

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 125

**REGISTERED TEACHER:** Gavan Michael CONNELL

**PANEL MEMBERS:** Terry Hayes, Chairperson  
Anne Farrelly, Registered Teacher  
Alina Jonas, Panel Member

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

**DATE OF HEARING:** 28 September 2012

**DATE OF DECISION:** 10 October 2012

#### **FINDINGS AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 10 October 2012 the Panel found the teacher guilty of serious misconduct and unfit to teach.

The Panel determined to cancel the registration of the teacher from that date.

## REASONS

### BACKGROUND

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

By letter dated 20 October 2011, 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 advised that the teacher is not permitted to seek employment in any capacity in any Victorian Government school unless and until advised, following his resignation prior to the conclusion of an inquiry into allegations that he had used his leased notebook computer to acquire and store pornographic images and video.

The teacher resigned from the employer, effective from 11 October 2011.

On 1 February 2012, the teacher's registration with the Institute was suspended due to non-payment of his 2012 annual registration fee.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute and on 23 May 2012, the Committee decided to refer the matter to a Formal Hearing. The Committee also decided to continue with the inquiry pursuant to s. 2.6.47 of the *Education and Training Reform Act 2006*

A Notice of Formal Hearing dated 6 September 2012 was served upon the teacher on 7 September 2012.

### THE ALLEGATIONS

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

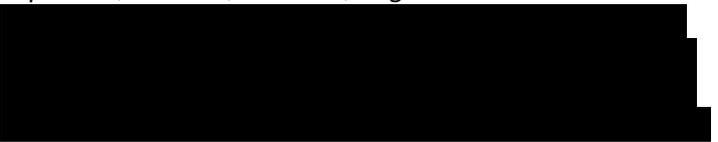
*Whilst employed as a registered teacher at t in 2010 you engaged in the inappropriate use of your school leased laptop computer in circumstances where you:*

1. Downloaded 213 sexually explicit images or videos of naked or partially naked men and women engaged in various poses or acts including:
  - a. images of erect penises, oral sex, anal sex, vaginal sex and masturbation; and
  - b. files labelled 
2. In August 2010 left your school leased laptop computer in a classroom in circumstances where Year 8 students were able to view on that laptop computer sexually explicit images

*or videos of naked or partially naked men and women engaged in various poses or acts including:*

- a. images of erect penises, oral sex, anal sex, vaginal sex and masturbation; and*
- b. files labelled* 

3. *In September 2010 left your laptop computer in a classroom in circumstances where Year 8 students were able to view on that laptop computer sexually explicit images or videos of naked or partially naked men and women engaged in various poses or acts including:*

- a. images of erect penises, oral sex, anal sex, vaginal sex and masturbation; and*
- b. files labelled* 

## **THE EVIDENCE**

The teacher did not appear at the Formal Hearing and no witnesses were called to give evidence. Consequently the Panel was reliant on evidence provided in the Hearing book.

This included:

- The report of the Investigator appointed by the employer (school principal) which detailed specific allegations related to the teacher's possible misconduct
- The teacher's lengthy response to the Investigator's report
- Interviews with eight students from the teacher's Year 8 class where the alleged misconduct occurred which collectively offered an explanation as to how students were able, in class time, to access, view and record on their mobile phones the offensive material on the teacher's computer
- Correspondence between employer personnel and the teacher relating to offences committed by him in 1988 (possession of marijuana) and 1994 (indecent exposure) for which he received fines and good behaviour bonds.

In his response the teacher admitted to the allegations. He said he had used his leased notebook computer to download pornographic videos and images and he had the computer in his classroom on the two stated occasions when students were able to view and copy the offensive material on their mobile phones.

The teacher made it clear that, although he recognised his actions in downloading the material contravened employer policies about the acceptable use of leased notebooks, he did not download the material during school time. This was confirmed by the Investigator. Nor, he said, had he viewed the material at school.

The teacher strongly rejected claims that his actions reflected incompetence as a teacher or a failure to adequately supervise students, though he acknowledged that on occasions the latter was affected by his impaired hearing. In his response to the Investigator's report which he also provided to the employer, he cited testimonials from students attesting to his quality as a teacher, students 'who appreciated my teaching and the care I took'. He said the incidents were isolated ones in a career spanning two decades.

Instead, the teacher said the actions arose out of his 'initial foolishness', though he did not specify as to whether he was referring to the downloading of the pornography, bringing his computer into the classroom, or allowing students to use his computer for work on a class assignment. He also referred to his 'misplaced trust' in students, whom he had allowed to use his computer for specific purposes related to class work, who had then accessed his personal files. This version of events was disputed by the three female students who had been given permission to use the teacher's computer. They claimed that they had been, in effect, bullied by several male students, who said they knew the teacher had 'porn' on his computer, into accessing the files.

At the conclusion of his response the teacher offered apologies to the students. He said 'I am deeply sorry to the children who were exposed to the pornography that I wrongly and foolishly had on the laptop. I am sorry for any confusion, loss of innocence, fear or betrayal of trust they may have experienced'. He also apologised to their parents and his teaching colleagues, the principal class at the school, the region and the union for the workload he had created for them, 'the name of public education in Victoria' and 'the name of teaching in Victoria'.

The teacher expressed regret for the fact that his actions had put at risk both his professional career and the well being of his own children.

As well as his admission to the allegations and apologies, the teacher's response contained a lengthy digression in which he referred to several matters including his Myer Briggs personality type, his relationships with his former partner and former wife, his Catholic upbringing, his own pedagogical practices, the role of pornography in childhood development, the causes of early onset of puberty in females, his medication and the importance of yoga to his life and the role that sexual fantasy had played in his life.

The correspondence between employer personnel and the teacher related to the two offences was as follows. In 2004 the teacher replied to the General Manager of the Human Resources Section, explaining how the offences had occurred. Regarding the first, he said that police had discovered, while investigating a possible burglary, a marijuana plant he had found in the state forest adjoining his property. Regarding the latter, he offered the explanation that he was easing physical discomfort caused by sticky, hot weather and adjusting his underwear while parked at a red light next to a bus, unaware that he was being observed by passengers.

The notification by police of the offences had subsequently resulted in an employer investigation into the teacher's possible lack of fitness to teach.

The Deputy Secretary, as a result of the investigation, had written to the teacher stating he was of the view that the teacher should be permitted to continue teaching with the employer. He also reminded the teacher of his 'requirement to demonstrate the highest standards of behaviour while on and off duty' and that 'any further breach of conduct will result in action under the Teaching Service Act 1981, such action may result in your dismissal'.

## **DISCUSSION OF EVIDENCE**

The Panel noted that every effort was made by the Institute to ensure that the teacher received natural justice. As well as several unsuccessful attempts to contact him by phone and email, he was sent two letters by registered mail informing him of proceedings, receipt of which he acknowledged. The Panel was also very conscious of the teacher's non-appearance and made every effort to give his written responses to the allegations, which appeared in the Investigator's report of which he had a copy, their proper due.

In discussing the available evidence the Panel made it clear that the teacher's competence as a teacher was not an issue in the allegations. The allegations related to serious misconduct in first downloading the pornographic videos and images on to a leased notebook computer in contravention of employer policies related to notebook use and then inadvertently allowing situations to occur in his classrooms which enabled students to access and copy them.

The Panel found credible the claims of the three female students, recorded in the Investigator's report, that they were harassed by male students into accessing and viewing the offensive material while the class was temporarily unsupervised. The fact that students were able to photograph the videos and images with their mobile phones raised the distinct possibility of their content going viral throughout the school and beyond. While the teacher characterised his action as an 'initial foolishness' the Panel believed it reflected an appalling casualness when thought about in terms of its actual and possible consequences. Even the teacher admitted that one of the female students, even if she was, as he claimed, complicit in accessing the videos, was 'exposed to material that is entirely inappropriate for developing students, hostile to their well being'. That carelessness, the Panel believed, was compounded by the fact that the videos and images were labelled in such a way that might have stimulated students' interest. 'Misplaced trust', as he put it, in this context looked more like downright naivete about adolescent curiosity when offered such obvious temptations as [REDACTED], [REDACTED] and [REDACTED], not to mention [REDACTED] and [REDACTED].

The Panel noted that the teacher, in the closing three paragraphs of his response to the Investigator's report, offered a lengthy and comprehensive list of apologies to all parties who were, or may have been, offended or inconvenienced by his actions: the students involved, their parents, fellow teachers and the school's principal class, the union and regional personnel, the school community and the general public, the good name of public education and teaching in general. However the Panel also noted that the apologies came after some disputation over factual matters in regard to the specifics of the two classroom incidents and a lengthy digression in which elements of rumination,

rationalisation and obfuscation seemed, at times, to be an attempt to justify his behaviour. What was lacking, the Panel felt, was a clear, unadorned recognition that he had behaved unprofessionally to the detriment of the students involved, other possible viewers of the material since it had become publicly accessible by being photographed on the mobile phones and to the profession as a whole.

The Panel also considered the correspondence between the teacher and employer personnel relating to the two offences committed in 1988 and 1994. The teacher's response to the latter incident had, the Panel believed, parallels with his response to the incidents in the allegations. That is, the teacher admitted to the offence as a 'reckless and indiscreet' act on the one hand, but sought to offer a plausible explanation of its occurrence, bordering on rationalization, on the other. It was also obvious that the necessary alarm bells in the warnings by the Deputy Secretary did not go off. That is, that an occurrence of similar behaviour which reflected the teacher's disregard for professional standards expected of a teacher might result in his dismissal.

## **FINDINGS AND DETERMINATION**

The Panel found all three allegations proved on the teacher's admission as recorded in his responses to the Investigator's report.

The Panel found the teacher guilty of serious misconduct. His action in downloading the pornography on to a leased notebook showed a blithe disregard for the propriety of the agreement covering his personal use of such equipment. His actions in bringing the notebook into the classroom and subsequently allowing students to use it, were foolish and careless in the extreme, given he knew the contents of the computer. They showed little consideration for the professional standards and duty of care required in dealing with young people. They affected not only the students involved in the incidents referred to in the allegations but had the potential to affect a myriad of other students who may have been exposed to the material recorded on the mobile phones by his students.

Furthermore such actions have the potential to bring the profession itself into disrepute because they clearly transgress the ethical and professional behaviour expected of a teacher as codified in the Victorian Teaching Profession Codes of Ethics and Conduct. In particular the Panel felt the teacher had not sufficiently understood or appreciated the full import of Principle 2.1: 'The personal conduct of a teacher will have an impact on the professional standing of that teacher and the profession as a whole'.

The Panel found the teacher unfit to teach. The Panel believed that its duty to protect the public interest requires a more rigorous guarantee than the teacher's somewhat effusive apologies to all and sundry and fulsome expressions of contrition and remorse. The public and the profession require a more objective assessment, other than the teacher's own unfocused, ruminative self reflection, that he had gained insight and understanding into his behaviour, the kind of assessment that is best provided by professional counselling. Such counselling might address the following questions:

- How his conduct breached the Victorian Teaching Profession Codes of Ethics and Conduct?
- How might he demonstrate an understanding of the importance of professional behaviour in maintaining the reputation of the profession and the trust that the community is entitled to expect of teachers?

**DETERMINATION**

The Panel determined that the teacher’s registration be cancelled from 10 October 2012. In making its decision the Panel was aware of the fact that the teacher is no longer registered as a teacher. It did so under Section 2.6.46 of the *Education and Training Reform Act* which allows it to take such action in the case of an unregistered teacher.

The Panel notes that its expectation of a rigorous objective assessment of his fitness to teach is an expectation any registration body, panel or committee might have of the teacher should he choose to apply for registration in order to resume his teaching career.



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**TERRY HAYES, CHAIRPERSON**



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



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**per:**  
**ALINA JONAS, PANEL MEMBER**