

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 003

REGISTERED TEACHER: Adrian Murray **WILLIAMS**

PANEL MEMBERS

Susan Halliday	Chairperson
Cathie Ireland	Registered Teacher
Sophia Panagiotidis	Member

Teacher Representation: The teacher was represented by Mr Scott Johns of Counsel and Mr Neil Kumar from Galbally & O'Bryan solicitors

Counsel Assisting: Mr Peter Harris

DATES OF HEARING: 5, 6 and 7 April 2004

DECISION OF THE PANEL:

On 3 June 2004 the panel decided to cancel the registration of the teacher from the date of the decision on 3 June 2004.

EFFECT OF THE DECISION

The effect of the decision is that the teacher cannot undertake the duties of a teacher in a Victorian school from 3 June 2004.

REASONS

BACKGROUND

On 31 December 2002 the *Victorian Institute of Teaching Act 2001* (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the Act because he was registered with the Registered Schools Board under section 37 of the *Education Act 1958* immediately before the Act was proclaimed.

By letter dated 13 August 2003 the employer lodged a complaint against the teacher with the Victorian Institute of Teaching (the Institute). The teacher is employed by School 1 as a teacher. He has been stood down on full pay pending the outcome of this complaint. The employer supplied documents indicating that a number of complaints had been lodged against the teacher, the first in 1992. These complaints had been investigated by the employer and no further action was taken. In late 2002 a further matter was brought to the attention of the employer which resulted in this complaint being lodged.

On 29 October 2003 the Disciplinary Proceedings Committee (DPC), a committee of the Institute Council decided that a preliminary investigation should be conducted into this complaint. On 7 January 2004 the report of the preliminary investigator was received by the Institute and on 21 January 2004 the DPC decided to refer this complaint to a formal hearing. The teacher and the complainant were sent Notices of Formal Hearing on 3 March 2004.

The information the Institute received as evidence of possible serious misconduct or lack of fitness to teach is that:

Allegation 1

- in 1990 The teacher was employed as a teacher at School 2
- during that year he had a number of conversations with male Year 10 students about sex and masturbation
- following a conversation with the Principal of School 2 the teacher took long service leave and then resigned from School 2.

Allegation 2

- in 1992 the teacher was employed as a teacher at School 1
- he was the home group teacher for a Year 8 class which included student 1
- on a number of occasions as the teacher walked past student 1 he would pat her on the bottom. He did not say anything when he did this
- on one occasion in 1992 as Student 1 was walking into class in one of the portable classrooms the teacher put his hand on her left buttock and she told him to leave her alone
- on another occasion in 1992 the teacher was in charge of a cooking class in one of the portable classrooms. He touched and squeezed Student 1 on the bottom three times. She walked away from him to the other side of the classroom
- on another occasion in 1992 the teacher took students to a swimming pool for an excursion. He approached Student 1 in the pool from behind. He pulled her against his body and then started rubbing her up and down against his body

- Student 1 became distressed and started to call out. The teacher then held her head under the water several times even though she was kicking out with her legs. Student 2 tried to help Student 1 by grabbing her right foot and pulling her away from the teacher
- The teacher then lifted Student 1 out of the water and threw her so she fell face first into the water. Student 1 was upset and got out of the pool and got dressed
- after the swimming session the teacher drove the mini bus with the students to a lookout. Everyone got out of the mini bus at the top of the hill. Student 1 walked to the tower and the teacher approached her, patted her on the bottom and said 'Don't tell anyone'
- after school one day the teacher approached Student 1 who was sitting on a fire hydrant. He put his hand on her thigh and rubbed her leg. She told him to stop it
- Teacher 1 witnessed this and told the teacher to leave Student 1 alone
- Student 1 told Teacher 2 who told the Head of Campus

Allegation 3

- that the teacher was the Home Group teacher for Student 3 in 1992
- on numerous occasions the teacher would smack, squeeze or pat Student 3 on the bottom when she was leaving the classroom
- in conversation the teacher would make personal remarks to the students
- The teacher reached for a key hanging by a chain from a button on Student 3's clothes. The key was hanging over Student 3's crotch
- when Student 3 asked what the teacher was doing he said 'Oh, you've got to understand I would never try to touch you, not until you're older'

Allegation 4

- in 1999 the teacher taught Student 5 a student in Year 10 at School 1
- by the end of Semester 1 he had begun to put pressure on Student 5 by inviting her to see him after class
- in June 1999 in the teacher's office the teacher gave Student 5 a birthday card and gift. The gift was a soft toy and the card was fairly personal
- The teacher encouraged Student 5 to take part in public speaking competitions and helped her prepare her speaking notes including dropping off notes to her home. Student 5 attended a public speaking competition in Regional Victoria with her parents. The teacher offered to drive Student 5 to the event and tried to discourage her parents from attending. At the event the teacher virtually ignored her parents
- The teacher told Student 5 that other female students had said that she would win the Head of Campus award in 1999. These girls talked about Student 5 in a derogatory way and the teacher told her about the conversation. He tried to get Student 5 to guess who these students were
- The teacher asked Student 5 to tell him something about herself that would surprise or shock him. The teacher told Student 5 something about himself when he was young
- on a later occasion Student 5 had to bring something to the teacher's office in class time. He had an office of his own in the administration section. The teacher was sitting at his desk and he invited Student 5 to sit down. The door to the office was closed. The teacher made a comment about a photograph of Student 5 that hung on the wall of the staff room and the fact that she was in her bathers

- The teacher also commented that he had heard that Student 5 had kissed a boy at a party recently and he rebuked her for not confiding in him. The teacher kept asking Student 5 who she had kissed and for the details but she refused to tell him. The teacher knew who the boy was and became angry with Student 5 because she would not discuss the matter with him
- The teacher intimidated Student 5 into telling him the name of the boy and then told her that the boy did not finish school and was working in gardening. He continued to cross examine her about the incident and she felt humiliated
- The teacher sometimes told Student 5 personal details about his wife and other teachers

The issues the Panel must address in this matter are:

- Was there sufficient evidence to support any, some or all of the allegations made against the teacher?
- If any, some or all the allegations were proved was this sufficient to amount to serious misconduct and/or lack of fitness to teach?
- If the teacher was guilty of serious misconduct or if he was not fit to teach what was the appropriate penalty?

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 provides:

26. Powers of inquiry

(1) *The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.*

(2) *The Institute must in writing notify-*

- (a) *the registered teacher; and*
- (b) *the employer of the registered teacher; and*
- (c) *the person who made the complaint-*

of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions. In this matter a complaint was lodged against the teacher by the EMPLOYER.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public
- to maintain proper standards of conduct for the profession, and
- to protect the reputation of the profession.

The purpose of these proceedings is to protect students in Victorian schools by ensuring that the teacher is not guilty of serious misconduct and is fit to teach. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established*.

And later

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings in *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191.

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided VCAT 2 December 1998))

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct (see *Re: Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242).

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

The **test** set out in the case law is conduct:

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.

Allinson v General Medical Council [1891-4] All ER 768

The conduct the subject of the inquiry may indicate a character defect incompatible with a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*)

In *Health Care Complaints Commission v Litchfield* [1997] NSWCA the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent the conduct departed from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of

their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (See *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South Wales Bar association v Cummins* (2001) NSWCA 284).

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness (see *New South Wales Bar Association v Cummins* (2001) NSWCA 284 and *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46).

DOCUMENTS CONSIDERED

- Witness statements by:
 - Student 1 dated 1 December 2003
 - Student 1's mother dated 1 December 2003
 - Student 1's father dated 1 December 2003
 - Student 5 dated 8 December 2003
 - Student 3 dated 8 December 2003
 - Head of Campus of school 1 dated 8 December 2003
 - Administrator 1 dated 16 December 2003
 - Teacher 3 dated 18 December 2003
 - Teacher 1 (unsigned)
 - Administrator 2 dated 12 December 2003
 - The investigator dated 9 December 2003
 - Third party (unsigned)
 - former Principal of School 2 dated 17 December 2003
- Notice of interview with the teacher dated 8 December 2003
- Record of interview with the teacher dated 15 December 2003
- Reference from School 3 dated June 2003
- Report following Preliminary Investigation
- Undated draft letter to the teacher from School 1
- Letter dated 24 January 2003 to the teacher
- Application for advancement in 2001
- Memo from School 1 dated 2 April 2003 with attachment
- Case Note dated 11 June 2003

- Letter from School 1 dated 4 October 1999
- Chronology dated 10 April 2003
- Report of Incident dated 4 October 1999
- Hand written statement by Student 5
- Hand written statement by Student 5's mother
- Letter from legal counsel dated 18 November 1997
- Letter from legal counsel dated 17 November 1997
- Fax to legal counsel dated 8 October 1997
- Letter from legal counsel dated 8 October 1997
- Memo from the employee of the employer dated 8 October 1997
- Letter from legal counsel dated 3 June 1997
- Fax to legal counsel dated 28 May 1997
- Letter from the employer dated 31 October 1995
- Letter from Student 1's father dated 16 October 1995
- Memo from the employee from the employer dated 21 June 1994
- Two letters from Minter Ellison Morris Fletcher dated 15 June 1994
- Memo from the employee from the employer dated 7 June 1994
- Letter from the solicitors for a student dated 2 June 1994
- Fax from the employer dated 27 April 1994
- Confidential Report dated 26 April
- Memo from the employee from the employer dated 22 April 1994
- Letter from solicitors for a student dated 20 April 1994
- Memo from the employee from the employer dated 15 February 1994
- Hand written file not by Former Principal of School 2 dated 6 September with typed copy
- Letter from Victoria Police dated 10 April 2003
- Registration details of the teacher
- Letter from the employer dated 20 April 2004-06-24
- Email from third party dated 7 April 2004
- Fax of contemporaneous note taken by Deputy Principal School 2
- Fax from Administrator 2 dated 2 April 2004
- Letter from the teacher received 26 March 2004 enclosing a submission
- Letter from the teacher dated 26 March 2004 enclosing references
- Submission from Counsel Assisting
- Submission from Scott Johns of Counsel.

THE EVIDENCE

The Panel heard evidence under affirmation or oath from the following witnesses:

- Student 1
- Student 3
- Father of Student 1
- Student 5
- the investigator
- Head of campus School 1
- Administrator 1
- Teacher 3

- former Principal of School 2 (by conference telephone)
- Administrator 2
- Teacher 1 (by conference telephone)
- The teacher

The proceedings were taped.

The written statements of all witnesses were put to them and all witnesses agreed that these statements were correct.

Allegation One: School 2

Former Principal of School 2 had taught the teacher when he was the Principal of School 2 between 1973 and 1977. The teacher had been employed at School 2 as a teacher from 1979. Former Principal of School 2 returned to the College in 1988 as Rector, a position he held when the allegations were made against the teacher. Former Principal of School 2 recalled that on 6 September 1990 two teachers came to see him expressing alarm at the questioning by the teacher of two Year 10 boys. The questions concerned whether the boys masturbated and what the boys would do if offered sex by girls. When the teacher was interviewed by the former Principal of School 2 he did not deny he had questioned the boys about these matters. He explained that his questioning had been well intentioned. After hearing the teacher' explanation the former Principal of School 2 advised the teacher to take long service leave and then to consider obtaining employment in another school because his experience as a teacher was too narrowly based. While giving evidence the former Principal of School 2 referred to some hand written notes taken by the Deputy Principal School 2 in 1990 when the allegations were raised. These notes were faxed to the panel and placed on the record. The notes confirmed that a number of staff members had expressed alarm at the teacher' inappropriate questioning of students. The hand written notes of the former Principal of School 2 taken on 6 September 1990 confirmed that two teachers and a parent at School 2 had been told about the questioning by the teacher and had expressed concern. Former Principal of School 2's notes and recollection of the event are consistent with the record of events documented by the then Deputy Principal at School 2.

The teacher did not deny that he had questioned the students. He placed the questioning in the context of testing the two boys for a prize for leadership. According to the teacher he asked if the boys adhered to the Church doctrines and in particular their attitudes to masturbation and pre-marital sex. He denied he asked the specific questions former Principal of School 2 mentioned and recorded in his notes.

Allegation Two: Student 1

The teacher was employed as a teacher at School 1 in 1992. Student 1 commenced her schooling at School 1 in 1991 and was in Year 8 in 1992. At the end of Year 8 Student 1 left School 1 and attended School 3.

Student 1 gave a clear, detailed account of the events at the swimming pool in first term of 1992, but did admit that she could not recall everything clearly. Her oral description of these events was consistent with her written statement. She recalled being approached from behind in the pool, grabbed around the waist, pulled against the teacher and thrown. Student 1 also described having her head held under the water, crying and screaming out and another student coming to assist her. She said that she was so upset by the incident she left the pool immediately. Student 1 then described being driven to the lookout with other students by the teacher where he told her not tell anyone. Following the incident in the pool Student 1 complained to Head of Campus of School 1 about that incident and about being touched on the bottom. Unfortunately her description of what happened was either not recorded or has since been lost. In 1999 the employee from the EMPLOYER recorded that Student 1 had complained that the teacher pulled on an item around her neck, grabbed her around the waist in the pool and threw her. Student 1 and the responsible administrators at the school at the time, Head of campus School 1, Administrator 1 and 2 differed in their accounts of how this complaint was handled by the school. No records were available; the records either had not been taken or had been lost. Student 3 confirmed in her evidence that Student 1 was distressed by the pool incident.

Student 1 also gave evidence about the teacher touching her inappropriately on a number of occasions. Although Student 1 said that one of these incidents was witnessed by Teacher 1, he denied seeing any such action on the part of the teacher.

Teacher 3 who was a teacher at School 1 from 1987 to 1997 gave evidence that the teacher was a demonstrative, tactile person. He had never witnessed any inappropriate touching of students or otherwise inappropriate behaviour on the part of the teacher.

Allegation Three: Student 3

Student 3 was also in Year 8 at School 1 in 1992. Student 3 appeared to have a very clear recollection of events that occurred at School 1. Her evidence regarding inappropriate touching was largely consistent with that of Student 1's. The essential features of the 'key chain incident' were that the teacher had grabbed a key that was hanging from a chain around Student 3's neck above her crutch. When Student 3 asked the teacher what he was doing he replied that he would never touch her until she was older. Student 1 confirmed that the teacher said this in her evidence. Student 3 did agree under cross examination that she had disliked the teacher.

Allegation Four: Student 5

The allegations regarding this matter were well documented. Student 5 was a Year 10 student at School 1 in 1999. The teacher was Student 5's English, English Literature and History teacher as well as the year level co-ordinator. Student 5 recalled a number of incidents involving the teacher which finally resulted in her complaining to the school. These incidents involved giving Student 5 a birthday present, arranging to see Student

5 regularly after class and close questioning Student 5 about her private life. Student 5's oral and written accounts of these events were consistent.

The teacher conceded in his written and verbal evidence that the events surrounding the questioning of Student 5 did take place and that his questions of Student 5 were intrusive. He placed the questioning in the context of being a hard working teacher who was concerned for a student's welfare. The teacher admits that he overstepped the boundaries and was awkward and intimidatory in his approach. He now very much regretted his actions.

The investigator investigated the complaint made by Student 5. Her written and oral evidence is also consistent with that of Student 5. The teacher admitted to the investigator that that he had made the remarks but that he had not meant them the way they had been interpreted by Student 5. The investigator did not approve of the teacher's attitude to female students. The investigator wrote an official report following Student 5's complaint which was placed on the teacher's file. She concluded that although the teacher had acted ill-advisedly, she was confident that he had meant no impropriety. The investigator was not aware of the earlier complaints when she wrote the report.

DISCUSSION OF EVIDENCE

Allegation One – School 2

The teacher denied that his questioning of the two Year 10 boys at School 2 was improper. It was not disputed that the questioning of the students occurred and nor was it disputed that those questions concerned pre-marital sexual intercourse and masturbation.

However, the teacher denied that he asked the students how often they masturbated and whether the boys would 'have sex with a pretty girl' if asked. Counsel for the teacher submitted that there was no direct evidence that particular phrases had been used and that what remains of this allegation is "hearsay upon hearsay, and speculation."

The teacher said that he asked the boys whether they approved of certain teachings of the Church. The Panel agrees with Counsel Assisting that if this was the extent of the questioning it is highly improbable it would have resulted in the complaints raised by the students with other teachers and a parent. Further the Panel also accepts that the teachers to whom the incident was reported thought the matter was serious enough to raise it with the former Principal of School 2. Former Principal of School 2 took swift action to interview the teacher and advise him that he would no longer be considered for a Position of Responsibility and suggested that he take long service leave and look for work elsewhere. The Panel does not accept as argued for the teacher, that the incident was of minor significance.

The Panel accepts the record of events recorded by the Deputy Principal School 2 and the evidence of the former Principal of School 2 and finds that the teacher asked

inappropriate and invasive questions when interviewing the boys at School 2 for the prize in 1990.

The Panel also finds that the teacher took long service leave and subsequently left School 2 because he was prevailed upon by the former Principal of School 2.

Allegation Two – Student 1

The first matter raised by Student 1 focuses on an incident which occurred at a local swimming pool in 1992. The teacher accepted that there was a swimming excursion in the first term of 1992 and that the teacher was playing around with students in the swimming pool. The teacher does dispute the Student 1's interpretation of the events in the pool. The teacher conceded that he threw Student 1 in a playful manner in the pool in the presence of other students and adults but said that the action was an innocent one. His evidence was that he had no idea that Student 1 had been affected or traumatised in any way.

Counsel for the teacher argued that his client's position with respect to the complaint has been consistent from the outset. He has denied the allegations of inappropriate contact and rough play made by Student 1.

Other allegations made by Student 1 concerned inappropriate touching, particularly on the buttocks. The teacher also denied any such incidents.

The Head of Campus, and Administrator 1 and 2 gave evidence that the complaint was viewed seriously and investigated by School 1. However, there is no record in existence of file notes or diary notes made at the time or any statements by the people involved. It is clear that no mention of this complaint was ever recorded on the teacher's file or on Student 1's file. It seems extraordinary to the Panel that given the evidence that the complaint was treated seriously that there are no contemporaneous records of the complaints made by Student 1 or for that matter Student 3. It is the Panel's view that if a complaint is properly and fully investigated, then a full and proper record of such an investigation should be retained by the school. The Panel notes that the employer's investigation was restricted to oral and anecdotal evidence two years after original allegations were made and that these records still exist. It is not necessary for the Panel to decide whether or not Student 1 was told to report the pool incident to her parents.

Because there is little documentary evidence available concerning this complaint, the Panel had to make its findings based on the oral evidence of the witnesses. It is not in dispute that the teacher held, lifted and threw Student 1 in the pool. Student 1 was clearly upset by this physical contact, to the extent that she eventually reported the incident. The Panel accepts that Student 1 told Student 3 of the incident. Student 3 corroborated this at the hearing. Although School 1 took some steps to respond to Student 1's complaint and put the allegations to the teacher, the allegations were refuted and it appears that the matter was dropped. The Panel finds it surprising that the teacher, who was an experienced teacher in 1992, would knowingly put himself in a position where he would be in physical contact with students in a swimming pool.

The Panel accepts that the teacher grabbed and threw Student 1 in the swimming pool, and that she was traumatised and bruised by the incident. Student 3's evidence supported Student 1's account of being distressed and bruised after the pool incident. However the Panel does not accept that there were any sexual overtones to this incident.

The Panel finds that the teacher acted irresponsibly by putting himself in the situation where physical contact with a young teenage girl occurred. In the Panel's view, this demonstrates a lack of insight on his part regarding what is acceptable conduct for a teacher when interacting with students.

Administrator 2 stated that he was not aware of the incident at the fire hydrant when the teacher was alleged to have touched Student 1 on the knee. Teacher 1 said that he did not witness any such incident even though Student 1's recollection is that he was present. On the evidence available to it, the Panel is unable to find that this incident occurred.

The other matter raised by Student 1 was that the teacher touched and grabbed her on the bottom on a number of occasions. Student 1 was able to describe some specific events but also stated that it was common for the teacher to touch students. Student 3 agreed with Student 1 that the teacher often touched her and other students on the bottom. At the time Student 3 just thought it was the way the teacher related to students. Teacher 3 noted that the teacher was a tactile, demonstrative person. The touching was raised with the teacher by Head of Campus when he was investigating the pool incident. According to Head of Campus the teacher acknowledged patting students on the bottom to hurry them up. Head of Campus admonished the teacher and told him it was inappropriate behaviour. Head of Campus was satisfied there were no sexual connotations although he did tell the teacher not to touch the students. The Panel found both Student 1 and Student 3 to be credible, consistent and compelling witnesses in relation to the allegations concerning the inappropriate touching of students on the buttocks by the teacher.

The Panel concurs with Counsel Assisting who makes the point that the lack of record keeping and the passage of time do not help the teacher and nor do they help the students who made the complaints. All persons involved in these proceedings are vulnerable because of the lack of documentation.

Allegation Three – Student 3

Student 3 alleged that the teacher made an unwelcome and sexually demonstrative approach as well as a sexually suggestive comment to her. The teacher attempted to grab her key and at the same time made a sexually suggestive remark to her. Student 3 confirmed the allegation made by Student 1 that the teacher would touch female students including Student 3 on the buttocks.

The teacher denied the allegation concerning the key.

The Panel accepts that Student 3 was a confident and forthright witness who had a good and consistent recollection of events. Student 1 confirmed a number of the crucial

elements of the key incident in her evidence. Both she and Student 1 were credible, consistent and compelling witnesses in relation to the allegations concerning the key chain. The Panel notes that Student 3 did not make a complaint at the time of the key incident. Student 3 did not recall Student 1 being in the room when the key incident took place. The Panels' view is that this is understandable given the time that has elapsed that two witnesses might not concur on all details of an incident. It is the Panel's opinion however, that both Student 3 and Student 1 gave consistent evidence about the incident regarding the key chain and both were particularly strong in the recollection of the words attributed to the teacher. The Panel is satisfied on balance that the teacher did grab for a key hanging at crotch level from a chain around Student 3's neck and made an inappropriate sexual remark.

The Panel finds that the teacher did not appreciate how inappropriate his conduct was towards female students as demonstrated by Student 3, Student 1 and later by Student 5.

Allegation Four – Student 5

The teacher conceded that his questioning of Student 5 was intrusive. Counsel for the teacher argued that the questioning arose out of 'misguided pastoral care' rather than 'attachment to the student which went beyond the bounds of a student-teacher relationship'.

The Panel does not accept this explanation. At the very least the teacher's conduct towards Student 5 could be considered to be intrusive, but it is the Panel's view that it was more than this. The Panel considered that this incident demonstrates the teacher's lack of understanding of the appropriate relationship between a student and a teacher. It showed an improper exercise of power over a student underpinned by sexual elements arguably amounting to sexual harassment. The Panel accepts Student 5's evidence that the teacher's behaviour was detrimental to her and finds that he breached a relationship of trust and caused her emotional distress.

Student 5's complaint was dealt with by School 1 in an appropriate way according to the available information given that records of any previous complaint were either not made or lost. The investigator did say that she would have treated the matter differently if she had been aware of earlier complaints.

FINDINGS OF FACT

Based on the evidence before it, the Panel made the following findings:

1. The teacher was employed as a teacher at School 2 in 1990.
2. In 1990 the teacher asked two Year 10 boys at School 2 how often they masturbated and whether they would have pre-marital sex.
3. The teacher left School 2 following an investigation of the 1990 incident.
4. The teacher was employed as a teacher at School 1 from 1992.
5. In 1992 the teacher grabbed and then threw Student 1 in the swimming pool, despite her protests causing Student 1 some distress and bruising.

6. In 1992 the teacher grasped at a key adjacent to Student 3's crotch that was hanging on a chain around Student 3's neck. At the same time he made a remark with sexual connotations to her.
7. The teacher patted female students at School 1 on the bottom.
8. In 1999 the teacher asked intrusive questions of Student 5 that were of a personal and intimate nature.

CONCLUSION

When making its decision the Panel was clear that the primary purpose of disciplinary proceedings is to protect students, the teaching profession and the public, by ensuring maintenance of proper standards of teacher conduct. Hence the lapse of time in relation to the 1990 School 2 incident and the School 1 incidents that followed in the 1990's, was not relevant in as much as the issue for the Panel was whether the teacher was guilty of serious misconduct and did this also mean that he was not fit to teach in 2004. This is particularly the case given that the Panel considered the teacher to be guilty of having both ignored and flaunted basic rules of the teaching profession on several occasions over a period of ten years. Further, with the teacher's conduct being reviewed and assessed in 2004, the Panel believed that the teacher demonstrated a continued lack of understanding as to why his behaviour could equate to serious misconduct.

Noting that serious misconduct is not measured against the worst cases of misconduct, rather by the extent of departure from proper standards, the Panel is of the view that in relation to most of the matters raised about the teacher, and the evidence provided, the teacher's behaviour was incompatible with the duties and responsibilities of a teacher.

In addition the Panel believes that the teacher's conduct about which students complained, was not embarked upon in order to pursue the best interests of the students, rather that the teacher's pattern of behaviour over a period of ten years amounted to a substantial departure from accepted standards within the teaching profession. The teacher's verbal and physical interactions that caused his students concern were all within his will, power and control.

It is the view of the Panel that based on the evidence before it, the teacher showed a lack of moral responsibility and extremely limited insight into right and wrong, highlighting to this day a personal deficiency in relation to his ethical fitness to teach. Acknowledging that fitness to teach extends to both good character and good reputation, the Panel considers that the teacher's character falls short of student, parent and community expectations of members for the teaching profession.

The teacher's position in relation to students is one of power and influence – a position of trust. The teacher's behaviour is considered by the Panel to have breached this position of trust on several occasions, and further that the teacher exploited this position of trust, for his own benefit and not for the students involved; indeed students upon whom he had a significant negative impact.

It is the Panel's view that the teacher's conduct demonstrated both a severe lack of judgement, as well as a failure to extend a personal duty of care to students that he had

a moral, ethical and professional duty, to care for. The teacher' physical and verbal interactions with the male students at School 2, and Students 1, 2 and 3 from School 1, moved beyond unprofessional to destructive of the positive relationship that should exist between teacher and student. Devoid of respect for the rights of the individual students whose issues were aired, the Panel is of the view that the teacher' behaviour has also had a prolonged negative impact on several of the students who gave evidence.

With specific reference to the teacher' questioning male students at School 2 about masturbation and pre-marital sex, and the teacher questioning Student 5 about kissing an adolescent male, the Panel considers that the teacher' behaviour also amounts to prima facie sexual harassment. The evidence available indicates that the students involved reacted negatively to, and were uncomfortable about, the teacher' unwelcome and uninvited questions/comments of a sexual nature. The Panel notes that

- as private educational institutions, the actions of individual teachers and operations of School 1 and 2 are covered by the *Sex Discrimination Act 1984 (Cth)* and the *Equal Opportunity Act 1995 (Vic)*, both of which prohibit sexual harassment in the areas of employment, education and provision of goods, services and facilities.
- sexual harassment of students by teachers is covered by these Acts,
- the definition of sexual harassment is uninvited and unwelcome behaviour of a sexual nature that causes offense, intimidation or humiliation,
- sexual harassment can equate to a single incident, and be behaviour by a male to a male, a male to a female, a female to a male or a female to a female,
- in relation to the definition of sexual harassment, intent is irrelevant as it is the impact and nature of the behaviour that is assessed,
- one example of sexual harassment cited by the Human Rights and Equal Opportunity Commission (HREOC) is 'questions or insinuations about a person's private life' (ref page 24 *Sexual Harassment and Educational Institutions – A Guide to the Federal Sex Discrimination Act – HREOC 1996*)
- exemptions relevant to Catholic educational institutions do not extend to exempting sexual harassment of students by teachers, even if the teacher was to run the argument that the unwelcome questions of a sexual nature were initiated under the auspices of 'pastoral care'.

Given the available evidence the Panel is of the firm view that the teacher' behaviour amounts to serious misconduct. Further the Panel does not consider the teacher fit to teach as he has not demonstrated comprehensively that he knows what he ought duly to do, and not to do. His failure to meet his full obligations to students, the teaching profession and the broader education community due to a pattern/series of inappropriate verbal and physical interactions, shows a level of disregard for the students involved and the teaching profession itself, bringing it into disrepute.

The teaching profession and the community must maintain standards that will enable

- parents to feel confident that teachers will care for their children,
- teachers and principals to trust individual teachers to behave appropriately

- the broader teaching community to have confidence in those individuals engaged as teachers as trustworthy
- the education system to be confident in teachers being able to fulfil their fundamental obligations of imparting knowledge to students without detriment.

The teaching profession and the community rely on the professionalism and integrity of individual teachers in order to achieve these goals. The Panel believes the teacher's behaviour worked in opposition to these goals, resulting in detriment to several students.

DETERMINATION

Mindful that the responsibility of the Panel is to help maintain the high standard of conduct of the teaching profession, and given that the teacher's actions constitute serious misconduct and that by those actions he has demonstrated himself to be a person unfit to teach, the Panel has determined to cancel his registration to teach from 3 June 2004.



.....
Susan Halliday



.....
for Cathie Ireland



.....
for Sophia Panagiotidis