

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 089

REGISTERED TEACHER: Tomislav Peter GAVRAN

PANEL MEMBERS: Susan Halliday, Chairperson
Kevin Pope, Registered Teacher
Rhonda Cumberland, Specialist Member

ATTENDANCE: The teacher was represented by Ms Trish Riddell, Counsel,
instructed by Christopher Bunnett Lawyers,

Ms Anne Sheehan, Counsel Assisting with Ms K Magnussen,
instructing

DATE OF HEARING: 30 July 2009

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION AND TRAINING REFORM ACT 2006*:

On 27 October 2009 the Panel decided:

1. to suspend the registration of the teacher from 14 December 2009 to 14 June 2010;
and
2. to impose the following conditions:
 - that the teacher attend six sessions of counselling with his treating psychologist (i.e. six sessions in addition to sessions that he has already attended). The counselling sessions are to address the following issues in relation to the teacher's practice as a teacher:
 - Victorian Institute of Teaching Code of Ethics (ref honesty and integrity)
 - Victorian Institute of teaching Code of Conduct (ref the teacher's breaches)
 - The direct and explicit links between Allegation 1 and Allegation 2

- Balancing personal life and professional conduct (ref alcohol consumption and social activities)
 - Student/teacher relationships – setting appropriate boundaries
 - Strategies for moving back into teaching.
- that a report from the psychologist is to be provided to the Panel by 14 June 2010. The report is to address the teacher's progress generally, as well as detail levels of understanding and outcomes in relation to the six points set out above.
3. Additionally, the teacher is to submit a report written by himself (i.e. it should not be drafted by his legal representatives or any other person) detailing what he has undertaken and learned during his own remedial and development work, and the six counselling sessions. This report should be submitted with the psychologist's report by 14 June 2010.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 25 January 2006.

By letter dated 8 July 2008, the employer notified the Institute that they had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. As a result of these allegations the teacher's employment was terminated by the employer, with effect from 28 June 2008.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 10 September 2008 and the Committee decided to refer the matter to an investigation. The Committee considered the investigator's report and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 16 March 2009 was served upon the teacher's solicitor on 31 March 2009. The formal hearing proceedings were initially listed for 6 April 2009. At the request of the teacher's legal representatives, the formal hearing was adjourned until 30 July 2009.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notification from the employer of action taken against the teacher, dated 8 July 2008 (1 page) (001)
2. The teacher – Victorian Institute of Teaching Registration Details (4 pages) (002-005)
3. Witness statement of the principal dated 5 January 2009 with attachments:
 - 1 – Printout of MSN message sent on 27 April 2008
 - 2 – Letter from the principal to the teacher dated 30 April 2008
 - 3 – Letter from the teacher to the principal (undated)
 - 4 – Letter from the principal to the teacher dated 28 May 2008
 - 5 – Minutes of Meeting between the principal, the assistant principal and the teacher dated 29 May 2008
 - 6 – Email message from the officer of the employer to the principal dated 4 June 2008
 - 7 – Letter from the employer to the teacher dated 6 June 2008
 - 8 – Letter from the principal to a senior officer of the employer dated 6 June 2008 (pages) (006-027)
4. Witness Statement of the officer of the employer dated 2 December 2008 (025-027)

2 – Copy DVD

3 – Email message from the officer of the employer to the principal dated 4 June 2008 (028)

5. Policy for the employer's Information, Communications and Technology (ICT Systems) dated 11 July 2006 (11 pages) (029-039)
6. Record of Interview with the teacher dated 11 December 2008 (34 pages) (040-073)
7. Report of the registered psychologist, dated 9 January 2009 (2 pages) (074-075)
8. Letter from the teacher to the Institute's Disciplinary Proceedings Committee dated 10 February 2009 (076)
9. Chronology (077-078)

The following exhibits were accepted by the Panel:

- Letter from referee 1 to the employer dated 11 July 2008
- Reference from referee 2 (undated)
- Reference from referee 3 dated 28 July 2009
- Reference from principal 1 dated 27 July 2009

THE EVIDENCE

The allegations of serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

In 2008, whilst employed as a registered teacher at the school, the teacher:

1. Engaged in inappropriate communication with 15 year old, the student, a previous student of his from school 1, in that he:
 - (a) On 27 April 2008, while communicating with the student via MSN:
 - i. Stated to words to the effect of:
 - '30...fuk im getting old'
 - 'too old for u...lol'
 - 'too old for u don't u think?'
 - 'how old u been with then?'
 - 'im drunk...don't take advantage of me ...lol'
 - '18 hey...im older than that tho... did u kiss him?'
 - 'really...u wuldnt have prob pickin up guys.....ur gorgeous'
 - 'who was the guy? how old are you now bec?'
 - 'u will b gorgeous... always knew u wuld....smart too'
 - 'i like young girls...i'm kinda seeing an 18 yr old... how bad's thta...lol???'

- 'I kinda feel bad... but she's very mature for her age...maybe im not....lol'
 - 'she's like only 3 yrs olde than u...lol...'
 - 'its like im with a girl your age...lol'
 - 'its almost like im with u....lol'
 - 'Please don't tell ur sis lve been talking to u...if word gets out, makes me look really bad...'
 - 'I wuld luv to cath up with you in a few years.. lol'
 - 'but ill b like 33-34 by the time u start going out...??'
 - 'i'd rather meet u then take a risk...lol...'
 - 'always though u nwere sexy...'
 - 'please don't tell anyone... u prob think im a weirdo...lol??'
 - 'when ur 17-18... id snap u up...lol'
 - 'that's weird...I teach u then think ur sexy... u were always more mature than the rest...always liked u...u like dme too hye...we got along well...'
 - 'always nice you were...'
 - 'u always took everything seriously and it rubs off...no msatter what it was'
 - 'this is wrong...im kinda liking u...lol'
 - 'u like me a bit?.....??.....that a no?'
 - 'oh shit...don't I feel like a fool...lol'
 - 'maybe in a few yrs'
 - 'in 2-3 yrs u b an adult...then we can meet for dinner'
- ii. Provided the student with his mobile telephone number, and encouraged her to send him a message for instance saying:
- 'oh ok....sexy... I will....send me a msg'
 - 'u got credit'
- iii. Attempted to obtain the student's mobile telephone number so he could send her a text message for instance saying:
- 'u got a mobile?'
 - 'ill send you a msg'
- iv. Encouraged the student on at least two occasions to take part in the use of a webcam for instance saying:
- 'don't be silly...it me see....u could never look bad'
 - 'let me see ya'
 - 'don't be shy... I may never b online again'
 - 'hehe...have confidence girl...u always look good!'
2. Engaged in inappropriate personal conduct in that he made use of his leased laptop computer in breach of the policy for the employer's Information, Communications and Technology (ICT Systems) dated 11 July 2006:
- (a) Entered search terms to access internet files including:

- http://au.youtube.com/results?search_query=amateur+girls+school+sex&search_type=&aq=f
- <http://youporn.com/search?query=schoolgirls&type=straight>
- http://au.youtube.com/results?search_query=teen+kissing&search_type=&aq=f
- http://au.youtube.com/results?search_query=amateur+teens&search_type=
- http://au.youtube.com/results?search_query=teens+kissing+in+school&search_type=&aq=6&oq=TEENS+KISS
- http://au.youtube.com/results?search_query=TEENS+GIRLS+KISSING&search_type=&aq=f
- <http://www.redtube.com/?search=teen+lesbians>
- <http://youporn.com/search?query=teen+girls+kissing&type=straight>
- http://server322.files.youporn.com/e1/a/02/63/flv/26302_Schoolgirl_Uniform_Fuck.flv
- YouTube - schoolgirls
- RedTube - Two naughty Schoolgirls
- YouTube - Very Sexy School Girl Strip
- YouTube - school teens lesbian kissing at the schoolyard
- YouTube - teen girls make out at home after school
- YouTube - Amateur Teens In The Bath
- YouTube - Drunk teens kissing and playing
- YouTube - school teens lesbian kissing at a houseparty
- YouTube - Young Teen does it on her bed
- YouTube - Beautiful Lesbians Teens
- YouTube - Lesbians Teens
- YouTube - Lesbian teens kissing in bathroom and bedroom
- YouTube - webcam teens kissing
- YouTube - hot sexy teen girls kissing (nude porn sex tongue ass)
- YouTube - Teens Rub Lotion Over Their Breasts
- YouTube - sexy teen stripping on her bed
- YouTube - Two Hot teens lesbian kissing with tongue
- YouTube - Lesbian teen kissing her friends mom
- YouTube - Teen Girls Kissing On Webcam
- YouTube - Four Teen Girls Kissing And Making Out
- RedTube - Teen girls start licking after sleepover

The Panel heard evidence under oath/affirmation from the following witness called by the Institute:

- The principal

The Panel heard evidence under oath/affirmation from the following witnesses called by the teacher:

- The registered psychologist
- Witness 1
- Witness 2

- Witness 3
- Witness 4
- Principal 1 (by telephone, at the Panel's request)

It is noted that prior to the Hearing the teacher's legal representatives filed a submission which admitted the facts relevant to the allegations. In addition the teacher's legal representative advised Counsel Assisting the Panel that the evidence in the Notice of Formal Hearing was unchallenged and that it would not be necessary to call certain witnesses on behalf of the Institute, as there would be no cross examination. The Panel commended the teacher's actions in this regard.

Given what had transpired the issues for the Hearing amounted to determining whether the admitted facts amounted to serious misconduct (mindful also of the need for clarity around timing and who accessed the pornography in question), whether the teacher was currently fit to teach, and in turn an appropriate determination pursuant to s 2.6.46 (2).

ALLEGATION 1

It was alleged that on 27 April 2008, whilst employed as a registered teacher at the school, the teacher engaged in inappropriate on-line MSN communication with a 15 year old female student, the student. The student was a previous student of the teacher's. The teacher had taught her whilst teaching at a previous school, school 1. The student did not give evidence at the Hearing.

The teacher admitted to the on-line MSN conversation in question. He indicated that he did not recall the conversation. The MSN on-line conversation was conducted in the early hours of Sunday 27 April 2008 between the teacher and the student. The evidence shows that the nature and content of the on-line conversation were inappropriate. The actual time of day that the conversation was conducted between the teacher and the student was also inappropriate.

The evidence shows that the conversation was printed off and taken to the Police by the student's concerned parent within a short space of time. The Police contacted the teacher's employer, namely the principal, on Monday 28 April 2008. The Police informed the principal that a complaint had been made about the teacher by the parent of a former student. The Police provided the principal with a transcript of the on-line MSN conversation between the teacher and the student. The principal then contacted the principal of the school where the teacher had previously taught; the same school that the student was currently being educated.

The evidence shows that the principal wrote to the teacher on 30 April 2008 seeking a written explanation for the on-line MSN conversation and included a copy of the transcript.

The evidence shows that the teacher initiated the conversation on-line, and on two occasions invited the student to go onto webcam. The student rejected both invitations. She also rejected repeated encouragement via on-line chat to show herself on-line. The teacher joked about a future relationship with the student, complimented her on her

appearance, asked her questions about her social life and gave her his mobile phone number, inviting her to send him a message. The teacher referred to the student as 'sexy' on three occasions and sought compliments from the student.

The teacher gave evidence that he could not recall the contents of the conversation. Having received a copy of the transcript from the principal he responded that the conversation "started innocently" and that there was discussion of normal topics as on previous occasions with the student. The Panel noted from the transcript that the conversation started with the teacher asking the student what she was doing up so late and then stating that he was "very drunk."

The teacher indicated that his conversation was fuelled by his alcohol consumption. He also indicated that in his view the student was happily chatting along and responding in a manner that contributed to the direction of the conversation, and in turn the inappropriateness of the conversation. In receiving this evidence the Panel was mindful that the teacher had stated that he could not personally recall the contents of the MSN on-line conversation.

The principal noted that as part of his investigation he asked the teacher to hand in his laptop for audit immediately. The principal personally delivered the laptop in a sealed box to the employer.

On 7 May 2008 the teacher provided the principal with a written response to the transcript of the on-line MSN conversation. He indicated that on Saturday 26 April 2008 he had attended a football match and then a party. He stated that having consumed alcohol at both functions, he returned home "*significantly intoxicated*" around 1am on Sunday morning 27 April. He wrote that he then logged onto the internet to check soccer scores and talk to friends overseas via MSN. He also wrote

- *Whilst I was on-line I noticed that the student had logged onto MSN.*
- *The student had added me as a 'friend' on MSN approximately 12-14 months ago, after I had ceased teaching at the previous school where I was employed*
- *I am not sure how she found my address but I accepted the invitation*
- *We have since chatted a few times on MSN and our conversations have always been good (i.e. we chatted about topics such as school, work, friends, soccer etc... it was never sexual)*
- *We never planned to meet and chat on-line. Our conversations were purely coincidental and random*
- *I taught the student for one term in 2006 and coached her sporting team*
- *We always had a cordial relationship and there were never any expectations or issues arising from either side*
- *I built up a good rapport with all of my students and players that year and they often asked me for advice, talked about school and shared a laugh*
- *As the transcript shows the conversation initially started innocently*
- *At times the conversation was admittedly inappropriate but it was fuelled by alcohol and by the responses the student gave, and it was nothing more than innocent flirtation*
- *At no stage did the student suggest that the conversation was inappropriate, yet was happily chatting along with me*

- *There was flirting from both ends*
- *Notwithstanding these comments I am fully cognizant that she is a minor and this behaviour was inappropriate on my behalf*
- *Although I was intoxicated I still knew that in reality nothing could or would happen between us*
- *It was an isolated incident fuelled by alcohol*
- *I sincerely am apologetic and realise that it is inappropriate behaviour that will not happen again*
- *I will delete the student's MSN contact and not contact her again*
- *As my laptop will prove I do not have any current student addresses ...it was definitely a one-off occurrence*
- *I have the utmost respect for females, and have numerous female friends, young and old, whose company I share and enjoy in a purely platonic nature*
- *I would never contemplate a relationship with a student.*
- *I have taken this matter extremely seriously ...I have definitely learnt a valuable lesson in protocol and behaviour as a teacher, and will ensure I never repeat the alcohol fuelled discussion I had that night.*

The principal met with the teacher on 29 May and noted that the teacher was remorseful and extremely embarrassed by what had happened. The teacher indicated that he had deleted the MSN contact for the student involved saying what had happened was a learning experience.

The evidence given by the teacher at the Hearing reflected what he had penned to the principal. During the Hearing the teacher demonstrated a level of remorse, as well as a degree of understanding about the circumstances and related professional fallout, with respect to Allegation 1.

ALLEGATION 2

It was alleged that the teacher engaged in inappropriate personal conduct making use of his leased laptop computer in breach of the employer's policy. An officer of the employer emailed the principal on 4 June 2008 with the results from the audit of the teacher's leased laptop computer. The officer stated –

"I've listed a few websites that the teacher has been accessing There is no indication that these have been accessed in school time.

- *<http://youporn.com/search?query=schoolgirls&type=straight>*
- *http://download.youporn.com/download/51365/flv/26302_Schoolgirl_Uniform_Fuck.flv*
- *<http://www.redtube.com/?search=teen+lesbians>*
- *<http://youporn.com/search?query=teens+girls+kissing&type=straight>*
- *<http://www.redtube.com/?search=teenagers>*
- *<http://www.redtube.com/?search=teen+lesbians>*

The items listed below are searches that the teacher has done on YouTube and RedTube. They are only examples and there are many more.

- RedTube - Teen girls start licking after sleepover
- YouTube -Horney lesbian teen sluts hump their friend
- YouTube - Drunk teens kissing and playing
- YouTube - School teens lesbian kissing at a houseparty
- YouTube - Lesbian teen and older woman kissing in kitchen and bedroom
- YouTube - Teen college girls boobs young ass sexy porn coeds video
- YouTube - Beautiful Lesbians Teens
- YouTube - Lesbian teens kissing in bathroom and bedroom
- YouTube - hot sexy teen girls kissing (nude porn sex tongue ass)

The principal referred the matter in full to the employer, via a senior officer, recommending that an inquiry commence. He informed the teacher that he had done so in writing, on 6 June 2008.

The officer of the employer who had reported on the original audit findings via email, provided a signed witness statement dated 2 December 2008. The statement itemised the standard audit procedures that were followed by the officer. It stated that the laptop was examined by external data specialists contracted to undertake such work and that as the responsible officer of the employer, he received a set of CDs containing a copy of the contents from the hard drive, which he then viewed to determine if the teacher had accessed and/or stored inappropriate material on his leased laptop computer. The officer wrote -

“One of the folders contained images stored on the laptop. I viewed a selection of these images. A number of the images were of naked women and depicted sexually explicit poses and behaviour ... One of the folders contained a ‘forensic internet history analysis’ - a complete history of the internet usage for the laptop, the search terms used to search for, or within, websites and the last date that a website was accessed by the laptop.”

“I did not view each item listed ...I used some key words to search the material ...the results of my searches indicated that combinations of words including ‘school’ and ‘girl’ and ‘teen’ and ‘sex’ and ‘porn’ had been used as search terms to search for, or within, websites on the laptop.”

It was noted by the Panel that viewing adult pornography is legal conduct and a personal choice. At the point in time where such a choice is linked to the professional life of a teacher and/or impacts negatively on the reputation of the teaching profession there are particular concerns. The evidence shows that the pornography accessed via the teacher’s leased employer laptop was labelled or itemised as ‘young’ - ‘porn’ - ‘schoolgirls’ -‘ teen’ - ‘girls’ etc

In giving evidence the teacher was more limited in his discussion in relation to Allegation 2, than Allegation 1. The teacher did admit to viewing some pornography, but he did not admit to viewing pornography directly after the MSN on-line conversation. He did suggest that maybe his cousins who were staying with him at the time, had accessed pornography using his laptop. The teacher gave evidence that he was unable to recall with precision or clear detail, what he or his cousins were doing on the relevant days and

times of interest to Counsel assisting, and that he could not recall what took place after his on-line MSN conversation with the student.

The evidence given by the registered psychologist, who had seen the teacher as a client prior to the Hearing, indicated that the teacher had viewed the pornography in question within about half an hour of concluding his online MSN conversation with the student. The psychologist informed the Panel that he was told this by the teacher in late July 2008. The evidence shows that the letter received by the teacher from the school on 6 June 2008 (the first letter to deal with the laptop) only indicated that *“a scan of the files stored and/or accessed on the laptop ... revealed a significant number of graphic images which could be considered inappropriate.”* There is no evidence that the specifics, or names of websites or search terms were provided to the teacher in writing or verbally, nor were any times or dates provided to the teacher about what was found on his laptop. Further, the email to the principal from the employer did not identify days or times relevant to the laptop searches and related audit findings.

The teacher gave evidence that he did not know what searches for pornography were made by him or potentially by others on his laptop. He conceded that it was logical to assume that searches for pornography undertaken just prior to and after him accessing his on-line banking for example, were probably made by him. Ultimately the teacher conceded that the pornographic searches made after the MSN conversation, would have been made by him. The teacher however gave evidence at the Hearing that he was so drunk that he could not really recall exactly what happened that night.

The evidence shows that the teacher’s character witnesses were told about the fact that he had viewed the pornography, in mid 2008, by the teacher himself, although without the specifics that were aired with the psychologist.

The teacher’s witnesses talked of the teacher’s dedication to teaching, and his continued interest in pursuing his career. There was evidence given by his character witnesses that the teacher had engaged in some self reflection and had demonstrated a level of remorse, especially given that he had had to live with the consequences of his actions, suffering a level of embarrassment and having to find alternative employment.

The psychologist indicated that the teacher had more developmental work to do, in order to fully understand from a behavioural perspective, what had happened, and why. He also stated that based on his work with the teacher thus far and what he had gleaned from their interactions he considered it unlikely that the teacher would repeat the same mistake.

The evidence shows that having had his employment terminated by the employer, the teacher applied for a role in a non-government school. Evidence given during the Hearing by the teacher and his new/current principal (2009), showed that the teacher was asked by the new/current Principal during his interview process if there were any matters that she should know about. The evidence given was that the teacher was not honest at the time, nor was he forthcoming about the nature of his pending disciplinary proceedings when the details became known to him. The Panel noted that these circumstances were not directly relevant to the two specific allegations before it, and that they came to light

during the Hearing. The Panel also noted that in January 2009 the teacher became aware that the Victorian Institute of Teaching would advise a prospective employer of an investigation but not the nature of the allegations. It was put to the Panel that the teacher's solicitor also advised him what he should and should not tell his employer. The teacher made the decision not to be honest with his employer. His legal representative informed the Panel that the teacher was uncomfortable about not being honest with his new/current employer.

DISCUSSION OF THE EVIDENCE

Reflecting on the last point of evidence first, the Panel noted that the teacher had many opportunities over several months to be honest with his new/current employer. He chose not to be. It is the view of the Panel that this on-going decision not to be honest does go to credibility, irrespective of what advice he initially received or what he may have thought that his new employer would or would not have found out as matters proceeded.

In relation to the on-line MSN conversation, the Panel deemed that alcohol consumption was not a reasonable or justifiable excuse for the nature or the content of the conversation, nor for the time of night/day that it was initiated. Further and for the record the Panel wished to note that the teacher was 'the adult' and most significantly 'a teacher' and of key relevance was the fact that he was known to the student having previously taught her. Hence the teacher had a core set of professional obligations and personal responsibilities that extended beyond 'school hours' and surpassed all else, when it came to a conversation with a 15 year old. This is irrespective of whether she was a current student or a former student, or where the conversation took place. The Panel wishes to make it particularly clear that the professional obligations and personal responsibilities of a teacher do not alter, or count less, because a teacher has been out socialising, or because the teacher in question has not had a drink for the previous 3-4 weeks, or because there is a chance that the teacher in question may have been more affected by alcohol because of his slighter build and isn't normally a big drinker. At 30 years of age it's the teacher's job to manage his own behaviour and desires; alcohol affected or not. There are no escape clauses. Further it is the teacher's job to manage his behaviours and desires in a manner that ensures they do not compromise the rights of others, in particular, students. Alcohol consumption is not a legitimate reason for arguing for leniency in these particular circumstances. To argue for leniency due to alcohol in these particular circumstances equates in many ways to arguing that a breach of drink driving laws should be deserving of reduced penalty because the driver was drunk, and hence he didn't realise he was drunk when he got in the car and drove home.

The teacher stated that he could not recall the content of the MSN conversation. The Panel is not convinced that this is the case. The teacher acknowledged that he was in the wrong, and should not have engaged in the on-line conversation. But the fact is that he did engage. It is the view of the Panel that the teacher's position on the MSN conversation, based on things that he may have remembered, and after having read the transcript, was party to attempting to lessen his culpability by not only blaming alcohol, but further and most significantly by identifying the student as a willing party who flirted,

chatted along happily and contributed in a manner that took the conversation down the path that it went. A thorough read of the transcript left the Panel with a very different picture and the view that the teacher thus far had not come to terms with the actual content progressed by him, and his role in the event. These things must be dealt with by the teacher, irrespective of the known/unknown fallout for the 15 year old student and her family.

If in fact there was anything out of order said by the student (however it is noted that her conversation was far more appropriate and innocent) it should have been appropriately managed immediately by the teacher. The transcript of the on-line conversation adds further weight to the teacher's blameworthiness as it shows that the person who was interacting inappropriately and in a sexually suggestive manner was the teacher, not the student. He initiated the conversation, he told her he was drunk, he swears – she doesn't, he offers up that he's too old for her and presses for conversation around the point, he then asks the age of people she sees and for intimate details. This is followed by his own personal disclosures about being with a young woman just a few years older than the student noting "it's almost like I'm with you." Further the teacher compliments the student on her appearance in a very familiar manner several times, he invites her to go onto webcam and repeatedly encourages her via chat to do so when she refuses. He tells the student "please don't tell your sister I've been talking to you ... if word gets out it makes me look really bad" and then he says that he would love to catch up with her in a couple of years and that "I'd rather meet you then, than take a risk." He calls her sexy and again says "please don't tell anyone" followed by "when you are 17-18 I'd snap you up" and "this is wrong I'm kinda liking you" and then he asks several times if she likes him. He notes that in 2-3 years when she is an adult they can meet for dinner. He asks again to see her on-line and she refuses. He asks for her mobile number, she avoids giving it, he asks does she have credit and gives her his mobile number, he then sends the second webcam invitation; again she refuses but he encourages her to show herself on line by telling her to have confidence. The teacher continues to seek phone interaction and a msg message. The student avoids the phone interaction and he finishes by telling her to send him a msg message.

The Panel is of the firm view that the student, unlike the teacher, behaved in a mature, astute and adult way, and that she should be commended.

While the duration of the conversation on-line may not have been particularly long, it was quite an extensive on-line conversation given the topics covered. There was time for many inappropriate comments and requests to be made, and untoward messages to be shared with the student, by the teacher. The Panel is of the view that the teacher chose to engage on-line, and chose to engage in the way that he did. He may have consumed alcohol, but his ability to type and use standard MSN phonetics, and his ability to think and transfer his thoughts in a sequential conversational manner do not appear to have been impeded, as evidenced by the transcript. Further given the content and requests made by the teacher, the Panel viewed the teacher's interaction as opportunistic and clandestine in nature. During the conversation he presents as unappeasable, and as one who can not be dissuaded by the careful way in which the student engages and disengages throughout the conversation, as evidenced by the transcript.

Having heard the teacher give evidence about the on-line MSN conversation, the Panel were of the considered view that the teacher lacked significant levels of personal and professional insight at the time of the incident. Further, and just over a year later, the Panel was of the firm view that the teacher still had quite some distance to travel before fully grasping the complexities and potential harm for the student and the profession, given the circumstances. The Panel, based on what was said by the teacher, felt that insufficient reflection had taken place, and additionally that psychologically the teacher had not unpacked or come to terms with what really sat behind the progression of such a conversation with a 15 year old student.

While the Panel acknowledges that it was a single conversation, it found the behaviour amounted to serious misconduct. The breach of trust, accompanied by the various webcam and conversational invitations fall well short of the standards as outlined in the Victorian Institute of Teaching's Code of Ethics, and Code of Conduct, respectively. Deserving of more than passing censure the teacher is fully and unequivocally to blame for the conversation. The teacher is also to blame for the deleterious impact on the teaching profession, the school communities he has been involved with, and further he is fully and unequivocally to blame for impacting the student and her family, who felt the need to take the matter up with the Police.

The second allegation, concerning the teacher's inappropriate use of his leased laptop computer in breach of the Acceptable Use Policy for the employer's information, Communications and Technology (ICT Systems) is proven. The breaching of his employment conditions were not a matter for the Hearing however. What was of particular significance to the proceedings was the nature of the searches and related search terms, links/files and websites that were accessed on the work laptop computer. Mindful of course that adult pornography is legal, and that the teacher (and his house guests) were free to view it if they wished, the key concern to the Panel was the timing that the pornography was viewed, the search terms that were purposefully entered in order to access the pornography, and in turn the nature of the pornography that was viewed. The Panel concluded on the balance of probabilities and the available evidence that the teacher did access the pornography in question soon after concluding his conversation with the student. Additionally, the actual words searched, revealing the names of the websites/links, the YouTube and RedTube items found on the teacher's computer focussed heavily on the words *school girls* and *young teens* and *teen girls* and *schoolgirl uniform* etc.

Time and content directly and explicitly link Allegation 1 and Allegation 2. It is the view of the Panel that the links are problematic and disturbing, and in turn in need of clear analysis and articulation by the teacher. This has not happened thus far in the view of the Panel, and the Panel considered that the teacher had some significant developmental and frank self assessment work to do prior to returning to the teaching profession. Given the circumstances, the Panel were of the view that Allegation 2 also amounted to serious misconduct.

The Panel noted that the evidence given by the teacher, in relation to this allegation was not particularly comprehensive. Further the Panel considered the teacher's evidence was delivered in a measured and at times evasive manner. While it took quite some time, in

the end the teacher conceded a number of points related to his viewing of the pornography of concern to the proceedings. The Panel would like to note that the teacher could have approached the situation in a more open and helpful manner. This is a matter for the teacher to reflect on in the Panel's view.

Further, there were some concerns about credibility with the Panel noting that the teacher had not always been as upfront, open and honest as he could have been, when given opportunities to do so. Again this is a matter for the teacher to reflect on in the view of the Panel.

When the teacher gave evidence, he appeared to go through the appropriate motions and demonstrate remorse. The Panel was unconvinced about the full and genuine nature of this. Ultimately the Panel felt that the teacher's remorse had much to do with his personal embarrassment, and the fact that he had been caught out in the manner that he had been. It is in this context also that the Panel considered the actions of the student to be commendable, given that it was her actions that ensured that the teacher's transgressions were realised and could be dealt with.

In determining a finding of serious misconduct the Panel noted *Parr v Nurses Board of Victoria* VCAT (2 December 1998, cited with approval in *Domburg v Nurses Board of Victoria* [2000] VSC 369, per Ashley J.) *the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of the case. Clearly such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be a departure, in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure.*"

There is no reference to, or evidence that the pornography in question was illegal. Mindful that the teacher's search terms did involve the words *teens/young teens/girls/schoolgirls* etc., the Panel noted that in *R v Quick* [2004] VSC 270 (27 May 2004), Redlich J reflects on the objects of Sub-Division 13 of the Crimes Act and notes the importance of efforts to reduce material *that fuels fantasies that incite offenders to offend*, and the importance of reducing material *that is used for grooming and seducing victims*. While these references relate to illegal child pornography, they do have application in the circumstances where a teacher views pornography that depicts young people who are the same age as their students.

In *Health Care Complaints Commission v Wingate* [2007] NSWCA 326 the Court made it clear that, at a general level members of professions have a duty to fully and frankly disclose any misconduct, and further that the obligation of candour does not override the common law privilege against self-incrimination. The privilege against self-incrimination does not entitle a professional to make untruthful or misleading statements. It is clear that the teacher did not comply with his duty to ensure that he provided full and frank disclosures during the Hearing.

If the teacher wishes to return to teaching (and he says that he does) the Panel requires that the teacher take the time to explore how he ended up in the situation that he did,

and that the teacher personally experience and demonstrate a level of remorse associated with all of the relevant factors.

The Panel was not of the view based on the available evidence that the teacher was a purposeful predator, rather a young man who lacked personal and professional maturity, personal and professional insight, and sufficient levels of common sense, given the nature and expectations associated with his chosen profession. While the Panel considers it unlikely that the teacher will repeat his mistake, the Panel was concerned that the mistake was a symptom, and that the ultimate cause related to a larger set of personal circumstances. Until the larger set of personal circumstances are addressed and the teacher has a clear picture of how they impact him in his role as a teacher, the Panel is of the view that he should not teach. Hence the teacher was viewed as currently unfit to teach.

The integrity of this teacher is also something the Panel considers to be in need of review, and something that the teacher is solely responsible for improving, given what has transpired. The examples of 'limited' honesty (or what came across as calculated levels of honesty) during proceedings have resulted in the Panel erring on the side of caution.

The Panel is of the view that the teacher needs to reflect fully on the position he has also placed his former two employers and current employer, and their respective school communities in. Many people have directly and indirectly been impacted by his actions, including the broader education community. The trusted and privileged position he holds as a teacher is one that he needs to demonstrate he understands in greater depth and in a more sophisticated manner, if the Panel is to consider this teacher fit to teach. His failure to demonstrate that he was accepting of his personal accountabilities was also evidenced by the fact that there were several excuses given to try and lessen culpability for the misuse of his leased work laptop, despite the fact that warnings about appropriate usage are given when the laptop is turned on.

The Panel did note the information provided by the teacher's colleagues/character witnesses/brother. The Panel also took on board when making its determination that the teacher had already done some remedial work, and had also suffered personal embarrassment. No issues associated with teaching competence were reviewed as part of the proceedings.

Ultimately at the end of the Hearing the Panel was not convinced that the teacher had comprehended the full relevance of the links between his conversation with the student and accessing the pornography itemised as featuring "*young teens/teens/schoolgirls*" within the evidenced timeframe. The Panel considered that the teacher still had a significant degree of developmental work to do, and deemed that if he wished to return to teaching he should continue to work with a psychologist. The teacher's commitment to continue to work with the psychologist he had been seeing was commendable.

Teachers are in a position of trust and this Panel decision has been made in the public interest given the clear breach of professional standards. The requirements of the Panel should not be viewed as a form of punishment. Teachers working with children and teenagers, who purposefully access pornography involving teenagers/schoolgirls need to

take on board that their behaviour is a clear breach of professional standards and community expectations, and further that such behaviour can amount to serious misconduct.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The teacher's conduct amounts to serious misconduct. The Panel viewed the teacher as currently unfit to teach. Registration is suspended until at least 14 June 2010 and until all conditions have been met.

The Panel decided:

1. to suspend the registration of the teacher from 14 December 2009 to 14 June 2010; and
2. to impose the following conditions:
 - that the teacher attend six sessions of counselling with his treating psychologist (i.e. six sessions in addition to sessions that he has already attended). The counselling sessions are to address the following issues in relation to the teacher's practice as a teacher:
 - Victorian Institute of Teaching Code of Ethics (ref honesty and integrity)
 - Victorian Institute of teaching Code of Conduct (ref the teacher's breaches)
 - The direct and explicit links between Allegation 1 and Allegation 2
 - Balancing personal life and professional conduct (ref alcohol consumption and social activities)
 - Student/teacher relationships – setting appropriate boundaries
 - Strategies for moving back into teaching.
 - that a report from the psychologist is to be provided to the Panel by 14 June 2010. The report is to address the teacher's progress generally, as well as detail levels of understanding and outcomes in relation to the six points set out above.
3. Additionally, the teacher is to submit a report written by himself (i.e. it should not be drafted by his legal representatives or any other person) detailing what he has undertaken and learned during his own remedial and development work, and the six counselling sessions. This report should be submitted with the psychologist's report by 14 June 2010.



SUSAN HALLIDAY, CHAIRPERSON



per:
KEVIN POPE, REGISTERED TEACHER



per:
RHONDA CUMBERLAND, PANEL MEMBER