

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 058

REGISTERED TEACHER: PETER MELVIN DRAKEFORD

PANEL MEMBERS

Marilyn Mooney, Chairperson

Michael Lester, Registered Teacher

Jenny Wajsenberg, Registered Teacher

ATTENDANCE: The teacher attended the hearing and was self-represented

Counsel Assisting: Ms A Sheehan with Ms C Sherman solicitor instructing

DATE OF HEARING: 18 December 2007

DETERMINATION UNDER SECTION 2.6.46 OF THE ACT:

On 18 December 2007 the Panel determined that a recommendation be made to the Council of the Victorian Institute of Teaching that if the teacher is granted registration in 2008 the following conditions should be placed on his registration:

1. That the teacher attend fortnightly counselling sessions for 12 months.
2. That the teacher submits to the Institute two detailed reports from his treating Psychologist. The first report by 30 June 2008 and the second by 31 December 2008. Each report is to attest to the teacher's fortnightly attendance at the counselling sessions and his further progress in the following areas:
 - communication skills including his ability to convey his feelings and needs effectively and considerately
 - ability to empathise with others, and in particular how his behaviour impacts on others
 - ability to recognise and deal appropriately with personal stressors

- development of a repertoire of positive strategies to respond to those situations.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 25 January 2006, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. The allegations relate to the maintenance of an inappropriate relationship with a student in 2003.

The matter was first referred to the Institute's Disciplinary Proceedings Committee on 29 March 2006 when the Committee decided the matter proceed to a formal hearing.

On 6 March 2007, the teacher notified the Institute that he no longer wished to be registered with the Institute effective from 24 April 2007.

On 16 May 2007 the Committee decided to continue with the enquiry into the allegations of serious misconduct and/or lack of fitness to teach of the teacher. On 26 October 2007 the Institute served on the teacher the Notice of formal Hearing together with all the relevant documents.

The allegations:

It is alleged that:

Whilst employed as a registered teacher at the College in 2003, the teacher:

Failed to develop and maintain a professional relationship by engaging in an inappropriate relationship with a student of the College.

1. Maintained an inappropriate relationship with student 1 in 2003, including:
 - a. Making numerous telephone calls to the student at her family home.
 - b. Engaging in inappropriate discussions with the student about personal issues.
 - c. Storing the student's mobile telephone number recorded under the name 'A' in his mobile telephone.
 - d. On several occasions in late November 2003 taking the student on unauthorised outings during lunchtimes to a shopping centre.
 - e. Taking the student on an unauthorised outing in his car to a Gallery.
 - f. In or around November or December 2003 visiting the student's family home to view her brother's artwork.

- g. On 3 December 2003, taking the student on an unauthorised outing in his car to the country, taking the student to a hotel for lunch on the way home and dropping the student at a corner rather than at her family home.
- h. Accepting personal gifts from the student, including a drawing, a small decorative sword, a dragon key ring and a small wind-up music box.
- i. Arranging with the student for her to type up documents for a magazine after the end-of-year exam period.
- j. In December 2003, giving an audio cassette to the student containing a tape recording of him talking about her.
- k. In December 2003, giving the student a CD as a belated birthday and early Christmas present.
- l. Spending time with the student at the College approximately once a week, after the completion of her Year 12 exams.
- m. In the last week of term 4 in 2003, taking the student on an unauthorised outing during lunchtime to a café.
- n. During the outing referred to above in m., advising the Assistant Principal teacher 1, teacher 2 and teacher 3 that the student was his daughter.
- o. Sitting with the student at the close of the staff end-of-year function at a hotel in December 2003.
- p. After the staff end-of-year function in December 2003, taking the student to his home at a time when his wife and children were not present.

THE LAW

Section 2.6.31 of the *Education and Training Reform Act 2006* 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.

Section 2.6.30 of the *Education and Training Reform Act 2006* states:

2.6.30 Powers of inquiry

(1) The Institute may in accordance with this Part

(a) inquire into any information it receives under section 2.6.31 or 2.6.32 or;

(b) inquire into any complaint that provides evidence –

(i) of the serious incompetence of a registered teacher;

- (ii) *of the serious misconduct of a registered teacher;*
- (iii) *that a registered teacher is unfit to be a teacher*

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

As stated by 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, and although the procedures are not meant to punish the teacher this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The Panel is aware that a decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

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

And later:-

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

The facts of each case will determine whether misconduct is serious. 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)

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. Serious misconduct is more likely to occur if the act was done wilfully or recklessly and without regard for the consequences, (see *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242).

An indication of the teacher's unfitness to teach could be demonstrated by the teacher's failure to understand that the conduct complained of was serious misconduct.

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

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency. Allinson v General Medical Council [1891-4] All ER 768

The conduct the subject of the inquiry may indicate a character defect incompatible with a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*).

The degree of remoteness of the conduct in question from professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales (2004) HCA 11* which it is stated at paragraph 34:

...the nature of the trust, and the circumstances of the breach, were so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous.

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

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW [2002] NSWSC 191* and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons [1965] 1 All ER 949*).

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

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. The teacher – Victorian Institute of Teaching Registration Details (4 pages) **001-004**

Witness Statements

- 2.** Statement of student 1, dated 10 January 2007 (12 pages) **005-016**
- 3.** Statement of teacher 1, dated 28 December 2006 (1 page) **017**
 - – Outline of evidence, dated 29 March 2005 (2 pages) **018-019**
- 4.** Statement of teacher 4, dated 6 December 2006 (2 pages) **020-021**
 - Response from teacher 4 to Principal 1 on matters raised in meeting on 20 April 2004 (1 page) **022**
- 5.** Statement of teacher 2, dated 20 November 2006 (3 pages) **023-025**
 - – Outline of evidence, undated (2 pages) **026-027**
- 6.** Statement of teacher 5, undated and unsigned (1 page) **028**
- 7.** Draft Statement of teacher 3, undated and unsigned (3 pages) **029- 031**
 - – Outline of evidence, undated (2 pages) **032-033**
- 8.** Statement of teacher 6, unsigned and undated (1 page) **034**
 - - ‘Statement of evidence in support of the teacher’ letter from teacher 6, dated 22 January 2006 (1 page) **035**

Other Documents

- 9.** Report from Assistant Principal (1 page) **036**
- 10.** Telephone notes of conversation with the teacher’s wife (3 pages) **037-039**
- 11.** Notes of Interview with student 1 on 8 April 2004 (3 pages) **040-042**
- 12.** Notes of Meeting with student 1, her brother and her parents on 8 April (2 pages) **043-044**
- 13.** Letter from principal 1 to the teacher, dated 20 April 2004 (1 page) **045**
- 14.** Letter from principal 1 to the teacher, dated 20 April 2004 (3 pages) **046-048**
- 15.** Notes of Interview with teacher 5 on 19 May 2004 (1 page) **049**
- 16.** Letter from the employer to the teacher dated 28 June 2004 (1 page) **050**
- 17.** Letter from principal 1 to the employer dated 17 September 2004 (2 page) **051-052** including
- 18.** Report to the employer from principal 1, dated 6 April 2004 (with handwritten annotation ‘1a’) (2 pages) **053-054**

- 19.** Report from Assistant Principal undated (with handwritten annotation '1b') (1 page) **055**
- 20.** Notes of Telephone conversation with teacher's wife, dated 7 April 2004 (with handwritten annotation '1c') (3 pages) **056-058**
- 21.** Notes of Interview with student 1 on 8 April 2007 (with handwritten annotation '1d') (3 pages) **059-061**
- 22.** Notes of Meeting with student 1, her brother and her parents on 8 April (with handwritten annotation '1e') (2 pages) **062-063**
- 23.** Letter from principal 1 to the teacher, dated 20 April 2004 (with handwritten annotation '2a') (1 page) **064**
- 24.** Letter from principal 1 to the teacher, dated 20 April 2004 (with handwritten annotation '2b') (3 pages) **065-067**
- 25.** Letter from principal 1 to the teacher, dated 20 April 2004 (1 page) **068**
- 26.** Notes of Interview with student 1 on 8 April 2007 (3 pages) **069-071**
- 27.** Letter from principal 1 to the teacher, dated 27 July 2004 (1 page) **072**
- 28.** Transmission of facsimile to principal 1, dated 3 August 2004 (5 pages) **073-077**
- 29.** Letter from principal 1 to the teacher, dated 31 August 2004 (1 page) **078**
- 30.** Letter from principal 1 to the teacher, dated 14 September 2004 (9 pages) **079-087**
- 31.** Letter from the employer to the teacher, dated 23 September 2004 (1 page) **088**
- 32.** Outline of evidence of student 1, dated 22 March 2005 (15 pages) **089-103**
- 33.** Outline of evidence of Assistant Principal, dated 12 April 2005 (4 pages) **104-107**
- 34.** Outline of evidence of teacher's wife, dated 15 April 2005 (21 pages) **108-128**
- 35.** Letter from principal 1 to the teacher, dated 5 May 2005 with Attachment 1 (9 pages) **129-137**
- 36.** Notes of Meeting with employer on 30 May 2005 (7 pages) **138-144**
- 37.** Tape transcript provided by the teacher (3 pages) **145-147**
- 38.** Letter from principal 1 to employer, dated 18 July 2005 (1 page) **148**

- 39.** Letter from principal 1 to the teacher, dated 18 July 2005 (1 page) **149**
- 40.** Investigators Report, principal 1 dated 15 July 2005 (21 pages) **150-170**
- 41.** Letter from the teacher to employer, dated 1 August 2005 (9 pages) **171-179**
- 42.** Cover page of attached Character Statements (1 page) **180**
- 43.** Character reference from student 2 (1 page) **181**
- 44.** Character reference from student 3 (2 pages) **182-183**
- 45.** Character reference from student 4 (1 page) **184**
- 46.** Character reference from student 5 (1 page) **185**
- 47.** Character reference from student 6, dated 30 July 2005 (1 page) **186**
- 48.** Character reference from student 7 (1 page) **187**
- 49.** Character reference from student 8, dated July 2005 (1 page) **188**
- 50.** Character reference from teacher 6 (1 page) **189**
- 51.** Character reference from teacher 7 (2 pages) **190-191**
- 52.** Character reference from teacher 8 (1 page) **192**
- 53.** Character reference from teacher 9 (1 page) **193**
- 54.** Character reference from teacher 10, dated 28 July 2005 (1 page) **194**
- 55.** Character reference from parent 1 (1 page) **195**
- 56.** Character reference from parent 2 (1 page) **196**
- 57.** Letter from principal 1 to employer, dated 4 September 2005 (2 pages) **197-198**
- 58.** Copy of Statement from student 1, dated 9 September 2005 (2 pages) **199-200**
- 59.** Letter from principal 1 to the teacher, dated 7 October 2005 (1 page) **201**
- 60.** Letter from principal 1 to employer, dated 7 October 2005 (1 page) **202**
- 61.** Response to student 1's Statement to the employer from the teacher dated 17 October 2005 (4 pages) **203-206**

- 62.** Letter from the employer to the teacher, dated 19 December 2005 (24 pages) **207-230**
- 63.** Email from the employer to staff member, dated 10 January 2006 (1 page) **231**
- 64.** Letter from employer to the teacher, dated 17 January 2006 (3 pages) **232-234**
- 65.** Letter from the employer to the teacher, dated 20 January 2006 (1 page) **235**
- 66.** Letter from employer to the teacher, dated 27 January 2006, (with attachment A1) (3 pages) **236-238**
- 67.** 'Statement of evidence in support of the teacher' letter from teacher 6, dated 22 January 2007 (1 page) **239**
- 68.** Letter from principal 2 to the Victorian Institute of Teaching, dated 4 December 2006 (2 pages) **240-241**
- 69.** Letter from Doctor 1, dated 15 December 2006 (1 page) **242**
- 70.** Reference letter from teacher 11, dated 17 December 2006 (1 page) **243**
- 71.** Reference letter from teacher 12, dated 20 December 2006 (1 page) **244**
- 72.** Letter from employer to the Disciplinary Proceedings Committee, dated 8 January 2007 (1 page) **245**
- 73.** Letter from the teacher to the Disciplinary Proceedings Committee, dated 23 January 2007 (1 page) **246**
- 74.** Cancellation of Registration form from the teacher, dated 6 March 2007 (1 page) **247**

The following exhibits were presented to the Panel:

- A.** Letter, the teacher to the Victorian Institute of Teaching, dated 6 December 2007
- B.** Letter, the teacher to the Victorian Institute of Teaching, dated 11 December 2007
- C.** Letter, Doctor 1 to the Victorian Institute of Teaching, dated 28 November 2007
- D.** Notice of Formal Hearing dated 26 October 2007, with multiple attachments
- E.** Report, Psychologist 1, dated 6 December 2007

Application for an Order for the Hearing to be closed and for suppression of the teacher's name

The teacher made an application for an Order to suppress his name and for the Hearing to be closed. The panel considered his application but rejected it on the grounds that there was a public interest in maintaining an open justice system and that matters of intimate, personal or financial matters had not been put forward in justification for the application.

THE EVIDENCE

The teacher gave evidence under affirmation.

The teacher submitted a written statement (Exhibit A) on 6 December prior to the hearing commencing. In this statement he advised that he would not be contesting the allegations listed in the Notice of Formal Hearing and accepted that the allegations constituted serious misconduct.

The teacher was not represented and in his opening statement referred extensively to Exhibit B, his statement submitted to the Institute, dated 11 December 2007. He outlined his 36 years service, the schools he had worked in and the roles he had undertaken, and tendered his character references (Documents 42 to 56) as evidence that he was highly regarded through many years of teaching.

The teacher stated that in the holidays prior to the commencement of the 2003 school year he had a heart attack and, despite advice to the contrary, did not seek counselling or sick leave, returning to work on the first day of Term 1. He was keen to achieve good results, particularly with his VCE class, to improve his prospects of gaining a position at another school.

The panel heard that over the course of 2003, ongoing health issues, personal relationship issues with his wife and teenage daughter, and anxiety at the performance of his VCE students resulted in the teacher being in a vulnerable emotional state at the time the incidents occurred at the end of the school year.

The teacher said that in this context an inappropriate relationship developed between him and the student - a context in which the teacher confused his needs with those of the student, relying on her for support and approval. He said that he blurred the line between the professional and the personal, resulting in a number of inappropriate and unauthorised contacts with the student. Further, the teacher told the panel that he deceived his colleagues and the school administration about the true nature of the relationship.

Under questioning from Counsel Assisting, the teacher indicated that he had sought help for a depressive syndrome from a psychiatrist in June 2006, and since then had regularly attended counselling with a psychologist. He acknowledged that if the student had indeed approached him for support in dealing with family problems, it would have been appropriate to refer her to the school's welfare staff and that, given his knowledge of the family situation, he had also deceived the student's parents about the true nature of the relationship.

The teacher testified that counselling had enabled him to take responsibility for his actions rather than blaming others, specifically the student, for the situation in which he had found himself. He acknowledged that his actions at the time had hurt others - the student and her family and his own family - and believed that he had learnt appropriate strategies to deal with similar situations should they arise in the future. The teacher told the panel that he was keen to continue counselling as a way of further exploring personality issues that might contribute to him being vulnerable in the future and as a means to obtaining ongoing support.

Psychologist 1

Psychologist 1 gave evidence under oath and testified that the material contained in her report dated 6 December 2007 (Exhibit E), presented to the panel, was true and accurate. Through her sessions with the teacher, and having seen some of the documentation relating to the case, she was aware of its general nature, although not the specific allegations of misbehaviour. Having had these read to her by Counsel Assisting, the psychologist felt that they did not significantly change her feelings towards the matter.

She believed that the teacher had developed an inappropriate relationship with the student as a substitute for the close relationship he had previously shared with his teenage daughter. Through history taking and psychometric testing, the psychologist had identified some maladaptive 'histrionic' personality traits that made the teacher more vulnerable to experiencing difficulties within interpersonal relationships and to the depressive episode that had impaired his judgement at the time.

Psychologist 1 told the panel that over the course of counselling, the teacher had developed insight into the breach of trust that had occurred. He had begun to develop an appreciation of the impact his actions had had on others and to explore patterns of relating and communicating in relationships, particularly the ability to communicate his feelings at stressful times rather than internalising them. She believed that the teacher had made significant progress in dealing with these issues and felt that further fortnightly counselling for the next 12 months would allow him to develop sufficient insight to recognise the early signs of depression and the need for early intervention.

The panel heard that although Psychologist 1 believes that the teacher would benefit from further therapy, she does not suggest "that he poses any risk to students should he wish to return to teaching in the future as he has demonstrated significant insight into his emotional state at the time of the relationship with the student and his inability to communicate his distress with the appropriate people in his life." Psychologist 1 believes that the teacher now has the skills to seek help from the appropriate professional if the need arises.

DISCUSSION OF EVIDENCE

The panel's role in this case was greatly assisted by the teacher's admission of the allegations in the form of a written statement submitted to the panel prior to the proceedings, and by his willingness to honestly and openly confirm the accusations.

This position was re-iterated by Counsel assisting the panel in her opening remarks and by the teacher in his opening statement.

As a consequence, no witnesses, other than the teacher and Psychologist 1, the psychologist with whom the teacher has been working for approximately twelve months needed to be called. This situation simplified and shortened proceedings.

Counsel assisting the panel commended the teacher's actions, and noted that, in making admissions to the allegations prior to proceedings, he saved a number of people including the student involved, from having to attend and give evidence. It contributed towards the clarity the panel saw in the teacher's remorse and progress in dealing with the matter before the panel.

As the teacher had admitted to the allegations and acknowledged that his behaviour constituted serious misconduct, most attention was focused on the subsequent counselling and the extent to which he had developed insight into his behaviours.

The teacher was able to explain to the panel the context in which these allegations arose. It was to the teacher's credit that he made the admissions to the panel and his admissions were evidence of his insight. His acknowledgement of the difficult circumstances he was experiencing at the time of the allegations provided an explanation and context for his misconduct, but did not minimise the gravity of his misconduct.

The panel heard evidence from the Specialist Psychology Counsellor, Psychologist 1, that contextual issues had been explored by the teacher during counselling sessions as an important part of his developing self-awareness and to assist him to develop appropriate intervention strategies in future. Psychologist 1's evidence was thoughtful and measured. She was able to reassure the panel that the teacher had made significant progress over the twelve months of treatment and that he recognised his culpability in his dealings with the student. Psychologist 1 also provided invaluable guidance to the panel in relation to the teacher's current state and the need for him to continue treatment for approximately twelve more months, to fully understand his actions and develop appropriate intervention techniques to guide his behaviours in stressful situations.

The panel also noted that the teacher had, prior to this incident, an exemplary record of 36 years in the teaching service. Further, the panel noted the supportive letters of recommendation from a number of colleagues, including those from his last school of employment where the principal of the school and other referees were fully aware of the allegations. These letters of reference support the interpretation that the teacher's behaviours were strongly linked to the contextual issues. The panel further considered the length of time it has taken the matter to reach a hearing, and the ramifications of this time lag on the teacher's opportunities to teach and on his standing in the community until such time as the panel's determination is made public.

The teacher's evidence demonstrated considerable remorse. The panel valued the voluntary undertakings made by him and his willingness to embrace the situation, accept responsibility for it and seek ownership in its resolution. He demonstrated,

importantly, insights into the effects of the breach of trust he is guilty of. In voluntarily seeking professional psychological help, the teacher demonstrated to the panel that his remorse is genuine.

In evidence before the panel, the teacher not only demonstrated that he has reflected on the incident, he also has a much deeper understanding of the professional boundaries that must exist between teachers and students and a deeper understanding of himself.

FINDINGS UNDER SECTION 2.6.46 OF THE ACT:

Based on all the available evidence and the teacher's admission, the panel concludes that the allegation of failing to maintain a professional relationship with a student, by engaging in an inappropriate relationship with a student, is proven.

The panel had to consider whether the teacher had engaged in serious misconduct and/or was unfit to teach. The panel found that the teacher not only breached the professional standards of the teaching profession, he exploited the privileged position of power and trust that a teacher is granted. His conduct reflected attitudes and characteristics inconsistent with the moral qualities required of a teacher. Consequently the panel finds the teacher has engaged in serious misconduct.

However, the panel does not consider the teacher unfit to teach. When considering the issue of fitness to teach, his conduct is to be assessed at the time of the hearing and not when the conduct occurred. Further the panel has taken into account the lengthy and drawn out timeframe of this matter, which has taken some years to reach a formal hearing.

DETERMINATION UNDER SECTION 2.6.46 OF THE ACT:

Disciplinary proceedings are not meant to punish, but rather to protect the public. The panel was mindful of this distinction when coming to its determination in this matter.

The teacher has admitted to the allegations and agreed that his actions were of a serious nature and that they represented a substantial departure from the accepted standards of the teaching profession.

The panel is conscious of its responsibilities to protect the public. In other cases before the Institute where a teacher has engaged in serious misconduct, a period of suspension has been imposed to emphasise to the teacher and members of the profession that the conduct is not acceptable professional conduct. It also gives the teacher a period of time to undertake education and counselling programs. In this case, the teacher voluntarily withdrew from the teaching profession by advising the Institute that he would not seek to renew his teacher registration in 2007.

The Victorian teaching profession and the public must be confident that students placed in the care of the teacher in the future will be safe from any repeated

inappropriate behaviour. Within the bounds of the professional caution expressed by the Specialist Psychology Counsellor, the panel concludes that if the following conditions are imposed upon the teacher's registration, the profession and the public can be confident that the teacher is fit to be a teacher.

The panel notes that the teacher is no longer registered as a teacher. On 16 May 2007 the Disciplinary Proceedings Committee decided to continue the inquiry into the teacher's conduct under section 2.6.47 of the Act. This means that the teacher is to be treated for the purposes of the inquiry, including for the purposes of the formal hearing, as if he is a registered teacher. The panel has determined that in this case it is not appropriate to cancel or suspend the teacher's registration. However the panel is of the view that if he teacher were to return to teaching in 2008 it would be appropriate for him to continue his counselling sessions. To ensure that the counselling sessions are addressing the matters of concern to the panel, the panel would require that reports be provided showing that these matters are being addressed.

On 18 December 2007 the Panel determined that a recommendation be made to the Council of the Victorian Institute of Teaching that if the teacher is granted registration in 2008 the following conditions should be placed on his registration:

1. That the teacher attend fortnightly counselling sessions for 12 months.
2. That the teacher submits to the Institute two detailed reports from his treating Psychologist. The first report by 30 June 2008 and the second by 31 December 2008. Each report is to attest to the teacher's fortnightly attendance at the counselling sessions, and his further progress in the following areas:
 - communication skills including his ability to convey his feelings and needs effectively and considerately
 - ability to empathise with others, and in particular how his behaviour impacts on others
 - ability to recognise and deal appropriately with personal stressors
 - development of a repertoire of positive strategies to respond to those situations.



MARILYN MOONEY, CHAIRPERSON



**per ,
MICHAEL LESTER, REGISTERED TEACHER**

Marilyn Mooney

**per ,
JENNY WAJSENBERG, REGISTERED TEACHER**