

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 021

REGISTERED TEACHER: Mr Stuart Norman

PANEL MEMBERS

Garry Salisbury	Chairperson
Toni Meath	Registered Teacher
Rhonda Cumberland	Specialist Member

ATTENDANCE: The teacher was represented by Mr John Langmeade of Counsel
Counsel Assisting: Ms Anne Sheehan

DATE OF HEARING: 20 & 21 June 2005

DETERMINATION OF THE PANEL:

On 6 July 2005 the Panel decided to cancel the registration of the teacher as a teacher.

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 6 July 2005

REASONS

BACKGROUND

On 31 December 2002 most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the *Victorian Institute of Teaching* 2001 (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.

On 23 July 2004 the Principal of the College lodged a complaint with the Victorian Institute of Teaching (the Institute) against the teacher because of his possible serious misconduct and/or lack of fitness to teach. The complaint was investigated and on 21 March 2005 the Disciplinary Proceedings Committee decided to conduct a formal hearing. A Notice of Formal Hearing was sent to the teacher on 23 May 2005 setting out the following allegations.

- 1) That on 20 June 2000 the Principal of the College met with the teacher to discuss access to inappropriate web sites on the Internet. The teacher admitted to the Principal that the teacher had accessed the sites from the College computer.
- 2) On 3 August 2001 the Principal met with the teacher to discuss complaints from five female students. By letter of 3 August 2001 the teacher was instructed to avoid tactile contact with female students, avoid being alone with any female student and not to transport female students in the teacher's car without another staff member or parent present.
- 3) During a visit to the College, the teacher said to a student, Student 1, that he wanted her to send him pictures Student 1 had taken of her legs.
- 4) The teacher and Student 1 chatted in MSN chat rooms after the teacher left the College. Student 1 'blocked' him when the teacher said things that Student 1 felt were not right for the teacher to say to her.
- 5) In the MSN chat room the teacher commented to Student 1 about her body and mouth and referred to the female vagina as "a pussycat" and the male body part "a snake". The teacher stated that he liked Student 1's lower stomach best. The teacher would leave the conversation when his wife came into the room.
- 6) In one MSN conversation with Student 1 the teacher made comments to Student 1 including 'any u r never ugly', 'always gorgeous', 'sounds sexy', 'wish I was always getting some', 'never enough', 'how about u?'
- 7) The teacher and a student, Student 2, chatted in MSN chat rooms after the teacher left the College. Student 2 'blocked' the teacher as Student 2 felt that the teacher made inappropriate comments including 'it would be really good if I could touch you and be with you', that the teacher sometimes asked what Student 2 was wearing and made comments about Student 2's looks and body. The teacher asked Student 2 to come over and have champagne and a spa.
- 8) The teacher commented to Student 2 in relation to her picture on MSN that Student 2 'looked sexy and was she trying to turn him on?' The teacher asked Student 2 to send him the picture. Student 2 did not send the picture and the teacher stated that 'that's probably better coz his wife might get suss.' Student 2

- replaced her picture with a picture of her friend, the teacher said 'she has nice breasts' but used a slang word.
- 9) The teacher made comments to Student 2 about her looks and body, asking what she was wearing and if he could kiss her pouty lips. The teacher stated to Student 2 'it would be really good if I could touch you and be with you'.
 - 10) In 2003 the teacher asked Student 2 at school if Student 2 had something on her neck. The teacher stated that he thought it was a 'hickie' and he asked if he could give Student 2 one, and that it would have to be in a place that was not visible.
 - 11) At the swimming carnival the teacher stated to Student 2 that she had a hole in the collar of the t-shirt she was wearing over her bathers. The teacher stated he would fix it. The teacher grabbed the hole and ripped the t-shirt.
 - 12) That on 3 May 2004 the teacher sent an email to a student, Student 2, 'Hey gorgeous, thanks for your email. She doesn't hate you she probably has school stuff on her mind or if you talk about me she probably thinks you use to flirt with me and that's just her thing. how r u? who's your latest heartthrob at the moment im guessing its unfortunately not me. Hope to c u some time soon and c ur smile, ur beautiful lips and maybe even get a little cuddle? Or more?... luv u the teacher
 - 13) That in a public speaking class the teacher was eating a lollypop and said to Student 2 'do you want to suck my pop' and that the teacher waved the lollypop and said not this pop and winked at her.
 - 14) That the teacher had an inappropriate conversation with a group of students, including Student 3, at a school sports event. The conversation was about relationships and boy/girl stuff. The teacher commented that guys like girls with curvy bodies.
 - 15) That on the oval when students were playing football the teacher pulled down Student 3's sock really slowly and Student 3 felt that the teacher was feeling her leg.
 - 16) That at the swimming carnival the teacher tried to physically pick up Student 3.
 - 17) That the teacher and a student, Student 4, chatted on MSN chat rooms. The teacher asked Student 4 'what colour is your pubic hair". The teacher made comments about his wife such as she's just got out of the shower and 'I wish that it was you'. The teacher stated to Student 4 that he wanted her to 'straddle' him. Student 4 asked the teacher what straddle meant and the teacher explained that it was what you did on a horse.
 - 18) In 2003 the teacher put a web cam on the Internet and when Student 4 was watching he removed his shirt and moved the camera down to his pants. When his hand moved towards the zipper Student 4 logged out.
 - 19) That in 2003 Student 4 and Student 5 were helping the teacher paint a banner. The teacher told Student 5 to put paint on Student 4's back. The teacher began to wipe the paint across Student 4's back. The teacher stopped just above her bottom. Student 4 said something like 'whoo what are you doing' and left.
 - 20) The teacher stated to Student 4 that he had been watching and looking at Student 4 and she had a good body.
 - 21) That at school the teacher unlocked a classroom and allowed Student 4 and another student inside. The teacher relocked the room. The teacher was going to change his shirt. The students looked away. The teacher said that it was okay to look but he still had his shirt off.

- 22) That when Student 4 told the teacher that she was going to tell her teachers about him the teacher said 'don't because I'll lose my wife and my job and house, everything I have ever worked for.'
- 23) That a student, Student 6, received internet email and mobile telephone SMS messages from the teacher including comments "Hope you had a good day 'cos I've had a shitty one', Goodnight cutie' and that he called her 'beautiful' and 'cute'.
- 24) That Student 6 removed the teacher's phone number from her mobile phone because she was 'creeped out'.
- 25) That Student 6 stated that the teacher came to school twice and she 'creeped out' because the teacher stood too close to her.
- 26) That in a classroom at a dance rehearsal the teacher joined two students Student 6 and Student 7 dancing with them and that the teacher held Student 6 but she pulled back.
- 27) That the teacher commented to Student 6 about how she looked, that she had nice eyes and was gorgeous.
- 28) That the teacher commented to the Mother of Student 6, at parent teacher interviews, at mid year 2003 that 'she (Student 6) had more curves than some of the others.'
- 29) That on the last day of school Student 6 gave the teacher a good bye hug and then went to get her bag. The teacher said to Student 6 'I want more of those hugs' and pulled Student 6 towards the teacher with Student 6's back to the teacher's chest and his arms around her and the teacher kissed her on the head twice.
- 30) That at the school swimming carnival in 2004 the teacher slapped Student 6 on the bottom.

THE LAW

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

The terms *serious misconduct* and *fitness to teach* are not defined in the Act. The Panel is aware of case law in other professions disciplinary proceedings which refers to the terms *serious misconduct* and *fit and proper* person. The Panel has had regard to those cases and other case law on disciplinary matters to decide what is meant by the terms *serious misconduct* and *fitness to teach*.

According to the High Court, 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 that profession.

As the High Court pointed out in *Ziems v The Prothonotary of the Supreme Court of N.S.W.* (1957) 97 CLR 279, the role of a registration authority is not to punish the person. This has been done by the court. The Panel must be justified in holding out a teacher as being fit to be trusted with the duties and responsibilities of being a teacher. Whether a person is a fit and proper person to be a teacher will depend upon the minimum standards demanded by the teaching profession given the particular responsibilities and duties placed on teachers. It is the profession itself that sets the standard. An inquiry into a person's fitness to teach will be concerned with the person's character. However the Panel must only consider matters that are relevant to the teaching profession.

The term *professional misconduct* has been considered by the courts in many cases. An early 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

Misconduct is not concerned with the skills of the teacher but with the teacher's conduct. If the teacher displays character defects which illustrate that they cannot be trusted then their registration must be cancelled. The connection between misconduct and the practice of teaching is demonstrated when the misconduct of the teacher shows an attitude or characteristic inconsistent with the moral qualities required of a teacher.

It is relevant to observe that professional misconduct may extend to acts that even though not occurring in the course of practice, manifest the presence or absence of qualities which are incompatible with or essential for the conduct of practice.

Legal Practitioner Conduct Board v Morel [2004] SASC 168

As the Supreme Court noted in *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46 *unfitness may be demonstrated by conduct totally unconnected with any such employment or employment at all.* That is, the conduct resulting in the offence does not have to be connected to a teacher's professional responsibilities for the conduct to indicate unfitness to teach. The High Court noted:

Furthermore, even where it does not involve professional misconduct, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise.

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1

The approach of the Panel to a case of personal misconduct is different from a case of professional misconduct. In the statutory context a finding of professional misconduct may result in a penalty being imposed that is not cancellation of the teacher's registration. For personal misconduct the Panel will analyse the teacher's conduct to see whether it demonstrates some character defect that illustrates that the person is not fit to teach and thus their registration should be cancelled (see *Hughes and Vale Pty Ltd v The State of New South Wales (No 2)* (1955) 93 CLR 127)..

The person's character is assessed to see if they meet the high standards of honesty and ethical behaviour expected of a teacher and are worthy of the level and extent of trust placed in a teacher by the community. That conduct does not have to arise during a

professional relationship but can occur at any time. However if the conduct reveals a character defect incompatible with the standards set for teachers this may indicate an unfitness to teach. A teacher's position in relation to students can be described as one of power and influence over those students. A teacher who abuses that power or influence for their own ends is unfit to teach (*Yelds v Nurses Tribunal & Ors* [2000] NSWSC 755).

As stated in *Siguenza* a person who is fit to teach must show that they possess the knowledge to carry out their duties and responsibilities, and that they possess *sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails.*

In *Burgess v Board of Teacher Registration Queensland*[2003] QDC 159 the Queensland District Court stated that *any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher. The weight to be attached to that behaviour was a matter for the Board to determine.* The persistence of the inappropriate behaviour was relevant to a finding of unfitness to teach. A teacher's conduct should not impair *the standards of the profession to which the community entrusts the immensely important task of educating young children and adolescents.*

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 (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW*[2001] NSWSC 1191).

DOCUMENTS CONSIDERED

- (a) Witness statements
- Witness statement of the Principal dated 8 December 2004 (2 pages).
 - Witness statement of Student 1 dated 8 December 2004 (2 pages).
 - Witness statement of Student 8 dated 8 December 2004.
 - Witness statement of Student 2 dated 8 December 2004 (2 pages).
 - Witness statement of Student 3 dated 8 December 2004 (2 pages).
 - Witness statement of Student 4 dated 8 December 2004 (2 pages).
 - Witness statement of Student 6 dated 8 December 2004 (2 pages).
 - Witness statement of Student 7 dated 8 February 2005 (2 pages).

- Witness statement of Student 9 dated 8 December 2004.
- Witness statement of the Mother of Student 6 dated 8 December 2004 (2 pages).

(b) (Documents from The College)

- Notes of the Principal dated 20 June 2000
- Notes of the Principal dated 3 August 2001
- Letter from the Principal to the teacher dated 3 August 2001
- Copies of 5 interviews with year 8 students, numbering 5 pages in all
- Copy notes the Pastoral Carer dated 16 July 2004 (2 pages)
- Copy notes the Pastoral Carer dated 19 July 2004 (4 pages)
- Copy notes the Pastoral Carer dated 20 July 2004 (2 pages)
- Copy notes the Pastoral Carer dated 21 July 2004 (4 pages)
- Copy notes the Pastoral Carer dated 22 July 2004 (4 pages)
- Copy notes the Pastoral Carer dated 22 July 2004 (7 pages)
- Copy print out of MSN conversation
- Copy notes dated 27 July 2004
- Copy notes the Pastoral Carer dated 2 August 2004
- Copy notes "outline of information" undated
- Copy notes the Pastoral Carer dated 4 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 5 August 2004
- Copy notes the Pastoral Carer dated 6 August 2004
- Copy notes the Pastoral Carer dated 9 August 2004
- Copy notes the Pastoral Carer dated 10 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 11 August 2004
- Transcript of notes by Student 10 dated 11 August 2004
- Transcript of notes by Student 11 dated 11 August 2004
- Transcript of notes by Student 12 dated 11 August 2004
- Transcript of notes by Student 13 dated 11 August 2004 (2 pages)
- Transcript of notes by Student 14 dated 11 August 2004
- Handwritten notes Student 10 August 2004 (2 pages)
- Handwritten notes Student 11 August 2004 (2 pages)
- Handwritten notes Student 12 August 2004 (2 pages)
- Handwritten notes Student 13 August 2004 (2 pages)
- Handwritten notes Student 14 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 12 August 2004
- Copy notes the Pastoral Carer dated 13 August 2004
- Copy notes the Pastoral Carer dated 16 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 17 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 18 August 2004
- Copy notes the Pastoral Carer dated 19 August 2004 (2 pages)
- Copy notes the Pastoral Carer dated 20 August 2004 (4 pages)
- Copy notes the Pastoral Carer dated 24 August 2004
- Copy notes the Pastoral Carer dated 26 August 2004
- Copy notes the Pastoral Carer dated 27 August 2004 (5 pages)
- Copy notes the Pastoral Carer dated 30 August 2004
- Copy notes the Pastoral Carer dated 1 September 2004

- Copy notes the Pastoral Carer dated 2 September 2004
 - Copy notes dated 6 September 2004
 - Copy notes dated 8 September 2004
 - Copy notes the Pastoral Carer dated 12 October 2004
 - Copy notes dated 25 October 2004
 - Copy notes the Pastoral Carer dated 4 November 2004
 - Copy notes the Pastoral Carer dated 4 November 2004 (4 pages)
 - Copy notes the Pastoral Carer dated 8 November 2004
 - Copy notes the Pastoral Carer dated 9 November 2004
 - Copy notes the Pastoral Carer dated 15 November 2004
 - Copy notes the Pastoral Carer dated 3 December 2004
 - Copy MSN conversation 2004/05/03 (4 pages) – Student 2
 - Copy MSN conversation (2 pages) – Student 1
 - Copy letter mother of Student 2 dated 1 December 2004
 - Copy email dated 3 May 2004 – Student 2
- (c) Witness statements from Counsel representing the teacher;
- Teacher 1
 - Teacher 2
 - The teacher
- (d) Documents from Counsel representing the teacher
- Email from Student 4 to the teacher dated 18/6/05

THE EVIDENCE

The Panel heard sworn oral evidence from the following witnesses at the formal hearing;

- The Principal
- Student 1
- Student 8
- Student 3
- Student 4
- Student 6
- Student 7
- Student 9
- Mother of Student 6
- Teacher 2
- the teacher

Closed Hearing

Counsel Assisting requested that the hearing be closed in accord with section 41(d) and (e) of the Act, because of the personal and intimate nature of the evidence to be presented by the following students and parent.

- Student 1

- Student 8
- Student 3
- Student 4
- Student 6
- Student 7
- Student 9
- Mother of Student 6

In addition, Counsel Assisting requested that the names of all the above student and parent witnesses not be published or broadcast and the student witnesses be screened from the teacher. The teacher's representative did not oppose the above requests and requested that the name of the teacher not be published until the determination is made.

After considering the submissions, the Panel ordered:

- that the hearing be closed when the above witnesses were giving evidence;
- that any information that would identify the teacher not be published until the determination is made; and
- that the student witnesses be screened from the teacher when giving evidence.

The Panel noted that pursuant to section 49 of the Act no information that would identify the complainant or the Principal of the College, is to be published or broadcast.

The teacher's representative also requested that the teacher's wife, Teacher 2, be allowed to remain in the hearing room to support her husband. Teacher 2's evidence only went to her husband's character rather than the facts. Counsel Assisting had no objection. After considering the submission, the Panel agreed to allow Teacher 2 to remain. The Principal of the College (the Complainant) was permitted to remain for the entirety of the proceedings.

The witnesses

The Principal of the College gave evidence that in June 2000, the Internet Technology Manager at the College reported through the IT Manager that the teacher's computer had been used to access inappropriate websites on the internet. A list of times and dates was provided to the Principal indicating access to adult/pornographic sites both during and outside school hours. The Principal put these allegations to the teacher at a meeting on 20 June 2000. The teacher admitted accessing the sites was highly embarrassed and gave his total assurance it would not happen again. The Principal spoke to the teacher for approximately 30 minutes and decided that for a variety of reasons, he would monitor the teacher's behaviour and Internet access in the future. The Principal clearly warned the teacher in this interview regarding inappropriate internet use. The Principal said there was no repetition of the behaviour after this date.

A different set of allegations was made against the teacher in August 2001 to the Pastoral Carer at the College who in turn relayed these to the Principal. Five girls reported concerns about the teacher's physical contacts with them, his comments about their bodies, and their relationships with other students. The Principal and the Pastoral Carer met with the teacher on the 3 August 2001 where the Principal instructed

the teacher on strategies to avoid unwanted contact, and his professional responsibilities and the trust he was given as a professional teacher. Following this meeting, a letter dated 3 August 2001 was sent to the teacher where he was clearly instructed to

- avoid tactile contact with female students
- avoid being alone with any female students
- not to transport female students in his car without another staff member or parent being present.

The teacher was instructed in an unambiguous way that an intentional breach of these conditions would result in instant dismissal.

The teacher left the College (with a good reference from the Principal) at the end of Term One 2004. In July 2004, the Pastoral Carer raised further concerns about the teacher's behaviour and made further enquiries at the Principal's behest. After reading reports about the teacher's behaviour, chat room printouts and interview notes with parents and students, the Principal formed the view that the teacher was acting in a predatory manner towards these female students. The Principal then contacted the Victoria Police and the Victorian Institute of Teaching.

Under cross examination the Principal said that the notes of 20 June 2000 were made immediately after the interview with the teacher. The Internet sites had explicit titles referring to girls although he could not remember the actual titles. He said that it was unusual for adolescent girls to hang around with teachers generally commencing at about grade 5/6 level but that it was not unusual for them to sit with teachers. At the 2001 meeting the Principal said he accepted the teacher's explanation. The teacher was given the benefit of the doubt and was certainly told more than just to "stop". The Principal's daughter was a friend of one of the female witnesses that she (the Principal's daughter) had had no problems with the teacher. In fact, the teacher was probably one of her favourite teachers. After the teacher was unsuccessful in applying for promotion at the school he sought positions elsewhere. There were some parent complaints when the teacher left the school. When questioned about the authenticity of the 3 August 2004 letter to the teacher the Principal said that it had been sent on the date at the top of the letter. The Principal asked the Pastoral Carer to continue gathering information and said that had he known what he now knows, he would not have wanted the teacher on the property. Although he had contacted the Victoria Police they took no further action because no physical acts had occurred. When questioned at length about the Pastoral Carer's role and time in her position the Principal said that students will talk to some teachers but sometimes they needed to talk to someone else. In answering questions from the Panel the Principal said that the Pastoral Carer's progression to Pastoral Carer was a natural one because she related well to students and had done so for a significant period of time. The College has developed a Code of Conduct since these events with a Christian perspective.

Counsel for the teacher then submitted to the Panel that the Pastoral Carer's notes were hearsay and should be disregarded.

Student 1 was a student of the teacher in 2001-02 in grades 5 and 6 and testified that the teacher was her favourite teacher. Student 1 had approximately 2-3 MSN contacts

per month at the end of 2003 and start of 2004. Student 1 said that conversations with the teacher would change in their context and she would realise it was wrong, and she would stop the conversation. An example of this was the teacher's references to body parts such as the snake for the penis and the pussycat for the vagina. The teacher said that he liked Student 1's lower stomach the best. Student 1 said she would exit the chat room but that she had finally decided that she did not want to speak to the teacher any more and she blocked and deleted him from her MSN list. Student 1 felt that the teacher's questions were a bit personal and not ones that a teacher should ask. She felt violated by the "snake and pussycat" conversation and felt on reflection that the teacher should not have talked to her like that.

On another occasion Student 1 had displayed her picture and another students' legs on her MSN. The teacher asked her repeatedly through MSN and then personally at school the next day for a copy of the picture.

Under cross examination, Student 1 said that she and the teacher would talk about a wide range of topics and that there was no problem until he said rude things to her. Student 1 denied that there was an innocent explanation for the "snake/pussycat" discussion. She agreed that she had asked the teacher to look at her shingles scar and said that he had asked for the picture of her legs on three separate occasions. Student 1 admitted that she used to stir and joke with the teacher; she asked him difficult personal questions, that she blocked him to stir him as part of a childish prank. She agreed that she could not tell if the teacher's wife had entered the room when the teacher closed a chat room discussion, but denied approaching him with sexual lyrics.

Under further questioning from Counsel Assisting, Student 1 agreed that the teacher had introduced the suggestive language involved in the "snake/pussycat" discussion. Student 1 said that she discussed sexual matters with her friends but not the act itself.

Student 8 was a friend of Student 1's but not a student of the teacher's. Student 1 had told Student 8 about the messages from the teacher. Student 1 gave Student 8 a printout of one message that Student 8 kept in his pencil case for some time. A copy was tendered at the hearing. In cross examination Student 8 said that he did not initially believe that Student 1 was getting dirty messages. In Student 8's view the message was "gross". When asked to describe the effect of these communications on Student 1 he said Student 1 was "miserable".

Student 3 had the teacher as a teacher in grade 5 in 1998. She said the teacher was her favourite teacher until she started to feel uncomfortable around him. Student 3 said that it was a recurring theme for the teacher to raise and comment on relationships between students. The teacher made a comment about boys liking girls with curvy bodies. She deliberately avoided the teacher by the beginning of year 8.

Student 3 accused the teacher of pulling down her sock in the schoolyard at an ad hoc football session. Student 3 said she could not remember the exact details about the length of sock, but she said she could remember that the teacher's motion in moving it down her leg felt like the teacher was feeling her leg and it made her extremely uncomfortable.

In cross examination, she denied that the teacher had pulled her sock down quickly. She felt that his comments were not innocent. Student 3 had not raised the issue about what girls' body shape boys liked in discussion, and she felt the teacher's comments followed a familiar pattern in her interactions with the teacher.

Student 4 was a student of the teacher's in grade 5 and she felt the teacher would pick on her and try and embarrass her. In 2002 when she was in year 7 the teacher's attitude changed and her name was added to his list of people he chatted to on MSN. During their MSN chats the teacher made various inappropriate comments such as

- *What colour is your pubic hair?*
- *My wife is getting out of the shower and I have to go. I wish that it was you*
- *I want to ride you*
- *I want you to straddle me*

Student 4 said in oral evidence that conversations with the teacher would be innocent at first but then they became 'dirty'. Student 4 had not spoken like this before to anyone and she didn't know what 'stuff' was.

In 2003 Student 4 said that the teacher put the webcam on the internet and removed his shirt and then moved the camera down to his pants, his hand moving towards the zipper. At this point Student 4 logged out. She said that in 2003 the teacher had told another student to put paint on Student 4's back and then the teacher began to wipe it across Student 4's back. Student 4 said that the teacher's behaviour freaked her out and she remonstrated with him. Student 4 said that the teacher had invited her to the pool.

Student 4 said that the teacher had said that he had been watching her and looking at her and that she had a good body. On another occasion, the teacher let Student 4 and another student into his room, locked the door and took his shirt off. He said to them not to be scared and that they were allowed to look. Student 4 said that she told the teacher that she was going to tell other teachers about him and the teacher told her not to because he would lose his wife and job and house and everything he had worked for.

Under cross-examination, Student 4 agreed that she had sometimes been reluctant to learn but denied that she had accessed the teacher's email address. She said that when the teacher said things like "I wish it was you" she tried to laugh it off and make out it was funny. She said that it was not just his compliments about her body, it was the way the teacher watched her. Student 4 said that even though the teacher was a significant distance away in his second floor classroom, she still felt he was watching her. Student 4 remembered the pubic hair discussion because she said the teacher had told her the colour of his pubic hair. She denied that because she had not mentioned this in her sworn statement that she had just made it up at the hearing. Student 4 could not remember if it was summer at the time the teacher is alleged to have taken his shirt off. Student 4 logged out because she was scared. She denied that she had many boyfriends at the time of these alleged events. Student 4 denied telling the teacher that she hated herself, and that she wanted to harm herself. She denied that the teacher had asked Student 4 and another student to leave so he could remove his shirt but said that

he stood there for two minutes and told Student 4 and another student not to be scared. Student 4 denied that the teacher had told them to turn around. Student 4 said that she thought that swimming pool nakedness is different to this situation. She reiterated that the pool request had been made.

Student 6 was a student of the teacher in grade 6 in 2003. Student 6 said that during that year the teacher was too 'touchy'. The teacher said that she had nice eyes and was gorgeous. Student 6's mother had told Student 6 that the teacher had said that she (Student 6) was the most "developed" one and that made Student 6 feel disgusting as if she was dirty inside. The teacher would send her mainly SMS messages requesting a hug or saying how beautiful she was. She deleted his number after her mother found out the teacher was sending her messages. Student 6 said that on the last day of school she gave the teacher a goodbye hug and the teacher said he wanted more of those hugs and pulled Student 6 towards him with her back to the teacher's chest and his arms around her waist and kissed Student 6 on the head twice. When preparing for a dance class, Student 6 said the teacher approached her from behind and she could feel his body and she did not like it. Student 6 looked at him and left the room.

Student 6 said that at the school swimming sports the teacher slapped her bottom and she gave him a dirty look. The teacher apologised to which Student 6 said "so you should" because she did not like the teacher touching her. Student 6 said that the teacher would come close to her in the corridor and 'creep' her out. Student 6 said she spent a considerable time inside the class room outside of normal hours and that she liked the teacher; she thought the teacher was good. Student 6 said that the different behaviour of her teacher in year 7 (not the teacher), his different way of talking to her, their different relationship and the fact that he was not as 'touchy', made Student 6 think about the way the teacher had acted. Student 6 said that the teacher would hug her mostly when there was no-one else in the room. Student 6 felt that she was the teacher's pet and that she was his favourite. She described her feelings when the teacher's body was against her as ones of disgust because a teacher should not do that. Student 6 said that she was sad to see him leave at the end of school.

Under cross examination, Student 6 said that she was struggling at school prior to Grade 6 and that the teacher had helped her. She said she was happy in the teacher's class and she spent a lot of time with the teacher in class. Student 6 was fond of the teacher at the time and used to hug him sometimes and agreed that she was sad when the teacher left the school. Student 6 agreed that she did not delete the teacher's SMS number the first time. Student 6 reiterated that the teacher had touched her bottom and said that he apologised later and that she took the whole incident seriously. Student 6 said that she did not participate in dancing often and did not usually practise in the teacher's classroom. She said that the teacher had put the front of his body to her back and the contact lasted until she turned which she described as a quick reaction. Student 6 said that in the incident in the corridor the teacher came close to her face and then stepped away quickly. There was no one else in the corridor and it happened after school.

Student 7 gave evidence that the teacher put his hands on Student 6's hips. Student 6 told Student 7 later that Student 6 had been surprised and uncomfortable. Both of the

girls thought that it was not something that really happens with teachers. Student 7 said that she saw the teacher giving Student 6 hugs in Creative Arts. Student 7 said that she had the teacher for health and creative arts. In the dance incident Student 7 said the teacher said 'This is how you do it.' Student 7 said she saw the teacher give Student 6 a hug. Under cross-examination Student 7 said she could not remember whether other students gave the teacher hugs.

Student 9 gave a sworn statement that Student 6 had been upset and unsure of what to do about the teacher's SMS messages. Student 6 had also said to Student 9 that Student 6 had been disgusted about the teacher dancing close to Student 6 because she could sort of feel the teacher against her. Student 9 said that Student 6 had also told Student 9 that Student 6 was upset that the teacher had slapped Student 6's bottom at the swimming pool.

The mother of Student 6 said that her daughter loved the teacher as a teacher and trusted him but later became uncomfortable and scared by him. The mother of Student 6 said in her sworn statement that the teacher had rung her home in the 2003-04 Christmas holidays and said that Student 6 had contacted the teacher on the Internet. The mother of Student 6 thought the teacher was vague and that the conversation was 'very left field'. She intercepted an SMS message from the teacher to Student 6 which said 'Goodnight cutie' after which the mother of Student 6 told her daughter that she was not to SMS the teacher anymore. The mother of Student 6 thought it was inappropriate for a teacher to send such a message. At a parent teacher interview in mid 2003 the teacher said to the mother of Student 6 that her daughter was trying to hug the teacher and that the teacher could not reciprocate because the teacher would get into trouble. The teacher said that Student 6 had more curves than the others which the mother of Student 6 thought was strange because her daughter was undeveloped and 'straight as a pin'. The mother of Student 6 was shocked by these comments. The teacher visited their home to deliver an art folio about which the mother of Student 6 felt uncomfortable but somewhat reassured when the teacher said his wife was in the car.

The mother of Student 6 repeated the substance of her statement in her oral evidence. Under questioning from the Panel, the mother of Student 6 said that she had been in the room when the phone had rung and she had picked it up before her daughter to read the 'goodnight cutie' message.

Student 2 provided a sworn statement to the Panel. Counsel for the teacher submitted that it was not evidence given under oath, and that Student 2 could not be cross examined. The statement should be treated with caution.

A sworn statement was submitted as to the character of the teacher by Teacher 1. Teacher 2, the wife of the teacher, tendered a sworn statement and gave oral evidence. No questions were asked of her by Counsel Assisting or the Panel.

The teacher gave evidence of his current employment status. He made two small amendments to his sworn statement in which he addressed all of the thirty allegations. The teacher gave evidence that his classroom would have been at least 20 metres from

the basketball court and it would not have been possible for one of the witnesses, Student 4, to see if the teacher had been looking at Student 4.

In his sworn statement the teacher responded to the allegations in the following way:

- 1) The pornography sites were personal. He never viewed them when students were in the classroom. The Principal did not say he was giving an official warning and the College did not have an Internet policy in place. He stopped viewing the sites when told to.
- 2) The teacher was given no details of the allegations and he was given no opportunity to refute them. He felt he had no other option than to accept them in light of the fact that there was no grievance policy in place at the school. The Principal told him his job was on the line.
- 3) The teacher visited the College in Term Two 2004 after telling Student 1 he would be there on MSN. Student 1 had then invited the teacher to come and see her. The teacher said that he and Student 1 chatted for 15 minutes approximately about Student 1's picture because the teacher was concerned that she was not eating properly. The teacher denied that the discussion had any implied sexual content.
- 4) Student 1 would ask the teacher awkward personal questions and approach him singing songs with sexual lyrics. She had been open about telling the teacher private details about her personal life. He said that they regularly 'blocked' each other sometimes to 'jibe' the other person. The teacher said he rarely contacted students, he let them contact him. Student 1 would often tell him of private matters or ask him things that he did not want to discuss.
- 5) Student 1 and he talked about a range of issues. He said that they both had pets. She had asked him how his other pet was going and when he asked what pet that was Student 1 said your snake. He said it was going as well as Student 1's pussycat. They had frequent discussion about appearance and body types. Student 1 said he had discussed this issue with Student 1's mother. Student 1 would show the teacher her stomach on various occasions. Student 1 denied leaving the conversation when his wife came into the room but that the teacher did close the contact in order to give attention to his wife when his wife entered the room. The teacher often said that he had to talk to his wife as a polite way of leaving the conversation.
- 6) When the teacher said to Student 1 that 'u r never ugly' he was responding to Student 1's concerns that she was fat. Student 1 often asked the teacher difficult and personal questions. The teacher felt that as he had left the College he had a little more freedom and so he did not ignore Student 1's questions. The teacher denied that his responses were explicit. He said that when he was asked about his sex life he responded with answers such as 'never enough' which he saw as banter and said that Student 1 never demonstrated any signs of being offended. He described Student 1 as a very worldly girl who knew how to speak with those older than her, including talking about her sexual development.

Allegations 7, 8, 9, 10, 11, 12, were made in relation to the teacher's relationship with Student 2. After submissions from Counsel Assisting and Counsel for the teacher made

in the light of Student 2's inability to attend, the Panel chose not to consider her sworn statement.

- 13) The teacher admitted that he had asked Student 2 if she would like a taste of his lolly pop but denied that it had any sexual connotation. He said he regularly gave lollipops to students as rewards and said that as a person brought up in the country he always gave people a wink and a smile and would have done so to hundreds of people at the College.
- 14) The teacher clearly remembers this conversation and said he would often reminisce with students about previous crushes and who their latest heart throb was. He agreed that he made the statement but said that it was neither sexual nor explicit.
- 15) The teacher agreed that he had pulled down the sock but said that in his mind it was the most innocent thing to do to distract Student 3 while someone else came and took the ball away. He said there was no sexual intent whatsoever.
- 16) The teacher had no recollection of this incident.
- 17) The teacher said that Student 4 had added him to her MSN contacts and they had several conversations. He denies asking Student 4 what colour her pubic hair was. The teacher had made some comments about his wife coming out of the shower but denied saying that he wished it was Student 4 instead of his wife. He said that he and Student 4 discussed a range of issues and in the course of discussing the physical nature of one of these relationships he asked Student 4 to clarify what she was referring to and asked if one of Student 4's boyfriend's had straddled her.
- 18) The teacher said he had borrowed a webcam from school and wanted to see if it would work. He said he used it when chatting with Student 4. He said it was summer and he was only wearing shorts. The teacher said he got up to either get more comfortable or open the window and that was when Student 4 saw him without a shirt. The teacher said Student 4 continued to chat after the webcam was turned off.
- 19) The teacher said Student 4's friend put paint on her back and after Student 4's friend made a poor attempt to clear it off, the teacher did so. Student 4 said the teacher stopped just above her shoulder blades. Student 4 continued to hang around the classroom and lots of people came and went.
- 20) The teacher said he made comments to Student 4 that she was not fat or ugly and that she was good looking because she had a low opinion of her appearance.
- 21) The teacher said he was hot and sweaty from yard duty in the gym and the two girls had asked if they could use his computer to check emails. After locking the door, he asked them to leave so he could quickly change his top because of other commitments but they delayed leaving. He then asked them to face the computer while he changed his shirt at the opposite corner of the room. They did not turn around and said that it would not have been a big shock for them anyway because they had seen him at the swimming pool and at the College's 20th anniversary fun day where he had his shirt off to be pelted with wet sponges. The teacher said locking the door was a question of practicality and he had no untoward motives.

- 22) The teacher said that when Student 4 told the teacher what she was going to do he thought she was trying to be funny. He felt people would believe Student 4 even if it were true or not. The teacher asked Student 4 not say anything to the Principal. The teacher said Student 4 toyed with the teacher for a while and that Student 4's threat made Student 4 feel like she was 'one up on me'. Student 4 did not say she was going to tell Student 4's teachers, only the Principal. The teacher did not believe that the topics they had discussed were inappropriate and a dismissible offence. The teacher was concerned that Student 4 would make up allegations which he believed would lead to his dismissal.
- 23) The teacher said he had a good relationship with Student 6 because she needed a male teacher and she assisted him in a wide range of jobs in and out of the classroom. In 2003 Student 6 obtained the teacher's email address and sent some emails. Student 6 was very sad that he was leaving the school. The teacher said that he sent Student 6 emails using terms of endearment in order to put a smile on Student 6's sad face. The teacher said that he had used the terms 'cutie' and 'beautiful'. He agreed he had used the term 'shitty' to describe a day at his new school but that Student 6 had used similar terms when SMSing the teacher.
- 24) The teacher said that Student 6 had told the teacher that her mother had asked Student 6 to remove the teacher's mobile phone number from Student 6's phone. Student 6 did not delete it but hid it under a nickname only Student 6 knew. Student 6 continued to SMS the teacher until June 2004.
- 25) The teacher said that Student 6 often hugged him in 2003 and Term One 2004. The teacher described as absurd the suggestion that he stood too close when Student 6 could not stand close enough to the teacher during the previous twelve months. The teacher said many people were in the hallway and that it is generally cramped and contact is made with many students as a person makes their way down the hall.
- 26) The teacher said that the performing arts are encouraged at the College and teachers are instructed not to leave students unsupervised in classrooms at lunchtimes. The teacher said he often sang or danced with students for a laugh. He said he stood behind Student 6 and danced for a few seconds and may have held her hand or arm. He would only have pulled back to stop Student 6 moving into something. In light of Student 6's regular body contact with the teacher he thought nothing more of the incident.
- 27) The teacher said Student 6's confidence had improved as had her academic progress. The teacher admitted saying Student 6 had nice eyes, hair and smile. The teacher said that he had given hundreds of compliments or terms of endearment to male and female students over the years.
- 28) The teacher said that at the interview with the mother of Student 6 he discussed Student 6's development in the context that Student 6 was receiving lots of attention from males in the year level. Student 6 said it was because she was more physically developed than the other girls and the mother of student 6 said that she did not want Student 6 to be distracted because Student 6 already found learning a challenge. The teacher said it was not an uncommon discussion to have at a parent teacher interview.

- 29) The teacher said the last day of Term One 2004 was an emotional day. Student 6 had hugged him and he gave her a kiss on the top of the head. Student 6 gave the teacher a second hug and again he kissed Student 6 on the top of the head and then gently pushed Student 6 away. The teacher then said he would like more of these hugs but he had to move onto a new school. He said that this behaviour was not inappropriate and that any one who tried to label this as sexual in anyway was wrong. He said kissing on the top of the head is non-sexual.
- 30) At the 2004 swimming carnival the teacher said Student 6 approached the teacher in the deep end and climbed onto the teacher to stay afloat. Student 6 stayed in physical contact with the teacher for several minutes. The teacher lifted Student 6 up under her thighs using the teacher's forearm as a seat and they then exited the pool. The teacher denied slapping Student 6 on the bottom.

The teacher said that several of his comments were questionable in nature and would have been better left unsaid. He apologised for any heartache or distress he may have caused to the people involved. The teacher outlined a series of difficulties he now faces including professional, health, marital and other problems. The teacher has lost his reputation as a teacher and a large number of friends at the College. The teacher understood that he had made errors of judgement and that he had to be more calculated in his dealings with people. However he was not a sexual predator but a normal human being who had made some poor decisions.

Under cross examination the teacher provided details of his qualifications. He said that he had retained emails from his students for the last two years but had no copies of MSN or chat room conversations. The teacher agreed that the email dated 3 May 2004 allegedly from him to Student 2 was from him.

In regard to accessing of pornography on the Internet, the teacher said they were 'personal' sites and other adult sites. The teacher did not deny the allegations but claimed that he was not warned in the interview with the Principal on 20 June 2000. The meeting only took 10 minutes. The teacher was concerned at the presence of the Pastoral Carer because the Pastoral Carer was untrained. The teacher agreed that he received clear instructions from the Principal in the Principal's letter of 3 August 2001.

The teacher was asked about boundaries between himself and students to which he said 'I find boundaries interesting because they are open to interpretation'. The teacher said that he was expected to have close relationships with students and their families. When you are teaching students you have boundaries. One example would be that he would not permit students to use his first name. The teacher said that he would also not be as friendly as he normally would. When asked what would be the boundary in the schoolyard, the teacher said that there would not be one; he would just treat students in a friendly personal manner. The teacher would treat them with respect as part of a professional relationship. The teacher then said 'I don't see the need to establish a boundary with students'. When it was put to him that he initiated discussions of a personal nature he said that he would never go out of his way to start these conversations. When asked how he would recognise if students were

uncomfortable, he said that they would have to indicate this in some way. The teacher said he could recognise a student's discomfort and this happened some times. This most often happened when students rolled their eyes at the teacher's remarks. The teacher was asked how he recognised physical discomfort and whether students would pull away. He said that he ruffled boys' hair, touched them, adjusted their ties without problem.

The teacher said that after the Principal's letter of 3 August 2001, he did his best to avoid physical contact. He felt that there was not much in the 'sock' complaint. He said that he tried to avoid 'unnecessary' physical contact and when asked why he continued to have physical contact he said that he did not initiate it. He would use physical contact if a student was in danger, to assist learning, in a case of distress, but that he would somehow 'regulate' a student's embrace.

When asked about his professional responsibilities, the teacher said that when students leave his classroom the obligation changes and the duty of care is passed back to the parents. His relationship with students then became the same as for people of the teacher's age. He would treat them the same as his friends' children. When asked about his comments to Student 1 he said that he was not as guarded as he should have been and that he wished he had not made some comments. He was willing to answer personal questions although some would be inappropriate and he would try to avoid them. He acknowledged that there was a boundary. In relation to the photo he said he found it intriguing as a composition. When asked if he thought telling a female student that a photo was unflattering the teacher said that Student 4 was not embarrassed. He blocked certain people and he had few contacts with adults in chat rooms.

In discussing the 'snake/pussycat' conversation the teacher said that he was trying to use deflecting comments in the conversation and that he could have handled it better. When asked if such discussions were appropriate the teacher said that if they (the students) talked about it, then it was okay to talk about it.

The teacher said he did not see a problem with Student 1 showing him her stomach or him commenting on it. He commented on male student's abdominal muscles at the swimming sports. He would discuss Student 1's body image approximately twice a month. The teacher said that it was not 'overly' appropriate to say 'sounds sexy' to a student. He said the mention of sexual matters was factual and the intent was not to raise sexual innuendo. The teacher again described his comments as questionable but not inappropriate. The teacher denied that he would raise sexual matters in discussion with students. When asked why it was necessary to raise sexual matters with Student 2 he replied that he never taught Student 2.

In relation to the chat room evidence (on 16 August 2004), the teacher agreed that the phrases 'u also have hot lips' and 'I think u'd taste great' were parts of a conversation that were not an appropriate conversation with a fifteen year old girl.

The teacher admitted the lolly pop conversation but said it was not a sexual act and that it was not his intention to make a sexual comment. He also said that he very much doubted that others would have taken offence.

In relation to Student 3's evidence the teacher said that Student 3 would approach him. He agreed that some of his comments were intrusive and uncomfortable.

When asked about discussions about the colour of girls' hair, the teacher said that the school frowned on students having their hair a colour that was not close to being natural. He said that he would not classify the relationships he discussed with Student 4 as intimate relationships. It was not for him to completely ignore students when they raised these issues. He encouraged Student 4 to have relationships with boys her own age and it was questionable but not inappropriate to help her. Student 4 was not naïve and she had been involved in relationships with boys. The teacher said that in hindsight he would not do it again (i.e. have these discussions). At the time he did not see a major concern with these discussions. He said that wiping the paint off Student 4's back was not unnecessary because he did not want her going home with paint on her back.

In relation to Student 4 threatening to report the teacher, he said that in the past students' opinions were believed over his. Even though he had talked to another teacher at the school about his discussions with students, he told Student 4 to remain silent.

In his evidence regarding Student 6, the teacher said that there was a distinction between Student 6 hugging him and the teacher hugging her. Students generally initiated hugging. In using the phrase 'goodnight cutie' the teacher said he actually meant 'goodbye'. When it was put to the teacher that he cultivated Student 6's dependence upon him, he said no more so than other students.

DISCUSSION OF EVIDENCE

With respect to the Pastoral Carer's notes the Panel had regard to the submission of the teacher's representative that these were hearsay. The rule concerning hearsay evidence is a rule of evidence that does not apply to this hearing. None the less the Panel treated the information in these notes with caution and looked to the direct evidence of witnesses to substantiate the allegations.

The teacher agreed that a number of the allegations had occurred but disagreed as to the interpretation of events, language used and his intentions. He conceded on various occasions in both his sworn statement and his oral evidence that some of the behaviour alleged had occurred and was not appropriate. The Panel found evidence to support the view that the teacher had a very limited understanding of the appropriate boundaries between teacher and student or his professional responsibilities as a teacher. This evidence came from the students and the teacher's own admissions. He appeared to believe that his responsibilities were reduced when he moved from the classroom to the schoolyard or when he left the school or when he was no longer teaching the students.

The teacher's defence rested partly on his view that he did not initiate conversations with inappropriate content, or that he did not initiate hugs from students. His view

appeared to be that some of the female witnesses who were aged 12-13 years at the time, initiated contact with him because they were sexually experienced and he lacked the necessary skills and experience to avoid being placed in that situation. The Panel rejected this view and apart from some evidence from the Principal in how to avoid student contact, the teacher did not stop tactile contact with female students nor did he seek help from other experienced teachers on how to deal with his problem.

A number of student witnesses commented on how a discussion with the teacher would change in content and language in a way that they never quite understood. The Panel took the view that the teacher was the initiator of the inappropriate discussions on a significant number of occasions. The Panel also came to the view that when students initiated inappropriate discussions he made no or limited attempts to stop them and that, in fact, the teacher manipulated conversations for his own ends. The Panel was provided with clear evidence of him initiating inappropriate conversations.

The Panel found a clear and unambiguous pattern in the teacher's behaviour where he manipulated conversations and situations with children and exceeded the boundaries of appropriate professional behaviour. The Panel came to the view that the teacher did not cross these boundaries with all of his students but only those who were vulnerable.

The Panel found the evidence of the various child witnesses credible. On the other hand the teacher displayed a lack of insight into his own behaviour and his repeated claims that he had innocent intentions were not supported by much of the evidence, including his own. His various descriptions of his language as questionable but not inappropriate or lacking a sexual intent were not accepted by the Panel.

FINDINGS OF FACT

After considering all the evidence the Panel made the following findings:

- 1) The teacher is a registered teacher. In 2001, 2002 and 2003 the teacher was employed as a teacher at the College.
- 2) On 20 June 2000 the Principal of the College met with the teacher to discuss access to inappropriate web sites on the Internet. The teacher admitted to the Principal that he had accessed the sites from the College computer.
- 3) On 3 August 2001 the Principal met with the teacher to discuss complaints from five female students. By letter of 3 August 2001 the teacher was instructed to avoid tactile contact with female students, avoid being alone with any female student and not to transport female students in his car without another staff member or parent present.
- 4) By MSN the teacher asked a student, Student 1, to send him a picture she had taken of her legs that was her 'display picture'.
- 5) The teacher and Student 1 chatted on MSN chat rooms after the teacher left the College. Student 1 'blocked' the teacher when he said things that she felt were not right for him to say to her.
- 6) In an MSN chat room the teacher made comments about Student 1's body and mouth and referred to the female vagina as 'a pussycat' and the male body part 'a snake'. The teacher stated that he liked Student 1's lower

stomach best and he would break off the conversation when his wife came into the room.

- 7) In one MSN conversation with Student 1 the teacher made comments to Student 1 including 'any u r never ugly', 'always gorgeous', 'sounds sexy', 'wish I was always getting some', 'never enough', 'how about u?'
- 8) The teacher and a student, Student 2, chatted in MSN chat rooms after the teacher left the College. Student 2 'blocked' him as she felt that the teacher made inappropriate comments including 'it would be really good if I could touch you and be with you', that he sometimes asked what she was wearing and made comments about her looks and body. The teacher asked Student 2 to come over and have champagne and a spa.
- 9) On 3 May 2004 the teacher sent an email to a student, Student 2, "Hey gorgeous, thanks for your email. she doesn't hate you she probably has school stuff on her mind or if you talk about me she probably thinks you use to flirt with me and that's just her thing. how r u? who's your latest heartthrob at the moment im guessing its unfortunately not me. Hope to c u some time soon and c ur smile, ur beautiful lips and maybe even get a little cuddle? Or more?... luv u the teacher'.
- 10) In a public speaking class the teacher was eating a lollypop and said to Student 2 'do you want to suck my pop' and that he waved the lollypop and said not this pop and winked at Student 2.
- 11) The teacher had an inappropriate conversation with a group of students including Student 3, at a school sports event. The conversation was about relationships and 'boy/girl stuff'. The teacher commented that guys like girls with curvy bodies.
- 12) On the oval when students were playing football the teacher pulled down Student 3's sock really slowly and Student 3 felt that the teacher was feeling her leg.
- 13) At the swimming carnival the teacher tried to physically pick up Student 3.
- 14) The teacher and a student, Student 4, chatted in MSN chat rooms. The teacher asked Student 4 'what colour is your pubic hair'. The teacher made comments about his wife such as she has just got out of the shower and 'I wish that it was you'. The teacher told Student 4 that he wanted her to 'straddle' him. Student 4 asked the teacher what straddle meant and the teacher explained that it was what you did on a horse.
- 15) In 2003 the teacher put a web cam on the Internet and when Student 4 was watching he removed his shirt and moved the camera down to his pants. When his hand moved towards the zipper Student 4 logged out.
- 16) In 2003 Student 4 and Student 5 were helping the teacher paint a banner. The teacher told Student 5 to put paint on Student 4's back. The teacher began to wipe the paint across her back. The teacher stopped just above her bottom. Student 4 said something like 'whoa what are you doing' and left.
- 17) The teacher told Student 4 that he had been watching and looking at her and she had a good body.
- 18) At school the teacher unlocked a classroom and allowed Student 4 and another student inside. The teacher relocked the room. The teacher was going to change his shirt. The students looked away. The teacher said that it was okay to look but he still had his shirt off.

- 19) When Student 4 told the teacher that she was going to tell her teachers about him the teacher said 'don't because I'll lose my wife and my job and house, everything I have ever worked for.'
- 20) A student, Student 6, received internet email and mobile telephone SMS messages from the teacher including comments 'Hope you had a good day 'cos I've had a shitty one', 'Goodnight cutie' and that he called her 'beautiful' and 'cute'.
- 21) Student 6 removed the teacher's phone number from her mobile phone because she was 'creeped out'.
- 22) Student 6 said that the teacher came to the College twice and she 'creeped out' because the teacher stood too close to her.
- 23) In a classroom at a dance rehearsal the teacher joined two students, Student 6 and Student 7, dancing with them and that he held Student 6 close to him.
- 24) The teacher commented to Student 6 about how she looked, that she had nice eyes and was gorgeous.
- 25) On the last day of school Student 6 gave the teacher a good bye hug and then went to get her bag. The teacher said to Student 6 'I want more of those hugs' and pulled her towards him with her back to his chest and his arms around her and he kissed her on the head twice.
- 26) Mid year 2003 the teacher commented to the mother of Student 6 at parent teacher interviews that 'she (Student 6) had more curves than some of the others.'
- 27) That at the school swimming carnival in 2004 the teacher slapped Student 6 on the bottom.

CONCLUSION

The Panel was invited by the Counsel for the teacher to accept that the teacher's behaviour was not serious misconduct. In this view the teacher was only guilty of poor judgement; he committed silly acts but was not predatory. In relation to whether the teacher was unfit to teach, it was admitted that he had engaged in inappropriate conduct, language and activities at a low level. However it was argued for the teacher he would not repeat this behaviour in the future.

The Panel disagreed with this view of the evidence. It concluded that the teacher's misconduct was serious because he regularly initiated inappropriate conversations, inappropriate tactile contact and clearly manipulated female students into explicit sexual discussions for his own gratification. It was of great concern to the Panel that these behaviours continued after he was specifically told to stop them. The teacher seemed to lack an understanding of the effect of his behaviour on young girls in particular. He lacked a clear understanding of the appropriate boundaries between students and teachers and his professional responsibilities. He abused the great trust the community places in teachers which could lead to an undermining of the community's respect for the teaching profession and in the community's belief that its children, the youngest and most vulnerable members of the community, are protected.

The teacher was given an unambiguous warning by the Principal on 3 August 2001 that his employment was at risk if there was a repeat of his inappropriate behaviour. Two of

the conditions the Principal set in the 3 August 2001 letter were that the teacher was to avoid tactile contact with female students and to avoid being alone with any female student. By his own admissions, the teacher disregarded these conditions regularly in a way that appeared to the Panel as cavalier and indicative of a person who, despite warnings, still had no clear understanding of professional boundaries or responsibilities.

The Panel did not accept the teacher's defence that it was appropriate for him to be discussing body image, personal relationships or explicit sexual matters because he was concerned for the students' welfare or because he no longer taught these students, his responsibilities to them were reduced or no longer applicable. The Panel found no evidence that the teacher had the training, expertise or intent to assist students outside his area of expertise as a teacher. The teacher did not discuss his very personal conversations with students to other staff members who had the expertise to assist the students.

His lack of understanding of the appropriate boundary between a student and teacher led him into using sexual innuendo with students in a variety of situations including classrooms, MSN chat rooms and emails. Throughout the hearing the teacher maintained his view that his constant references to body image were appropriate. He did not convince the Panel during the hearing that he understood that his behaviour discomfited, distressed, embarrassed and frightened female students. His interpretation of being 'blocked' by students was that it was part of the game being played out between him and the students; he did the same to them and he found it difficult to believe that the students experienced feelings of disgust.

The Panel came to the view that the teacher's behaviour amounted to serious misconduct and he is unfit to teach. He was clearly warned to avoid tactile contact with female students and to avoid being alone with them. He continued to touch female students inappropriately in a way which made them uncomfortable and frightened; he initiated conversations which were sexually explicit and raised personal and intimate matters which distressed female students; he manipulated vulnerable female students into discussing subjects they were very uncomfortable with. One of the teacher's responsibilities as a teacher was to establish and maintain an appropriate boundary between himself and his students. If he found it difficult to do so, he should have sought advice from his peers, professional teachers, and implemented strategies which would have established such boundaries. The teacher did not seem to understand that it was his responsibility to establish the boundary as an adult with maturity, experience and power rather than the student who was vulnerable, inexperienced and immature.

The teacher showed a continuing lack of moral responsibility and an absence of insight and understanding into the appropriate boundaries between teacher and student; his professional responsibilities; and the effect of his behaviour on young, impressionable, vulnerable girls. He paid little regard to or was unaware that his personal relationships with students were potentially exploitative and fraught with the substantial risk of emotional damage and pain for a vulnerable student.

The Panel was mindful of the serious consequences of a decision to deregister the teacher but it was satisfied that a pattern of serious misconduct was evident. The

Panel found that his professional colleagues would reasonably regard his actions as disgraceful and dishonourable. The teacher would not be able to command the professional respect of his colleagues or the educational community. He provided evidence from students, teachers and parents that he was a very popular teacher, even charismatic. But there was considerable evidence that he had used these qualities in a manipulative, predatory way with little recognition of the damage he could cause. His conduct was not caused by inexperience or immaturity. It was a deliberate and substantial departure from the standards reasonably expected of a teacher by the community.

The purpose of the hearing was not to punish the teacher (although his own statements provided evidence of the disastrous effects the allegations have had on his friendships with other teachers, his professional reputation and his standing in the educational community) but whether the reputation of the teaching profession and the protection of the public would best be served by not allowing him to teach. The teacher did not meet the high standards of honesty and ethical behaviour expected of a teacher or the trust placed in him by the community. Instead, he abused the power and influence he had over students through his serious misconduct. The Panel found that the teacher did not maintain a high standard of integrity and did not fulfil three basic duties

- Parents must feel that the teacher will care for their child appropriately
- Other teachers must be able to trust the teacher to behave appropriately with students
- The education community must have confidence that those persons engaged as teachers are trustworthy.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The Panel came to the view that the teacher's behaviour amounted to serious misconduct and that he lacked the required insight into the nature and extent of his conduct to understand the consequences of his actions especially on students.

There was a clear connection between the teacher's professional misconduct and his lack of moral integrity and rectitude of character that led the Panel to conclude that the teacher was not a fit and proper person to teach.

DETERMINATION UNDER SECTION 42(2) OF THE ACT

The Panel did not think it appropriate to allow the teacher to continue his registration with restrictions because his misconduct was too serious and his continuing lack of insight made him unfit to teach. The determination of the Panel is that the teacher's registration as a teacher is cancelled.

A handwritten signature in black ink, appearing to read "Craig Salihung", is written on a white background. The signature is cursive and somewhat stylized. To the right of the signature is a vertical line.

Garry SALISBURY, CHAIRPERSON

A handwritten signature in cursive script that reads "Garry Salisbury".

Per:

Toni MEATH, REGISTERED TEACHER

A handwritten signature in cursive script that reads "Garry Salisbury".

Per

Rhonda CUMBERLAND, SPECIALIST MEMBER