

## **VICTORIAN INSTITUTE OF TEACHING**

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 051

**REGISTERED TEACHER:** JER

**PANEL MEMBERS**

Susan Halliday, Chairperson

Norm Fary, Registered Teacher

Jeanette Barclay, Registered Teacher

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

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

**DATE OF HEARING:** 19 July 2007

**DETERMINATION UNDER SECTION 2.6.46(2):**

On 5 August 2007 the panel determined that the teacher remains registered as a teacher in Victoria.

## REASONS

### BACKGROUND

On 1 July 2007, the *Victorian Institute of Teaching Act 2001* was repealed and replaced by the *Education and Training Reform Act 2006* (the Act).

The teacher has been a registered teacher since 14 March 2003.

By letters dated 13 July and 1 August 2006, Principal 1, at the School, notified the Institute that he had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The teacher's employment at the School was terminated, effective 10 July 2006.

The matter was referred to the Disciplinary Proceedings Committee on 10 August 2006 and the Committee decided to refer the matter to a formal hearing.

The Institute arranged for an investigation of the allegations and, on 12 January 2007, the Committee determined to proceed to a formal hearing.

A panel was constituted in accordance with section 39 of the *Victorian Institute of Teaching Act 2001*.

A Notice of Formal Hearing dated 2 May 2007 was served upon the registered teacher's solicitor by registered post and was received on 4 May 2007.

### 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.*

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

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

- to protect the public;
- to maintain proper standards of conduct for the profession; and

- to protect the reputation of the profession.

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

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

And later:-

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

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

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998)

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 (see *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242).

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

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 in* 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*).

## **DOCUMENTS CONSIDERED**

The Panel was provided with the following documentary evidence:

- Notice of Formal Hearing dated 2 May 2007
- 4 Witness Statements including attachments numbered 001 to 044

The following exhibits were presented to the Panel:

- A. Witness Statement – Witness 1, dated December 2006
- B. Witness Statement – Witness 2, dated November 2006
- C. School New Staff and Buddies Table, 2005
- D. School Position Description and Selection Criteria – Teacher of Humanities, dated October 2004
- E. Witness Statement – Principal 1, dated 27 November 2006
- F. Extract from School Staff Handbook 2006, Page 1.6, dated January 2006
- G. School Drug and Education Policy, dated 17 September 2002
- H. School Behaviour Management Policy, dated 10 August 2004
- I. School Statement of Philosophy, dated August 2001.

## **THE EVIDENCE**

The allegations as listed in the Notice of Formal hearing were:

1. Whilst employed as a teacher at the School, during a year 9 outdoor programme from 5 to 9 June 2006, The teacher -

- a. Failed to display appropriate personal conduct whilst in the company of students by engaging in inappropriate behaviour and discussions and using offensive and/or inappropriate language -
  - i. Smoked a cigarette whilst in a canoe with a student.
  - ii. Commented to a group of students ‘smoking helps asthma; it makes you take deep breaths’.
  - iii. Swore on numerous occasions in front of students including using the words ‘fuck’, ‘fucken shits’.
  - iv. Made disparaging comments about students, including ‘she’s so dippy’ and that a student had ‘more cushion for pushin’.
  - v. Had a conversation with students about the best way to stab someone including stating ‘you should stab in the kidneys because then the person inhales and can’t exhale or scream’ and ‘you should twist the knife so you can pull it out quickly if you need to stab someone else’.
  - vi. Demonstrated to a student fighting techniques with an open knife.
  - vii. During a conversation with students about masturbation, The teacher stated to a student that he no longer needed to masturbate as he had a wife at home.
  - viii. Stated in front of students that ‘he once had a girlfriend who was only 4’3” which was the perfect height for...’
  - ix. Regularly stated as a conversation filler to a group of students – ‘ladies’ then clapped quickly twice and said ‘titties!’
  
- b. Failed to treat students and colleagues with courtesy and respect by making inappropriate comments -
  - i. When an outdoor programme leader, Witness 1 introduced a rule with a group of students that anyone swearing had to go away from the group and return with a new word to replace the swear word, The teacher swore and when students asked him to replace the word, he replied by laughing and saying that the rule did not apply to adults.
  - ii. Told a group of students that he had had a student removed from the group before the group left for the camp and named the student in circumstances where the student had in fact been removed and The teacher been told not to mention it.
  - iii. Regularly referred to the two leaders of the outdoor programme as ‘darling’ and ‘love’ in front of the students.

The panel acceded to the submission of Counsel Assisting that the word ‘cunt’ should be removed from the particular of allegation 1.a.iii.

At the commencement of the hearing, the Chairperson noted that the teacher had in correspondence dated 15 May 2007 requested that the hearing, which was originally scheduled for 4 and 5 June 2007, be adjourned. In his correspondence the teacher had indicated that he sought adjournment in order that he might progress further legal advice. On the day of the Hearing the teacher explained that he had sought further legal advice and decided that he would represent himself.

At the beginning of the hearing the Chairperson noted that the seven character references that the teacher had provided to the Panel, would not be considered as evidence by the Panel. It was stated that they would be disregarded in full for a range of reasons, including that -

- (a) the references were on plain paper and several were not signed
- (b) the teacher required that the references be kept strictly confidential (even though he was involved in a public hearing)
- (c) the teacher instructed that the referees with whom he was currently working were not to be contacted about the references and
- (d) the fact that a number of people who had been asked for written references were unaware why the references were obtained, and for what purposes they were being used.

Evidence under oath or affirmation was provided by the following witnesses,

- Witness 1
- Principal 1
- Witness 2 (by phone) and
- The teacher

In Counsel Assisting's opening submission it was stated that most of the facts were not in dispute, rather it was the context in which matters arose, and the context in which things were said and done, that was to be examined. Allegations 1 and 2 were conceded and acknowledged as a departure from proper standards. However there was some difference of opinion in relation to some of the stated particulars. Hence what was in dispute was the context, and whether context impacted on the seriousness of the misconduct.

In his opening submission the teacher reiterated some of what had been stated by Counsel Assisting and referred to an additional written submission, that he had drafted. He stated that he believed that his conduct had been misinterpreted. He also stated that he believed that his conduct was caused by the degree of stress and pressure he was under at the time. The teacher indicated that he would not be calling witnesses. The Chairperson asked, that given the situation with the references he had provided at late notice, whether the teacher wanted to call his referees as witnesses. The teacher declined the opportunity to do so.

**Witness 1**, a witness for the Institute, confirmed that she worked for an outdoor programme and that she was the Group Leader at the camp where the matters of concern had emerged. She stated that she held a Diploma and various other certificates.

Witness 1 stated that her job involved working with a school staff member and a group of students. Witness 1 reported to her Program Leader who provides logistical support with food and water drops in isolated conditions. Witness 1's signed statement was submitted as Exhibit A. Points 10 and 11 were considered to be prejudicial and were withdrawn.

Witness 1 explained the normal procedure for 'river camps.' For this particular camp Witness 1's group comprised five Yr 9 students. The teacher was the staff representative

from the school. Witness 1 stated that in these situations, the teacher and the outdoor programme staff member operated as colleagues and had dual responsibility in terms of control of the students. She stated that usually the teacher was expected to be the disciplinarian and outdoor programme staff were expected to impart outdoor knowledge to students. On this trip another female outdoor programme staff member, namely Witness 2 was also present for the first two and a half days.

Witness 1 stated that she had noticed from the beginning that the group of students was swearing a lot and that the teacher was also swearing. Witness 1 stated that she heard the teacher use the words 'fuck' and 'shit' and 'fucken shits.' When attempting to curb the swearing by introducing a no swearing technique that singled people out, Witness 1 stated that the teacher said that he would not co-operate and told Witness 1 that the rule was too hard for him, and did not apply to him because he was an adult. Witness 1 stated that she felt her authority had been undermined and informed the Panel that successful camps rely on co-operation between the teacher and outdoor programme staff. She stated that she did not feel that she could tell the teacher what to do and was placed in a difficult position.

The Panel heard that the general rule for outdoor programme camps was that there was no smoking by students and that if adults had to smoke that they were expected to be away from students and not seen by students. Witness 1 stated that the teacher was smoking while in a canoe with a student, and also rolled cigarettes and smoked daily in front of students. It was stated that when one student said the teacher shouldn't be smoking, the teacher responded saying that he'd had asthma as a boy, and that smoking was good for asthma. Witness 1 said that the teacher spoke to students about the best types of cigarettes and explained how to roll them. When the group was told that Principal 1 would be dropping in for a visit later on, one student said to the teacher jokingly that he should light up now. Witness 1 indicated that the teacher did so immediately.

The Panel heard that at night around the campfire, in a social manner, the teacher talked with students about masturbation. Witness 1 stated that while this was not necessarily unusual conversation for Yr 9 boys, that she was usually in a position to remind them with a level of authority that such discussions should remain private. She added that teachers would not involve themselves in such conversation in her experience, rather stop the conversation. She stated that given the teacher's involvement and contributions to the discussion, this was not possible. Witness 1 informed the panel that the teacher said that he didn't need to masturbate anymore as he had a wife, and made the sexually suggestive remark that he "*once had a girlfriend who was 4 foot 3 inches tall which was the perfect height for .....*" and then the student detailed why this was advantageous. Witness 1 indicated that the teacher laughed in response.

Witness 1 stated that the teacher referred to her in front of students as *lady* and *darling*, which made her feel inferior and uncomfortable, particularly given that she wanted the five male students to respect her and view her as the teacher's equal. Witness 1 added that such behaviour put her in a difficult position as she didn't feel like she could challenge the teacher even though he was not treating her as an equal.

Witness 1 stated that the teacher would suddenly say, for no apparent reason ‘Ladies!’ then quickly clap twice and say ‘Titties!’ She stated that he did this quite often, and that it appeared to amuse the students.

Witness 1 told the Panel that the teacher engaged in a detailed discussion about knives and how to kill by stabbing. She stated that this concerned her and that their outdoor programme training guidelines discouraged the inappropriate use of knives, and that students were not encouraged to bring knives to camp.

Witness 1 stated that on the last day of the camp, the teacher was shown a knife by one of the students. She stated that she heard the teacher discussing its suitability as a fighting knife in front of students and witnessed him demonstrating some fighting techniques. She said that she believed that the blade was close to the student. She described the knife as a single blade fold up knife. Witness 1 stated that she was approximately 2 metres away when this incident occurred. She confirmed that she saw the teacher open the knife and that the blade was approximately 6 centimeters long.

Witness 1 stated that she had not noticed any signs of stress or anxiety displayed by the teacher during the camp and that he did not mention being stressed or anxious.

**Witness 2**, a witness for the Institute, confirmed that she worked for the outdoor programme and that she was a Group Leader. Witness 2’s signed statement was submitted as Exhibit B. For this particular camp Witness 2 was employed as ‘river support’. She stated that she spent two and a half days with Witness 1, the teacher and the five male Yr 9 students.

Witness 2 stated that she heard the teacher use offensive language many times in front of the students. She told the Panel that the teacher laughed when Witness 1 attempted to curb the offensive language by stating that the rule did not apply to adults. Witness 2 stated that the language was not abusive nor foul, but was used as part of general conversation. She stated that the teacher’s behaviour did not reflect the standards expected of school groups and teachers. She stated that she heard the teacher use the word ‘fuck’ and ‘fucken shits’ many times.

Witness 2 informed the Panel that she witnessed the teacher smoking in front of the students several times, and while sometimes he would move a small distance away, he was still in sight. She said she saw the teacher smoking in a canoe while with a student. The teacher lit the cigarette while the students packed the canoe, continued to smoke when he boarded the canoe, and then threw the rolled cigarette butt into the river. She said the teacher told students that smoking helps asthma as it helps you take deep breaths.

Witness 2 told the Panel that she heard the teacher talking about other students from the school, not present at the camp, in a disparaging manner. She said that it was her opinion that the teacher did so, as a way of entertaining the boys. She acknowledged that students talk about other students, but noted that teachers shouldn’t do so in front of students. She stated that teachers should stop the conversation in order to respect the privacy of other students. She informed the Panel that the teacher talked about a



student, whom he named, saying that he'd had him removed from the camp. He also referred to another student by name and said that "*being so dippy she would have to be taught how to walk.*" Witness 2 said that the teacher mocked students and behaved like a student.

Witness 2 told the Panel that the teacher held a long conversation with students while the group cooked dinner, about how best to stab someone. The teacher talked about stabbing someone in the kidneys, and the inability of the person to inhale and exhale. She said that he also talked about twisting the knife and removing it quickly, so that you could stab someone else.

Witness 2 pointed out that the students could become 'revved up' when conversations like this were progressed and that it was dangerous to focus such attention on a knife as a weapon, when it should be seen as a tool at camp.

Witness 2 said that when masturbation was discussed, the teacher said that he didn't need to masturbate as he had a wife. He also made a comment about once having a 4 foot 3 inch girlfriend who was the perfect height, and the students' reaction made it clear that they knew what he meant. Witness 2 said that her method of dealing with this sort of issue would be to remove the student from the group and discipline them for crossing the line. She stated that she had expected the teacher would stop the discussion, but stated that she felt that he was involved and part of the problem. She stated that she did not feel that she could discipline the teacher in front of the students.

Witness 2 said that the teacher did not act as a responsible role model and likened his behaviour on camp to that of a Yr 11 student who'd been sent along with younger boys. Witness 2 stated that her concern on the camp was the high level of influence the teacher had on the students and the degree of immaturity he showed as a teacher. She informed the Panel that she witnessed a lack of judgement on his part in relation to what was suitable for young adults.

Witness 2 stated that the teacher referred to herself and her female outdoor programme colleague as "*darling*" and "*love*" which she personally regarded as highly inappropriate, especially given their leadership roles and the age of the boys. She stated that this behaviour did not promote respect in the group for the female outdoor programme leaders.

Witness 2 said that she did not believe that the teacher was suffering from stress or was unwell. She told the Panel that he was energetic and happy, and seemed to enjoy the camp from what she saw.

Witness 2 stated that her concerns and those of her colleague were reported via 'the pink form' back to the Program Leader.

**Principal 1**, a witness for the Institute, confirmed that he was the Principal at the School. His signed statement was submitted as Exhibit E. Points 6 to 16 and Points 19 to 22 were disregarded.

Principal 1 told the Panel that the teacher had been employed as a relief teacher in 2004 and was offered employment at the school in 2005. Principal 1 outlined the school's induction process which was designed to make teaching staff aware of the school's expectations and teachers' obligations. Exhibit C New Staff and Buddies and Exhibit D the School's Position and Selection Criteria were tendered as evidence.

Principal 1 told the Panel that school staff were expected to provide pastoral care, leadership and support when on camps. He said that they would be aware of boundaries and limitations when dealing with students participating in camps. He stated that the teacher's role was to support outdoor programme staff.

The School's Drug Education and Management Policy was tendered as Exhibit G. Point 5.4.2 stated that staff are not permitted to smoke tobacco on school grounds, at school events or in the presence of students. This rule extended to camps. Principal 1 said that if a teacher really had to have a cigarette at a camp, then it should be well away from students, and that teachers would know this.

The School's Behaviour Management Policy, tendered as Exhibit H, stated in Point 4.9.1 that smoking was not permitted by students in any activity including camps. Principal 1 told the Panel that smoking would be seen as an extreme breach of school policy. He stated that the message that students would get when seeing a teacher smoking would be that he did not support the school.

With regard to the language used by the teacher, Principal 1 told the Panel that the swear words used were crude and inappropriate and were more the language of Yr 9 boys and not expected from teachers. He stated that staff should be role models for students. Principal 1 stated that he regretted that the teacher had disregarded his professional obligation as a teacher and had failed to support outdoor programme staff. He added that the teacher's undermining of the outdoor programme staff member's instructions to stop swearing had placed her in a very difficult position.

Principal 1 stated that to allow discussions about masturbation to continue in front of adults was inappropriate. Principal 1 also believed if by referring to his wife the teacher really had sought to terminate the conversation, that it was an inappropriate strategy.

Principal 1 was adamant that the teacher should not have engaged in conversations about other students. He noted that there were privacy issues involved and further that such interaction encouraged intimacy and familiarity between student and teacher which demonstrated a lack of professional distance on the part of the teacher. Principal 1 stated that with only 5 boys present it should have been easy to assert authority and close down any inappropriate conversations.

Principal 1 told the Panel that addressing professional peers as *lady* or *darling* could be perceived as demeaning. He believed it showed a lower level of respect for colleagues than should be expected and was not appropriate.

Principal 1 stated that it was important to have boundaries as the teacher is the responsible adult, and not a member of the group. He stated that adolescents push boundaries but that the role of the teacher is to maintain the boundaries.

The Panel heard that at no time, whether at camp, or in prior or subsequent meetings was Principal 1 aware that the teacher was stressed or anxious. He acknowledged he recalled a general brief conversation about workload with the teacher sometime prior to the camp. He also stated that every staff member was expected to be involved in extra curricular activities and that the school had a 25 year professional relationship with the outdoor programme.

**The Teacher**, the unrepresented teacher gave evidence under affirmation. He read a statement similar to an undated supplementary statement he had submitted prior to the hearing. The teacher informed the panel that he had spent a lot of time considering his behaviour on the camp. He stated that he thought about it daily. He indicated that he was aware that his behaviour had compromised the position of the outdoor programme staff and that he had not intended to do so.

The teacher told the panel that at the time of the camp that he was stressed and suffering 'burn out' from an excessive workload. He said that he believed that he was physically and emotionally 'below strength' but he did not seek medical attention. The teacher told the panel that he had enjoyed the camp activities but did not enjoy being away from his wife and child.

Information provided by the teacher indicated that he accepted the allegation that he had smoked in front of students and in a canoe with a student on board. He acknowledged that he had made a comment about smoking being helpful to asthma. He also stated that he swore in front of students. Finally the teacher agreed that he had inappropriately discussed other students with the group of 5 boys on camp.

The teacher explained that he felt that the boys were unwilling participants at the camp and that some of his conversations, including those about knives, were conversations that he felt that the boys would be interested in. He told the panel that he felt that he needed to keep the boys entertained and happy by spicing up his conversations and attempting to be their buddy. He said that he believed that some of his comments and conversations, such as the one about stabbing techniques had been misconstrued or taken out of context by the outdoor programme staff. He stated that he was not talking about stabbing humans.

When asked about his reasons for calling outdoor programme staff *darling* and *love*, the teacher explained that he thought he had built up a degree of familiarity and a rapport with the staff which made it acceptable to use such terms. He agreed that others may feel uncomfortable with such terms but felt that he had not used them in a demeaning way. He did not believe that referring to colleagues in this way would undermine their authority.

Further he stated that the reference to '*Ladies!*' and '*Titties!*' was from a movie and not related to outdoor programme staff.

The teacher stated that he had made serious errors in judgement. He stated that he understood that smoking and swearing in front of students, and his participation in inappropriate conversations, were serious departures from the role and responsibilities of a classroom teacher, and from his role as a person in authority at camp. He stated he would not do such things again and apologized for what had transpired.

## **DISCUSSION OF EVIDENCE**

The teacher from the outset admitted that a number of allegations that had been made were correct, and that he had made serious errors in judgement. It is acknowledged that this step on the teacher's part had prevented student witnesses from being called and showed a level of professional maturity.

The evidence indicated that there was a conflict in the standards of behaviour expected of students by the teacher while the students were at camp, and the standards of behaviour expected of students by outdoor programme staff. Further the evidence showed that the teacher failed to ensure that the standards of behaviour for students at camp appropriately reflected those that were appropriate when students were at school. This is despite the fact that the expected standards of student behaviour when at school and at camp were detailed in the school's policies and other documents issued to all staff. The evidence shows that outdoor programme staff, unlike the teacher, had an accurate measure of what should be expected and what was acceptable in relation to student behaviour, when on camp.

The evidence confirms that the teacher on a number of occasions behaved in a manner that was inappropriate while attending the camp. Further the panel is of the firm view that the teacher's behaviour, some of which the panel viewed as belittling and sexist, undermined the authority of outdoor programme staff in front of the adolescent male students. Of particular concern to the panel was the fact that given the outdoor environment and the challenging nature of some of the activities where it was essential that students respected, trusted and automatically responded to the authority of specialist outdoor programme staff, the teacher's behaviour lacked judgement and foresight, failing to pre-empt potential risks and fallout.

The panel noted that during camps both leadership and discipline play an important role when it comes to limiting risk and ensuring safety. Based on the available evidence the panel is of the view that the teacher not only failed to demonstrate and promote sound role models of leadership, he also compromised structured discipline without reasonable excuse. Good camp management is important, and the evidence shows that the teacher fell well short of what was expected of him in his professional role.

While the teacher admitted that his behaviour had compromised the position of outdoor programme staff, the panel was of the opinion based on the evidence, and the degree of remorse shown by the teacher, that the teacher still had some distance to travel in order to fully understand the real and potential impact of his behaviour. The teacher did however admit that by smoking in front of the students at the camp, and making comments about smoking and asthma, that he had behaved in a manner which

was clearly against the stated and published rules of the school. Further in admitting to using offensive and inappropriate language in front of students at the camp, and discussing how his classroom behaviour was significantly different, the teacher evidenced that he knew what standards of behaviour he was expected to adhere to as a teacher.

The panel considered a number of discussions between the teacher and the boys at the camp lacked sound judgement and showed concerning signs of personal and professional immaturity on the part of the teacher. The panel were of the firm view that this behaviour amounted to misconduct. The panel also formed the view that the teacher's priority was to be accepted by the boys and to be viewed as a member of the group, rather than taking responsibility for the topic of conversation, changing the direction of conversation or calling it to an immediate halt, hence being viewed as the adult in the group. Given the evidence the panel believed that there were several occasions where the teacher behaved like a student, rather than a teacher.

The panel, mindful of the context, believed the evidence showed that the teacher failed to appreciate the degree to which his behaviour was disrespectful of outdoor programme staff and students.

The teacher told the panel that he was stressed at the end of term when the camp occurred, and that these circumstances went some way to explaining what had happened at camp. No supporting medical evidence was provided by the teacher in relation to this claim. Based on the evidence the panel was far from convinced that the teacher's claim was credible.

## **FINDINGS UNDER SECTION 2.6.46(2) OF THE ACT**

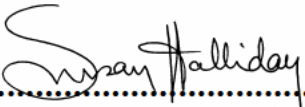
The panel decided that based on the balance of probabilities and all the available evidence, allegations 1(a) and 1(b) as listed in the EVIDENCE were substantiated, and the teacher had engaged in misconduct. Further, the panel were of the view that the context increased the seriousness of the teacher's misconduct.

The teacher's claim that his behaviour and comments were misinterpreted was not accepted by the panel. Additionally the panel did not accept that the teacher's behaviour and inappropriate comments could or should be blamed, and in turn excused, on the basis of stress and a heavy workload.

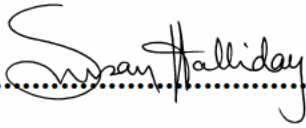
However, in the end, the panel considered that the teacher's misconduct fell short of amounting to serious misconduct and that the teacher was fit to teach. That said, the panel was concerned, given what had transpired and the limited levels of remorse shown by the teacher, that the teacher was involved with the education of student teachers. This was particularly the case given that the panel considered the teacher's analysis of what had transpired to be lacking in depth and sophistication. The panel considered that it was incumbent upon the teacher, given his current and future career objectives, to revisit what had transpired from the position and perspective of the

students, the parents, the school, the outdoor programme staff and the broader education community.

The panel determined that the teacher had engaged in misconduct, not serious misconduct, and declared the teacher fit to teach.

  
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**SUSAN HALLIDAY, CHAIRPERSON**

  
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**per ,**  
**NORM FARY, REGISTERED TEACHER**

  
.....  
**per ,**  
**JEANETTE BARCLAY, REGISTERED TEACHER**