennis with others. The teacher assisted with the tennis team but she was not on the tennis team. She could not recall the teacher playing tennis with other students or staff. However, she could recall playing tennis with him and other students.

In his evidence at the hearing the teacher said that he was responsible for the tennis team. The student 3 was a good tennis player and he would ask other students to play with her. He would be present at these practice sessions.

The Panel considered that this evidence does not in itself suggest any particular favouritism or special treatment of the complainant.

The complainant in her initial complaint further alleged that the teacher made inappropriate comments about her physical appearance whilst she was a year 12 student at the school. More specifically, in her statement dated 16 December 2004, she said:

"I remember that if I wore my hair a certain way, he would say, 'you look 20 with your hair like that'. He would come up to me and say it to me so that I was the only one who could hear it. It was not said in the classroom but outside in the quadrangle or in the corridor... He also wrote things on my work like 'A moment on the lips is like a lifetime on the hips'.

In her evidence at the hearing the complainant said she could not specifically recall when or where inappropriate comments were made, perhaps outside on the school steps or in a classroom. She could recall the comment about her looking 20 years of

age when her hair was done a certain way being made on the outside steps. She did not think anyone else was present at the time. She could also recall a comment about her weight at one point.

Regarding the comment written on her work that *"A moment on the lips is like a lifetime on the hips"*, she could not remember the subject matter of the assignment and possibly the comment related to the argument in her essay. She felt the remark was personal, unusual but not relevant to the relationship she and the teacher had. They did not discuss the comment. She did not know what the teacher meant by the comment.

He made many comments on her work and on the work of other students.

Student 1, in her evidence at the hearing, said she was not aware of any inappropriate comments being made by the teacher to the complainant about her appearance. She confirmed in her witness statement dated 30 December 2004 that the teacher was in the habit of writing unusual comments on student work, writing on her own work *"get thee to a nunnery"* and similar. She said that she thought this was meant to be humorous and she took it as such.

Witness statements from teacher 2 and teacher 3, former teachers at the school indicate that there was never any complaint made about the teacher's conduct whilst he was a teacher at the school.

The teacher prepared several written statements in response to the complaint, in which he initially denied the allegation that he made inappropriate comments about the complainant's physical appearance, but later acknowledged that simply because he could not recall making such comments did not mean he did not make any.

Regarding the allegation that the teacher made inappropriate comments about the complainant's physical appearance, evidence of only two specific comments was given by the complainant. There is no independent evidence of these or any other such comments being made, and teaching staff attested that no concern was ever noted by them in regard to the teacher's conduct as a teacher.

Regarding a specific comment written on her work, it was acknowledged by the complainant that this may have related to the content of her work and that other students had unusual comments written on their work. Student 1's view was that these were taken by her, in any event, as humorous.

Thus, the evidence which might be indicative of inappropriate attention or remarks concerning the complainant's appearance is in fact limited to one comment only. The teacher has acknowledged that he may have made a comment about the complainant's appearance that he could now not recall.

Allegation 3

The complainant in her initial complaint and statement dated 16 December 2004, alleged that the teacher secretly gave her a copy of the novel *Lady Chatterley's Lover* by D. H. Lawrence in a brown paper bag in a private area of the school library.

More specifically she stated:

"He said to me somewhere nearer the end of the year that he had a book for me to read... he made a comment to me something like 'when he read the first page it reminds me of you but that's where the similarity ends'. I wondered what he meant. I think now that he was referring to her overcoming difficulties that she had had. The fact that he gave it to me in a brown paper bag was odd. He gave it to me upstairs in the library in the small room. He would talk to me about 'John Thomas' and 'Lady Jane'."

In her evidence at the hearing the complainant said that she could recall having been given the book *Lady Chatterley's Lover* in a brown paper bag by the teacher when they were in the library. He said the main character reminded him of her. She could not recall discussing this exchange with anyone else.

D.H. Lawrence was not studied or discussed in class. Comments such as "*Dear Lady Jane*", signed "*J.T.*" or "*John Thomas*" were written on her work and this occurred on more than one occasion.

Student 1 in her statement of 30 December 2004 indicated that the complainant had told her at the time that the teacher had given her the book *Lady Chatterley's Lover* to read. She said that that the complainant missed the implication of the words John Thomas and Lady Jane. The teacher used to call the complainant "*Lady Jane*" and write that in comments on her essays. As far as she could recall the teacher never referred to *Lady Chatterley's Lover* as a book for class reading.

At the hearing student 1 said that she could not recall whether she saw any work of the complainant's with "*Lady Jane*" written on it, or whether the complainant told her about this. She could recall that she had a conversation with the complainant about the book *Lady Chatterley's Lover* and the meaning of the terms "*Lady Jane*" and "*John Thomas*". She explained the meaning of those terms to the complainant and thought it was not appropriate that the teacher should use them. The complainant had said that she felt uncomfortable and she advised the complainant to do something about it. She remembered this conversation quite well because she had read the book herself.

Her memory was that they were holding a copy of the book when discussing it. However she had no memory of how the complainant got the book. She could not recall the complainant telling her that it was a gift from the teacher.

In her evidence at the hearing student 2, with whom the complainant lived in 1979 when not at school, said that she could recall a copy of the book *Lady Chatterley's Lover* in the complainant's bedroom when she was in year 12. She could recall the complainant mentioning the term "*Lady Jane*" but only in the context of the book.

In his written responses to the complaint, the teacher stated that he believed student 1's peer group were reading works by D.H. Lawrence including *Lady Chatterley's Lover* in

Year 11, which included the compulsory novel *The Virgin and the Gypsy* as part of the literature component of a subject entitled *Modern Thought and Culture*.

He indicated that the HSC English Literature examination paper at the time provided students with the opportunity to write on any novel of their choice and he encouraged students to address this section of the paper. It was his practice to deal with a handful of modern 20th-century novelists including D. H. Lawrence. He provided a reading list and lectured on themes, structure and characters in general terms. He was likely to have mentioned *Lady Chatterley's Lover* in relation to D. H. Lawrence's nonconformity and the controversy his books generated.

He denied giving the complainant a copy of *Lady Chatterley's Lover* in a brown paper bag in the library. He indicated that had he done so, the novel would have circulated throughout the boarding school (not being available in the library) and inevitably a rumour would have started and would have come to the attention of the Principal and the nuns.

In relation to this allegation the Panel noted that there is no person who is able to independently verify that the complainant was given the book by the teacher, only that she had the book in her possession in Year 12. Initially, in her written statement, student 1 said that she had been told at the time by the complainant that the teacher had given her the book. However she gave contrary evidence at the hearing.

The teacher asserted that he did not give the book to the complainant. It seems likely from his evidence as to the content of the Year 11 and 12 literature subjects that works by D.H. Lawrence would have been discussed, but again, there is no independent verification of this, apart from the fact that student 1 had also read the book, for reasons she could not recall. Thus, had the book *Lady Chatterley's Lover* been given to the complainant by the teacher it is possible that it may have related to course content or class discussion. The manner in which the book was said to have been handed to the complainant suggests, however, that the exchange was furtive, would not have been approved of by school authorities and was not appropriate.

The Panel notes that, in itself, the giving of this particular book to a literature student would not necessarily be inappropriate. The Panel finds it difficult to determine, on the state of the evidence before it, whether or not the complainant was given a copy of *Lady Chatterley's Lover* in the circumstances and manner she described.

Regarding the allegation that the teacher called the complainant "*Lady Jane*", the evidence is again variable. The complainant initially stated in her written complaint that the teacher "*talked to*" her about "*Lady Jane*" and "*John Thomas*". Later, in evidence at the hearing, she said these terms were written on her essays. Student 1 on the other hand, initially said that the teacher called the complainant "*Lady Jane*" and wrote that in comments on her essays. At the hearing student 1 said that she could not recall whether she saw any work of the complainant's with "*Lady Jane*" written on it, or whether the complainant told her about this.

At least three witnesses have referred to the use of the terms “*Lady Jane*” and “*John Thomas*” in discussions associated with the book *Lady Chatterley’s Lover*. The complainant and student 1 have both indicated that the terms were used by the teacher on the complainant’s work, but in evidence Student 1 said that she could not recall seeing this personally. It is not known whether the terms had any contextual relationship to the content of the essay or essays on which such remarks were alleged to have been written. It is known that the teacher was in the habit of writing unusual comments on student’s work.

Taking into account all of the above matters, in the absence of independent verification of the allegation, and noting the passage of time between the alleged events and the giving of evidence in this matter, the Panel was unable on the evidence before it, to be reasonably satisfied that the complainant’s account was a correct representation of events in 1979. The evidence that is available contains inconsistencies, and does not amount to clear and cogent evidence of the behaviour alleged.

Allegation 4

The complainant in her initial complaint and statement dated 16 December 2004, alleged that the teacher suggested to her that he would take her out to dinner as a reward for every ‘A’ result in her final months in 1979.

More specifically she stated:

“By the end of the year I sensed that he was almost having a dilemma about me, what he should do because I was going to leave. He did say that he would give me dinner for every ‘A’ I got and I got one in both subjects but I didn’t find that out till January the following year. This was a plan for something in the future that wouldn’t be in the regional city.”

In her evidence at the hearing the complainant said that she believed this conversation occurred on the steps outside the school, which was an open area. She could not recall anyone being present. It was after this conversation that she discussed her feelings with student 1. Although she subsequently went to dinner with the teacher this was not tied to her results in his subjects.

In his written responses to the complaint the teacher denied that this occurred.

Again there is no independent verification of this allegation. The complainant’s recollection was that this comment prompted her to talk to student 1 about the teacher’s behaviour. However student 1 did not confirm that such a comment was discussed or made known to her. Her memory was that the complainant spoke to her about her discomfort in association with a conversation about the book *Lady Chatterley’s Lover*, and the use of the terms “*Lady Jane*” and “*John Thomas*”. These inconsistencies in the evidence serve to highlight the difficulties inherent in recalling accurately events occurring many years ago.

Thus, in the absence of independent verification of the allegation, and noting the passage of time between the alleged events and the giving of evidence in this matter,

the Panel was not able to be reasonably satisfied that the complainant's account was a correct representation of events in 1979.

Allegation 5

The complainant in her initial complaint and statement dated 16 December 2004, alleged that in September or October 1979 the teacher invited her and another student, student 4, to his house. The teacher's wife was not present but returned home later in the day.

More specifically she stated:

"As the year went on in October he asked me to his house. It was almost as if by then the rules were getting a bit grey and it wasn't until the end that he started to make stronger moves because I suppose he knew then that I was leaving soon... I was invited to go to his house for lunch with another student, student 4 who has since passed away. This was before the exams. Student 4 was another bright student who was a bit of protégé as well. This sort of felt clandestine. We were invited to his house not for school work purposes but because he liked me. It was just a social thing. It entailed having a huge feast for lunch and just sitting around the table talking for the afternoon. His wife was out but I do remember her coming in at the end of the day. Student 4 drove herself home... he walked me back to the school. He didn't touch me or do anything like that but there was a feeling I had there was something more to it. I remember having the sense that I couldn't tell the nuns that I was going to lunch at his house. I went out the back door and down the backstreet. I had mentioned it to a couple of my friends in the boarding house that that was where I was going. I again didn't have the sense at the time that this was inappropriate. I was caught up in it but I did have a sense that it was clandestine."

At the hearing the complainant said that she did not tell the nuns she was going to attend a lunch at the teacher's house. She did not sign herself out of the boarding school as would normally be required. She told at least one other person where she was going. Student 4 was not a boarder. The teacher did not tell her that the lunch was to be a secret. She could not recall if the teacher told her not sign out of the boarding house. She felt it was clandestine. When he walked her back to the school he walked her only to the edge of the grounds. She thought student 4 was invited because student 4 was another student whose company the teacher enjoyed. She could not recall if the teacher extended the invitation to both herself and student 4 at the same time.

Students did go to teachers' homes for meals and went out with teachers on excursions. They also babysat for teachers at the teachers' homes.

Student 1, in her statement dated 30 December 2004, said that she could recall the complainant going to a lunch with the teacher because she remembered discussing what the complainant would wear. She had the sense of preparing the complainant to go off as the teacher's favourite.

Teacher 2, a former teacher the school, in her undated witness statement, confirmed that students in 1979 visited the homes of staff members occasionally. These were often organised events carried out with the permission of parents and the relevant supervisor. Students would also baby sit for staff members.

At the hearing teacher 2 described a strict sign out procedure for boarders at the school but acknowledged it was possible for a student to leave the boarding house without signing out.

Teacher 3, also a former teacher, in her witness statement, indicated that it was common practice for students to baby-sit teachers' children and that she and her husband, also a teacher at the school, *"had students from time to time to our house for a meal"*.

In her witness statement student 2 said that the complainant went to the teacher's house a couple of times and that the complainant knew his wife. At the hearing student 2 said that the complainant began to mention the teacher towards the end of the year. She mentioned that "they" had been to his house and met his wife. His wife was very familiar to the complainant and her friends. She believed that the complainant went to dinner at his house with student 5, when the teacher's wife was also present. She thought it was a friendly gesture and there was never any indication to her that it was anything else.

The teacher in his written response to the complaint denied that the complainant attended a lunch at his home in 1979, but said that she did visit with a friend in the subsequent year. In his evidence at the hearing he stated that he had never in 30 years of teaching invited a student to his home whilst he was their teacher.

In relation to this allegation, the complainant's assertion that she went to a lunch at the teacher's house was supported by evidence from student 1 and student 2. However, the complainant and student 1 gave evidence of only one lunch, whilst student 2 recalled being told of a number of occasions when this occurred, involving other students and with the teacher's wife in attendance. On the other hand, the teacher has denied that he has ever had students at his home. The Panel considers that, as there is independent verification of at least one lunch occurring at the teacher's home, that such a lunch probably did occur. However, there is also considerable evidence that this was usual practice at the time, and that it was not regarded as inappropriate for teachers to have students at their homes for meals. The complainant was not the only student asked to attend the lunch. She was not asked to keep the lunch a secret by the teacher. Nor did he suggest she should fail to sign herself out of the boarding house. He walked her back to the school, suggesting he was not attempting to conceal the outing. He was not accused of any inappropriate behaviour or having made any inappropriate suggestions during this outing. His wife apparently came home during the lunch, suggesting that it was not untoward. Although the complainant described the lunch as in her view clandestine, there was nothing in her account of the event which might explain her view. The Panel was unable to conclude that the complainant's attendance with student 4 at this lunch was in any way clandestine. Nor

was the Panel able to conclude that that anything the teacher said or did during the lunch, was in any way inappropriate.

Allegation 6

The complainant in her initial complaint and statement dated 16 December 2004 said that in September or October 1979 the teacher intimated to her that they could stay together in the city the following year. The complainant became alarmed and confided in Student 1. When the complainant advised the teacher of her distress he told her that her studies were important and to forget the matter.

More specifically she stated:

“By the end of the year I sensed that he was almost having a dilemma about me, what he should do because I was going to leave. He did say that he would give me dinner for every ‘A’ I got and I got one in both subjects but I didn’t find that out till January the following year. This was a plan for something in the future that wouldn’t be in the regional city. It was also suggested that I would stay with him... It was then that I got frightened. It was then that I went to my friend student 1 and told her what he was saying. I was frightened and nervous about all this and I realised that the rules were changing. Student 1 was really wise even as a girl and she said that I should tell him that I didn’t like what was happening. I did that. I arranged to meet in the dining room of the boarding school. The meeting only went for about one minute and I can’t remember the language that I used but something like I was concerned and he said something like that my studies were the really important thing and that I should forget it. This all happened before my year 12 exams.”

At the hearing the complainant said that she could not recall whether the teacher’s suggestion that she could stay with him in the following year occurred at the same time as his comment that he would take her to dinner with every ‘A’ result. He did not overtly suggest any sexual relationship. She thought he meant that she could stay with him and they would be together. She could not recall her response.

Student 1 in her statement dated 30 December 2004 said that she could recall having a conversation with the complainant regarding her feelings of discomfort about what was happening with the teacher. She could not remember what the precursors were but thought this conversation was associated with their conversation about *Lady Chatterley’s Lover*.

The teacher in his written responses to the complaint denied that he intimated the complainant and he could stay together in the city in the following year.

This allegation appears to be linked to Allegation 4 and presents the same difficulties for the Panel in terms of making findings of fact. Again there is no independent verification of this allegation. As noted earlier, the complainant’s recollection was that the teacher’s suggestion prompted her to talk to student 1 about the teacher’s behaviour. However

student 1 did not confirm that such a suggestion was discussed or made known to her. Her memory was that the complainant spoke to her about her discomfort in association with a conversation about the book *Lady Chatterley's Lover*, and the use of the terms "Lady Jane" and "John Thomas".

Thus, in the absence of independent verification of the allegation, and noting the passage of time between the alleged events and the giving of evidence in this matter, the Panel was not able to be reasonably satisfied that the complainant's account was a correct representation of events in 1979.

Allegation 7

The complainant in her initial complaint and statement dated 16 December 2004 alleged that the teacher took her out for lunch to a Chinese restaurant in a regional city on her final day of school after she had officially departed from the boarding house.

More specifically she stated:

"The night before we left the boarding house officially, all the girls went out together with teachers. I can't remember when he asked me out but it was for the next day. On the day I packed my bags and left the boarding school for good and went into the regional city and met him. It was in a car park and we went to a Chinese restaurant for lunch and then I went home with the people whom I lived with in the country town. I think I had told them that because there was nothing secret about that. I was aware that this was an unusual thing."

In her evidence at the hearing the complainant confirmed that there was nobody else present at the lunch apart from herself and the teacher. There was no pressure placed on her at that lunch. She did not talk about the lunch with anybody else although she didn't regard it as a secret, just unusual. No other students had lunch with the teachers.

At the hearing student 2 said that she believed the teacher went to a Chinese restaurant with the teacher. She recalled the complainant being excited and eager to go. Student 2 thought that the lunch was associated with all the hard work put into the HSC year, and to say congratulations. This was close to when school finished. She thought it was a Chinese restaurant in the regional city.

She thought maybe some other students went to the lunch, in particular student 5, because she did a lot together with the teacher's family. The complainant told her about the lunch during a weekend home visit.

The teacher, in his written responses to the complaint stated that he did not take the complainant to a Chinese Restaurant at the end of school but did so in May or June 1980.

Thus while the teacher agrees that he did attend a lunch at a Chinese Restaurant with the complainant, he disagrees as to the timing and location. Evidence was also given by the complainant of a lunch at a Chinese Restaurant in February 1980 in the city.

However, there is independent evidence from student 2 that a lunch did occur in the regional city with both the teacher and the complainant in attendance at the end of the school year. The Panel was concerned that this lunch was not formerly mentioned by student 2 in her initial witness statement, and noted that student 2 had also departed from other aspects of her written statement when giving evidence at the hearing. However, student 2 indicated that it was a recollection that came to her after she had given her witness statement. Whilst she was hazy about the details of this lunch, which she was told of by the complainant, she seemed firm in her memory that a lunch at a Chinese Restaurant in the regional city did take place. Thus the Panel considers it more probable than not that such a lunch took place at the end of 1979, as alleged by the complainant. The Panel notes that it was not suggested the teacher behaved in an inappropriate way during this outing.

Allegation 8

The complainant in her initial complaint and statement dated 16 December 2004 alleged that the day following her final day of school she received a letter from the teacher at her foster family's home in the country town stating that *'he realised how much he liked her and wanted to make love to her'*. The teacher suggested that the complainant could travel to the regional city where arrangements could be made to stay at the hotel on the Highway. The complainant showed this letter to student 2. The complainant destroyed the letter as requested by the teacher. The complainant refused the offer to meet and the teacher replied that he could be patient.

In a statement dated 16 December 2004 the complainant indicated:

"The letter said that he realised how much he liked me and that he wanted to make love to me and that this was very separate from his relationship with his wife. He then said that he could come and pick me up in the country town or he could meet me in the regional city. It was almost like he would do anything. I showed student 2 the letter and said to her not tell her parents because he asked me to destroy the letter so I was caught up in the secrecy. I wrote back and said no -I can't remember the exact words but then the letters didn't stop for the next six months. I think student 2 was quite shocked by the letter and I think that she saw how shocked I was... he wrote back and said that he could be patient."

At the hearing the complainant said that she was very frightened when she received this letter because she felt that in order to keep the teacher she had to surrender. However it was not a mutual desire.

In a witness statement, student 2 stated that she could remember only vague things. She could remember that there was a letter from the teacher to the complainant. She could not remember seeing the letter. She could not remember whether the letter was read to her or whether the complainant just told her about it. She remembered vaguely that the teacher invited the complainant to his place or somewhere else where they

could meet. At that time she did not think there was anything with this and nor did the complainant. She could not remember anything about a motel but did remember a letter. She recalled the complainant being very flattered by the teacher's attention.

At the hearing student 2 said that she believed the complainant received a letter from the teacher in January 1980. The complainant was home for the school holidays and it was around the time they were expecting HSC results. It was after Christmas. She thought they received their results about 9 or 10 January. The complainant was excited about the letter. As far as student 2 could recall it was not shown to her. She thought it was an invitation from the teacher to meet with him. The complainant was flattered by it all.

Student 2 asked the complainant if she was offended by the letter and whether she wanted to discuss it with her parents but the complainant did not want them to know about it at all. Student 2's father was a school teacher and student 2 thought he might view it as inappropriate because at the end of the day, the teacher had been the complainant's teacher.

She could not recall what type of meeting the letter had suggested. She did not see the contents of the letter, the complainant just referred to it. She could recall mention of *"meeting in a motel room"* and the complainant being flattered by that, but she could not recall if this was mentioned in the context of the receipt of a letter from the teacher; it was possibly on another occasion.

Student 2 stated that she saw the complainant a handful of times when she returned home in 1980. Student 2 also visited the complainant in the city on 2-3 occasions but they did not discuss the teacher.

In his written responses to the complaint the teacher denied sending a letter to the complainant as alleged in late 1979, although he agreed that he wrote to her several times in 1980 when she resided in the city.

In relation to this allegation, student 2 provided independent verification that the complainant received a letter from the teacher, in which he suggested they meet. However, there are considerable inconsistencies in the evidence given by the complainant and student 2 about this event. The complainant asserted that the letter was received immediately after she ceased school, whilst student 2 recollected the letter arriving in the earlier part of January 1980. The complainant asserted she was distressed by the receipt of the letter, while student 2 variously stated that the complainant did not think there was anything wrong with it, and then that she was excited and flattered by the letter.

More concerning however, are the internal inconsistencies in student 2's own evidence. In her written witness statement she did not remember seeing the letter, could not recall whether the complainant read the letter to her or just told her about it. She could recall only vaguely that the letter suggested they meet. She could not recall anything about a motel.

In relation to the letter itself she said *"I didn't think anything wrong of this at the time and nor did she"*. This would suggest that the letter did not include statements of the explicit nature described by the complainant or that the complainant did not disclose those details. However, the complainant's evidence was that she showed Student 2 the letter, and that they were both shocked at the contents.

However, in her evidence at the hearing, Student 2 did refer to the complainant's mention of a meeting at a motel. She also described her own reaction to the letter as one of concern, that it was something she thought inappropriate, that her father, a school teacher, would also find it inappropriate. This is quite different and contrary to her written statement, calling into question the reliability of her evidence.

The Panel notes that correspondence between the teacher and the complainant was admitted to in early 1980, albeit after the complainant had left the country town. However, contact continued between student 2 and the complainant in the following year intermittently and such correspondence may have been discussed at a later time.

Due to the unsatisfactory nature of the evidence relating to this allegation, and the difficulties caused by the passage of time between actual events and the giving of evidence in this case, the Panel considered that it was unable to be reasonably satisfied that the complainant's account was a correct representation of events in 1979.

Allegation 9

The complainant in her initial complaint alleged that in 1980 the teacher sent many letters to 'The Hostel' a student hostel in the city and the complainant believed he was pressuring her to begin a sexual relationship.

More specifically in her statement dated 16 December 2004 the complainant said:

"Once I came to the city, I gave him my address and he wrote profusely to me about 20 or 30 letters in the first six months of 1980. I really did feel pressured by him with those letters... he would say that he was going to be in the city on such and such and let's meet..."

At the hearing the complainant said that she heard from the teacher when her HSC results came out in January. She thought she telephoned the school and spoke to him there. She could not recall when the next contact was. She moved to the city to student hostel accommodation. She could not recall who made the first contact after her move to the city but contact occurred by correspondence. She recalled letters being very frequent and that she received at least two letters from the teacher per week. There was always pressure in the letters. There were explicit demands for a sexual relationship. She could not recall how often she wrote to the teacher. They did not speak about their former relationship as a teacher and student. She supposed she had genuine feelings of care for him and he seemed to have genuine feelings of care for her. She was always trying to recreate the earlier relationship from 1979. She did not believe she entered into the relationship freely. She was overwhelmed by his power over her. She said nothing about this to him.

The teacher stated in his written response to the complaint that there was an exchange of a few letters with information about what each was doing in their respective lives. This started sometime in March 1980. After the complainant took up residence at The Hostel in 1980, she wrote a letter of thanks to the teacher for his help with subjects that he had taught her. In that letter she expressed the hope that they could meet sometime in the city. He wrote back, indicating that he would be in the city regularly that year and suggested they could meet for coffee at some stage.

At the hearing the teacher stated that as a teacher he became aware of the complainant's HSC results in January. He wrote to her to congratulate her on her success. He might do this with 4 or 5 students who had done extremely well. Between March and August 1980 he wrote to the complainant and she wrote to him. He could not say how often, not very often.

Regarding this allegation, both parties agree that the course of correspondence began when the complainant moved from the country town to the city to commence her teaching degree. It is unclear who initiated the course of correspondence or how regular such correspondence was. The complainant asserted that she felt pressured by these letters, but the specific reason for this is unclear. Ultimately it was said that the letters began to contain references to a possible sexual relationship.

Allegation 10

The complainant in her initial complaint alleged that in July 1980 she and the teacher began a sexual relationship.

More specifically in her statement dated 16 December 2004 the complainant said:

"We met at least twice probably three times before we had a sexual relationship i.e. between February and July 1980. He knew that it was my first sexual relationship. He asked me. This time he asked me to dinner and I knew that this was going to be the time. I went with my bags packed so I obviously knew that. The restaurant was I think in the suburb and the motel was called 'The Motel' ...the relationship lasted intermittently for three years..."

In her evidence at the hearing the complainant said that she thought she first saw the teacher in February 1980 somewhere in the city. They went to a Chinese restaurant in the city. This was not a romantic meeting. Their sexual relationship began in July 1980.

She met him in 1980 because she wanted to maintain the healthy connection they had first established in 1979; she was searching for that earlier connection. The relationship continued for three years and always involved sexual contact. She did not go out with anyone else. They did not go out with other friends. She ended the relationship because she felt it was not healthy. When the relationship ended she no longer felt that he had power over her. He did not attempt to resume the relationship.

The teacher agreed both in his written responses to the complaint and in the hearing that he commenced an affair with the complainant, he thought in August 1980. Initially in his written responses to the complaint he stated that the affair began spontaneously, that it was casual and lasted only six months. He later acknowledged that the affair was longer than six months in duration.

At the hearing the teacher said that he dropped in to see the complainant when she moved to the city on a few occasions. He was in the city about every five weeks. He considered her a friend. He also dropped in on other friends. There was nothing sexual in these earlier contacts and no hint of endearment. They had lots to talk about because he was a 4th year teacher and she was undertaking training as a teacher.

The teacher maintained at the hearing that the affair occurred spontaneously, but acknowledged it commenced at the Motel, that they went to dinner beforehand and that the complainant came to the dinner with a bag.

In relation to this allegation both the complainant and the teacher agree that there were several meetings prior to the commencement of their relationship. The teacher asserts that these meetings occurred as friends. It is unclear from the complainant's evidence whether she viewed the meetings in this way, but her evidence is that the teacher asked her to commence a sexual relationship at the meeting preceding the actual commencement of their sexual relationship.

General comments on the evidence

The Panel noted that during the Institute's investigation the teacher had not always been honest and forthcoming. For example, he provided a copy of a letter to him written by the complainant in 2003, having deleted certain parts of the letter that were potentially damaging, because those parts referred to his relationship in 1979 and 1980 with the complainant. Further, statements made to the Institute about the length of his early affair with the complainant were subsequently proved to be inaccurate. The teacher stated that the affair, which commenced in 1980, lasted for only 6 months, rather than 2 to 3 years.

It is also noted that in 2003 the teacher wrote a letter to the complainant, purposefully making false statements in relation to his marital and family situation. The panel was informed the teacher had done so hoping to protect his family and employment, having received acrimonious letters from the complainant. He said that he had lied in the hope that the complainant would not contact him again. These matters go to the credibility of the teacher as a witness of truth.

With regard to the complainant's evidence, it was noted that there have been allegations raised as to the motivations for the laying of the complaint which the Panel did not find relevant. The effluxion of time is bound to affect the quality and veracity of the evidence in this case, including that of the complainant.

For these reasons, in making findings of fact in this case, the Panel looked for independent evidence, in relation to each of the allegations, which might tend to confirm or disprove the matters raised.

FINDINGS OF FACT

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

- There was some form of interaction between the teacher and the complainant, in relation to the teacher using the terms '*Lady Jane*' and '*John Thomas*' that made the complainant feel uncomfortable.
- The complainant did go to the teacher's house with another student at least once.
- The teacher and the complainant went to lunch after she had officially departed from the boarding house.
- The teacher wrote to the complainant in the January 1980 after she had left school.
- During 1980, the complainant's first year out of school, there was on-going regular correspondence between the teacher and the complainant in the early part of the year.
- In 1980 after the complainant had started tertiary studies in the city, she and the teacher met up several times and then commenced a sexual relationship mid year.

FINDINGS UNDER SECTION 42(2) OF THE ACT

There is insufficient evidence to make any findings of misconduct against the teacher.

CONCLUSION

In 1979 when the complainant was at school she felt that she received special attention from her teacher, the teacher and that they had developed a special relationship. The evidence for this special relationship was the teacher's comments to her, visiting his

house with another student and going to lunch immediately after she left the school. Other former students of the teacher observed that he was in the habit of making 'quirky' comments to students. A former teacher at the school said it was not unusual for students to visit the homes of teachers for a meal. On the evidence presented the Panel was not satisfied that the teacher developed an inappropriate relationship with the complainant in 1979.

The Panel makes no comment about the subsequent sexual relationship that developed between the complainant and the teacher. This relationship developed after the complainant had left the school when she was an adult and the teacher student relationship had ended.

Because of the above conclusions the Panel cannot say that the teacher's particular interest in the complainant was based on feelings that evolved when she was still a student. There is insufficient evidence to make a finding of misconduct in relation to the allegations made by the complainant, when she was a student. In making this statement the Panel notes that the teacher agreed under oath that he had had a sexual relationship with another former student, also within a short period of time after she had left school. It must be noted that sexual relationships between teachers (married or not) and former students who have completed their schooling are not matters with which the Panel is concerned. Allegations of predatory behaviour or 'grooming' of students, while at school however, must be very carefully scrutinised. That said the passage of time, the lack of any sufficiently cogent evidence from the late 1970's substantiating the complainant's account, and the inconsistencies in the evidence that was provided, were problematic in this case.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

The Panel did not make a determination.



SUSAN HALLIDAY, CHAIRPERSON



per:
STEWART CHEAL, REGISTERED TEACHER

A handwritten signature in black ink that reads "Susan Halliday". The signature is written in a cursive style with a large, looping initial "S".

per:

ANDREA TREBLE, PANEL MEMBER