

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 116

**REGISTERED TEACHER:** Chad Andrew ANDERSON

**PANEL MEMBERS:** Susan Halliday, Chairperson  
Anne Farrelly, Registered Teacher  
Paul Wilhelm, Registered Teacher

**ATTENDANCE:** The teacher did not attend the Formal Hearing  
  
Ms Simone Bingham, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 30 January 2012

**DATE OF DECISION:** 12 March 2012

#### **FINDING AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 12 March 2012 the Panel found the teacher guilty of serious misconduct and unfit to teach.

The Panel cancelled the registration of the teacher from 12 March 2012.

## REASONS

### BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 August 2005.

By letter dated 4 May 2009, 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 teacher's employment with the employer was terminated on 24 April 2009.

By email dated 1 May 2009 the teacher advised that he no longer wished to be registered with the Institute.

On 22 July 2009, the Institute's Disciplinary Proceedings Committee (the Committee) decided to continue with the inquiry and refer the matter to an investigation given the nature of the allegations.

On 8 September 2010, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing. The matter was referred back to the Committee on 19 December 2011. The Committee decided to continue with the inquiry and to refer the matter to a Formal Hearing pursuant to section 2.6.47 of the *Education and Training Reform Act 2006* which enables a Hearing Panel to make determinations as if the teacher was a registered teacher.

A Notice of Formal Hearing dated 20 December 2011 was served upon the teacher by registered post on 21 December 2011.

### THE ALLEGATIONS

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

1. Whilst employed as a registered teacher at the school, the teacher violated his professional relationship with year 12 student, the student, in circumstances where he held conversations with her via MSN from 21 August 2008 to 12 October 2008 without a valid context, including but not limited to the extracts of the conversations particularised below that are of an inappropriate, personal and sexual nature:

#### PARTICULARS :-

- (a) On or about the 19 August 2008 had the following conversation with the student via MSN:  
*The teacher: "im drinking my beer and now im wondering which end she would prefer"*  
*Student: "now your cracking onto jk!"*

The teacher: "all bcoz of you"  
 "lol"  
 Student: "oh my god ur gross"  
 "cant stop now"  
 The teacher: "as if im cracking onto ne 1 except a few"  
 Student: "ull try get her number lol a few"  
 The teacher: "r u jealous coz I didn't ask for your number?"  
 Student: "oh god...no but you made it obvious u DEFS didn't want mine"  
 "but I don't give a shit"  
 "what would you do with it anyway"  
 "nothing"  
 The teacher: "ur upset"  
 Student: "no I'm not"  
 The teacher: "ok ok"  
 Student: "just it was obvious"  
 "lol"  
 The teacher: "yeah I know, a little bird told me u were trying to get my number and  
 to not give it to u"  
 Student: "wtf?????who told you that ?"  
 The teacher: "i plead the 5<sup>th</sup>"  
 Student: "wtf are you on about"  
 "nah I know the real reason and i dont care so its all good"  
 The teacher: "ok if you know why don't you tell me?"  
 Student: "you tell me"  
 "I DONT WANT IT"  
 The teacher: "██████████"

(b) On 21 August 2008 had the following conversation with the student via MSN:

The teacher: "have found a new career for you?"  
 Student: "what trannyng?"  
 The teacher: "yeah"  
 Student: "yes please"  
 Student: "I need a penis though"  
 The teacher: "you just need to move to Sydney"  
 Student: "and I don't really want my finger chopped off to make one"  
 The teacher: "maybe you can find a guy that wants to be gurl and use his/hers"

(c) On 21 August 2008 had the following conversation with the student via MSN:

The teacher: "the student id like to say that i treat all my students the same, i do like  
 students who are keen to do work and improve alot more then  
 students that dont care, however i really do try not to play favourites,  
 but as a consequence the students who do try kind of feel like i am  
 ignoring them by spending time on the dead shits"  
 Student: "so in other words your saying u dont wanna say what u really feel  
 about me coz it will hurt my feelings and u help me as a "dead shit"  
 coz u feel sorry for me. Correct"

- (d) On 21 August 2008 had the following conversation with the student via MSN:  
*The teacher: "and if you annoyed me id just block you, though dont be surprised if my wife does that neway, she is super jealous"*  
*Student: "oh me??? f off"*  
*The teacher: "jealous of ne female i come into contact with"*  
*Student: "oh coz ur so cute and buff"*  
*"kinky"*  
*The teacher: "if a check out chick smiles at me she gives them a filthy look and then calls them a whore when they can still hear her"*  
*The teacher: "poor girls they are paid to smile at customers!"*
- (e) On 30 August 2008 had the following conversation with the student via MSN:  
*Student: "and don't get me starting on the other night when I was complaining about school to my teacher who is suppose to reassure me Im a smart student :) and you went offline"*  
*The teacher: "At what point in time did you stop thinking I was an arsehole"*
- (f) On the 2 October 2008 had the following conversation with the student via MSN:  
*The teacher: "my wife is asleep, i think she is cheating on me, all of a sudden she has gone from mundane to downright kinky"*  
*"nah, im pretty good at w/e i attempt"*  
*Student: "shock"*  
*The teacher: "and if im not i persist until i am"*  
*Student: "im literally CONVULSING in my chair right now"*  
*The teacher: "thats nice"*  
*Student: "no its not"*  
*The teacher: "ok, no its not"*  
*"im lucky i can touch type, coz i cant really see what im typing"*  
*Student: "i dont know whether ur serious about ur wife cheating and then WHAM u put in that shes kinky"*  
*"Kinky\*\*\*"*  
*The teacher: "well she used to b boring, the last couple of times have been fun, it hasnt been like that for 5 years"*  
*Student: "and then i think that would mean...ugh +o( "*  
*The teacher: "so sumthings up!"*  
*Student: " well dont tell her that shes been boring for the past 5 years otherwise u wont be getting any at all"*  
*The teacher: "i already have, u cant not tell her, we are adults, talking about what you think is part of that"*  
*Student: ""WE" are adults...nice and what did she say? alot ppl would get ratherrrrr pissed at that lol]"*  
*"oh god...please dont tell me that was ur brb?"*  
*Student: "ugh no..dont answer that!"*  
*"chnage the subject please!"*  
*The teacher: "yes she was"*  
*"she was stripping on webcam"*  
*"then asked me to come to bedroom"*

Student: "hexx <<< i dont really have the exact emotion for what im feeling right now...but i wish i was the doll he is hitting gee u were gone pretty long;) :-#"
   
The teacher: "she did a good strip tease"
   
"we played for a while"
   
"what else do you expect from a conversation with an adult?"
   
"shall we talk about the newest cartoon?"
   
"wait that wouldnt be very adult would it?"
   
Student: "well...no i get sex talk from my friends everyday...its just ....weird...coz its u...and yeah...i domnt know what to say tbh lol coz i can talk to u about sex like i do with my friends but then it would just be ....weird"
   
The teacher: "ok"

(g) On the 2 October 2008 had the following conversation with the student via MSN:

The teacher: "my wife is so selfish"
   
The teacher: "she finished and fell asleep"
   
Student: "thats me vomitting^^^ lol"
   
"so is ur wife ur first?"
   
"not first wife, put ya know"
   
"but\*"
   
The teacher: "no, i think she was 12"
   
"13 or so"
   
"She is snoring now"
   
"she wont go to work 2morro"
   
Student: "shit tired her out that much hey?"
   
"u sure are bloody cocky"
   
"so number 12-13 girl u slept with?"
   
The teacher: "yep, well it cant be helped, im good at EVERYTHING i do!"
   
Student: "ugh im vomitting because of ur cokcyness now"
   
"i dont care qwhat u say to me anymore"
   
"im all vommitted out i think"
   
The teacher: "nah that was just the number my wife got when we first were together, iv lost count, well stopped bothering to count, and forgotten names etc"
   
Student: "so aka she was ur first"
   
"aww thats sweet"
   
"bit boring but sweet"
   
The teacher: "admit it the student ud lift that tranny skirt of urs if i asked!"
   
"lol"

(h) On the 2 October 2008 had the following conversation with the student via MSN:

The teacher: "u sound like my wife"
   
Student: "what the fuck u part?"
   
The teacher: "yeaH"
   
Student: "good..she should get a medal if she says that to u"

*"fuck u yeah? not fuck me? Kinky"*

*"lolzyyyy"*

*The teacher: "well a little from column a and a little from column b"*

- (i) On the 7 October 2008 made the following comment to the student via MSN:

*The teacher: "look i try to imagine the most innocent motives of my students, i really dont like to hear that this one is a lesbian or this one can take an orange up her but, i try to see all students as little kids, u made that harder, but most girls force me not to consider them innocent with the little conversations they have in class that i wish i never heard".*

- (j) On the 7 October 2008 made the following comment to the student via MSN:

*The teacher: "and although we conversate and are friendly, i really cant be nemore, i can help you with questions and whatever you want, and i know i probably have burdened you with information i shouldnt have when you talked to me whilst i had had a few drinks, but in the end i still have to stand in front of you 3.5 times a week"*

- (k) On the 7 October 2008 engaged in the following conversation with the student via MSN:

*Student: " i write i whole fucking novel about shit that i feel about you and i get nothing bk except some textbook teachers answer to a problem. not that i expected u to confess ur love for me because that would not be true and/or realistic but i dunno i guess i wanted u to be more 'reasurring' "*

*The teacher: "well lets call a spade a spade, the student, do you have feelings towards me that you shouldnt, as in more then just friends? if i am reading between the lines here, i must, and i mean absolutely must give a text book answer, i could say its ok but really its not, i thought u were ok with us just talking like friends, but u know i have a family, u know i have a wife and a son, and worst of all even if you had managed to seduce me or w/e you are still my student and its not allowed. so textbook answer was confronting, it was meant to be, nothing can happen, even the talking we have done so far may even be too much"*

*Student: "i never wanted to seduce you...i alwasly thought if i had a chance, id have to be someone like student 1 which im clearly not so in that area i gave up on that way bk in the yr"*

*The teacher: "well heres the thing, student 1 wouldnt be able to seduce me either, she is a student"*

*Student: "and yes u do have a family and i never wanted to be a home wrecker and therefore i gave up on that to...i didnt even try because of it because of that reason. yes it does happen and maybe i thought abotu it abit too much but maybe i was just more vunrable (sp?)"*

*than i thought i was and at the start of the yr i thought "hey he looks like a nice guy, for abit excitment , ill talk to him"*

*The teacher: "ok so we are making some progress"*

*Student: "and maybe i pushed talking to u too much and then i stared getting feelings for you"*

*The teacher: "ok thats normal"  
"when a person sets their sites on something they can be come obsessed with it, i know that, afterall i am obsessed with a childrens card game"*

2. Continued to hold conversations with the student via msn on 18 October 2008 without a valid context including conversations of an inappropriate, personal and nature, after being warned by his employer on 14 October 2008 not to contact any current or former students:

PARTICULARS :-

- (a) On the 18 October 2008 engaged in the following conversation with the student via MSN:

*The teacher: "I cant talk to you  
"my whole life is messed up, coz I tried to help you, you have no idea how messed up that is"*

- (b) On the 18 October 2008 engaged in the following conversation with the student via MSN:

*Student: "Ive been racking my brain out all week worrying about u so an u just fucking say something!"*

*The teacher: "I cant last time I did it was saved printed and used to completely mess up my life, I don't trust u nemore"*

*Student: "Ok why the fuck would I want to get you into trouble intentionally? I started talking to u first, if anything I will get into more shit than u will"*

*"I don't give a fuck though coz as stupid as it sounds, im actually fucking worried about u not me"*

*The teacher: "then turn off the option to save"  
"then if u are worried, then im sure u r smart enuff to fix it  
U can claim stress of exams for ne mistake and be completely forgiven, the way teacher 1 and principals are going ill end up in jail and my family on the street"*

- (c) On the 18 October 2008 engaged in the following conversation with the student via MSN:

*Student: "they made it into a big deal"*

*The teacher: "I have been completely removed from the school, and the Police are involved, I know I did nothing wrong, I know i*

only tried to make you feel good about urself and yet here I am, about to loose my job and completely freaking out”

Student: “how are the police involved”

“WHY are the police involved and why the fuck aren’t I being told any of this”

“ive just been left out in the fucking dark”

The teacher: “coz u took it to the staff members that are complete feminist and over the top”

Student: “fucking great”

The teacher: “becoz this is their powertrip, u gave people who like to Stamp their authority evidence enuff to mess up my life”

Student: “so all the pain I went through this year because of u Means nothing and is over the top?”

“and what about ur powertrip?”

The teacher: “my powertrip, I spent the whole year helping you”

“I had no idea how you felt until the end”

Student: “and being a fucking arsehole to be and draggin me down”

The teacher: “then I stopped speaking to u so as not to hurt y nemore”

“dragging you down, wtf”

“ive always been an arsehole, its not sumthing I especially Pull out for you”

- (d) On the 18 October 2008 engaged in the following conversation with the student via MSN:

Student: “if u think urve done nothing wrong then why are u stressing?”

The teacher: “no I wont , because ever1 assumes Im full of shit and that im the predator, that I initiated everthing, this is the bullshit associated with being a young male teacher, u have no idea wot u have unleashed against my, the entire system is set up to completely fuck me up”

- (e) On the 18 October 2008 made the following comment to the student via MSN:

The teacher: “u r the only person I have spoken to and im not supposed to, this conversation never happened, it should end here”

- (f) On the 18 October 2008 engaged in the following conversation with the student via MSN:

The teacher: “I had no intentions for this”

“have a guess who stand to gain from this”.....

“who has been a career deputy principal and needs sumthing big to get the top job”

Student: “well at least some ppl give a shit about my feelings. not u

“dont fucking blame someone else for this”

The teacher: “treat me like a pariah”

Student: “pariah?”

The teacher: “tell you wot u want to hear but use you to their own ends”

“make a choice the people who use you or the person who tried to help you”

*" i must go now, i will be on later, u can think till then"*

- (g) On the 18 October 2008 engaged in the following conversation with the student via MSN:

*The teacher: "can you blame me for not being happy with you, you brought it upon yourself"*

*Student: "ME !! if u didn't want this to happen then u should have known ur fucking boundaries as a teacher to a student"  
"yes I didnt help with that I CONTRIBUTED BUT U COULD HAVE STOPPED AT ANY TIME"  
"caplocks"*

*The teacher: "I tried to steer you away without hurting you but you wouldn't take a hint, in the end there was no choice"*

*Student: " not at one point did u say we should stop"*

*The teacher: "I told you several times that I didn't think the conversation was appropriate"  
"then I stopped talking to you and you came up crying to me after school"*

*Student: "WHAT THE FUCK!"  
"crying to you?"*

*The teacher: "ok, all but crying"*

*Student: "don't make me out as some pathetic teenager making a fuss to make u feel better about doing the wrong thing"  
"im not the one who talked about having sex with my partner"  
"other students"*

*The teacher: "only so you could feel awkward and leave me the fuck alone"*

*Student: "oh sure"*

*The teacher: "so that you realised I had a family life that didn't involve you"*

*Student: "well you really seemed to want to talk when u were"  
"I didn't want it to involve me"*

*The teacher: "I don't want to talk now but I am"  
" iv told you the conversation is over"*

*Student: "yet here we are still talking and once again, maing me feel like ive done something wrong"*

*The teacher: "if I talk to you im fucked and if I don't im fucked"*

- (h) On the 18 October 2008 engaged in the following conversation with the student via MSN:

*The teacher: "I was instructed not to talk to ne1, as were u, I tried to ignore you yet you continued to talk to me"*

*Student: "u do realise how pathetic u actually sound right now yeah?"*

*The teacher: "then stop talking to me"*

3. By engaging in the conduct referred to in allegations 1 and 2 the teacher failed to maintain objectivity in his relationship with the student and maintain acceptable professional boundaries with the student.

4. By engaging in the conduct referred to in allegation 2, the teacher failed to demonstrate insight into his lack of professional behaviour towards the student.
5. Failed to demonstrate that he treated the personal problem of a student with confidentiality and respect in circumstances where he discussed her personal information with the student via an MSN conversation:

PARTICULARS :-

- (a) On the 2 October 2008 had the following conversation with the student via MSN:

*Student: "yeeeaapp... yeeeaapp...pretty sure i havent spoken to student 2 all holidays except when she told me she might be preggaz :S but then i couldnt say no lol"*

*The teacher: "ummm, ok, u and pregnant yr 12 gurls wots with that"*

*Student: "hahah its so weird..theres to girls that say they might be pregnant...but i guess u dont want me to tell u about it teehee"*

*The teacher: "il hear about it, generally it comes up when they need more time for exams, great covery coz no1 wants to touch it with a 10 ft pole"*

*Student: "hahaha and maybe becoz EVERYONE was tslking about it on weds and im not that one to keep something like that private so have they asked for more time for exams?"*

*The teacher: "not that i know of but the first one you mentioned, has asked for special consideration as she is going through harsh times"*

## THE EVIDENCE

### The student

Former student of the school, the student, gave evidence at the Hearing confirming the content of her statement signed and dated 2 December 2009. Currently at university, the student stated that she was in Year 12 in 2008. The teacher had taught her maths in 2008. He had also previously taught her maths in 2006.

At the beginning of 2008 the teacher gave his private email address to his students. Other teachers provided their school email addresses. The student started exchanging emails related to maths with the teacher around February-March 2008. Their communications soon progressed to online MSN chat and it was during March that the nature of their MSN chat became personal. The teacher and the student both shared personal information about family and their social lives.

The student stated that by the middle of the year the online MSN chat took place regularly, around five out of seven nights per week. The teacher also gave the student his home phone number and his mobile phone number. The student stated that she felt special. She was privy to information that other students were not privy to, including information about teachers and other students.

The student said that the teacher was very friendly towards her at night, then would often totally ignore her the next day, giving other girls far more attention in class. She stated this angered and confused her. She began to believe that the teacher 'was playing with my mind.' She stated that she was resentful given that the teacher had made her feel special. She believed that she was the only one he had such an intense level of personal contact with.

The student indicated that the teacher preferred to be called by his first name. This was not normal at the school.

The student stated that the way the teacher engaged changed. He started to become vulgar and swear when online. He had explicit sexual conversations, including about his wife. The student stated that she felt uncomfortable – yet privileged at the same time.

During the Hearing the student also revealed that the teacher had engaged in regular 'private tutoring' sessions with her at the school, after school hours. No other students were involved and the door was closed. The teacher sometimes offered the student a lift home, however her parent collected her or she made her own way home. The student purchased game cards worth around \$200.00 for the teacher in return for the tutoring. He nominated the cards that he would like. The student paid for them herself. The tutoring took place regularly.

The student said that the teacher asked her very personal things, made her jealous when talking about other girls, talked to her about other students and their tests and had asked her to lie.

She stated that the conversations went too far and that she really wanted to tell someone. In October 2008 the student confided in teacher 1 to whom she provided saved online MSN chat conversations.

The student provided details about how she was still significantly and routinely impacted, some four years later, by her Year 12 experiences with the teacher.

#### Teacher 1

A teacher for three decades, teacher 1 had taught at the school for 25 years. She confirmed the content of her written statement signed and dated 20 October 2009 noting that she had supported the student during her school years as she had struggled with a number of issues and self-esteem. Teacher 1 stated that the student seemed happier during Year 12.

Teacher 1 stated that it was not appropriate to give out personal email addresses as the teacher had done. Teacher 1 also stated that she believed that the student had romantic feelings for the teacher. She said that in her view the student believed that the teacher wanted to be with her and may leave his wife for her. She stated that the student clearly liked the teacher a lot and was very upset after she had disclosed what had been happening. Teacher 1 stated that the student had indicated that she had a special person

in her life. She also indicated that she was uplifted by his attention and would walk past his office just to see him.

Teacher 1 provided professional insights into the various protocols and policies that the teacher had breached; noting that he, like others at the school was versed in what was appropriate behaviour with students. Teacher 1 indicated that the teacher was very familiar with students, utilising his first name. She stated that she considered that he tried hard to be cool and enjoyed doing things with the students. Teacher 1 had concerns about the teacher's lack of distance.

On 13 October 2008 the student disclosed what had been going on. Teacher 1 informed the Assistant Principal and the evidence was collected. The student said she would have no further contact with the teacher. On 15 October 2008 the student sent teacher 1 emails saying that the teacher was on MSN chat and she wanted to talk to him. Teacher 1 believed that the student was in a distressed state. The next day she again told the student she should not be having contact with the teacher. It became clear to teacher 1 that there was MSN chat contact on Saturday night 19 October 2008. On Monday 20 October 2008 teacher 1 spoke with the student who indicated that she and the teacher were both aware that they had broken the no contact rule. Teacher 1 stated she then spent time with the student trying to help her focus on her year 12 study and exams.

#### Assistant Principal 1

An Assistant Principal of the school, Assistant Principal 1 confirmed the content of her written statement signed and dated 12 October 2009. She confirmed that she had been informed about inappropriate online MSN chat between the teacher and the student by teacher 1 on 13 October 2008. She spoke with the student who stated that she had saved the conversations on her computer. She then drove the student to her home to retrieve the material of concern. She viewed the material accompanied by the Acting Principal and another staff member – Assistant Principal 2. The employer was contacted. The next day the teacher was told by the Acting Principal not to have any further contact with any school students. Assistant Principal 2 escorted the teacher to the carpark.

The student was very distressed as she believed that she had got the teacher in trouble. *"She was more concerned about him than herself. She was also angry about an argument the evening before, and she felt that she was not getting enough attention from him."*

Accompanied by the Acting Principal, Assistant Principal 1 spoke to the teacher. She stated that the teacher displayed shock and anger in the first instance when confronted. He indicated that he was trying to help the student and did not consider any of his interactions to be inappropriate. He denied repeatedly that he had had MSN online chat with the student. Then the teacher was informed that there was evidence of the online chat and he became very angry.

Assistant Principal 1 stated that it was not appropriate for teachers to provide private email addresses and that teachers signed an agreement at the school, requiring them not to do so. Assistant Principal 1 was unaware that the 'private tutoring' had been taking place at the school. She noted that if teachers were helping students that the door should be open and that there should be no exchange of money or compensatory gifts. Assistant

Principal 1 stated that the teacher did not adhere to the Code of Conduct and school policies, but in her view, he was aware of what was expected of him as a professional.

Assistant Principal 1 provided additional examples of the teacher's behaviour that was too familiar. Assistant Principal 1 also talked about a time when the teacher changed into a dress for a charity function in a room with the student and another student, and being absent for a notable period with those students.

Assistant Principal 1 stated that the student had indicated that she believed that there could be a future for herself and the teacher based on what information had been shared. The student was also very upset when she learned that the teacher would not be attending the valedictory dinner.

It was the view of Assistant Principal 1 that the teacher fostered and encouraged the student's involvement online. She considered the student was infatuated and obsessed with being online nightly with the teacher.

#### Acting Principal

The witness was the Acting Principal at the time that the student made her disclosure. She confirmed the content of her written statement signed and dated 30 September 2009. The matter was reported to her on Monday 13 October 2008. The next day was her last day as Acting Principal. Assistant Principal 1 took the student home to access the saved online chat files. The student's mother indicated that she was aware the online chat had been happening for some time but didn't want to raise it prior to completion of the year 12 exams.

The matter was reported to the employer. The next day the teacher was provided with written correspondence that instructed him not to make any contact with any students. The Acting Principal stated that she also gave the teacher this instruction verbally. The teacher's laptop was confiscated and he was escorted from the school.

The teacher indicated that he wanted to be mates with the students and that his actions did not go beyond that. He also talked about his intent being to help the students. The Acting Principal noted that he would have attended staff training and received an information package and a Code of Conduct.

The teacher blatantly disobeyed the instruction not to talk to the student and had further online contact after receipt of the instructions not to do so.

#### Assistant Principal 2

Assistant Principal 2 provided a Statutory Declaration dated 25 January 2012 to confirm that his written statement signed and dated 21 October 2009 was true and correct.

A member of the school staff for 16 years, Assistant Principal 2 stated that he escorted the teacher from the school to his car on 14 October 2008. Assistant Principal 2 stated that he observed the content of the saved MSN conversations between the student and the teacher, taken from the student's memory stick. He converted the files to 'word' format and printed them off for the Acting Principal. He confirmed that the conversations were

between the student and the teacher. He also stated that the teacher's laptop was retained by the school in the strong room.

#### The Principal

The Principal provided a Statutory Declaration dated 25 January 2012 to confirm that her written statement signed and dated 12 October 2009 was true and correct. The Principal was the Acting Principal at the school from 15 October 2008 to the end of term one in 2009. The previous Acting Principal briefed the Principal on the first day of her duties that the teacher had been escorted from the school the day before and that an investigation regarding the teacher's alleged MSN conversations with the year 12 student was underway.

On 20 October 2008 the Principal was advised that the teacher and the student had been in contact online, and that the information had been provided by the student's mother. The Principal obtained a copy of the conversation from the student's computer, and sent it to the employer. The Principal stated that she sent the teacher's computer to the employer as requested in late October 2008. Prior to that, the computer had been stored in the school strong room.

#### The teacher

It is the view of the Panel that the teacher was provided with sufficient time to prepare for the Hearing. The teacher signed for/collected his Registered Australia Post delivery of the Formal Hearing Notice and Hearing Materials on 21 December 2011.

The Panel is of the considered view that the principles of natural justice were adhered to regarding the preparation and conduct of the Hearing. The teacher did not attend the Hearing. It is noted that when the teacher was first advised of the Hearing date by correspondence dated 1 December 2011, that the teacher contacted the Institute on 6 December 2011 and indicated that he would not be attending the Hearing.

It is also noted that the teacher refused to participate in the Institute inquiry prior to the Hearing. He refused to provide a statement to the Investigator and he refused to respond to the allegations contained in the Formal Notice of Hearing.

### **DISCUSSION OF THE EVIDENCE**

The Panel considered the witnesses to be credible and the evidence to be compelling. The Panel also noted that the student was still significantly impacted by what had transpired.

The evidence was unchallenged. Based on the balance of probabilities and the available evidence, and mindful of the implications of *Briginshaw v Briginshaw* (1938) 60 CLR 336., and in turn the heightened responsibilities imposed given that from *Briginshaw* it is clear that when making determinations based on the balance of probabilities, hence reasonable satisfaction, that reasonable satisfaction is not a state of mind that is attained or established independent of the nature and consequence of the fact or facts to be proved. Consequently in making these determinations persuasive proof was not only required, but required of a degree that reflected the seriousness of the allegation.

The Panel found each allegation and all of the associated particulars, to be proven. The Panel was of the firm view that the proven behaviour amounted to serious misconduct. In making its decision the Panel noted that the behaviour of the teacher and the MSN chat constituted a substantial departure from the standards expected and required of a teacher. Falling well short of the requirements stipulated in the School Code of Conduct, and in clear conflict with the Victorian Institute of Teaching Code of Conduct and Code of Ethics, the behaviour of the teacher was provocative, sexual, derogatory towards students, misogynist, insensitive, professionally immature and in breach of privacy. The behaviour was also repetitive. In addition the teacher engaged in further MSN online chat having been specifically instructed not to do so.

The teacher did not engage with the process, hence the Panel had no contemporary information about the teacher, his insights (if any) into what had taken place were not offered up by the teacher, information about his current work and educational practice were not presented to the Panel for consideration, and no representations regarding remorse or professional support sought were put forward by the teacher. Determining whether a teacher is fit to teach is a matter determined at the time of the Hearing. The Panel, given the lack of information before it, deemed the teacher unfit to teach.

## **FINDINGS**

The teacher is guilty of serious misconduct and is unfit to teach. The conduct of the teacher is considered to have brought the profession of teaching into disrepute. Further the teacher abused his privileged position of trust and power, to the long term detriment of the student.

The Panel does not believe that the teacher should be working with students and has cancelled the teacher's registration pursuant to section 2.6.47 of the Act

## **DETERMINATION**

The teacher's registration is cancelled pursuant to section 2.6.47 of the Act



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**SUSAN HALLIDAY, CHAIRPERSON**



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**per:**  
**ANNE FARRELLY, REGISTERED TEACHER**



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**per:**  
**PAUL WILHELM, PANEL MEMBER**