

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 32

REGISTERED TEACHER: PJB

PANEL MEMBERS

Marilyn **MOONEY**, Chairperson

Norm **FARY**, Registered Teacher

Loula **RODOPOULOS**, Specialist Member

ATTENDANCE: The teacher was represented by Ms Alanna Duffy, Barrister, with Ms Tania Clarke instructing

Counsel Assisting: Ms Anne Sheehan with Ms Carolyn Pickett instructing

DATE OF HEARING: 1, 2 and 3 March 2006

DECISION OF THE PANEL:

On 13 March 2006 the Panel decided that the teacher should remain registered as a teacher because it did not make a finding pursuant to section 42(2) of the *Victorian Institute of Teaching Act 2001* (the Act).

EFFECT OF THE DECISION

The effect of the decision is that the teacher retains his registration as a teacher in Victoria.

REASONS

BACKGROUND

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* prior to 31 December 2002 immediately before the Act was proclaimed.

The Victorian Institute of Teaching (the Institute) was advised by the employer by letter dated 8 February 2005 that action had been taken against the teacher because of his alleged serious misconduct and/or lack of fitness to teach. The employer's notification was made in accordance with section 27 of the Act.

At its meeting on 28 June 2005 the Disciplinary Proceedings Committee (the Committee), a committee of the Institute Council decided to refer the matter to an investigation in preparation for a formal hearing. Following the investigation at the meeting on 26 October 2005 the Committee confirmed its decision to hold a formal hearing.

The teacher was sent a Notice of Formal Hearing dated 1 December 2005 with all relevant documents attached advising him that the formal hearing would be held on 1, 2 and 3 March 2006.

The Notice of Formal Hearing set out the following allegation:

1. In 2002 during Outdoor and Physical Education program, the teacher
 - a. Commented to a female year 9 student about her underwear
 - b. Told a female year 9 student she was pretty
 - c. During a dance class, held a year 9 female student inappropriately
2. In 2002 during year 10 sport classes, the teacher
 - a. Entered the female students change room at the start of a class and at the end of a class while female students were changing
 - b. Commented to a female student in the change room that her bra was not suitable and adjusted her bra strap
 - c. Commented to female students about their underwear
 - d. During a dance class, held a female student inappropriately
 - e. Made comments to a female student about her figure
3. In 2003 in the school yard, the teacher
 - a. Touched a female year 10 student on the bottom
4. In 2004 during a year 10 biology class, the teacher
 - a. Referred to an experiment as appearing like a filled condom
 - b. Put his arm around students when helping them with their work
 - c. During a slide presentation, showed a slide of himself naked having a bush shower
5. In 2004 on 2 occasions the teacher entered the female students change rooms while year 9 female students were dressing after sport.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 27 of that Part provides:

27. Employer to notify Institute of action against teacher

(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

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.

The purpose of these proceedings is to protect students in Victorian schools.

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 in relation to professional misconduct is:

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 Panel had available to it the following documents

- Witness statement of Principal 1 dated 02/08/2005 (7 pages) and attachments
 - BD1- Letter to the teacher dated 17/01/2003
 - BD2 - Copy student petition
 - BD3 - Letter to the teacher dated 23/06/2004
 - BD4 - Letter from deputy principal, Teacher 9 dated 25/06/2004
 - BD5 - Witness statement Student 2
 - BD6 - Witness state ment Student 5
 - BD7 - Witness statement Student 15
 - BD8 - Witness statement Student 16
 - BD9 - Witness statement Student 3
 - BD10 - Witness statement Student 17
 - BD11 - Witness statement Student 18
 - BD12 - Witness statement Student 6
 - BD13 - Witness statement Student 13 (2 pages)
 - BD14 - Letter from the teacher dated 24/06/2004 (2 pages)
 - BD15 - Letter to the teacher dated 25/06/2004
 - BD16 - Letter to the teacher dated 30/06/2004
 - BD17 - Letter from the teacher dated 07/07/2004 (3 pages)
 - BD18 - Letter on behalf of the teacher dated 07/07/2004 (2 pages)
 - BD19 - Letter to the teacher dated 10/07/2004 (3 pages)
 - BD20 - Letter to the teacher's representative dated 10/07/2004 (3 pages)
 - BD21 - Letter to the teacher dated 15/07/2004
 - BD22 - Amended letter to the teacher 30/06/2004
 - BD23 - Letter to the teacher dated 09/09/2004
- Witness statement of Teacher 1 dated 25/07/2005 (2 pages)

- Witness statement of Teacher 2 undated and unsigned
- Witness statement of Student 8 dated 14/08/2005
- Witness statement of Student 7 dated 09/2005 (2 pages)
- Witness statement of Student 9 dated 08/2005 (2 pages)
- Witness statement of Student 10 dated 04/10/2005
- Witness statement of Student 4 dated 16/08/2005 (2 pages)
- Witness statement of Student 5 dated 14/08/2005 (2 pages)
- Witness statement of Student 6 dated 14/08/2005
- Witness statement of Student 3 dated 15/08/2005
- Witness statement of Student 2 dated 08/2005
- Witness statement of Student 1 dated 16/01/2005
- Witness statement of the teacher dated 21/09/2005 (2 pages)

The following documents were provided on behalf of the teacher:

- Witness statement of Teacher 5 dated 13/02/2006
- Witness statement of Teacher 6 undated
- Witness statement of Teacher 7 undated
- Witness statement of Teacher 8 undated
- Witness statement of Principal 2 undated
- Witness statement of Teacher 4 undated
- Witness statement of Teacher 3 undated
- Witness statement of the School Counsellor undated
- Supplementary Witness statement of the teacher undated
- Witness statement of the Vice Principal undated
- Sworn statement of Teacher 12 01/03/2006
- Sworn statement of Teacher 13 01/03/2006
- Sworn statement of Principal 3 22/02/2006

THE EVIDENCE

The Panel heard evidence under oath or affirmation from:

- Principal 1
- Teacher 1
- Teacher 2
- Student 1
- Student 2
- Student 3
- Student 4
- Student 5
- Student 6
- Student 7
- Student 8
- Student 9
- Student 10
- The teacher
- Vice Principal
- School Counsellor

- Teacher 3 (telephone)
- Teacher 4
- Teacher 5
- Teacher 6
- Teacher 7
- Teacher 8
- Principal 2

Changes to Allegations

The Panel noted that in allegation 1 the year is meant to read 2002 not 2001 and the allegations relate to Year 10 students not Year 9 students.

Principal 1

Principal 1 confirmed under oath that his written statement, with minor changes, was true and correct. Principal 1 was the principal of the College where the incidents occurred and where the teacher was a teacher.

Principal 1 informed the Panel that in August 2002 he received 2 sets of complaints about the teacher's behaviour. The first was from a Year 10 level co-ordinator, Teacher 1, and the second was from a parent, the mother of student 8, a Year 10 student. Teacher 1 advised Principal 1 that some female students had expressed concern about the behaviour of the teacher. Those concerns involved the teacher invading their personal space; holding them too tightly during dance lessons; making personal comments to them about their appearance; and taking photographs of them rock climbing. The mother of student 8 told Principal 1 that her daughter Student 8 had complained to her of the teacher patting her bottom at sport; dancing too close; making inappropriate personal comments; and telling her that she was a 'beautiful girl'.

The Panel heard that Principal 1 met with the teacher on 15 August and all of these issues were raised with him. Principal 1 cautioned the teacher about his comments and behaviour towards students. In particular, Principal 1 mentioned the need for him not to get too close physically to students, either in class or in the dancing lessons. The teacher was also cautioned in relation to comments made to students, and was made aware of the need for him to be sensitive to the feelings of his female students. Principal 1 told the Panel that he had noted the teacher's propensity for getting 'physically too close' in other circumstances, eg while engaged in conversation with staff he would often invade their personal space.

The Panel heard that in December 2002, following the teacher's contact with the mother of student 11, a Year 10 student, another complaint came to light. The teacher had contacted the mother of student 11 because Student 11 had not attended his Outdoor Education fieldwork sessions and had not handed in particular work requirements. The mother of student 11 told the teacher that this was due to Student 11 'having a problem' with her teacher who happened to be the teacher. Principal 1 told the Panel that when this issue was brought to his attention he contacted the mother of student 11 assuring her that Student 11 would not fail the subject because of her non-attendance and that the teacher would not phone her again.

Principal 1 explained to the Panel that the warning letter to the teacher of 17 January 2003 was written in response to the mother of student 11's complaint and because the teacher had requested an explanation in writing. Principal 1 said that the teacher's confusion regarding the mother of student 11 having phoned the school earlier to complain, came about because Teacher 9, the 2002 Year 10 co-ordinator was the person that the mother of student 11 had earlier telephoned regarding Student 11's problems not Principal 1, as the teacher believed.

The Panel was told that the school has several points at which students can seek counselling or take their concerns. The process requires the first person or contact point to make the decision as to where the issue goes next. In Student 11's case, Teacher 9, chose not to take the matter any further.

Principal 1 informed the Panel that he had taught Physical Education in 2002 when he replaced Teacher 9 who was on a sick leave. He said that when students were using the change rooms the process of supervision would be that 2 teachers would organise the equipment whilst another two would unlock the doors and supervise the change rooms. Principal 1 said that at the end of a session he was often the only teacher left to supervise and lock up. He said that if the girls needed hurrying up he would simply call "Hurry up please!"

Principal 1 informed the Panel that in June 2004 a group of Year 10 biology students submitted a 'petition' to Year 10 co-ordinator, Teacher 1 who then passed it on to the Deputy Principal, Teacher 9. This petition complained of the teacher making improper sexual comments in and outside the classroom, and making inappropriate physical contact with some female students. Teacher 9 was to speak to the teacher about these complaints. The Panel heard that the following day, June 23, Teacher 1 informed Principal 1 that 2 students, Student 4 and Student 12, had come to speak to him about an incident in the teacher's Biology class. One of the slides being presented in the teacher's slide show was of him naked in a bush shower.

Teacher 9 interviewed and asked all the students whose names were on the petition to write a statement of their version of events. Principal 1 said that he took notes. The Panel heard that Principal 1 immediately spoke to the teacher and asked him to report to his office immediately. Principal 1 told the Panel that initially the teacher refused saying he had work to complete. The teacher told Principal 1 that it was a mistake, and that he had forgotten to take that particular slide out. Principal 1 said that later that day, after 2 meetings, he suspended the teacher for the remainder of the term and asked him to provide a written explanation for his actions.

Principal 1 informed the Panel that he talked with the teacher about an apology to the class and to the parents. The teacher wanted to do this but for Principal 1 the issue was 'how' it was going to be carried out. The first day of Term 3 was mentioned but did not happen because the teacher was on leave. Then it became apparent that it was too late as students had left the school.

When asked by Counsel Assisting whether he was surprised that other PE teachers were not aware of complaints against the teacher, Principal 1 replied that he was not as it

was not the practice to tell other teachers of complaints. He said that there is a need for confidentiality to protect the teacher as well as the students. Principal 1 said that he is always reluctant to pass on names of students because of the perception by students that the differential in power may lead to teachers failing them.

Principal 1 told the Panel that he took no further action in August 2002 because he believed that it was the end of the matter and that the teacher was acting on Principal 1's concerns. In June 2004 the slide show incident came to light and some students were clearly upset, some more so than others. Principal 1 quoted one student "We shouldn't see that from our teacher."

Cross examination

In relation to the meeting of 15 August 2002, Principal 1 told the Panel that the teacher was unhappy about the meeting. Principal 1 said that he had told the teacher that he had confidence in him and that he was not going to put anything in writing.

Principal 1 said that he was shown the slide show in context but that it was not shown using two sets of slides. He said that as he was looking at the slides and taking notes at the same time he did not see the particular slide. He had to ask the teacher to show him the particular slide. After seeing the slide Principal 1 formed the view that the incident needed to be investigated.

In response to one student's opinion, Student 13, that it was accidental, Principal 1 said that he did not recall that comment. Principal 1 told the Panel that he did not think that the other students thought it was accidental.

Principal 1 said that he had not received any contact or complaints prior to August 2002 in relation to Student 8. He said that other teachers could know of incidents or complaints without him knowing. Principal 1 told the Panel that he did not divulge any students' names to the teacher but he did caution him regarding personal comments and behaviour towards female students. He said in response to Ms Duffy's questioning that the teacher did know that he was being questioned about calling a student a 'beautiful girl', etc. Principal 1 said that he spoke to a Year 10 co-ordinator about these issues but that he did not talk to Teacher 4 who is another Physical Education teacher who also was involved in the dancing class.

Principal 1 explained to the Panel that the teacher was not the regular biology teacher and had not taught biology before. The teacher took over the subject because the regular teacher was on sick leave. Up to the point when the teacher took over as the biology teacher, the class had had relieving teachers. Principal 1 agreed that this was a situation that the students were not happy with.

Principal 1 told the Panel that the teacher was suspended because of the slide show incident and because Principal 1 wanted to resolve the issue.

Teacher 1

Teacher 1 confirmed under oath that his written statement was true and correct.

Teacher 1 told the Panel that he has been a teacher for 15 years and has been at College since May 2002. He said that he was one of the two Year 10 Level co-ordinators with responsibility for the welfare and conduct of all Year 10 students. Students would see his position as the first port of call if they had a problem.

Teacher 1 informed the Panel that in 2002 at least two, possibly three girls approached him outside his office and expressed their concerns about the teacher. They told him that the teacher made them feel 'yucky'; that he 'invaded their personal space'; and claimed he was 'too touchy' during dance classes. Teacher 1 said that he spoke to them for about 15 minutes as he wanted to make sure that the girls were not playing games or being spiteful or frivolous. Teacher 1 said that the girls assured him that it was serious. He told them that he would be taking it to Principal 1. Teacher 1 said that one of the girls also mentioned that the teacher took photos of her from the ground when she was rock climbing. The girls also told him about an occasion at the beach where the teacher was said to be constructing 'lewd' sand structures.

The Panel heard that Teacher 1 spoke to the teacher later in 2002. In December 2002 the teacher came to the Year 10 co-ordinators' office to see if he could speak with Student 11's parents as Student 11 had not attended the Outdoor Education camp and had not submitted work requirements. Teacher 1 said that the co-ordinators advised the teacher not to phone. Teacher 1 said that they knew that Student 11 was one of the complaint students but the teacher was not aware of this. He said that the teacher phoned anyway.

Teacher 1 told the Panel that the teacher was very confused by the conversation that he had with the mother of student 11 as he did not know of the earlier complaints. Teacher 1 said that both Year level co-ordinators talked to the teacher about the earlier issues for about half an hour.

The Panel heard that in June 2004 two students, one of whom was Student 4, came to see Teacher 1 to complain about a slide show that the teacher had shown their biology class. Teacher 1 told the Panel that the girls said that one of the slides was of the teacher in a bush shower without any clothes on. He said that he spoke to the two girls for about 10-15 minutes then immediately informed Principal 1.

Cross-examination

Teacher 1 told the Panel that he is no longer a Year level co-ordinator because he chose not to apply for the position. He agreed with Ms Duffy that the teacher had initiated the conversation with him. He told the Panel that, due to confidentiality issues, the accepted process in the school is that a teacher does not contact parents until the Year level co-ordinator has been contacted.

Teacher 1 informed the Panel that the dance classes involved about 80 students. He said that there were generally more girls than boys and that some boys would sit out the session.

Teacher 2

Teacher 2 confirmed under oath that his written statement was true and correct.

Teacher 2 informed the Panel that Principal 1 asked him if any students in his science classes had raised issues or concerns in relation to the teacher. Teacher 2 said that he could not recall any such incidents in his class but then remembered that during a science class in 2002, two female students made comments about the teacher being present whilst they were changing their clothes.

Student 1

Student 1 confirmed under oath that her written statement was true and correct. Student 1 told the Panel that she is a Year 11 student at the College.

She told the Panel that her memory of the teacher entering the girls' change rooms while they were dressing is clear in her mind because 'having a male come into the change rooms is not something you usually see.'

Using the photographs of the girls change rooms, Student 1 identified for the Panel where she was standing when the teacher walked in. She said that he walked right into the change rooms and that he did not stand at the door. The Panel heard that the teacher walked in to the change rooms on two occasions and on one of those occasions he put his hand on the shoulder of one of the girls. She could not recall the girl's name but indicated to the Panel where in the change rooms this particular girl was standing. The position was right into the change room to the far wall from the entrance. Student 1 said that there were about 30 girls in the room and some were screaming and trying to cover up. Student 1 did not tell anyone because 'teachers are friends – I didn't think anyone would believe me'.

Student 1 told the Panel that she was standing near her close friend but that they did not discuss the incident later. She said that usually female teachers would come to hurry them up. 'Never males'.

Student 2

Student 2 confirmed under oath that her written statement was true and correct. Student 2 told the Panel that she is a Year 12 student at the College.

Student 2 told the Panel that during the biology class where the slide show incident occurred she did not actually see it as she was talking at the time. She said that she noticed the reaction of the students who had seen it. These reactions were of shock and disgust. She said that everyone was talking about it later. The Panel heard that the teacher said something about how immature the students all were. Student 2 said that she did not believe that the teacher was embarrassed by what had happened and that he did not apologise to the class for showing the slide.

Cross-examination

Student 2 told the Panel that the class was a full class of about 25 students. She said that she did not think the teacher was a very good biology teacher and that he always referred students to other biology teachers for help. She could not recall two slides being shown at one time but said that aboriginal music was played for the whole time.

Student 2 informed the Panel that the next biology class they had was taken by a different teacher. She said that at recess after the slide was shown all the girls were talking about why he had shown it.

Student 3

Student 3 confirmed under affirmation that his written statement was true and correct. He told the Panel that he is a Year 11 student at the College.

In Student 3's statement he mentions that the teacher would sometimes say things that did not seem appropriate for a teacher to say but he could not remember any specific statements or jokes. He told the Panel that in a biology class experiment where a cellulose bag filled with a white starch solution was being used, everyone was laughing and then the teacher 'stated the obvious' and referred to it as looking like a condom. Student 3 said the class then moved on with their work.

Student 3 told the Panel that in a biology class in June 2004 the teacher showed a set of slides, one of which was of the teacher naked under a bush shower. He said that the class was shocked and that the teacher said that he did not mean it to be included. Student 3 could not recall if the teacher referred to the class being immature specifically in relation to the slide, although in Student 3's written statement he says the teacher referred to the students as not being mature enough to handle seeing the slide. He said that there was not much discussion after the incident.

Student 4

Student 4 confirmed under affirmation that her written statement was true and correct. She told the Panel that she is a Year 12 student at the College.

Student 4 told the Panel that in 2004 the teacher was her biology teacher. She said that she was studying advanced biology with the Head of the biology faculty and she felt that the teacher was not teaching the subject properly.

Student 4 told the Panel that the teacher put his arm around her, invaded her personal space and made her feel uncomfortable. Using her mother, Student 4 demonstrated this to the Panel. The Panel heard Student 4 explain that during a class experiment where a semi permeable membrane was being used with a white starch solution, The teacher insinuated that it looked like a condom. Student 4 said that she felt the comment was 'inappropriate for a teacher – maybe a 15 year old student but not a teacher.' She told the Panel that she was one of the students to complain about the slide show incident which she found disgusting.

Cross-examination

Student 4 told the Panel that Principal 1 interviewed her regarding the slide show incident. She said that she did not have a high regard of the teacher as a teacher and that the teacher had told the students he was not a qualified biology teacher. Student 4 said that she would not interrupt the teacher but would put her hand up to offer to explain things to the class.

Student 4 told the Panel that she could not remember much about the membrane incident and that the class settled down to work after this. Student 4 did not agree with Ms Duffy that the teacher 'just patted students'. Student 4 said that the classroom was cramped and that conditions were squashed and there was not much room to move around. She denied that the teacher had accused her of cheating.

Student 4 informed the Panel that the slide show took up the whole of the lesson, either a single or double lesson. She was not sure. She said that two slides were on the screen at once and that maybe indigenous music was being played. She felt that the 'immaturity' comment was not specifically aimed at the particular slide. Student 4 said that the slide was inappropriate because as a professional the teacher should not have shown it.

She agreed that the boys in class were laughing and mucking around and making comments before the teacher said anything about the membrane experiment.

Student 5

Student 5 confirmed under oath that her written statement was true and correct. She told the Panel that she is a Year 12 student at the College.

Student 5 told the Panel that in class when you asked a question the teacher would come too close and invade your personal space. In her written statement she said that he would put his arm around her and make her feel uncomfortable.

Cross-examination

When asked if the teacher was just 'patting' the students' shoulders, Student 5 told the Panel that the teacher would put his arm around you and leave it there. She said he did it to boys and girls. Student 5 said that when the classroom was full the space could be a bit tight.

Student 5 told the Panel that she did not watch the slide show as she was talking. But she could recall that there were 2 slides being shown and that they were on the screen for a very short time. When the slide of the teacher naked in the shower was shown, the whole class laughed. When the next slide came up the teacher told the class that they were too immature to accept the photo.

In response to questioning regarding the discrepancy in her handwritten statement Student 5 said that she must have left out his 'immaturity' comment. She was adamant that he talked over the slides to say they were immature, etc. Student 5 told the Panel that afterwards students talked about it in their own groups. She said that she was offended and shocked. "It was one of my teachers – you don't expect this!"

Student 6

Student 6 confirmed under oath that his written statement was true and correct. He told the Panel that he is a Year 12 student at the College.

Student 6 told the Panel that he signed the student petition because he believed that most of the points were true. Student 6 said that he could not support to the third point

involving inappropriate sexual comments in and outside of the classroom. Student 6 explained to the Panel that during the osmosis experiment in the biology class all of the boys were laughing and the teacher said, "You can make your own analogy."

Student 6 could not recall any offensive sexual comments out of class. He felt that the touching of students only occurred with the girls. He saw it but it never happened to him. He believes that after the slide show incident two students went to see the Year level co-ordinator and then other students were interviewed. His handwritten statement was done a couple of days later.

Cross-examination

Student 6 acknowledged that students were joking during the osmosis experiment with the cellulose bag but he felt that it was inappropriate for the teacher to make the comment that the teacher did. Student 6 said he thought it was odd but the class moved on with their work.

Student 6 told the Panel that he watched the slide show and that 2 slides were shown at once. He said that they were not on for very long. Student 6 felt that the teacher's 'immaturity' comment was during the slide show and after it.

The Panel was told that the teacher put his arms around both girls and boys but mainly girls.

Student 7

Student 7 confirmed under oath that her written statement was true and correct. She said that she was a Year 12 student in 2004 and is presently a 2nd Year Nursing student at University.

Student 7 told the Panel that in 2002 when a Year 10 student she was a shy, withdrawn, quiet and a nervous student. She said that the teacher was her Sports teacher in Semesters 1 and 2 of 2002. Student 7 said that the teacher sometimes made comments on the girls' dress. He would say things like 'skirts flying in the air' and comment on being able to see boxers or briefs.

Student 7 informed the Panel that in Semesters 1 and 2 of 2002 the teacher would go into the girls' change room. He would come in to hurry them up. Other teachers would clearly announce themselves before coming in but the teacher would just 'barge in'. Student 7 could not recall any other male teachers entering the change rooms but if they did they would warn the girls. She said the teacher would say things like 'you shouldn't use aerosol, you should use roll-on.' She said he would enter the change room about twice a month and all of the girls would tell him to leave. Student 7 told the Panel that she reported him to one of the sports/PE teachers who told her that there was not a lot she could do and that Student 7 should see Teacher 1. Student 7 said that Teacher 1 said 'to keep your distance if you are feeling intimidated.'

Student 7 told the Panel that on one occasion the teacher entered the change rooms and told her friend that she was wearing the wrong bra. Her friend made her swear not to tell anyone. Student 7 said that she broke school rules and wore clothing that did not

show her body. In that way "I was protected." She said that she eventually stopped sport as a subject because she felt so uncomfortable. Student 7 told the Panel that a teacher should not be touching someone in a vulnerable position regardless if he thought it was an inappropriate bra.

The Panel heard that students were attending dance classes to prepare for the Deb Ball. Student 7 said that the teacher would say things like "You've got the hips to move." She believed that no other teacher danced with her like the teacher. Student 7 told the Panel that she would leave the dance with excuses and then return when the teacher had passed by.

Student 7 told the Panel that she made a written statement because her sister had started Year 7 at the College in 2005. When Student 7 found out that the teacher was going to be her sister's home teacher she was concerned so she contacted Principal 1 and went to the school to see him.

Student 7 said that she had Teacher 2 for a science teacher in either Year 9 or 10.

Cross-examination

Student 7 told the Panel that the teacher came right into the girls' change rooms on 3 – 4 occasions. She said that he came into the room and stood near the brick wall. From that position he could see 10 – 15 students. Student 7 said that she reported it to Teacher 1 probably in the first half of Term 1. When asked if she was concerned that there was no follow up, Student 7 said that she was not as she was not at the College any more. She said that she was told that it would be followed up. She then stated that 'perhaps I'm getting confused as to when I reported it.'

In regard to the school sports uniform, Student 7 could not recall that it was part of the school uniform to wear bloomers under the skirt. She told the Panel that the teacher would make comments along the lines of, if the girls want the boys to see their underwear then it was their problem. She said that girls' underwear was not an issue for any other teacher.

Student 7 informed the Panel that she had not been taught PE/Sport by Teacher 8 and could not recall if Teacher 3 had taught her.

The Panel heard that Student 7's friend, Student 14, was the student whose bra strap was touched by the teacher. Student 7 told the Panel that she was next to Student 14 and another friend when the incident occurred. She said that Student 14 swore them to secrecy because she reminded them of her home problems and, as much as the touching of the bra was inappropriate, it was minor compared to all the other things on her mind.

Student 7 told the Panel that she missed heaps of sports sessions after deciding not to attend any more. She said that she went with students who were wagging or went to the Year 12 room.

Student 7 said that students did talk about the teacher's invasion of space. She said that as a professional, he should have known not to pull in so tight or swing out so much.

Student 8

Student 8 confirmed under oath that her written statement with 2 minor changes was true and correct. She told the Panel that she completed Year 12 in 2004 and was now working in an accounting firm.

Student 8 told the Panel that when she complained to her mother about the teacher's inappropriate behaviour towards her, her mother went to see Principal 1 'pretty well straight away.' In Student 8's written statement she said that the teacher would get too close when dancing with her during dance lessons; she said the way the teacher put his arms around her made her feel uncomfortable. She also complained in her statement that the teacher made inappropriate comments regarding her underwear and told her that she was pretty. Student 8 felt that the teacher was 'always singling her out'. This attention made her feel embarrassed.

Student 8 told the Panel that she remembered these incidents because "I couldn't forget them. They stand out in my mind and keep coming back." In response to a question regarding her personality and character at school, Student 8 said that she was a confident person but would not try to bring attention on to herself. She said she was not loud, but not quiet either.

The Panel heard that Student 8 did not discuss these concerns with anyone other than her mother. Student 8 said that she did talk to a close friend but that she only confided her feelings to her mother. She explained to the Panel that she was approached by Principal 1 regarding this investigation and thought the right thing to do was to become involved. She then made her written statement.

Cross-examination

Student 8 told the Panel that in regard to the school's sports uniform, specifically the wearing of bloomers, she was never told what to wear. She said that if she was wearing the wrong things she would 'have been told off.'

Student 8 said that she could not recall when the teacher made the comments about her underwear. She said that the teacher told her she was pretty during a sports lesson, and that the incidents of being held too closely during the dance classes probably happened at the start of the year.

The Panel heard that Student 8 told her mother immediately after the events occurred. She said that her mother complained to Principal 1 in August 'because I asked her to.' Student 8 said she did not see Principal 1 before this, as 'she didn't want to make a big deal out of it.'

Re-examination

Student 8 informed the Panel that she had previously made informal complaints, to the school but could not recall any details. She said that she had never complained of being stalked. She told the Panel that she felt like she was being singled out by the teacher

and felt uneasy. She feared that he might 'go over the line' and might get physically too close. She told the Panel that her then boyfriend was Student 19, whose father, Teacher 14, was a friend of the teacher.

When asked what she meant by 'over the line', Student 8 was unable to define or describe a response.

Student 9

Student 9 confirmed under oath that his written statement was true and correct. He told the Panel that he was now working as a labourer.

The Panel heard that in 2002, perhaps at the start of the year, Student 9 heard the teacher ask a female student why she did not have her usual sports skirt on. Student 9 said she was wearing tight, non school sports pants, and as the teacher asked her, he grabbed her on the bottom for a few seconds. Student 9 said that he was shocked when he saw this and could not believe that a teacher would do this. Student 9 said that he spoke to a few classmates and a teacher asked what they were talking about so he told him. Student 9 thought the teacher was Teacher 2, but other teachers offered as possibilities were Teacher 10 and Teacher 11.

Student 9 told the Panel that when he heard about the incidents involving the teacher and him leaving the school, he went to see Principal 1. He said that personal issues in his life involving people committing sexual abuse, has developed strong feelings in him regarding people abusing their power. Student 9 told the Panel that he still had a clear recollection of the incident.

Cross-examination

The Panel heard that Student 9 was about 2-3 metres away from the incident involving the teacher grabbing the female student's bottom. He said that he was a friend of Student 8.

Student 9 said that he went to see Principal 1 who asked him and Student 10 to make witness statements.

Student 10

Student 10 confirmed under oath that his written statement, with a minor change, was true and correct. He told the Panel that he completed Year 12 in 2004 and was now working as a farm hand.

Student 10 told the Panel that the teacher did not teach him. He said that he saw him around the school and that the teacher took sport, which involved about 3-4 home rooms. Student 10 said that he remembered the incident described by Student 9 because 'it wasn't right what I saw'. He thought the incident occurred in the first half of the year but he was not sure. He became involved in this process because Student 9 went to see Principal 1 and then both he and Student 9 made witness statements.

Cross-examination

Student 10 told the Panel that he couldn't remember the girl's name but she was wearing a sports uniform. Student 10 told the Panel that he was about 10-20 metres away from the incident and that both he and Student 9 discussed what they had seen straight away. He said that later on, Student 9 told him that he had reported the incident to his class teacher.

In response to Ms Duffy, Student 10 said that he is a friend of Student 8 but that he did not know her very well in Year 10. She is his girlfriend now.

Student 10 said that he made a statement over the phone to the Institute's investigator but had not attended a meeting with Principal 1 before giving the statement.

The teacher

The teacher confirmed under oath that his written statements were true and correct.

The teacher told the Panel that he was currently employed as a teacher at school 1. He stated that he taught Outdoor Education and Sport, and was the co-ordinator of weekend programs. He further stated that he had been a teacher at the College from 1993 until 2005 when he resigned. At the College he had held a number of positions including home room teacher, Outdoor Education co-ordinator as well as being the Occupational Health and Safety Co-ordinator.

The teacher described the girls' sports uniform policy at the College as being a skirt, shorts or skirt, and bloomers. The teacher stated that some girls complied with the uniform; others did not. He stated that teachers made discreet comments about uniform irregularities.

The teacher informed the Panel that as the Occupational Health and Safety Officer for the school he entered the girls' change room from time to time when inspecting the facilities. He did this when no student was present. The teacher stated that when he wished to hurry up the girls during sports classes he would call out from the entrance door of the change rooms at the top of the ramp. The Panel heard that most of the time female PE teachers would be present to hurry the girls up.

The teacher told the Panel that he worked with Teacher 4 and a professional dance instructor for the dancing class, which was part of the Year 10 Sport program. The sports staff worked with the dance professional to provide additional instruction to the students. The teacher explained that the professional dance instructor would demonstrate a dance and then the group of students and staff would move into a progressive dance. The teacher told the Panel that the Year 10 students responded in a variety of ways to the dance classes. Some were awkward and embarrassed, some keen and enthusiastic, some hesitant, and some defiant. The teacher stated that he did not take a scheduled dance class after the complaint about the way he was alleged to have held a female student.

The teacher told the Panel that he took Long Service Leave at the end of 2003. When he returned to the school in 2004 he was told that his position was now a ½ position. He

challenged this through the Union and the position was subsequently changed to a full-time position. Principal 1, asked him to help with the Year 10 Biology class. The teacher told the Panel that he had not previously taught Year 10 Biology and that he had only taught Year 7 Science. He stated that he saw Year 10 Biology as a challenge, but he felt that he did not have enough lead time or college support to fully prepare in an unfamiliar subject area.

The teacher told the Panel that he was only aware of the petition signed by students after he was suspended by Principal 1. He stated that students were aware of the fact that his experience as a Biology teacher was limited and that he did have some difficulty teaching more able students. One student in particular, Student 4 was outspoken and would complain, not aggressively, about his teaching.

The teacher produced a diagram to show the layout of the Biology room including the practical areas at the outside edge of the room. The teacher demonstrated how he stood in relation to a student when correcting a student's work. He explained that the space was 'tight' and difficult to move around the room and students without touching them. He showed how he would touch an arm, or shoulder or back while leaning over a student. The teacher told the Panel that the Principal had spoken to him about inadvertently touching students. He also told the Panel that he changed his strategy after that and that he now finds physical touching uncomfortable. He said that now he constantly tries to 'back off' and 'pull back' and gestures to students rather than touch them. He says he feels 'stiff and starchy' and 'freezes when students come near me'.

In response to an incident when Student 4 collapsed in class, the teacher provided first aid which included touching her chest to check her breathing. The teacher told the Panel that he acted in accordance with first aid protocols. The Panel heard that the teacher as an advanced First Aid Instructor simply followed standard ambulance protocol. He stated that he had ensured that Student 4 was breathing. He further told the Panel that he had not been aware that Student 4 had a heart problem.

In describing the discussion during a Science lesson on diffusion, the teacher acknowledged that he had likened the white liquid in a cellulose bag to a condom.

The teacher screened the slide show to the Panel twice as he recalled presenting it to the biology class and described the circumstances which led to the showing of a slide of him naked in a Year 10 Biology class. The show consisted of dual images with soundtrack of music and songs that highlighted the themes he was endeavoring to highlight. He told the Panel that the Biology course proper was over and that he sought a "creative, but relevant, topic". He stated that he decided to use slides from a recent trip to an aboriginal community as these touched on a number of issues in biology such as DNA, genetics etc. He said that he had been under pressure to complete student reports and that at 5am when he was preparing the activity he simply forgot to edit the slide show. He used the set of slides for another purpose and decided to show them without culling. He described the class as restless and that the students talked and appeared to show little attention. The teacher said the slide in question, of him naked, was screened briefly and that he immediately clicked off it when he realized what was on the screen. The teacher told the Panel that he thought he would 'try to move on

because most students had not seen it'. He said that he did not want to make "a big deal of" or draw attention to the slide, so he spoke generally about the students not being mature enough to handle the slide show. The teacher stated that the slide show lasted between 40 and 50 minutes. He said that he was annoyed at himself for not editing the slide show properly. The teacher stated that he returned to the staff room to compose himself when Principal 1 confronted him and asked him to bring the slide to his office. The teacher stated that he was busy and did not go to the Principal's office. He also stated that he had wanted a union representative to go with him as he felt "intimidated by the Principal". The teacher did go to the Principal's office with a union representative after school where he received the suspension notice from Principal 1.

Cross-examination

In response to a question from Ms Sheehan regarding the slides shown to the Biology class, the teacher stated that the slides were part of a set, which he used for fathers and sons workshops. They were edited for different groups and he had shown them four or five times. The Panel heard that the teacher usually edited the slides before showing them to school groups. He said that it was a quick extraction process 'take this one, this one, etc' and that this time he forgot to take out the offending slide. The teacher agreed that for some students the slide (of him naked) was offensive. The teacher further stated that the "degree to which students were upset has been made worse by my lack of ability to apologise to the students". He believed that the impact of the slide was minimal. He said that he did not pick up the extent of the students' reaction and that he did not believe that the slide was the only matter of concern to the students. The teacher stated that he felt that two students had complained and that "more energy was given to the complaint than was warranted". In response to a question he said that the degree of upset was not evident to him at the time of the incident. He felt that he should have been part of the process following the episode. The teacher told the Panel that his comment to the class regarding them not being 'mature enough' related to the slide show generally and not to the offending slide. Asking all the students to give their account of the slide episode escalated the issue. The student discussion and gossip about him was inaccurate and allowed to continue because he was not being given support or allowed to finalise the issue.

The teacher objected to the notion of him "invading personal space" in regard to his closeness to a student. The teacher claimed that he watched where he was in relation to students, particularly after the 2002 meeting with Principal 1. He said that he had no intention of invading anyone's personal space. He told the Panel that he does not have a problem with students saying that he invaded their space but it does not mean that he did it. He said that he has become more sensitive and focused on cues that students give of not wanting him too close.

The teacher told the Panel that he was surprised by Student 8's feelings as he thought that he had a good relationship with her.

The teacher stated that he did not know why Student 11 was not attending his classes and does not recall picking up any cues as to how she felt towards him. The teacher maintained that Student 11 was left in his class when she should or could have been moved to another class. The teacher told the Panel that he did not seek permission from

Teacher 1 to ring the mother of student 11. He said that the general practice in the school is to take responsibility for students' work requirements, therefore he did not have to get permission to phone parents. The Panel heard that the teacher went to Teacher 1 after he had phoned the mother of student 8 because he was annoyed when he found out from her, that Student 11 had issues with him and that a complaint had been made against him and he knew nothing about it.

The teacher stated that he had been told by the Principal to be cautious because some female students were uncomfortable in his presence. In response to Ms Sheehan's comment that the teacher must have known that some students had complained about him, the teacher stated that he had been warned by the Principal to watch personal space in the dancing class. He said that he had no sense that there was a student like Student 11 sitting in his class thinking, "Oh my god, I've got the teacher!"

The teacher explained that he used the word "beautiful" in a general way, as the word 'terrific' is used, when he described a student as "beautiful". He further stated that after 2002 he had changed and had concentrated on improving his ways. He stated that his change of style would have been obvious to some teachers but not to others. For example he spoke to Teacher 4 about not taking the dance class. In response to a question he said it was not that he was not doing it well before, rather it was that his tactile style was more prone to be misinterpreted.

The teacher said that he initiated a conversation with Teacher 1 regarding the concerns about him that Principal 1 had raised. He said that Teacher 1 did not raise or discuss any of these issues. The teacher maintains that he was not told not to ring the mother of Student 11. With regard to Student 11, the teacher stated that he reflected on the matters discussed and wondered how he related to Student 11. He stated that he wanted to rectify the matter with her, but was unwilling to act after being told not to approach the student.

The teacher stated that he has been a "tactile" person and some actions and reactions were "natural". He claimed that his focus was on "the big picture" and managing it, which may have led to some touching of students. He stated that he felt that he had improved a lot since 2004.

When questioned about entering the girls' change room, the teacher stated that he did not go into the girls' change room. He expressed surprise that no member of staff had knowledge of the claim that he had entered the change room. In response to a further question on the claim that he had entered the girls' change room, the teacher responded " How could I go into a room with 30 students and for no other staff to have commented on it, or no other students (other than Student 7 and Student 1) complain? I know that I did not go into the change room." In response to Teacher 2's evidence that he heard students talking about the teacher being present when students were changing, the teacher said that he believed Teacher 2's evidence suggested that the girls might have been frivolous and he did not take them seriously.

When questioned about the purpose of the slides, the teacher stated that the slides were an attempt to demonstrate maleness by comparing male and female indigenous

people as well as the diverse forms of human beings. Later when questioned about the purpose of the slide show, the teacher stated that it had been used commercially in a course for fathers and sons. He further stated that he considered the slides to be broad based and suitable for students. The slides had been used for different purposes.

When questioned about disagreements between himself and the principal, the teacher stated that the issues covered workload, occupational health and safety, and style of interaction.

Vice Principal

The Vice Principal confirmed under oath that her written statement was correct. The Vice Principal is the Assistant Principal of school 1, where the teacher is currently employed.

The Vice Principal gave details of school 1 – a residential college for 65 mostly ‘at risk’ students which uses both Western and other cultural approaches in its curriculum. The Vice Principal told the Panel that because of the physical and emotional needs of the students it was important for teachers to work closely with students. She stated that with all staff there was a need for thoroughness, and that in the areas of pre-planning, planning and execution, the teacher has been excellent.

The Vice Principal informed the Panel of a recent incident that she had witnessed, where the teacher immediately withdrew from a student who had come to him for a cuddle. She considered that his interaction with students has been appropriate and that she was “stunned” by these allegations. In the Vice Principal’s written statement, she stated that she had never observed or heard anything that would bring the teacher’s fitness to teach into question.

Cross-examination

The Vice Principal stated that the requirements for a teacher at school 1 were such that teachers need to be prepared to evolve (as teachers) and to be involved in all aspects of the school. She said teachers worked long hours, taught across the curriculum and needed to be supportive of their colleagues.

School Counselor

The School Counselor confirmed under oath that his written statement was correct. The School Counselor told the Panel that he has been a School Counselor at the College since 1990.

The School Counselor said that he had heard no direct complaint against the teacher, except that the teacher’s work demands of students were high. He explained that the counselling service was well attended and that complaints would normally be made to him if students felt aggrieved. There had been no complaints about the teacher.

Cross-examination

The School Counselor told the Panel that there are some students who would not be comfortable using the counseling service but that generally, there would be someone on staff with whom they could talk. The School Counselor said that he was only aware

of the 'dance class' incident and assumed that it involved only one student. The teacher had told him that he did not want to make young people feel uncomfortable and that he would make adjustments to his manner and style. The School Counselor said that when the teacher found out about Student 11 being uncomfortable in his classes, he was upset that she had not been moved to another class if that was the case. He said that the teacher was annoyed that he had not been informed of Student 11's complaint.

The School Counselor told the Panel that in 2003 he was taking a class in an adjoining room to the teacher and was not aware of any problems. The School Counselor said that the teacher had been annoyed that he had not been informed by the Year 11 co-ordinator that allegations had been made about him and that there was no opportunity to have the matter resolved. The School Counselor knew that the teacher felt that he should have been allowed to apologise to the students after he became aware that the slide (of the teacher naked) had offended some students. He said that the teacher was distressed at his oversight of showing the offending slide.

The School Counselor told the Panel that given the significant number of allegations, issues and students involved, he was surprised that none of the school counselors had any knowledge of the complaints.

The School Counselor told the Panel that since 2002 he had not noticed any change in the teacher's behaviour towards students.

Teacher 3

Teacher 3 gave evidence to the hearing via a telephone link. Under affirmation she confirmed that her written statement was true and correct. Teacher 3 told the Panel that she was a Health and Physical Education teacher at the College from 2000 to August 2005. Between 2003 and 2005 she was a co-ordinator responsible for the Health and Physical Education curriculum.

Teacher 3 told the Panel that the teacher was on leave for 1 year during her time at the College but that she worked with him at all other times. This included organizing and staffing camps and outdoor education activities, as well as sharing equipment and ideas. She said that she also taught 3 to 4 sessions with him.

Teacher 3 said that she had never observed the teacher talking to female students inappropriately about their sports uniforms. She said that the wearing of bloomers was not taken seriously by students and that she had cautioned many students about that part of their uniform.

Cross-examination

Teacher 3 told the Panel that it was accepted that male teachers would not enter female change rooms at the College. Teacher 3 stated that she did not teach sport with the teacher during Terms 1 and 2, 2002 and that she could not recall teaching Student 7 although in 2004 she may have taught her as an emergency teacher. Teacher 3 stated that she had heard about the allegations made by Student 7, but could not recall having any conversations with Student 7. Teacher 3 also told the Panel that she was not sure whether or not she had heard the teacher speak to the girls about dress. The

girls would have made a comment to her had they felt uncomfortable. Teacher 3 stated that the only comments which she had heard about the teacher from the students was "that he was strict". She said that it was not unusual for one teacher to be left on their own at the change rooms while the other teacher put the equipment away.

Teacher 4

Teacher 4 confirmed under oath that his written statement was correct. Teacher 4 has been a Sports and Physical Education teacher at the College for 33 years

Teacher 4 stated that he had been involved with the Dance classes at the College for six years from 1999 to 2004. He described the method of dance instruction as one where boys were on one side of a circle of students and girls on the other and that the students progressed from one partner to another. Teacher 4 told the Panel that dance instructors took the lessons and that teachers assisted by acting as partners. Teacher 4 stated that he was not aware of any student complaints about the teacher. He further stated that after August 2002 the teacher did not continue with the Dance classes. Teacher 4 said that he had no recollection of discussing the dance issue with the School Counselor in 2002. The Panel heard that no students ever 'waved' him on and he could not recall any students 'waving' the teacher on during dance lessons.

Teacher 4 told the Panel that he was not aware of any change in the teacher's behaviour towards students after 2002.

In response to questions from the Panel, Teacher 4 stated that the Dance classes lasted for 4 weeks. He further stated that as the dance was progressive dance partners would be together for about 30 seconds.

Teacher 5

Teacher 5 confirmed under oath that his written statement was correct. The paragraph numbering was changed to give consecutive numbers throughout the document. Teacher 5 has been a teacher and Head of Sport at the College since 1999.

Teacher 5 told the Panel his teaching duties took up about 50% of his duties. He said that he would try to have regular contact with coaches and teachers either in person or by email. Teacher 5 described the sports uniform and the changes which have been made. Shorts or a track suit are now the outside garment. He indicated that netball skirts made the girls feel uncomfortable, and that as a duty of care, a change was made. Teacher 5 stated that he spoke to all groups about the dress expectations for sport.

Cross-examination

Teacher 5 told the Panel that if students were not attending classes, staff were encouraged to phone home. He added that the appropriate course of action for repeat offenders would be to notify the year level co-ordinator. Teacher 5 stated that there had been no observable change in the behaviour of the teacher between 2002 and 2004. Teacher 5 gave details of the sports arrangements at the school in 2002 and 2004, but could not recall if the teacher was on year 9 Sport in 2004.

Teacher 6

Teacher 6 confirmed under oath that his written statement was correct. Teacher 6 has been a teacher at the College since 1984. He is currently the Year 9 co-ordinator.

Teacher 6 stated that it would be a serious situation if a male staff member were to enter the girls' change room. He told the Panel that should this happen, comments would be passed on to him. Teacher 6 said that rock climbing photographs of boys and girls were taken for the school magazine to promote the course.

Cross-examination

Teacher 6 agreed with Counsel Assisting that any concern about student absences would firstly be raised with the home room teacher then the year level co-ordinator if absences continued. Teacher 6 worked with the teacher as a sports teacher and as an outdoor education teacher. He described the teacher as having a 'tactile' style of interaction with students. He stated that he had no knowledge of the teacher's alleged inappropriate behaviour between 2002 and 2004. He agreed with Counsel Assisting that if students told parents or other teachers of their concerns, that he would not necessarily know. Teacher 6 stated that he had not observed any change in the teacher's behaviour towards students.

In response to questioning by Counsel for the teacher, Teacher 6 stated that photos taken during rock climbing were not put on general display, but given to the editor of the school magazine. There is no set procedure for informing year level co-ordinator, subject coordinators or home room teachers of concerns about students.

Teacher 7

Teacher 7 confirmed under oath that her written statement was correct. Teacher 7 was a physical education/outdoor education/science teacher at the College between 2001 and 2004. She is now teaching at school 2.

Teacher 7 stated that she taught 4 classes a week with the teacher in 2002-2003, including team teaching. She described the school uniform policy for girls as including track pants, shorts and skirt. She said that the netball teams used a skirt with a t-shirt. Teacher 7 told the Panel that she had a good relationship with students and that both boys and girls often spoke to her after sport about issues which interested them including relationships, parties, friends and 'grumpy' teachers. She stated that there were only small references to the teacher and these comments related to his strictness.

Cross-examination

Teacher 7 told the Panel that she could only remember ever having a male teacher with her therefore there must always have been a male/female combination at the change rooms. She said that 1 or 2 teachers would unlock the change room doors and the other teachers would bring the students. The Panel heard that usually another person would be able to assist. Teacher 7 stated that there were no observable changes in the teacher's behaviour after 2002.

Teacher 8

Teacher 8 confirmed under oath that her written statement was correct with the exception of the years she took maternity leave (1999 to 2002) and the years she co-taught with the teacher (1993 -1999). Teacher 8 has been a teacher at the College since 1992 and has worked in a full time and a part-time capacity with maternity leave breaks.

Teacher 8 stated that she co-taught physical education/health with the teacher from 1993 to 1999 and that they were also teachers at the same school camps. Teacher 8 stated that when it was necessary to “hurry up” boys in the change room she would call from outside the change rooms or get another student to help. She described the school sports uniform policy and stated that girls were asked not to wear black bras. Teacher 8 stated she would speak to female students about issues such as not wearing black bras under white sports tops. She said that boxers hanging down out of their shorts, for both boys and girls, was inappropriate and students were asked not to wear them.

Teacher 8 described the Dance classes and the progressive nature of the formation of dancers. She stated that Year 10 students often felt uncomfortable when dancing. They did not want to be too close together. She stated that all staff danced with the students and that “the teacher knew how to dance properly. I do not believe that he behaved differently from the other staff”.

Cross-examination

Teacher 8 told the Panel that she was not at the school in 2002 and did part-time work in 2003 when she took some Dance classes. She did not work at the school in 2004. Teacher 8 stated that she did not observe any change in style of the teacher between 1999 and 2003. Teacher 8 stated that student complaints could be directed to year level coordinators, home room teachers or counselors.

In response to questioning from Counsel Assisting, Teacher 8 told the Panel that if a male teacher had an issue with a female student’s bra he would ask the female teachers if it was appropriate clothing and ask the female staff to follow it up.

Counsel for the teacher asked Teacher 8 if the teacher had ever asked her to follow-up on an issue with a student’s bra. “No he hadn’t.” she said.

Principal 2

Principal 2 confirmed under affirmation that his written statement was correct. Principal 2 is the Principal of school 1, a position that he has held since May 2004.

Principal 2 described school 1 as a small residential school for 63 students, a number of whom have behavioral problems. The school has a strong after-hours program. Six new staff members have been engaged since 2005 including the teacher. Principal 2 stated that the teaching team needs special skills. Initially the teacher demanded high standards of students and these standards were too demanding. After Principal 2 had a discussion with the teacher, he successfully modified his demands on students. Principal 2 described the teacher as “strong, firm, and encouraging”. In reply to a

question as to whether Principal 2 knew about the circumstances of the teacher leaving his previous school, Principal 2 stated that the teacher had told him that he did not get on well with the principal at his former school and that allegations had been made about him including that he invaded student space at dancing lessons, and that it was alleged that the teacher had been in the girls' change room. Principal 2 stated that the teacher had conceded that he had danced with girl students in the dance lesson, but that he was not sure of the sense in which he had invaded a student's personal space. He also stated that the teacher had disputed the allegation that he had been in the girls' change room. Principal 2 stated that the teacher claimed that he had never been given 'due process' at the College.

DISCUSSION OF EVIDENCE

The Panel considers that the witnesses who gave evidence for the Institute were credible and measured in their recollections of what they claimed had transpired. The evidence raises the possibility of possible sexual misconduct on the part of the teacher. However, this inference needs to be balanced against adolescent sensitivities, expectations and reactions to what adolescents perceive as suggestive behaviours of a sexual nature. The Panel accepts on the evidence of Principal 1 that in 2002 Teacher 1 told him about the concerns with the teacher's conduct raised by some of the female students.

Subsequently on two occasions events two mothers came to see him. These were the mother of student 8 who said that her daughter complained to her that the teacher had invaded her personal space. The mother of student 11 said that Student 11 had stopped attending the teacher's outdoor fieldwork sessions because of discomfort in his presence. The Panel accepts that in 2002 the teacher was told by Principal 1 of the complaints and cautioned not to get too close in a physically sense to students. It also accepts that Principal 1 did not divulge the specifics of the complaints, including names of students, to the teacher. The teacher's evidence that he was unaware of specific complaints and students' names is accepted by the Panel, as is his stated concern for Student 11 being left in his class when she clearly felt uncomfortable with him. It accepts that the teacher ceased his participation in the dance classes once aware of the complaint about how he held female students.

However the evidence of a number of teachers at the College who appeared as character witnesses for the teacher indicated that the teacher did not heed this caution, as there was no perceived change in his interactions with students except for ceasing the dance classes. However, the clear evidence from witnesses from school 1, his present school, supports the teacher's contention that he has changed in his interactions towards students. The Panel accepts that the teacher has, since 2004, modified his interaction with students.

Principal 1 became aware of further complaints in June 2004 when the slide incident arose. At this time Teacher 1 informed him of a petition of complaint against the teacher prepared by the year 10 biology class. Two biology students, Student 4 and Student 12 complained directly to him about the slide of the teacher naked under a bush shower. The teacher was subsequently suspended for the remainder of the term and refused an opportunity to apologise to the class due to Principal 1's concerns as to how such an apology would best be carried out. In general other teachers were not made aware of

student complaints against a teacher nor were the names of student complainants given to the teacher concerned.

Teacher 1's evidence corroborates that of Principal 1 and refers to the comments of discomfort made by at least two but possibly three female students to him. The students said that the teacher made them feel "yucky"; invaded their "personal space" and was "too touchy" during dance classes. After assuring himself that their concerns were genuine Teacher 1 reported to Principal 1 as he did in 2004 when Student 4 came to him about the slide show.

Notwithstanding the teacher's robust denial that he never entered the girls' change room and the evidence of colleagues, the Panel relied on the clear, measured and adamant recall of Student 1 and Student 7 who allege that he did so on more than one occasion. The teacher said that he never entered the change room beyond the entrance area. The evidence showed that the usual practice was for male teachers to seek assistance from a female teacher or students to hurry students along. Counsel for the teacher submitted that no other female student had lodged a complaint about the teacher entering the change room. Nor was the alleged incident the subject of general gossip around the school. This evidence, including the teacher's adamant denial is, in the Panel's view countered by the highly credible evidence of Student 7 who, at the time, felt that a male teacher should not behave as he did, entering the female change room without warning. Concern for her sister who was to become a student in the teacher's sports class in 2005 prompted her and her mother to report the teacher's behaviour to Principal 1. The Panel finds that the teacher entered the girls' change room on a number of occasions.

The Panel accepts that there were questions about the teacher's suitability to teach the biology class. The teacher conceded that he was unfamiliar with the subject and did not have sufficient lead time to prepare. It also accepts that because of this he had some difficulty in engaging students, particularly Student 4, who was studying advanced biology. She complained about his teaching to the Head of Biology. The Panel is satisfied that the evidence of the witnesses of his former biology class confirms his sheer carelessness and lack of sensitivity in the presentation of the slide of him naked under a bush shower. Further, the students' evidence confirms that during the presentation of the osmosis experiment he inappropriately handled comments which had a sexual innuendo.

The Panel does not accept the teacher's explanations about the reasons for his showing the slides, namely that he was endeavouring to be creative by encouraging students to explore broad based comparative issues of gender etc with an indigenous society. The slides, which the Panel viewed, were prepared by the teacher for his commercial activities with a father and son program and consist primarily of family photos, most taken in an aboriginal community, accompanied by selections of music/songs that the teacher considered reinforced the points that he was seeking to make. The Panel, however, did not consider that the presentation was cogent in its alleged purpose and thereby was not persuaded that the slides were relevant to biology. The Panel accept that their viewing of the slides may not have exactly replicated the classroom situation and that, like some of the students, the offending slide was missed by one Panel

member on the first presentation. However this does not detract from the fact that a teacher screened a slide of himself naked to the class. Further it does not accept that he inadvertently forgot to remove the offending slide. The evidence points to his being a person who meticulously prepared for his classes and Principal 1 had already warned him about the 2002 complaints. If for no other reason than this warning the slide should have been removed to ensure no misunderstandings arose regarding its inclusion.

Taking into account the evident space restrictions of the biology class room that could necessitate touching to pass by another person the Panel is nevertheless satisfied, on the evidence before it, that the teacher's interactions with students caused a great deal of discomfort to students who perceived his touching as an invasion of their personal space. The teacher claims that he now "backs off", "pulls back" and "freezes" when students approach him. As stated earlier, this evidence is contradicted by his former colleagues who claim not to have noted a change in his behaviours between 2002-2004. The Panel does accept, however, that the teacher's present colleagues gave strong evidence in support of his manner and interactions with students.

In relation to the allegations outlined in the Notice of Hearing the Panel finds:

1. In 2002 during outdoor and physical education program, the teacher

a. Commented to a female year 10 student about her underwear

The Panel does not question the credibility of the witnesses but agrees with Counsel for the teacher that this allegation lacks specificity and is therefore not corroborated.

b. Told a female year 10 student she was pretty

The Panel finds Student 8 a credible witness. The Panel accepts Student 8's evidence that the teacher singled her out and finds the allegation substantiated.

c. During a dance class, held a year 10 female student inappropriately

The Panel finds on the balance of probabilities, find that the teacher did hold a year 10 female student inappropriately in the dance classes.

2. In 2002 during year 10 sport classes, the teacher

a. Entered the female students change room at the start of a class and at the end of a class while female students were changing

The Panel heard conflicting evidence in regards to this allegation. It found Student 7 to be a more credible witness and finds that the teacher did enter the female change room as alleged.

b. Commented to a female student in the change room that her bra was not suitable and adjusted her bra strap

The Panel agree with Counsel for the teacher that the allegation lacks specificity and cannot be verified.

c. Commented to female students about their underwear

The Panel agrees with Counsel for the teacher that this allegation lacks specificity and is not corroborated.

d. During a dance class, held a female student inappropriately

The Panel accepts, unequivocally, that the former year 10 students who gave evidence, Student 8 and Student 7, felt a significant level of personal discomfort and unease in the

progressive dancing classes when partnered by the teacher. The Panel find that the teacher did hold a year 10 female student inappropriately.

e. Made comments to a female student about her figure

The Panel accepts Student 8's evidence that the teacher seemed to single her out. The Panel finds the allegation substantiated.

3. In 2003 in the school yard, the teacher

a. Touched a female year 10 student on the bottom

As neither Student 9 nor his friend, Student 10 was able to assist the Panel in clarifying the time and place of the incident and name the girl concerned, the allegation is not substantiated.

4. In 2004 during a year 10 biology class, the teacher

a. Referred to an experiment as appearing like a filled condom

The Panel agree with Counsel Assisting that this event occurred but that it was a 'one off' incident.

b. Put his arm around students when helping them with their work

It is not in dispute that the teacher is a tactile person and lent over students with his arms around their shoulder (as demonstrated at the hearing) when assisting them and giving them feedback about their work. The teacher showed a paucity of insight as to the importance of maintaining clear professional boundaries with students to avoid his actions and comments being misconstrued. The Panel find that the teacher did put his arm around students when helping them with their work.

c. During a slide presentation, showed a slide of himself naked having a bush shower

Taking account of the evidence about the teacher's meticulous planning and conscientiousness, the Panel does not accept the teacher's claim that he inadvertently left the slide of himself having a bush shower in the slide show presented to the class. It was clear that he had not prepared a lesson plan for the presentation and that whilst some of the students were inattentive and disinterested, others watching the slides were shocked when this one was screened and alerted their classmates. The Panel find this allegation substantiated.

5. In 2004 on 2 occasions the teacher entered the female students change rooms while year 9 female students were dressing after sport.

The Panel accepts and relies on the clear and credible evidence of Student 1 who was in Year 9 in 2004 as substantiating this allegation.

FINDINGS OF THE PANEL UNDER 42(1) OF THE ACT

The findings against the teacher on allegations 1b; 1c; 2a; 2d; 2e; 4b; 4c; and 5 are exacerbated by his lack of sensitivity to the cues of physical discomfort expressed by female students. His tactile behaviours and lack of insight as to why it was inappropriate to show a slide of himself naked having a bush shower to a mixed year 10 biology class illustrated his lack of sensitivity. The Act does not define serious misconduct and according to Kellam J in *Parr* will depend upon the facts of each case. The Panel by no means consider the teacher's conduct as trivial or of momentary effect given the impact on the witnesses who expressed their discomfort and the impact on two female students, Student 8 and Student 11 who discontinued their participation in his classes.

However on the evidence before it, the Panel cannot find a consistent pattern of inappropriate conduct suggestive of sexual impropriety as implied by the allegations.

When giving evidence and responding to questions, the teacher demonstrated little insight into the impact of his behaviour on the students - both male and female. He was not able to satisfactorily explain his rationale for screening the slides and lamented only the lack of opportunity to apologise to the class, which he apparently did not think necessary until he learnt of the complaint. He was unaware of any school policy that addressed a code of teacher/student interaction. Overall the Panel has formed the view that the teacher would benefit from attendance at professional development courses relating to issues pertaining to sexual harassment and the perils of blurring the professional and personal boundary.

The Panel therefore finds that the teacher's behaviours constitute misconduct deserving of disapproval and modification but not serious misconduct as required under the Section 42(1) of the Act and the principles expressed in the case law presented to the Panel.

Because the Panel did not find the teacher guilty of serious misconduct the teacher is fit to continue to teach.



.....
Marilyn Mooney, CHAIRPERSON



.....
Norm Fary, REGISTERED TEACHER



.....
Loula Rodopoulos, SPECIALIST MEMBER