NUMBER: 151

REGISTERED TEACHER: Michael Allan KELLY

PANEL MEMBERS: Marilyn Mooney, Chairperson
Anne Farrelly, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing

Mr Rodney Hepburn, Counsel Assisting with Ms Raji Bains, Instructing on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 4 December 2014

DATE OF DECISION: 25 February 2015

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the Education and Training Reform Act 2006, on 25 February 2015 the Panel found the teacher guilty of serious misconduct and not fit to teach.

Had the teacher been registered the Panel would have determined to cancel his registration from 25 February 2015. As the teacher was not registered at the time of the hearing, no such determination could be made.
REASONS

BACKGROUND

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

By letter dated 26 September 2012, 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 employer further advised that the teacher was prohibited from employment in any capacity with the employer following his resignation prior to the conclusion of the employer’s investigation.

The matter was referred to the Professional Conduct Committee (the Committee) of the Institute on 24 October 2012 and the Committee decided to conduct an investigation.

On 31 December 2013, the teacher’s registration with the Institute expired as he did not renew his registration.

On 23 July 2014, the Committee considered the Investigator’s report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 30 October 2014 was served upon the teacher by express post on 31 October 2014 and personally delivered to the teacher’s address by a process server on 9 November 2014.

Own Motion Inquiry

Following receipt of further information, new allegations were referred to the Chief Executive Officer (CEO) and on 15 October 2014 the CEO decided the Institute should conduct an ‘Own Motion’ investigation.

On 7 November 2014, the Committee considered the Investigator’s report and decided to refer the matter to a Formal Hearing.

An Amended Notice of Formal Hearing dated 7 November 2014 was sent to the teacher by registered and express post on 7 November 2014.

THE ALLEGATIONS

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

1. You engaged in misleading and deceptive conduct by declaring to four schools where you were employed namely school 1, school 2, school 3 and school 4 that you possessed tertiary qualifications that you did not have, thereby obtaining a financial advantage by this deception.
2. You further falsified and misrepresented your CV in relation to your professional standing and teaching experience, thereby procuring positions of senior responsibility at those four same schools.

3. By reason of allegations 1 and 2 you failed to meet the professional standards and conduct expected of a Leading teacher and member of the Principal class.

4. Made sexually explicit comments to students and/or use (sic) inappropriate language with students.

5. Invited a student to take part in private activities at homes and other places outside of the school environment.

THE EVIDENCE

The teacher did not attend the Hearing, was not represented and did not make any submissions to the Panel. He did not supply the Institute with any evidence in response to the findings to be made against him.

The Panel was presented with an Affidavit from a legal officer at the institute indicating that the teacher knew the date and day of the hearing and that he had been provided with a copy of the Hearing Book including a Notice of Formal Hearing. The evidence shows the lengthy communication attempts the Institute undertook to be in contact with the teacher via mail, telephone, personal visits, and process server. Post included ordinary mail, registered mail and express post. Counsel Assisting presented the Panel with Affidavits confirming that from 31 October 2012, when the Institute first wrote to the teacher notifying him that it was to conduct an investigation, until 28 November, 2014, the Institute had undertaken extensive steps to communicate with the teacher. The Panel is satisfied that the teacher has been provided with an opportunity to be involved in this hearing and to put any matters before it that he considers relevant. The Panel concluded that he has chosen not to participate in the hearing process.

Counsel Assisting presented the Panel with an Affidavit pertaining to the Institute’s investigations into the teacher’s claimed qualifications, experience and subjects taught. The following information was obtained:

- University of Tasmania - 1974 - Awarded Bachelor of Arts; 1975 - Diploma of Education.
- University of Roehampton, UK - no record of the teacher based on the information the Institute provided. No Master of Education almost completed (as claimed).
- University of Surrey, UK - no record of the teacher on their systems. Not a Research Fellow or PhD student.
- Macmillan Publishers Australia - could not confirm any published works of the teacher.
- Monash University – the teacher did not complete Master of Educational Studies
- Hutt International Boys’ School, New Zealand (NZ) - school does not have a copy of the teacher’s application; the teacher was Principal from February 1996 to April 1998 when he left the school by mutual agreement between the Board and the school; no
records to confirm that the teacher was NZ Secretary for International Coalition of Boys’ Schools.

- School 4 - employed on a 3 year contract from January 2000. Following certain matters being investigated by the school the teacher’s employment was terminated in August 2001. The teacher falsely claimed in his application that he was a Research Fellow and that he had a Masters degree from Monash. His CV for the position at school 4 falsely claimed that he had previously taught Mathematics, German and Computer Studies. One of the key functions of the role applied for was the development of computer technology.

- School 3 (now renamed) - personnel files forwarded onto subsequent schools; the teacher’s CV for a position at school 3 falsely claimed he had previously taught SOSE and Religious Education. He also falsely claimed that he was completing a Master of Education from the University of Surrey (Roehampton).

- International Boys’ Schools Coalition (IBSC) - the Executive Director of IBSC has found no mention of the teacher as a trustee, nor any record of his attendance at annual conference since a data base was established in 2007.

- In his applications for positions at school 2 and school 1 he falsely claimed to school 2 that he was completing a PhD (Education) and to school 1 refers to postgraduate research PhD (Literacy). He also falsely claimed to be a single parent to school 1. His CVs made no mention (as previously claimed) of having taught German, Maths, SOSE and Computer Studies at any previous schools. In his school 1 application he made reference to writings for Macmillan publications which cannot be substantiated.

The Principal
The Principal gave evidence under oath and confirmed her signed statement as true and accurate. The Principal was Assistant Principal in 2006, Acting Principal in 2008 and has been the Principal of school 1 since 2009.

The Principal told the Panel that she was a member of the interviewing panel when the teacher applied for the Assistant Principal position in late 2007. He was duly appointed and took up the position in 2008. She said that what differentiated the teacher from other applicants was that he held a PhD in literacy and as this was the area the school was keen to develop, the teacher had the edge over other applicants. The former Principal of school 1’s sworn statement corroborates this position. He stated that the teacher was hired for his experience and qualifications and as an Assistant Principal it was expected that he would work according to that experience and qualifications. The former Principal of school 1 further stated that the teacher needed frequent prompting to complete his tasks and when they were brought to the table they were not of the quality expected of an Assistant Principal. He said that the teacher would often come up with excuses or blame other teachers for delayed projects.

The Principal told the Panel that the appointment process was taken very seriously. Much thought and deliberation was done prior to the interviews as they decided on the qualifications, experience and skill set needed to fulfil the role. Positive written references were obtained and she personally spoke to one of the teacher’s referees, Principal 1, Principal of school 5. Principal 1 commented supportively on specific work that the teacher had been involved in and assured her that the teacher could have the “difficult
conversations” that sometimes need to be had with staff. It is her understanding now that the teacher has never worked under or with Principal 1. She also understands now that the teacher was in a long-term relationship with Principal 1. The Principal said that Principal 1’s positive reference was significant in the teacher being appointed as she had worked with him previously and respected his judgement.

The Principal said that not long after the teacher’s appointment she would notice certain tasks which were his responsibility would not be completed. The Panel heard that when the former Principal of school 1 left school 1 and was “handing over” to the Principal as the new Principal, he mentioned worries and concerns that he had with the teacher’s work ethic and his non-completion of his job responsibilities. The Principal told the Panel that not long after the teacher was appointed as Assistant Principal she too noticed tasks not being completed and found it frustrating that a member of the leadership group was not pulling his weight. The Principal said she started to have grave concerns in the teacher’s willingness and ability to do the work. She said that for somebody who had purported to have a PhD in Literacy there was no leadership that was tangible in nature and he wasn’t leading the literacy curriculum in the school. She said that a PhD gave rise to certain expectations but the teacher’s efforts were below what his qualifications claimed. The Principal told the Panel that it became obvious to her that every piece of work or correspondence that the teacher was responsible for had to be checked and almost always edited or rewritten by the Assistant Principal, herself or the executive assistant. She said that the teacher’s work did not have that high level understanding of audience and his grammar was woeful.

She said that the teacher had been afforded considerable “settling in” time but that it became increasingly obvious that his performance was under question. The Principal told the Panel that the teacher did not meet deadlines for his areas of responsibility and that he was out of the school quite often without valid reasons. The Panel heard that up to this time nothing disastrous had occurred at the hands of the teacher but a couple of big programs that were his responsibility had started to unravel. The Principal said that during informal meetings that she had with the teacher to discuss tasks she wanted him to complete, he would tell her that he had delegated the task to another teacher. The Principal said that she would have to stop him and make clear that she wanted him to take the lead and complete the task not another teacher. The Panel heard that these issues were also made very clear during his performance reviews. The Principal told the Panel that it became obvious that the teacher was not telling the truth. She said that the teacher would claim that he had either completed tasks or delegated them to other teachers when all along the task had not been completed and, in many instances, the conversation with other teachers had not even occurred. The Principal described one example that involved the school planner which was assigned to the teacher to oversee in mid 2010. This is a simple, technical task but one with critical deadlines that had to be met. The Principal said that she often enquired as to the progress of the proofs and the teacher would respond to the effect that all was well and under control. She said that in November 2010 the printers called her to say that they didn’t have the proofs and that they were having difficulty in getting assistance from the teacher. The proofs were needed immediately otherwise the student planners would not be available for the 2011 year. The Panel heard that the Principal, the Assistant Principal and other staff worked frantically all afternoon to ensure the proofs were at the printers on time. She said that the teacher
walked in to where they were working and accused them of undermining him. In response to the Principal telling him that the printers didn’t have the proofs, the teacher accused the printers of never getting back to him. The Principal told the Panel that she responded to the teacher with words to the effect “I don’t believe you and I don’t think you’re telling the truth”. The Principal said that she felt betrayed by the teacher and was very concerned at the image the Principal team was giving to staff. The Panel heard that staff resented having to take on more work to cover for the teacher and it later became clear that other staff also had concerns with the teacher’s professionalism and work ethic.

The Principal explained to the Panel that again in 2011 the same issues arose with the school planners so much so that she took the responsibility from the teacher and gave it to another staff member. She said that the teacher again blamed the printers but she believed that the teacher was not telling the truth as a number of inconsistencies with his story were exposed and other situations arose whereby she believed a pattern of lying behaviour was becoming evident.

The Principal told the Panel that the culminating issue for her was in late November 2010 when her husband had been diagnosed with cancer. She said that the teacher was very supportive of her during the next 10 months or so as her husband had medical treatment. She said that prior to October 2011 she had told the teacher several times that he needed to lift his performance. It was on Graduation night, 21 October 2011, that he informed her that his sister-in-law was suffering from breast cancer and he needed to take carers leave from Monday, October 24 to visit his parents in country Victoria. The Principal said that she received an email from the teacher on Sunday, October 23 informing her that he would be back at school on Tuesday 25 October and describing the work he was completing on his parents’ farm. The Panel was told that as part of his Assistant Principal role the teacher was assigned a mobile phone and that Telstra provides the school with detailed records of all phones. The Principal said that the record of the teacher’s phone from 8.54pm on Saturday October 22 to 6.35pm on 24 October revealed that the teacher was in fact in Darwin not country Victoria.

It was at this time the Principal said that she shared her findings and beliefs about the teacher’s lying with senior staff. She also took her concerns to the Regional Network Leader. Due to the Principal’s personal situation and the likelihood that she would need to take extended leave in 2012 to care for her husband she asked the Regional Network Leader to take the issues up with the teacher which he agreed to follow through with in term 1 2012. The Principal told the Panel that she met with the teacher on 25 January 2012 and discussed all the issues of concern particularly that he had been untruthful and lied to her on several occasions. She said that the teacher then became teary and told her that he was dealing with his son who was having a difficult time. The teacher agreed to be honest and promised to improve his work practice.

The Principal stated that in 2012 there was no improved work ethic and he continued to lie. These issues were all raised and documented in the teacher’s performance review of April 2012. In May 2012 another incident arose. This concerned the teacher forgetting and being late for an interview with a student for the future admission into the Accelerated Learning Program. The Panel heard that instead of adhering to protocol and conducting a 35 minute interview with a panel, the teacher conducted a 5 minute
interview on his own. The student concerned was upset that he hadn’t had the opportunity to talk to an important piece of work to support his application. The Principal was concerned that the teacher’s lack of professionalism reflected poorly on the school. On the same day it was brought to the Principal’s attention that the teacher had loaned a general master key and the security fob for the entire school to a student. When asked about it by the Facilities Manager, the teacher denied having given the key to the student. The Principal told the Panel that the teacher had in fact pressured another teacher, teacher 1, to take the blame for him. Teacher 1 was quite distressed about this.

The Principal told the Panel that the teacher met with her and divulged that he was dealing with a family emergency with his son in Darwin and that he would explain both incidents when he had seen to the family emergency. The teacher’s contact and correspondence with the Principal over the next several days and weeks concerned the management of his son’s situation and his need for extended carer’s leave. The Principal said that although she was keen to be supportive of the teacher she was concerned that he would continue to take leave during major incidents. She then decided to access the teacher’s personnel file which included his career history. She said she found many inconsistencies between the details he provided on three previous CVs. and that this was the first time she realised his academic qualifications may well have been falsified. The Panel heard that in CVs tendered at several schools and in a performance review interview, the teacher had referred to or claimed to be either completing or having completed, a PhD when in fact he had never been a candidate for a PhD. He also falsely claimed holding a Masters degree. The Principal told the Panel that at a meeting with the teacher she provided him with copies of his CVs drawing his attention to the anomalies that she had uncovered and asking him to provide evidence of his claimed qualifications and work history by Friday 20 July 2012.

The Principal told the Panel that she subsequently made contact with the Principal of Hutt International Boys School in New Zealand who informed her that the teacher had been dismissed by the Board for dishonesty, providing false information and lack of performance. From an email she received from the Principal of Canberra Grammar School she established that the teacher had embellished his CV and during a telephone conversation with the Principal she was told that the teacher was seen as dishonest and unethical and that many were happy to see him leave. Principal 2 adds support to this view in her sworn statement. She described how, as then Principal of school 2, she was impressed with the teacher when he was interviewed for an Assistant Principal role. Although he was unsuccessful the school eventually hired him as a Leading Teacher. Principal 2 described their relationship as a strong professional one where they had many diverse educational and personal conversations. She said that the teacher was highly supportive of her in an environment where some staff and school council members were not supportive of her as Principal. She said, “that in retrospect I had no sense that he was utterly and completely grooming me to make his next steps. …. the teacher was a type of person that was blameless but there was continual conflict around him.” She stated that his versions of situations always put him in a helpful and supportive light and as the one willing to resolve the conflict, whilst painting others as vindictive and toxic. Principal 2 described a situation, just prior to Christmas 2008, where the teacher contacted her in a panic because he had lost his wallet with money and all of
his credit cards. At length the teacher claimed to have booked travel to France to visit relatives and friends. He claimed to not have access to cash because of the Christmas break and that he would have to cancel his travel plans without any hope of a refund. Although the teacher at no stage asked her, Principal 1 offered to lend him money by getting an advance on her credit card and with the understanding that he could repay her when he returned. She gave the money to the teacher at her home with her sister witnessing the handover. The teacher said that he would pay her back by Easter the following year. The teacher failed to repay the money, did not return Principal 2’s communications and maintains that the money was a gift not a loan. Principal 2 said that “in retrospect it is also no surprise he used me and acted unconscionably in respect with his dealings with the members of the school and also myself”.

The Panel was told that the Principal’s husband died on 17 July 2012 and the Assistant Principal continued the investigation in her absence. Over the next week the teacher took sick leave and in a short time submitted a WorkCover claim for work related stress which was eventually unsubstantiated. The Principal wrote to the teacher on 3 September 2012 again outlining the discrepancies she had uncovered in his CVs and again asking him to respond and provide evidence of his postgraduate academic qualifications. The teacher wrote to the Principal on 13 September 2012 but failed to produce any of the required documents.

The Principal stated the teacher was on leave to 20 September 2012 after which he then resigned. She said the matter had a profound impact on staff and the broader school community particularly after the publication of an article in The Age which disclosed the reasons for the teacher’s departure from the school. She said that she has worked extremely hard to rebuild the credibility and name of school 1 since his resignation.

The Assistant Principal
The Assistant Principal gave evidence under oath and confirmed his written statement as true and accurate. He is Assistant Principal at school 1 and has been since 2003.

The Assistant Principal outlined several instances where the teacher’s lies and dishonesty seriously impacted on the students and staff at the school. One issue was when the teacher lied about having been in touch with a particular teacher regarding an assessment and reporting matter. The Assistant Principal said this was odd because it was the Assistant Principal’s area of responsibility not the teacher’s and he should not have been involved at all. When asked to provide a copy of the email so it could be filed, the teacher then indicated that he had not sent it but would do it the next day. The Assistant Principal confirmed the Principal’s view of the incident where the teacher said he needed to take leave to be with his parents in rural Victoria only for his telephone records to confirm he was in fact in Darwin.

The Panel heard that the teacher was in charge of the Year 7 Discovery Night but on the day of that event he claimed to have had a “wardrobe malfunction” and needed to return home to change clothes. Although he lived close to the school he did not return to the school for 5 hours. His non-attendance meant other teachers, including the Assistant Principal had to fill in for the teacher and complete the many tasks required for the night’s event. The Assistant Principal told the Panel that when the Principal informed him that the
teacher had not completed the school planners, they both dropped what they were doing and worked on getting the proofs to the printer on time. He said that the teacher walked in on them and offered an excuse as to why the planners were not ready. The Principal said words to the effect of, “teacher, I don’t believe you”. The Assistant Principal said this was when, for the first time, he confided in the Principal that he believed that much of what the teacher said was untruthful.

The Panel heard that the Principal took leave when her husband died and the Assistant Principal assumed the Acting Principal role. He followed up with the teacher regarding the need for him to provide evidence of his academic qualifications, literary publications, and employment positions. The teacher asked for an extension as he stated he may need to have a medical procedure and he also needed time to obtain the documents from his union representative. He was granted an extension to 24 July 2012. The teacher emailed the Assistant (Acting) Principal on Sunday 22 July 2012 to say that he was on sick leave for the next two weeks and that his doctor had faxed a certificate to the school. He said on Monday 23 July 2012 a WorkCover claim against the school was received.

The Assistant Principal told the Panel that the teacher’s behaviour was disappointing, unprofessional and not reflective of the values of the Principal team. He stated working alongside the teacher towards the end of his tenure was impossible because he was simply untrustworthy.

Further Evidence
Further sworn evidence was provided to the Panel from several teachers and administrative staff.

Teacher 2 outlined instances of the teacher claiming tasks and responsibilities had been completed when they had not. One example was of the teacher not being thorough in carrying out his responsibility as chair of selection panels. His application packs did not appear to have been opened, read or shortlisted to the job description matrix. He shortlisted an applicant for a French/SOSE position who ended having no evidence of any French qualifications.

Teacher 3 stated that he never saw any technical knowledge or capacity from someone who purported to have a PhD in Literacy. He said the teacher wanted a particular text available in the VCE English curriculum. The issue was that his preferred book was not listed as a prescribed text and had little relevance to the area of study. He said that the teacher’s lack of understanding of the curriculum was impacting on the strategic direction of the faculty. Teacher 3 stated that the teacher really did lack the understanding you would expect from an Assistant Principal with a PhD in Literacy.

The Facilities Manager supported the evidence given that the teacher lied about giving the school’s security keys to a student and then tried to blame another teacher.

The Business Manager’s evidence indicated discrepancies with invoices claiming for work that was not completed for an integration aide the teacher was responsible for hiring. The invoices were incorrect but the teacher continued to sign for them. When she queried the
discrepancies with the teacher and offered to contact the Principal of the other school to work it out, he indicated that all was fine and he would look into it.

Principal 3 is currently the Principal of school 3 and was an Assistant Principal when the teacher was at the school. In his sworn statement he stated that he was not impressed with the teacher as Leading Teacher or colleague as he viewed his interactions with other staff as often divisive and definitely not conducive to positive teamwork and collegiality. He said that many of his school’s Leading Teachers and senior staff viewed him as a difficult person to work with and he was generally not held in high regard. Principal 3 gave examples of important responsibilities that were not completed by the teacher and where others had to step in and complete the task.

The student
The student provided a sworn statement which stated that he moved to Melbourne from city A in 2010 and was enrolled as a student at school 1 from 2010 - 2012. The student stated that he saw the school counsellor for guidance over an issue he was dealing with regarding a student from his former school. As he appeared very tired the counsellor advised him to go to sick bay for rest. When he awoke he said that the teacher was in the sick bay with him. He said that the teacher told him that he knew about his personal issues and wanted to help. The student said that he then had a conversation with the teacher which involved revealing that he had had a sexual relationship with a boy in city A and had also engaged in sexting him. The student told the teacher that he was not open about being gay and the boy was threatening to expose him. At the teacher’s insistence the student divulged details of the sexting. At this stage the student said that he started to feel uncomfortable and this was when the teacher began suggesting things that might have been said in the texts, such as “What are you doing to yourself?” “Do you have a hard on?” The student said he was quite taken aback by the teacher’s suggestions and then shut down and didn’t say much.

That afternoon, at the teacher’s suggestion, the student stated he went to the teacher’s office where the teacher drafted a text to the boy. He gave the student his personal mobile number so he could call when he needed. The student said that he developed a considerable level of trust with, and respect for, the teacher as a result of this communication. The teacher noted that the teacher knew more about his personal circumstances than his parents. He stated that his weekly visits with the teacher continued through to Year 12. The student stated that in May 2012 he asked the teacher for a key to the school so he could access the hall and theatre. He was shocked when later that week the teacher gave him the key and said, “don’t show this around and don’t make a big deal of it”.

Another incident involved the teacher suggesting certain poses for a photographic assignment in which the student was involved. He started with common poses, but moved into suggesting the student pose topless. The student stated this suggestion made him feel uncomfortable. The student distanced himself from the teacher from this point. The student stated that his final year of school was marred by stress and anxiety. He said that he could not focus for the rest of the days following conversations with the teacher because that would be the only thing on his mind. The student stated that he could not
tell his parents, he felt ashamed and embarrassed and believed he had caused the teacher’s employment to be finished.

DISCUSSION OF THE EVIDENCE

As stated previously, sworn Affidavits demonstrate to the Panel that significant effort has been made to provide all relevant documents to the teacher and to afford him every opportunity to attend the Hearing and make submissions. The teacher was also given the opportunity to make submissions to the Panel in relation to this matter after the Hearing and before the Panel made its determination. The teacher was given 14 days to make submissions, but no submissions were received by the required date. The Panel is satisfied that the teacher has been accorded natural justice and procedural fairness.

The Panel weighed the evidence on the basis of the burden of proof as outlined in Briginshaw v Briginshaw (1938) 60 CLR 336 at 361 where Justice Dixon states:

“When the law requires the proof of any fact the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality.”

The phrase serious misconduct has not been defined in the Act however has been the subject of consideration in various other cases before the Victorian Civil and Administrative Tribunal (“VCAT”) in their Occupational and Business Regulation List (now the Review and Regulation List) and also defined in legislation regulating other professions. The meaning of serious misconduct in the Act was also discussed at VCAT in Davidson v Victorian Institute of Teaching [2007] VCAT 920 at 165, where it states “we must look to ways this phrase has been defined in relation to other professions.” Like phrases are contained in legislation pertaining to other professions and consider serious misconduct close in nature to professional misconduct. In the Health Professions Registration Act 2005 (Vic) at s3 (1) it states

“conduct that violates or falls short of, to a substantial degree, the standard of professional conduct observed by members of the profession of good repute or competency”; and

“conduct of a health practitioner, whether occurring in connection with the practice of the health practitioner’s health profession or occurring otherwise than in connection with the practice of a health profession, that would, if established, justify a finding that the practitioner is not of good character or is otherwise not a fit and proper person to engage in the practice of that health profession”; 

In the Legal Profession Act 2004 (Vic) s4.4.3 it states

“Professional Misconduct includes unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence”.

11
The phrase *serious misconduct* has also been considered in *Re Parr and Nurses Board of Victoria* (1998) 16 VAR 118 at 16-18 and this case was cited in *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 at 165-169. When discussing *serious misconduct* in Parr, there was no definition of serious misconduct in the legislation that regulated nurses at that time under the *Nurses Act 1993* (Vic). Nor did it define unprofessional conduct of a serious nature. The Panel found Justice Kellam’s view in relation to unprofessional conduct of a serious nature helpful in explaining the degree of seriousness that must be present for the Panel to be satisfied as to serious misconduct and or not fit to teach.

Justice Kellam ultimately concluded that what constitutes *serious misconduct*:

“is a question of fact to be determined in each case. It denotes something serious in itself and the consequences which, it may be reasonably anticipated, would be serious”; and

“Clearly such conduct would not be serious if it was trivial or momentary affect only at the time of the commission or omission by which the conduct is so defined. It must be a departure, in a substantial manner, from the standards which might reasonably be expected.”

The Panel considered the witnesses to be credible and their evidence overwhelmingly compelling. Similarly, the Affidavits considered by the Panel contained indisputable facts indicating the teacher’s deliberate and methodical falsification of his qualifications and professional experience. The Panel notes that this deception was not a one-off lapse in a long, otherwise unblemished career. It was planned, implemented and repeated, again and again, over a lengthy period of time. His deception allowed him access to senior positions that he would otherwise not have been realised. It is clear to the Panel that he would not have been offered the Assistant Principal position at school 1 had he not claimed a PhD in Literacy. The impact on the school from his deception was devastating. His colleagues heard constant excuses, were repeatedly lied to, he blamed some for his own shortcomings and they constantly had their workloads increased because the teacher did not carry out his responsibilities. The Panel acknowledges the strength and courage of the Principal. At a time of personal crisis, she also had to deal with the devastation that the teacher had caused in the school and on his departure had to rebuild the school’s reputation in the community.

In other instances when applying for positions the teacher simply altered his CV to reflect the qualifications and experience required for that particular role with no thought whatsoever to truth and reality. Significant amounts of evidence demonstrate the teacher’s inability to cope with the demands of higher level appointments. It is obvious to the Panel that the teacher does not have the skill set required to carry out the roles he obtained through his dishonest dealings and falsehoods.

The Panel viewed the teacher’s behaviour towards Principal 2 at school 2 as particularly reprehensible. It accepts Principal 2’s evidence that she was deceived by him and that she now carries a great shame and embarrassment over her part in the teacher’s appointment to school 1. He displayed serious character flaws as a schemer, liar and cheat, to obtain personal and financial advantage in a most unconscionable manner.
In relation to Allegations 4 and 5, although unchallenged by the teacher, the Panel was not persuaded that they were substantiated in the evidence presented. The teacher’s relationship with the student was professionally inappropriate as he was assuming the role of counsellor, a role for which he held no qualification. Nor did such counselling fit within his position description. The Panel was troubled by several aspects of the relationship with the student; in particular whether the teacher was ‘grooming’ the student. However the Panel believed that there was insufficient evidence to make such a finding. The Panel found that the teacher’s behaviour although departing from proper standards, did not amount to serious misconduct with regard to these two allegations. The Panel was satisfied that the behaviour however constituted misconduct and is deserving of a severe reprimand.

FINDINGS

The Panel found Allegations 1, 2 and 3 proved and the teacher guilty of serious misconduct. The Panel is satisfied that the teacher’s conduct is not trivial or of momentary effect at the time of the conduct. Rather it is a continuing departure from expected standards over a long period of time in a substantial manner. The deliberate and methodical fabrications he employed to obtain positions absolutely violates or falls short of, to a substantial degree that which would be expected. The Panel is satisfied that the conduct did depart from proper standards and that it was disgraceful and dishonourable in every respect.

In considering fitness to teach, the Panel relied on the words in Davidson where it was said “the focus is on how the character of the teacher is reflected by the behaviour and in Pillai v Messiter (No2) [1989] 16 NSWLR 197 at 201 where Kirby P said behaviour that was “indifferent as to the rudimentary professional requirements.”

The Panel finds the teacher’s severe character flaws are an impediment to proper professional teaching practice. The teacher displays a reckless and flagrant disregard for the requirement to uphold the values and good standing of the teaching profession. The Panel finds him unfit to teach.

DETERMINATION

Pursuant to section 2.6.46 of the Education and Training Reform Act 2006, on 25 February 2015 the Panel found the teacher guilty of serious misconduct and not fit to teach.

Had the teacher been registered, the Panel would have determined to cancel his registration from 25 February 2015. As the teacher was not registered at the time of the hearing, no such determination could be made.
Marilyn Mooney, Chairperson

per:
Anne Farrelly, Registered Teacher

per:
Paul Wilhelm, Panel Member