

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 052

REGISTERED TEACHER: **Kenneth William HOCKING**

PANEL MEMBERS

Susan Halliday	Chairperson
Ian Watkins	Registered Teacher
Kay Bodna	Panel Member

ATTENDANCE: The teacher attended the hearing and was not represented.

Counsel Assisting: Ms A Sheehan, with Ms A Haslam solicitor instructing.

DATE OF HEARING: 20 & 21 August 2007

DETERMINATION UNDER SECTION 2.6.46(2):

On 3 September 2007 the Panel decided to cancel the registration of the teacher.

REASONS

BACKGROUND

The teacher has been a registered teacher since 31 December 2002. He has not paid the registration fee for 2007.

By letter dated 26 May 2006, the employer notified the Victorian Institute of Teaching (the Institute) that it had taken action in relation to the alleged serious incompetence, serious misconduct and/or lack of fitness to teach of registered teacher the teacher. The teacher resigned his employment with effect from 25 May 2006.

The matter was referred to the Disciplinary Proceedings Committee of the Victorian Institute of Teaching on 20 December 2006. The Committee requested an investigation into the allegations put by the employer, in relation to the teacher. On 16 May 2007 the Committee decided that the matter should proceed to a formal hearing.

A Panel was constituted in accordance with section 2.6.43 of the *Education and Training Reform Act 2006* (the Act).

A Notice of Formal Hearing dated 17 July 2007 was served upon the teacher by registered post 20 July 2007.

THE LAW

Section 2.6.31 of the Act states:

2.6.31 . 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 incompetence*, *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel is aware of and has had regard to cases and other case law on disciplinary matters to decide what is meant by the terms.

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.

Serious Incompetence - Simple negligence or errors of judgement are not sufficient for serious incompetence. However negligence of a sufficiently high level could amount to incompetence. If a teacher's practice is such that it would defeat the cause of imparting knowledge to students then this would be serious incompetence.

The conduct need not be criminal, committed in bad faith or involve moral wrong doing to be incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors* [1999] NZCA 145).

In *Zechner v Department of School Education* [1999] FCA 445 a teacher was dismissed for incompetence. After hearing the evidence the Court found that the teacher was incompetent. In finding incompetence the Court noted that the teacher was:

- unable to implement meaningful lessons
- unable to communicate ideas or information
- unable to develop rapport and confidence with students
- not trusted by parents or other teachers to perform the duties of a teacher
- poor relationship with colleagues
- unable to maintain teacher/student relationship
- deficiencies in curriculum knowledge
- unable to see the need to improve teaching skills.

These skills were fundamental requirements for a teacher and a failure to exercise these skills indicated incompetence.

Whether incompetence 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 of the act or omission. 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* decision of VCAT 2 December 1998).

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct. However if the teacher's conduct was caused by their inability to cope with the work situation, this may be incompetence but may also be lack of appropriate support. If the conduct was caused by ill health then it will not be misconduct (see *Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242). However the teacher may be unfit to teach.

Fitness To Teach - As stated in *Siguenza* a person who is fit to teach must show that they possess the knowledge to carry out their duties and responsibilities, and that they possess *sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails.*

In *Burgess v Board of Teacher Registration Queensland* [2003] QDC 159 the Queensland District Court stated that *any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher. The weight to be attached to that behaviour was a matter for the Board to determine.* The persistence of the inappropriate behaviour was relevant to a finding of unfitness to teach. A teacher's conduct should not impair *the standards of the profession to which the community entrusts the immensely important task of educating young children and adolescents.*

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

- Notice of Formal Hearing dated 17 July 2007
- 13 Witness Statements including attachments numbered **001 to 143**
- Transcript of interview between the investigator and the teacher of 21 February 2007 (71 pages) numbered **144 to 214**

The following exhibits were presented to the Panel:

- A.** Letter from the employer to the teacher dated 18/11/2005, attaching letter from the employer to principal 1 dated 18/11/2005
- B.** The teacher's Record of Service with the employer
- C.** Minutes of Meeting between principal 2 and the teacher, dated 3/3/1999, (also present teacher 1 and a union representative) reflecting discussions regarding curriculum, preparation, classroom management, care and maintenance of equipment, time management and skill levels of a teacher
- D.** Letter from principal 2 to the teacher, dated 31/8/1999, informing of failure to perform at the required level and outlining expectations for future progress

- E.** Letter from the teacher to principal 2 (undated), in response to principal 2's letter of 31/8/1999
- F.** Letter from principal 2 to the teacher dated 14/10/1999, acknowledging receipt of the teacher's undated letter and responding to queries raised
- G.** Letter from principal 2 to the teacher dated 1/11/2000, providing a reference
- H.** Letter from campus principal 1 to the teacher dated 25/10/2002
- I.** Statement of principal 1 dated 8/2/2007 and attachments numbered **1- 52**
- J.** 10 photographs taken by campus principal 2
- K.** Statement of campus principal 1 dated 21/2/2007 and attachments numbered **53 - 57**
- L.** Statement of campus principal 2 dated 8/2/2007 and attachments numbered **58 - 70**
- M.** Statement of teacher 2 dated 21/2/2007 and attachments numbered **93 - 108**
- N.** Statement of teacher 3 dated 8/2/2007 and attachments numbered **71 -84**
- O.** Letter from teacher 4 to the investigator dated 22/3/2007 and attachments numbering 22 pages in total.

THE ALLEGATIONS

Allegation 1

1. Failed to establish and maintain a safe and supportive learning environment for students in his care at the school -
 - a. Failed to adequately supervise students:
 - i. During 2005, left his metalwork class unsupervised. During this time a student in the class used a metal cutting guillotine.
 - ii. During 2005, allowed students in his metalwork classes to work in the woodwork room, unsupervised.
 - iii. During 2005, allowed students in his classes to play games unsupervised outside the classroom.
 - iv. During periods 1 and 2 on 14 November 2005, left several students in his metalwork class unsupervised. During this time:
 - Students used a thicknesser machine to cut wooden cricket bats.
 - Student 1 and some other students behaved in a dangerous manner, throwing things and banging pieces of metal and pop rivets against the table.

- Student 1 threw a hammer across the room which lodged in the wall, making a hole in it.
 - v. During period 4 on 14 November 2005, was not present in the metalwork room, when a student was using a drill.
 - vi. During period 6 on 20 October 2005, gave permission for students to play games, unsupervised, outside of the classroom. During this time, student 2 fell over and seriously injured his knee.
 - vii. On 26 July 2005, failed to supervise student 3, who cut his hand whilst using a drill.
 - viii. On 7 March 2005, during a class in the gym, failed to send student 4 to the sick bay even though he was pale and holding his head, crying.
 - ix. On 4 November 2005, did not attempt to check up on the wellbeing of student 5, who had walked out of the class in a distressed state.
- b. Failed to establish and maintain standards for student behaviour:
- i. On 14 November 2005, allowed students in his ball sport class to throw tennis balls with force at each other which resulted in a student being injured.
 - ii. During 2005, did not ensure students were appropriately disciplined by not enforcing detentions or suspensions or reporting student behaviour to school Level coordinators

Allegation 2

2. Failed to teach effectively and engage students in active learning –
- a. During 2005, failed to adequately plan or prepare activities for his ball sports classes, instead allowing students to choose their own games.
 - b. During 2005, failed to adequately plan or prepare activities for his metalwork classes.

Allegation 3

3. Failed to treat students with courtesy and dignity -
- a. Engaged in unprofessional behaviour towards students, including inappropriate physical contact:
 - i. On 8 June 2004, grabbed student 6 by his arms and used physical force to get him to drop a pole.
 - ii. During 2004, pushed student 7 away from the classroom door and said words to the effect of: ‘I’ll make sure you go somewhere where the sun don’t shine.’
 - iii. On 7 March 2005, grabbed a broom from student 6 in such a way as to scratch him and cause his arm to bleed.
 - iv. On 27 May 2005, grabbed student 6, pushed him out of the classroom, and told him that he would put him in jail.

- v. In semester 2 of 2005, pushed student 3 out of the classroom, and when the student entered the classroom again, said to him words to the effect of: 'you will be picking up your [dental] braces if you do that again.'
- b. Failed to model and engage in respectful language that is impartial and non derogatory:
 - i. During 2005, repeatedly yelled at students in an aggressive manner.
 - ii. During 2005, spoke to students by referring to them as 'stupid', 'dumb nut', 'knuckle brain' and 'idiot' and telling them to 'shut up'.
 - iii. On 8 February 2005 during class, said to student 8, words to the effect of: 'you're not all there', 'you've got no brain' and 'shut up.'

THE EVIDENCE & DISCUSSION OF THE EVIDENCE

The Panel heard evidence by oath or affirmation from the following witnesses:

- Principal 1
- Campus Principal 1
- Campus Principal 2
- Teacher 2
- Teacher 3
- Teacher 4
- The teacher

Allegation 1 stated that the teacher failed to establish and maintain a safe and supportive learning environment for students in his care at the school. Extensive evidence was led in relation to part (a) of Allegation 1 that the teacher failed to adequately supervise students. Extensive evidence was also led in relation to part (b) of Allegation 1 that the teacher failed to establish and maintain standards for student behaviour. Information relating to the particulars under part (a) and part (b) was also provided.

The Panel was provided with detailed written evidence of incidents relating to the teacher and his classes, and information about the processes adopted by the school administration between 1999 and 2005 during the leadership of two principals and campus assistant principals, all of whom identified and attempted to deal with serious issues in relation to the teacher's teaching, supervision, and management of students.

This evidence included a range of incident reports and letters of concern from school management to the teacher, as well as correspondence on formal and informal processes to assist the teacher, including support groups, professional development, mentoring and rearrangement of his classes over an extended period of time. Documents from the teacher's personal file were presented to the Panel. These indicated concerns about the teacher's supervision and classroom management raised by principal 2 and also indicated that there were concerns during principal 1's term at

the school. This evidence outlined various structures and meetings designed and implemented to support the teacher from 1999 on.

Witnesses, including principal 1, campus principal 2 and teacher 3 gave evidence at the hearing. Principal 1 said that during 2005 there was an increasing incidence of students with nicks and cuts in the sick bay, and that these students came from the teacher's metalwork and woodwork classes. Complaints increased from parents, and also increased from year level coordinators and other staff who needed to respond to complaints about the high levels of noise in the teacher's classes, and the need to speak with, and return students to, the teacher's classes when they were outside or wandering elsewhere.

Photographs of the metalwork room, the woodwork room, the storeroom and the preparation room, as well as surrounding internal corridors and external areas were presented to the Panel. Witnesses and the teacher talked to the photographs when providing their evidence. The Panel heard from a number of witnesses that the teacher absented himself from the main classroom to do things in either the preparation room or the store room, leaving the class in the main teaching area. Witness statements asserted that the teacher allowed students to enter the preparation room unsupervised. The preparation room contains items of equipment that need to be separate from the classroom because of the dangers associated with using them in an unsupervised manner. It also contains various machines that students are not authorised to use. The Panel heard from one witness who observed students using a thicknesser machine in this room. Another witness spoke of students independently going into the preparation room and exiting with pieces of metal that they had cut themselves.

Campus principal 2 told the Panel that the teacher allowed students in his care to roam about the school or play down ball outside of his classroom, when they should have been in class. Campus principal 1 told the Panel that he was frequently required to collect 5 to 10 students who should have been in class with the teacher, and return them to their assigned class with the teacher.

Teacher 3 advised the Panel that he dealt with a number of significant incidents relating to the teacher, and that they were serious issues - at the top of the scale. Teacher 3 stated that the teacher's students were in danger in the classroom, and that they were not being taught the curriculum. He also outlined the resources that were available to teachers who were having difficulties, including talking with principal 1, campus principal 2, year level managers and curriculum leaders; the "Roles and Responsibilities of Teachers" document and the counselling service that is available for teachers. It was made clear to the Panel that there were a range of support mechanisms available to the teacher, and curriculum guidelines for the teacher, so that he could undertake his role in a safe and informed manner, and further seek assistance and advice in order to better manage his own students.

Principal 1 cited the "Roles and Responsibilities of Teachers" document and said that this was the subject of talks by principal 1 to teachers at various times of the year, including emphasising teachers' responsibility to keep students in the classroom. In

addition (in late 2004 / early 2005) the school initiated a full day professional development exercise on dealing with conflict and difficult students, for all staff.

The teacher gave evidence about his background, stating that he was a tradesman for 19 years. He then applied to become a teacher and trained at an educational Institute. The teacher gave evidence that he recalled that the main emphasis in the course he undertook at the educational Institute was on design work, planning and preparing and evaluating models, rather than specific teaching techniques. The teacher stated that he had been a teacher for 18 years, to the end of 2005. The teacher said he liked the career change to teacher, and had in the past found teaching exciting, although over more recent times he had found it stressful. He added that he found getting used to students tough however, and indicated that in his early days at the school, from 1994 onwards, he had had discipline problems. The teacher stated that he found that some of his students in woodwork couldn't read or write, and he indicated to the Panel that he felt that there was a lack of back-up to help him with managing his students, from others in the school, when it came to difficult issues like poor reading and writing skill levels and difficult behaviours that students presented with, or poor behaviour that they engaged in.

The Panel was presented with evidence indicating that a meeting had taken place between the teacher and school personnel, including principal 1, to monitor and assist the teacher in improving his teaching performance in early 1999. Concerns were recorded following that meeting by principal 1 in relation to the teacher's curriculum development, inadequate preparation, students leaving class and being left unsupervised, lack of regular upkeep of equipment and theft of tools from the room/s that he had responsibility for. Poor time management including the teacher leaving school early, and failure to adequately develop students' skill levels were also raised. In late 2000 principal 2 initiated unsatisfactory performance procedures in relation to the teacher, and noted that the school's previous principal had also initiated unsatisfactory performance procedures. In 2000 the teacher moved to another school for almost two terms, and then took some sick leave, however student management difficulties persisted on his return to the school.

In October 2002, campus principal 1 wrote to the teacher advising him of concerns he had about the teacher's professional conduct including dangerous incidents in the teacher's classrooms, citing students throwing sharp metal objects that stuck into the walls of the classroom. Campus principal 1's letter to the teacher outlined a number of resources available to the teacher, including the Teacher Class Handbook, The Teacher Code of Conduct and Students Code of Conduct, Welfare and Discipline Policy and Staff Handbook. There was no evidence tabled of the teacher's response to this letter. There was no evidence presented by the teacher showing that he had engaged in activity to improve his performance following the letter.

The teacher denied that students in his classes used equipment in the preparation room without him being in the room to supervise, although he acknowledged that students waited in the preparation room by themselves, until he arrived to help them. However the teacher's evidence in relation to this was not consistent. The teacher said that he always supervised his students and that they were never allowed into restricted areas,

but also said that he knew of one student that used the metal guillotine without himself being present in the room. The teacher stated that he had given that student detention.

One of the difficult issues relating to the teacher's trade classes involved students wearing correct footwear. The teacher said that those students who did not wear correct footwear to class were not able to use trade equipment, and therefore he would tell them to sit at the back of the class, or sit outside in the corridor and do theory. He said he would never let these students go outside to play downhill, but acknowledged that they could have done so without his knowledge. He did not agree that he could not supervise the students outside the classroom in the corridor when he was engaged in teaching in the classroom. He indicated that he believed that he could keep his eyes on everything happening in the classroom, and teach, and also supervise students sitting in an adjoining corridor.

The Panel heard evidence from campus principal 2 regarding an incident of a student injury during the teacher's ball-sports class. The teacher allowed students to play dodge ball against a wall. In this game some students line up against the wall and others throw tennis balls directly at them, with force, trying to hit them. The teacher confirmed that he would allow students to select the game that they wanted to play and that they would go to different areas to play their preferred game. These areas were not in one location but in various locations about the school. This meant that some students were not supervised.

The evidence showed that on 14 November 2005 the teacher experienced difficulties in his classes. Students behaved in a dangerous manner, throwing things and banging pieces of metal and pop rivets against the table. A student threw a hammer across the room which lodged in the wall, making a hole in it. A student used a drill while the teacher was not present and other students had used the thicknesser in the machine room. Teacher 3 intervened during the day because of a complaint from another teacher about the level of noise and disruption in the teacher's class. The Panel heard from campus principal 2 and campus principal 1 regarding the fact that they both had need to attend to issues in the teacher's class that day. During the teacher's class, some of the teacher's students were outside playing, some were in the adjoining woodwork room, some were sitting on the benches doing nothing, and there was a high level of noise. At the time the hammer was thrown into the wall the teacher stated that he was in the adjoining store room. He was therefore outside a direct line of sight of his class and not supervising them. The teacher acknowledged the difficulties he experienced on that day in particular. He said that he was feeling very stressed and that he had difficulty teaching classes after the hammer incident. The teacher said the stress he experienced made him feel sick in the stomach, that he couldn't think clearly, and that he wasn't able to deal with issues as well as usual. The teacher stated that little things would upset him, things that wouldn't have upset him in the past, and wasn't as jovial as before, and maybe spoke more loudly in class than usual.

The teacher said that he took a couple of weeks stress leave during 2005, and that he saw his GP perhaps a dozen times in that year. He told the Panel that he felt unsupported by school personnel. The teacher indicated that he believed that it was the

role of others in authority in the school to manage difficult students and that he didn't get such help.

The teacher indicated that unless he had marked students off on his class roll on the day, they were not his responsibility – even if they were listed on the roll and supposed to be in the given class and were wandering elsewhere in the school or outside his classroom. The Panel did not accept the rigid position of the teacher as reasonable or appropriate.

The Panel was presented with photographs of the classroom and associated student and outdoor areas, and a number of witnesses spoke of the procedures for students to line up before class and how they were required to enter the classrooms with their teachers. The Panel accepted witness statements and that of the teacher that the normal practise at the school was that teachers would come out of the classroom and assemble their students before they entered the classroom. The Panel agreed with principal 1, campus principal 2 and teacher 3 that the teacher would be able to see which students were there and would be expected to marshal these students and take them inside.

The Panel accepted the evidence from the teacher that there was no process in place in the school to inform teachers of students that were absent on any given day. However, given the extended period of concerns raised by a number of administrators about the teacher's supervision and classroom management, the Panel would have expected the teacher to adopt proactive measures to check on and monitor his students' and their attendance levels.

The Panel accepted that there was sufficient evidence to show that students regularly left the teacher's classes and that he failed to adequately supervise his students. The Panel accepted that there was sufficient evidence to show that the teacher failed to properly supervise students in the classroom. Despite the teacher's assertion that he was able to supervise all students in his metalwork and woodwork classes, the Panel came to the conclusion that when the teacher was in the preparation and store rooms, and when he had sent his students outside to do theory in the corridor, his students were out of his sight, and out of his control.

The Panel accepted evidence that students from the teacher's metalwork class were allowed to work unsupervised in the adjoining woodwork classroom. The Panel accepted evidence from witnesses who had observed that the teacher had little management or control of his classes and that students frequently wandered between adjoining rooms, when these rooms should have been off limits. The Panel accepted that the teacher had allowed students to engage in activity which resulted in a serious injury to a student.

The Panel accepted the evidence from witnesses regarding students from the teacher's ball sports classes being allowed to wander about the school. The teacher would not be able to sight and supervise his class. The Panel accepted the evidence from witnesses who spoke of the students as being uncontrolled with no set task and wandering about the school.

A lot of evidence was provided of students from the teacher's classes being in the corridor outside the classrooms during class times. Further, witnesses spoke of seeing the teacher telling students to leave his class. The teacher admitted that students had a habit of walking out of his classes.

The Panel saw little evidence of improvement in the teacher's supervision and management of students over the period of time detailed throughout the hearing. The Panel did not accept the evidence presented by the teacher, and the witness for the teacher, that the teacher had not been offered support, nor that his teaching and student management had improved sufficiently after concerns were raised with him. The Panel came to the view that the teacher was unable to adequately structure and control his classes, that the teacher could not adequately supervise his students, and that the teacher on a number of fronts demonstrated serious incompetence.

The teacher told the Panel that he had many disruptive students in his classes whose behaviour was unsafe. He said that he wrote notes about these students and complained to principal 1 on numerous occasions, but considered he wasn't given any help or support. He said his students were often 'the dregs' who would rather be in other classes and that they were difficult to teach.

Based on the available evidence and the balance of probabilities, the Panel found that Allegation 1 part (a) with specific reference to particulars i, ii, iii, iv, v, vi, vii, viii, ix - is substantiated. Further based on the available evidence and the balance of probabilities, the Panel found that Allegation 1 part (b) with specific reference to particulars I and ii – is substantiated.

Allegation 2 stated that the teacher failed to teach effectively and engage students in active learning. A significant amount of evidence was led in relation to part (a) of Allegation 2, that during 2005, the teacher failed to adequately plan or prepare activities for his ball-sports classes, instead allowing students to choose their own games. Evidence was also led in relation to part (b) of Allegation 2, that during 2005, the teacher failed to adequately plan or prepare activities for his metalwork classes.

Principal 1 told the Panel that students at the school wanted to do a trade and that metalwork and woodwork were learning areas that attracted student interest. Principal 1 stated that there was emphasis at the school on the importance of trade skills as many students wished to go on and take up apprenticeships. Principal 1 said that without learning the appropriate skills and basic behaviours, they were unlikely to succeed.

The teacher told the Panel that his training was as a tradesman, but as a secondary teacher he had been required at times to teach a range of subjects outside of his subject area to younger students. He indicated however that he predominantly taught woodwork, metalwork and graphics. The teacher advised the Panel that he wasn't given any help or support with students at the school and that he had unmanageable students and disinterested students. The teacher referred to a number of these students being "the dregs." He indicated that he had problems because of the nature of the students, a number of whom would have preferred to be in classes other than those he

taught. Generally the teacher did not agree that the issues of concern were to do with his teaching ability or competence.

The Panel heard evidence from school personnel including campus principal 1, campus principal 2 and teacher 3, who were required to intervene in the teacher's classes, due to a number of incidents that were the subject of incident reports, and due to unacceptably high noise levels. They gave evidence about general upheaval in the teacher's classes and how what took place during his classes negated effective teaching and active learning.

The teacher, although he had no training in the subject, expressed an interest in teaching ball-sports, an elective, in 2005. Principal 1 said that the teacher did some good work in this subject, bringing speakers in and organising ball-sport clinics. However, principal 1 noted that his interest was not sustained, and his enthusiasm did not appear to translate to his core subjects.

Principal 1 and campus principal 2 spoke of a number of support groups that were established to assist the teacher to improve his engagement of students in his class. The Panel heard that the teacher was paired with another member of staff from the other campus for the purpose of mentoring the teacher. Visits to other schools were also organised to assist him to develop an improved metalwork program. A number of witnesses spoke of the teacher's lack of planning for his metalwork classes. Evidence showed that it was common practise for the teacher to ask the students to develop their own models that they wished to make. This process was usually long and drawn out, and the teacher agreed that students tended to put off their decisions, and hence little was done in his classes. The evidence led showed that these circumstances resulted in a lack of engagement and further management issues such as students wandering off from class and students not having anything to do.

When discussing curriculum and work undertaken by students, the teacher gave the example of wooden cricket bats being made by students, in his metalwork classes. The teacher said he had no issue with this. He said he allowed it, noting that students wanted to make the wooden bats, and as they were engaged in their learning, he didn't see why it mattered that they weren't doing metalwork. The Panel did not accept the teacher's reasoning as appropriate and failed to understand why the teacher could not develop a model in metal, especially given that for these students to construct the wooden bats they had to work in the adjoining woodwork room out of the direct line of sight and supervision of the teacher in the metalwork room. In response to a question from the Panel, the teacher said that making the wooden cricket bats kept the students happy, so why not let them do it? The teacher did not reflect on, or alter his view regarding these circumstances during the hearing, despite questioning from the Panel.

The Panel heard that some smaller metal models were developed for the students when the teacher had support from a support group, and this interaction resulted in a short term improvement in the level of student engagement.

Campus principal 2 said that during 2005, the teacher's teaching, with the input of the support group, showed some improvement. Campus principal 2's overall assessment

was however that the teacher's teaching reached a plateau, and started to decline again. Campus principal 2 spoke of the resources available to assist the teacher including professional development on student management, the staff handbook, and the mentor/buddy system. The Panel heard that there were a range of opportunities for the teacher to improve his performance, and a range of resources that he could have better, and proactively, utilised – but didn't.

The Panel accepted the evidence from campus principal 2 and campus principal 1 regarding the lack of preparation and planning done by the teacher, for the teacher's ball-sports class. The teacher told the Panel that even though he had the class on Thursdays and the opportunity to speak with PE staff, his preparation and planning consisted of having a key to the sports store and laying out on the ground, just before the class, balls for the students to choose their game. There was no development of teams, planned acquisition of and development of skills and no assessment regime. The teacher only indicated whether the students had participated. The Panel accepted that after discussion with some other staff, the teacher initiated and implemented some ball sports clinics, but accepted the statement from campus principal 1 that they did not lead to a sustained improvement in the teacher's teaching practice.

After viewing and hearing evidence from a number of witnesses, and considering the teacher's evidence, the Panel formed the view that there were a few spasmodic periods of time in 2005 where the teacher had improved his preparation and planning of activities. However based on the evidence it could not be said that this improvement was anything other than limited, and it could not be said that the teacher's preparation and planning improved to an acceptable standard or in an ongoing way. There is also a significant amount of evidence that shows the teacher's capacity to engage with his students reduced during 2005, culminating in major classroom and ball-sports difficulties that resulted in his classes providing little active learning, whilst housing risks to students' safety. In addition the teacher's attitude to his professional responsibilities to thoroughly plan and prepare fell well short of required standards, to the detriment of his students, clearly contributing to the range of behavioural problems that resulted. The Panel did not accept the argument from the teacher that his classes were a dumping ground for students who did not get into other electives. The Panel did consider credible the evidence that showed that the teacher had not during 2005 adequately planned or prepared activities for his ball-sports classes, instead allowing students to choose their own games. Further the Panel did consider credible the evidence that showed that the teacher had failed to adequately plan or prepare activities for his metalwork classes.

Based on the available evidence and the balance of probabilities, the Panel found that Allegation 2 part (a) - is substantiated. Based on the available evidence and the balance of probabilities, the Panel found that Allegation 2 part (b) – is substantiated.

Allegation 3 stated that the teacher failed to treat students with courtesy and dignity. Limited evidence was led in relation to part (a) of Allegation 3, that the teacher engaged in unprofessional behaviour towards students, including inappropriate physical contact, and part (b) of Allegation 3, that the teacher failed to model and engage in respectful language that is impartial and non derogatory. The Panel heard

some evidence in relation to parts (a) and (b) however students were not called as witnesses by the Institute.

With specific reference to part (b) there was some evidence provided by other witnesses, that indicated that the teacher failed to use respectful language that was impartial and non derogatory. Evidence from the teacher generally refuted the allegations. Principal 1 said that she had observed the teacher speaking to students in an incredibly loud voice. Principal 1 described the teacher's interaction as "aggressively loud and abusively loud", not assertively loud. Principal 1 said that in addition to hearing this herself, she was advised of the teacher's inappropriately loud level of voice by year level coordinators and two KLA leaders. The teacher generally refuted such allegations.

Despite hearing allegations of the teacher calling the students inappropriate names and using an excessively loud voice in his dealings with students, the Panel was unable to fully assess the particulars i, ii and iii relating to the various incidents with students in part (b). The Panel did hear however that some alleged incidents of the teacher using inappropriate language when interacting with students were handled by the school administration through its mediation processes, and that during this process there were admissions and apologies made.

In relation to part (a) evidence of an injury sustained by a student on 7 March 2005 during which the teacher grabbed a student waving a broom was presented to the Panel. The Panel was however provided with differing accounts of the incident from the teacher, and the members of the school administration. The evidence of the student could not be fully tested because the student was not called as a witness.

Given these circumstances the Panel found that the particulars associated with parts (a) and (b) of Allegation 3 could not be specifically and individually determined. However based on the evidence of professional educators and the teacher, and the balance of probabilities, the Panel was of the view that there was sufficient evidence to show that the teacher did at times engage in loud, disrespectful and aggressive interactions with students that fell short of professional standards.

FINDINGS UNDER SECTION 2.6.46(2) OF THE ACT

The Panel found that the teacher had experienced difficulties over many years with student discipline and effective teaching. The Panel found that since 1999 there has been written evidence of concerns by school management about the teacher's supervision of students, his maintenance of appropriate and accepted standards of student behaviour, and his capacity to teach effectively, progress required curriculum and engage students in active learning. The Panel considered that school administrators and management had responded to concerns expressed by teachers and students about these matters and put a range of supportive and developmental processes in place, in order to help the teacher. The Panel formed the view that such measures had largely been fruitless, and that while the teacher was considered 'a good

bloke' and 'a very helpful person' in the school community, he was seriously incompetent.

The Panel accepted the teacher's assertion that he had a number of students with difficult behaviours in his classes. The Panel did not accept the teacher's view that there was very little in the way of behaviour policy at the school, nor that he received little help in dealing with his students. The Panel accepted that the school had dealt with challenging student behaviours, and felt that the teacher himself had a very limited perspective on his personal and professional responsibility to also do so. The Panel accepted that there were appropriate levels of assistance available to help teachers at the school and formed the view that the teacher didn't access such help in a reasoned way, and failed to be proactive or willing to develop his skills to manage a diverse range of students. The Panel found that the teacher was unable to benefit from the written, formal and informal resources available to provide support to those having difficulties.

The Panel accepted that the teacher taught subjects, such as metalwork, that have a high level of associated danger, but did not accept that the teacher's management of his students in his classes was acceptable or astute to the dangers involved. Dangerous incidents did occur, and the Panel found that the teacher's lack of risk assessment and very poor levels of supervision contributed in a significant way to these incidents. The teacher did not seem to appreciate the seriousness of the injuries that students in his classes were, and could be exposed to due to his inappropriate supervision levels and limited means of controlling students.

The Panel found that the teacher, over a prolonged period, did not teach effectively and failed to engage students in effective learning. His supervision of students was inadequate and he did not set or maintain acceptable standards of behaviour for the students in his classes. The evidence did not project a series of simple errors or mishaps; it clearly demonstrated that the teacher's practice was negligent, in that it defeated the cause of imparting knowledge to students. While not criminal behaviour, or action and lack of action committed in bad faith, the teacher failed to fulfil his duty to achieve and maintain an appropriate level of competence and care.

The frequency and on-going nature of the teacher's poor performance reflects directly on the teacher's fitness to teach. The panel held the firm view that the teacher was seriously incompetent and was not fit to teach. The Panel found that there was sufficient evidence that the teacher was

- unable to implement meaningful lessons
- unable to control students and communicate effectively and respectfully
- unable to develop appropriate professional relationships with students
- not trusted by other teachers to perform the duties of a teacher
- unable to maintain teacher / student relationships
- deficient in his ability to deliver on curriculum requirements
- unable to see the need to improve his teaching and student management skills.

These skills are fundamental requirements. The conduct of the teacher could not be viewed as trivial or of momentary effect at the time of the teacher's actions and omissions. The conduct in question is serious due to the substantial and regular

departure from the accepted standards for the teaching profession, and the fact that the departure from these standards is the fault of the teacher.

The teacher did not show that he possessed the knowledge and skill to fulfil his duties as they are currently and reasonably required of him. Due to the fact that he worked in dangerous areas with students and trade equipment, the Panel was not of the view that the teacher could be safely accredited to the public, or entrusted with the health and safety of students in the classroom, particularly given the nature of the work required of him in the areas of metalwork and woodwork. Further the persistence of the issues at hand have added to the Panel's view that the teacher was not fit to teach. The teacher's conduct and performance has unfortunately significantly impaired the standards of the profession, as expected and required by the profession itself, and the community at large.

DETERMINATION UNDER SECTION 2.6.46(2) OF THE ACT

The Panel found that the teacher is guilty of serious incompetence and unfit to teach.



CHAIRPERSON



**per ,Ian Watkins
REGISTERED TEACHER**



**per , Kay Bodna
PANEL MEMBER**