

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 372663 Hearing Number 0324

REGISTERED TEACHER: Jack Daniel JOHNSON

PANEL MEMBERS: Garry Salisbury, Chairperson
 Leonie Sheehy, Registered Teacher
 Jo-Anne Mazzeo, Panel Member

ATTENDANCE: Mr Johnson attended the Formal Hearing and was self-represented. He was accompanied by Mrs Johnson.

 Mr Damien Cricchiola (VIT SOLICITOR), Instructing Solicitor on behalf of the Victorian Institute of Teaching.

DATE OF HEARING: 5 April 2017

DATE OF DECISION: 8 May 2017

FINDINGS AND DETERMINATION

Pursuant to section 2.6.40 of the *Education and Training Reform Act 2006*, on 8 May 2017 the Panel found the teacher guilty of serious misconduct and makes the following orders:

1. The Panel has decided to suspend the registration of the teacher from 8 May 2017 to 8 November 2018
2. Before the teacher's registration is reinstated at the end of the period of suspension:

- a. the teacher will identify a facilitator (the Facilitator), to be approved by the Institute, to provide a professional development program, which explores and addresses maintaining a professional relationship with learners whether in the educational setting or not (the Program);
- b. The Program must consist of not less than 5 sessions and the teacher will bear all costs associated with the Program;
- c. Once the Institute has approved the Facilitator, the teacher will engage in an initial meeting with the Facilitator and provide the Facilitator with a copy of these conditions. This initial meeting will not be counted as one of the five formal sessions mentioned in b above;
- d. The teacher will request the Facilitator to prepare an outline of the Program (the Program Outline) and provide this to the teacher;
- e. The teacher will provide the Program Outline to the Institute for review and approval. The following process will apply to the approval of the Program Outline by the Institute:
 - (i) Within a reasonable time, the Institute will notify the teacher as to whether the Program Outline has been approved;
 - (ii) If the Institute does not approve the Program Outline, the Institute will provide the teacher with reasons as to why the Program Outline was not approved;
- f. In any case where (e)(ii) applies, the teacher will discuss these reasons with the Facilitator and request that the Facilitator prepare a new outline of the Program or amended Program Outline, which addresses the reasons why the Program Outline was not approved;
- g. The Institute and Respondent agree that the Respondent will not commence the Program with the Facilitator until Clauses d.to f. have been satisfied;
- h. At the conclusion of the Program, the teacher will prepare a written:
 - (i) Personal Code of Conduct; and
 - (ii) Reflective piece demonstrating:
 - o a summary of his attendance at the Program;
 - o his understanding and comprehension of the course material delivered as part of the Program;
 - o his learnings as a result of undertaking the Program;
 - o how he plans to use the strategies and tools developed as part of the Program in his/her future teaching practice; and
 - o his understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to the allegations, particularly regarding the Principle(s) identified below:

Section 1: PROFESSIONAL CONDUCT

Principle 1.4

Teachers maintain objectivity in their relationships with learners

in their professional role, teachers do not behave as a friend or parent.

They:

c. do not draw learners into their personal agendas

d. do not seek recognition at the expense of professional objectivity and goals.

Principle 1.5:

Teachers are always in a professional relationship with the learners,

whether at the education setting where they teach or not

Teachers hold a unique position of influence and trust that should not be violated or compromised. They exercise their responsibilities in ways that recognise that there are limits or boundaries to their relationships with learners. The following examples outline some of those limits.

*A professional relationship **will** be violated if a teacher:*

b. uses sexual innuendo or inappropriate language and/or material with learners

d. holds conversations of a personal nature or has contact with a learner via written or electronic means including email, letters, telephone, text messages or chat lines, without a valid context

- i. The Respondent will provide a draft of the documents identified in clauses h. (i) and (ii) above to the Facilitator for review and approval.
- j. Once the documents identified in h. (i) and (ii) above have been approved by the Facilitator, the Respondent will provide them to the Institute within 14 days.
- k. The Institute will review the documents submitted by the Respondent in compliance with clause h. above and if required by the Institute, the Respondent will engage in a tripartite discussion with the Institute and Facilitator within 30 days of receipt of the documentation referred to in clause j. above. The tripartite discussion is to enable exploration of the Respondent's depth of understanding based on his Personal Code of Conduct and Reflective Piece;
- l. Within 14 days after providing the documents identified in h.(i) and (ii) above, or following the tripartite discussion (as the case may be), the Respondent will arrange for the Facilitator to provide the Institute with a written report addressing:
 - (i) whether the Respondent has successfully completed the Program;
 - (ii) the Respondent's level of attendance and participation;
 - (iii) the content covered in each session of the Program;
 - (iv) the Respondent's level of insight into the conduct;
 - (v) the Respondent's learnings as a result of undertaking the Program; and

(vi) the Respondent's understanding of the Victorian Teaching Profession Code of Conduct and Ethics with reference to the allegations.

3. The Respondent must comply with these conditions within 18 months of the date of imposition.
4. The conditions imposed on the Respondent's registration will not be discharged until the requirements of clauses (1) – (12) have been satisfied and the documentation which addresses all matters referred to in clauses (8) and (12) has been received by the Institute.
5. In addition, if and when the teacher commences employment as a teacher he will be required to satisfy the following condition at the end of the first six month period of employment.
 - Provide a written statement to the Institute from the teacher's Principal that the teacher has been able to maintain objectivity with students and maintain appropriate professional boundaries with students whatever the setting in the course of his employment.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 15 February 2012.

By letter dated 7 April 2016, the employer notified the Institute that they had taken action in relation to the alleged serious misconduct of the teacher. On 24 March 2016, the teacher's employment at the School was terminated as a result of these allegations.

The matter was referred to the Professional Conduct Committee (the Committee) of the Institute on 5 October 2016 and the Committee decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 9 March 2017 was served upon the teacher by registered post on 9 March 2017.

THE ALLEGATIONS

The allegations of serious misconduct as set out in the Notice of Formal Hearing are:

Whilst employed as a registered teacher at the school, you:

Compromised and violated your professional relationship with the student, through communications on the social media application Facebook and Snap Chat.

Particulars:

- *On or about 15 February 2016 to 20 March 2016, you formed an inappropriate relationship with the student by communicating on social media;*
- *You sent text messages and photos of a personal nature without a valid context to the student through the social media applications Facebook and Snap Chat;*
- *You asked the student to send pictures to you;*

- *You sent a photo of yourself to the student, in which you appear shirtless and wearing only a towel to cover the bottom half of your body; and*
- *You told the student in messages to ‘Keep it secret’ and ‘Need to make sure no one really knows that we chat on here’.*

THE EVIDENCE

The teacher agreed in both his oral and written evidence that his behaviour was not of a professional nature and had veered from the expectations of the VIT and its Code of Ethics and Code of Conduct. He attributed his behaviour to a variety of causes including the stress of being the Duke of Edinburgh coordinator in 2014 with a heavy workload as well as attending thirteen camps during the year. This also created personal difficulties with his wife. He outlined a number of relationship issues he and his wife were having both prior to and after the evidence of his serious misconduct were revealed. He said trying to conceive a child has been psychologically, emotionally and physically stressful for him and his wife. He stated that the workload was creating constant anxiety and sleep difficulties for him. A number of personal traumas led to him being tired and depressed which he failed to recognise at the time. He indicated he is currently seeing a psychologist and a doctor and taking medication for depression. He stated that he now recognises that his coping mechanisms for dealing with stress were immature and undeveloped and these affected his decision making skills in a negative way. He said that he always had an urge to be liked by students and wanted to be a ‘king of the kids’.

The teacher stated that he could not recall ever receiving any formal training in what was appropriate behaviour either in his teacher education or as a teacher in the school in regard to social media and students. He stated that he was encouraged by the school to keep in touch with students using social media but he felt the lines were blurry about what was appropriate communication

The teacher entered into an Agreed Statement of Facts (ASoF) with the Institute obviating the need for the following facts in respect of the allegations to be independently proven by evidence. He accepted that he had:

- formed an inappropriate relationship with a student by communicating with her on social media
- sent inappropriate messages and emails to a student including a photograph of him wearing a towel
- asked the student to send him photographs
- suggested to the student to keep their messages a secret
- suggested that he would sneak out and see the student on a school camp
- used inappropriate references to her as a “spunk’ and his favourite
- asked if she was home alone and suggesting that he would have come around.
- invited the student to be cheeky with him
- suggested that the student leave a class to meet him

The teacher agreed that his behaviour had crossed appropriate student-teacher boundaries and that he was naive, short-sighted and did not realise the gravity of

his actions at the time. He agreed that his behaviour had gone a step further into 'flirtatious content' He stated that he had stepped over the mark in his professional obligations by:

- creating an unsafe environment for the student and causing her to feel unsafe at school
- trying to be a friend to the student and being flirtatious with her.
- undermining the student's parents confidence in the school and compromising the public's trust in teachers as well as teacher's confidence in each other

Removing him from his position in the school had harmed the school's reputation and caused difficulties for other staff in having to teach his classes. This undermined the continuity of care for students and caused problems for the school's Principal. He felt it also undermined students' trust in their teachers.

The teacher argued that his flirtatious comments to the student were not of a sexual nature and that he was not attempting to push the boundaries of his relationship with the student even further by making various requests for photographs and sending one of himself in a bath towel.

The teacher said he is continuing to receive counselling provided by the school for him and his wife to deal with marital and other issues. Their discussions have focussed on developing his ability to think before acting, aiming to seek gratification from positive sources and learning strategies to be around young people without trying to act like one or gain their acceptance. He believes he was trying to gain self esteem in the wrong places. He said that as a result of this counselling and reflection on his part he is sorry and remorseful for what he did. He values the teaching profession and would like to return to it one day.

He stated that he now has a greater understanding of how an addiction to social media can have devastating consequences for his life. As a result he has significantly reduced his social media time and has blocked all requests from ex-students to meet on social media.

Counsel Assisting the Panel argued that the evidence showed that the teacher was attempting to persuade the student that being 'cheeky' was acceptable. In describing the student as attractive Counsel submitted that he was attempting to get her to send photographs to him. In telling her she was a 'spunk', Counsel submitted that the teacher was using compliments to push the boundaries of his relationship with the student in order to achieve further ends. His suggestion about going to the student's house was submitted by Counsel as evidence of the teacher's attempts to further push the boundary between student and teacher. Counsel submitted that the teacher's reference to himself as 'an old loser' was intended to be manipulative. The teacher agreed with Counsel that his

communications with the student were flirtatious and different in tone to the way he communicated with other students online. He did not agree with Counsel that his intentions were ever sexual in nature but agreed that flirtatious conversations could be sexual in nature. The teacher did not agree with Counsel that the request for photos from him and might have been misinterpreted by her. He did agree that she might have misinterpreted his flirtatious communications. When asked whether he thought it possible that the student might have sent him an inappropriate photo of herself after he praised her as a spunk, referred to the need for secrecy and encouraged her to be cheeky, the teacher said he thought it was possible but the student knew his intention.

In reference to the teacher's claim that he had received no formal training in ethics, teacher behaviour or codes of conduct he was asked by Counsel whether any member of the public would need formal training around not engaging in the behaviour the teacher had agreed he had committed, he said no, not necessarily. The teacher was asked whether he needed formal training to know right from wrong and he replied that he did not think he needed specific training but sometimes relationships are blurred and it would be good to be able to look back on that training to remind him of the professionalism of the job. Counsel submitted to the Panel that the answers provided in cross examination by the teacher were equivocal in nature and illustrative of a lack of insight, contrition and understanding in respect of the role and responsibilities of a teacher in relation to professional boundaries between teacher and student.

The teacher was asked by a member of the Panel what strategies he would employ in the future to avoid crossing professional boundaries with a student and he said that he had cut his social media connections, with the exception of Instagram because that application doesn't have the function of sending private messages, unlike Snapchat and Facebook messenger. He said this would avoid future problems with students. When asked how he had changed the teacher said that he had changed a lot but his wife could comment better on this. Counsel objected to this suggestion and the teacher's wife did not give evidence.

DISCUSSION OF THE EVIDENCE

The teacher agreed with the Institute in the ASoF that the allegations made against him were substantiated. The teacher submitted that the communications with the student were merely flirtatious and they amounted to misconduct for which he agreed to an eighteen month suspension. The teacher was unrepresented and the Panel was uncertain that he understood the distinction between misconduct and serious misconduct but in any case he accepted the seriousness of the allegations made against him and the lengthy suspension of registration proposed.

The Panel accepted the Institute's submission that the teacher's behaviour amounted to serious misconduct because it was a substantial departure from the

standards which might be reasonably expected from a registered teacher. It was blameworthy and deserving of more than passing censure. While the Panel does not expect perfection from the teaching profession and recognises that human frailty has to be considered, the teacher's behaviour still formed a consistent course of inappropriate conduct. The Panel considered the context in which the teacher acted but considered that teachers from day to day have to deal with various stresses but this does not lead them to step over the proper boundaries of teacher student relationships. The Panel had no doubt that the teacher's behaviour would be regarded as disgraceful and dishonourable by teachers generally. Parents have the right to expect that teachers will act with integrity towards their children and the student's mother rightfully considered that on the evidence she saw, the teacher had forfeited her trust.

The Panel understands that there will be communication between students and teachers on professional matters extending into sporting and cultural matters. The overwhelming majority of teachers understand the very clear boundaries between teachers and students as a result of the Institute's publication and professional development activities in regard to the Code of Conduct and the Code of Ethics. Schools have developed policies in relation to these matters and media reporting and social change have transformed the environment in which parents, teachers and students operate. While the Panel was sceptical about the teacher's claim that he had never received any formal training in ethical behaviour, we were confident that the School had policies in place and the teacher's registration with the Institute included reference to his professional obligations. The teacher did not appear to appreciate that as a professional person he had an obligation to make himself aware of his profession's ethical requirements. The teacher appeared to the Panel to have a casual attitude towards his professional obligations and his failure to complete the requirements to move from provisional registration to full registration after five years (a process normally taking 12 months) supported this view.

The quick responses of the student's mother and the College Principal to the teacher's inappropriate behaviour supported the Panel's view that their behaviour mirrored the widely held ethical views in the Victorian community about what is appropriate teacher behaviour. The Panel interpreted the teacher's claim about a lack of formal ethical training as self serving and designed to deflect personal responsibility.

Counsel Assisting submitted that the teacher's behaviour rather than being merely flirtatious had a more serious intent. The evidence supports this submission. The teacher used sexual innuendo and inappropriate language to the student, attempted to use her to bolster his own self esteem issues, sought to manipulate her into feeling sorry for him, attempted to get her to send him revealing photos of herself and repeatedly tried to swear her to secrecy about their communications. The student showed admirable maturity in refusing to become

drawn into the teacher's testing of the boundaries. The Panel found in both the teacher's written and oral submissions a continuing lack of clarity about his professional obligations and a tendency not to accept full responsibility for his actions. He tended to blame his failure to honour his professional obligations on a lack of formal education about the ethical boundaries for the teaching profession or his distancing himself from his colleagues because of his tensions in the Physical Education department at the school. He blamed aspects of his private life for his actions. He also blamed the stress of a demanding position as the Duke of Edinburgh program coordinator and the blurring of lines between himself and students because of his heavy involvement in local sporting organisations. The teacher blamed the pervasiveness of social media and its ability to catch up with someone who is suffering stress and anxiety.

While the teacher has made some progress in his understanding of the boundaries between teacher and student and shown some remorse and insight, the Panel was of the view that he still has more work to do. There was also a concern that it is all very well to study professional requirements while not employed as a teacher but the real tests come when he would be faced by a Facebook request to befriend a student or a student asks for a lift home etc. The Panel thought that the teacher did not adequately understand that in attempting to develop a relationship with an adolescent girl he was potentially creating emotional confusion in her mind about teacher/student relationships. The teacher has not achieved the proper professional detachment teachers need to develop for their students. He did not understand that he was the adult speaking to a child, not an equal. While he was attempting to develop his own ego and sense of self esteem the relationship was all to his advantage and inappropriate because of the imbalance of power the position of trust which the teacher held and which he endangered. It was not clear to the Panel that the teacher had minimised or eliminated stressors in his life. He admitted that he is attempting with his counsellor to develop more positive habits of mind and not use others to bolster his sense of self esteem. His removing of himself from social media is a wise step for someone in his position but this does not change his underlying attitudes or ability to maintain professional boundaries.

The Panel considered that the teacher is still relatively early in his teaching career and there is still time for him to develop the appropriate understandings and values. The Panel would urge the teacher to complete the process of moving from provisional to full registration if and when he returns to teaching because it would give him a better understanding of the professional standards required of him. No evidence was provided that the teacher did not fulfil the rest of his professional duties with competence. His admissions and his acceptance of his suspension suggest that he has the potential to regain his registration and the trust of the profession and the public in time. The period of communication with the student only extended over a period of slightly over a month or with any other students so the Panel was satisfied that this did not constitute a pattern of serious misconduct

over an extended period. It is fortunate that the teacher's attempt to invite himself to the student's home was not accepted and there was no evidence that this relationship extended further than social media for a relatively brief period. The Panel saw no evidence that the teacher's conduct was of a persistent or continuing nature outside of the period covered by the allegations. The Panel retained some concerns about the teacher's future behaviour in a classroom and that is why the Panel has determined to suspend him and place strict conditions on his registration. The Panel did not find that the teacher's whole approach to teaching and the children in his care was profoundly and irretrievably flawed such that he could not be placed in a position of power and authority with students at some point in the future. The fact that the Panel has opted for a period of suspension with conditions rather than deregistration suggests that we have some confidence in his suitability to teach in the future, subject to him gaining appropriate understanding and ability to operate according to clear rules about boundaries between teacher and student. We thought it unlikely that the teacher would re-offend in the future subject to him satisfying the conditions placed on his registration.

The Panel received written submissions from both the teacher and Counsel Assisting as to whether his eighteen-month suspension should include a discount for his twelve months out of teaching already. The teacher agreed with the eighteen-month suspension, but argued that his time away from teaching and regular counselling had increased his understanding and changed his behaviour to an extent that the conditions were not required. Counsel pointed out that the teacher was not prohibited from teaching in this period but chose not to do so. The Panel accepted Counsel's submission that an eighteen-month period of suspension was warranted to serve not only as a specific deterrent to the teacher but also as a general deterrent to warn others in the profession against such conduct. The Panel's role is to protect the public and the reputation of the profession and the period of suspension we have fixed and the conditions attached to it reflect the gravity of the teacher's serious misconduct.

FINDINGS

Pursuant to section 2.6.40 of the *Education and Training Reform Act 2006*, on 8 May 2017 the Panel found the teacher guilty of serious misconduct and makes the following orders:

1. The Panel has decided to suspend the registration of the teacher from 8 May 2017 to 8 November 2018
2. Before the teacher's registration is reinstated at the end of the period of suspension:
 - e. the teacher will identify a facilitator (the Facilitator), to be approved by

- the Institute, to provide a professional development program, which explores and addresses maintaining a professional relationship with learners whether in the educational setting or not (the Program);
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Section 1: PROFESSIONAL CONDUCT

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in their professional role, teachers do not behave as a friend or parent.

They:

c. do not draw learners into their personal agendas

d. do not seek recognition at the expense of professional objectivity and goals.

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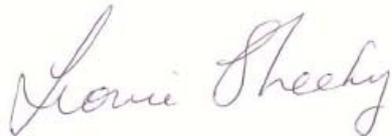
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3. The Respondent must comply with these conditions within 18 months of the date of imposition.

4. The conditions imposed on the Respondent's registration will not be discharged until the requirements of clauses (1) – (12) have been satisfied and the documentation which addresses all matters referred to in clauses (8) and (12) has been received by the Institute.

5. In addition, if and when the teacher commences employment as a teacher he will be required to satisfy the following condition at the end of the first six-month period of employment.
- Provide a written statement to the Institute from the teacher's Principal that the teacher has been able to maintain objectivity with students and maintain appropriate professional boundaries with students whatever the setting in the course of his employment.



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GARRY SALISBURY, CHAIRPERSON



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per:
LEONIE SHEEHY, REGISTERED TEACHER



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per:
JO-ANNE MAZZEO, PANEL MEMBER