

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 34

REGISTERED TEACHER: **STEPHEN JOHN SNOW**

PANEL MEMBERS

GARRY SALISBURY, Chairperson

ANNE FARRELLY, Registered Teacher

IAN WATKINS, Registered Teacher

ATTENDANCE: Mr Snow was represented by Mr J Handley

Counsel Assisting: Ms Anne Sherry with Ms Carolyn Pickett
solicitor instructing

DATE OF HEARING: 16 and 17 May 2006

DETERMINATION UNDER SECTION 42(2) OF THE ACT

On 17th May 2006 the Panel decided to cancel the registration of Stephen John Snow from the date of this decision.

EFFECT OF THE DECISION

The effect of the decision is that the teacher cannot undertake the duties of a teacher in a school in Victoria from 17th May 2006.

REASONS

BACKGROUND

On 31 December 2002 the teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

The Victorian Institute of Teaching (the Institute) was advised by the employer by letter dated 23 January 2004 that they had taken action against the teacher because of alleged serious incompetence. The employer notification was made in accordance with section 27 of the Act.

At its meeting on 9 June 2004 the Disciplinary Proceedings Committee, (the Committee) a committee of the Institute Council considered this matter and decided to hold a formal hearing. An investigation was conducted on behalf of the Institute into the allegations against the teacher. Following the investigation the matter was again referred to the Committee and at its meeting on 5 January 2006 the Committee confirmed its decision to hold a formal hearing into the allegations against the teacher.

The teacher was sent a Notice of Formal Hearing dated 19 April 2006 with all relevant documents attached advising him that the formal hearing would be held into his serious incompetence and/or lack of fitness to teach on 16 and 17 May 2006.

The Notice of Formal Hearing set out the following allegation:

1. Teaching skills
 - a. Fails to be adequately prepared, planned and organised for his classes
 - b. Fails to promote the acquisition of the skills required by students in Art and PE
 - c. Uses materials which are inappropriate to the student year levels
 - d. Fails to provide variety in his program as different year levels are taking home very similar finished work
 - e. Fails to cater for the individual differences within each class
 - f. Fails to provide adequate supervision in that his focus on a particular student or incident means that he is unaware of other students and incidents in his class
 - g. Fails to implement effective and appropriate classroom management strategies resulting in poor class control
 - h. Uses inappropriate tone of voice and shouts at the children.
2. Communication
 - a. Fails to communicate effectively with students
 - b. Fails to communicate effectively with staff
 - c. Fails to communicate effectively with parents
 - d. Gives explanations at the beginning of lessons which are lengthy and repetitive

3. Organisation and Management
 - a. Fails to adequately organise interschool sporting events
 - b. Fails to adequately check parent permission notes
 - c. Fails to ensure that teams are sent off with the correct equipment for sporting events
 - d. Fails to provide information to the Sports Association in the given time frame.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 27 of that Part provides:

27. Employer to notify Institute of action against teacher

(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

The term *serious misconduct* is not defined in the Act. The Panel is aware of some case law regarding disciplinary proceedings in other jurisdictions which refers to the term *serious misconduct* person.

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 stated in *Siguenza v Secretary, Department of Infrastructure [2002] VSC 46* 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 *Zechner v Department of School Education [1999] FCA 445* a teacher was dismissed for incompetence. After hearing the evidence the Court found that the teacher was incompetent. In finding incompetence the Court noted that the teacher was:

- unable to implement meaningful lessons
- unable to communicate ideas or information
- unable to develop rapport and confidence with students
- not trusted by parents or other teachers to perform the duties of a teacher
- poor relationship with colleagues
- unable to maintain teacher/student relationship
- deficiencies in curriculum knowledge
- unable to see the need to improve teaching skills.

These skills were fundamental requirements for a teacher and a failure to exercise these skills indicated incompetence.

Whether incompetence 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 of the act or omission. 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* decision of 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. However if the teacher's conduct was caused by their inability to cope with the work situation, this may be incompetence but may also be lack of appropriate support. If the conduct was caused by ill health then it will not be misconduct (see *Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242). However the teacher may be unfit to teach.

So simple negligence or errors of judgement are not sufficient for serious incompetence. However negligence of a sufficiently high level could amount to incompetence. If a teacher's practice is such that it would defeat the cause of imparting knowledge to students then this would be serious incompetence.

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

The Panel had available to it the following documents

-Witness statement Retired Principal - 2/12/2005 (5 pages) and attachments

- RS1 – procedure for difficult children
- CS30 – Summary meeting 9/10/1997
- CS31 – Minutes of meeting 15/10/1997
- CS32 – Minutes of meeting 29/10/1997
- CS33 – Minutes of meeting 26/11/1997

- CS34 – Minutes of meeting 10/2/1998
- CS35 – Minutes of meeting 23/6/1998
- CS36 – Minutes of meeting 9/9/1998 (2 pages)
- CS37 - Letter
- CS38 – Letter to the teacher 14/09/1998
- CS39 – Minutes meeting 14/9/1998
- RS40 – Letter Teacher 1 22/3/1999
- RS41 – Letter Witness 1 16/6/1999

-Witness statement Teacher 1 30/11/2005 (3 pages)

- RS1 – procedures for difficult children
- CS31 – Minutes meeting 15/10/1997
- CS32 – Minutes meeting 29/10/1997 (3 pages)
- CS33 – Minutes meeting 29/11/1997
- RS40 – Letter 22/3/1999

-Witness statement the Principal dated 22/11/2005 (4 pages) and attachments

- CP43 – Record of Interview 4/11/99 (2 pages)
- CP44 – Letter Witness 2 5/11/99
- CP45 – Interview note 5/11/99 Student 1
- CP46 – Interview note 5/11/99 Student 2
- CP47 – Letter to Witness 3 and Witness 2 11/11/99
- CP48 – Letter to the teacher 11/11/99
- CP49 – Letter Witness 1 11/11/99
- CP50 – Interview note Student 3 19/11/99 (2 pages)
- CP51 – Minutes of meeting 19/11/99
- CP52 – Letter Witness 4 1/12/99 (2 pages)
- CP53 – Letter to Witness 4 8/12/99
- CP54 – Letter to Witness 3 and Witness 2 13/12/99
- CP55 – Letter Witness 5 and Witness 6 17/5/2000
- CP56 - Letter Witness 5 and Witness 6 25/5/2000
- CP57 – Letter to the teacher 5/6/2000
- CP58 – Letter the teacher 8/6/2000
- CP59 – Letter Witness 5 and Witness 6 19/6/2000
- CP60 – Letter to the teacher 19/6/2000
- CP61 – Annual review 19/6/2000 (4 pages)
- CP62 – Minutes of meeting 6/6/2000 (5 pages)
- CP63 – Panel report interview 6/6/2000
- CP64 – Panel review
- CP65 – Letter Witness 7 and Witness 8 10/2/2001
- CP66 – Letter Witness 9 29/3/2001
- CP67 – Handwritten notes 22/6/2001 (2 pages)
- CP68 – Letter Witness 10 29/6/2001 (2 pages)
- CP69 – Witness 11 and Witness 12 16/7/2001 (2 pages)
- CP70 – Letter Witness 7 and Witness 8 19/7/2001
- CP71 – Handwritten note students
- CP1 – Letter to the teacher 1/8/2001 (3 pages)

- SS2 – Response the teacher 7/8/5001 (2 pages)
- CP3 – Minutes of meeting 7/8/2001 (2 pages)
- CP4 – Letter to the teacher 9/8/2001
- CP26 – specialist timetable 2001
- CP6 - Minutes of meeting 17/8/2001
- CP7 - Minutes of meeting 22/8/2001
- CP8 - Minutes of meeting 29/8/2001
- CP9 - Minutes of meeting 5/9/2001
- CP10 - Minutes of meeting 14/9/2001
- CP11 - Minutes of meeting 19/9/2001(2 pages)
- CP74- student list dates 30/1/2002
- CP72 –Letter Witness 13 18/10/2001
- CP73 – Petition (3 pages)
- CP12 – Minutes of meeting 6 February (2 pages)
- CP13 – Minutes of meeting 13 February (3 pages)
- CP14 – Minutes of meeting 27 February (3 pages)
- CP15 – Minutes of meeting 6 March (3 pages)
- CP16 – Letter to the teacher 18/4/2002 (3 pages)
- CP17 – Minutes of meeting 24 April 2002 (4 pages)
- CP18 – Letter to the teacher 30/4/2002
- CP27 – timetable
- CP19 – Minutes of Meeting 8 May (2 pages)
- CP20 – Minutes of meeting 15 May (3 pages)
- CP21 – Minutes of meeting 22 May(3 pages)
- CP22 – Minutes of meeting 29 May (2 pages)
- CP23 – Minutes of meeting 5 June (2 pages)
- CP24 – Minutes of meeting 25 June 2002 (2 pages)
- CP28 – stop/start plan (2 pages)
- CP75 – Letter Witness 10 1/3/2002 (2 pages)
- CP76 – Letter Witness 14 and Witness 15 5/3/2002 (2 pages)
- CP77 – Letter Witness 16 9/5/2002 (3 pages)
- CP78 – Letter Witness 11 and Witness 12 15/5/2002
- CP79 – Letter Witness 11 and Witness 12 20/5/2002 (2 pages)
- CP80 – Record of interview Witness 17 23/5/2002
- CP81 – Record of interview Witness 4 28/5/2002
- CP89 –Letter Student 4 (4 pages)
- CP82 – Letters to the teacher 29/5/2002 (5)
- SS83 – Response the teacher 5/6/2002 Witness 16
- SS84 – Response the teacher 5/6/2002 Witness 11 and Witness 12 (2)
- SS85 – Response the teacher 5/6/2002 Witness 18 (2)
- SS86 – Response the teacher 5/6/2002 Witness 17
- SS87 – Response the teacher 5/6/2002 Witness 4
- CP25 – Letter to the teacher 25/6/2002
- CP88 – Letter to the teacher 27/6/2002
- CP90 – Letter to the teacher 31/7/2002
- CP91 – Report 30 July 2002 (14 pages)

-Witness statement Teacher 2 20/12/2005 (3 pages) and attachments

- CP13 – Minutes of meeting 13 February (3 pages)
- CP17 - Minutes of meeting 24 April 2002 (4 pages)
- CP24 – Minutes of meeting 25 June 2002 (2 pages)

-Witness statement Teacher 3 10/12/2005(2 pages)

- CK6 – Minutes of meeting 17/8/2001
- CK7 – Minutes of meeting 22/8/2001
- CK8 – Minutes of meeting 29/8/2001
- CK9 – Minutes of meeting 5/9/2001
- CK10 – Minutes of meeting 14/9/2001
- CK11 – Minutes of meeting 19/9/2001
- CK12 – Minutes of meeting 6 February (2 pages)
- CK13 – Minutes of meeting 13 February (3 pages)
- CK14 – Minutes of meeting 27 February (3 pages)
- CK15 – Minutes of meeting 6 March (3 pages)

-Witness statement Assistant Principal 22/11/2005

-Witness statement the teacher 12/12/2005 (6 pages) and attachments

- CS30 – minutes meeting 9/10/1997 (2 pages)
- CS31 – Minutes meeting 15/10/1997 (3 pages)
- SC32 –Minutes of meeting 29/10/1997 (2 pages)
- CS33 – Minutes of meeting 26/11/1997
- CP50 – note Student 3 19/11/1999 (2 pages)
- SS96 – Report the Psychologist 18/7/2002 (4 pages)
- SS102 – Report the Medical Practitioner
- CP25 – Letter 25 June 2002
- CP90 – Report the School (The School)
- CP91 – Letter 31/7/2002
- SS97 – Letter 7 August 2002 and attachments (28 pages)
- SS98 – Letter 10/9/2002
- SS99 – Letter 1/10/2002 (6 pages)
- SS100 – Letter 10/10/2002
- SS101 – Letter 24/10/2002
- SS103 –Letter 23/12/2002 (6 pages)
- CK1 – Letter Teacher 3
- LO1 – Letter Teacher 5
- JL1 – Letter Assistant Principal 2

- Minutes of meeting 9/8/2001

- Letter from the employer dated 1/10/2002 (6 pages)

- Letter from the employer dated 23/12/2002 (6 pages)

The teacher presented various documents related to terms one and two 2002 including

- a sample set of weekly and term length curriculum content documents

- miscellaneous lists and planning arrangements for school activities
- a school newsletter dated 6th February 2002
- Medical Reports by the Medical Practitioner and the Psychologist
- Written References from Assistant Principal 1, Teacher 5, Teacher 3, Teacher 6, Teacher 4, Teacher 7, Teacher 8 and Witness 19.

THE EVIDENCE

The Panel heard evidence from:

- Retired Principal
- Teacher 1
- The Principal
- Teacher 2
- Teacher 3
- Assistant Principal
- Teacher 4
- The teacher

1. Teaching skills

a. Fails to be adequately prepared, planned and organised for his classes

In response to accusations of a failure to have adequately planned lessons, the teacher supplied the Panel with copies of his term planner for Art and Physical Education (PE). He also supplied his weekly planning sheets. While the plans appeared adequate they were limited in scope. They did not contain objectives, nor evidence of the desired skill acquisition.

Teacher 1, who taught in an open-play classroom with the teacher in 1997, told the Panel that members of the unit took responsibility for planning 3 week units of work. She stated that the teacher never submitted his in time and in one case he failed to provide a plan at all.

Teacher 4 a colleague of the teacher in 1988/9, gave evidence that he always appeared well prepared.

Throughout the period that the teacher was being monitored, the issue of his late arrival at school had been brought to his attention. The Retired Principal, Principal of the School up until Term 4 1999, gave evidence that while the teacher was never technically late, his arrival at school at 8.50am “was not conducive to good teaching practice”. The Retired Principal stated that he told the teacher that arriving at this time would cause him to be rushed and this would affect his ability to be organised for his classes. Concerns about the teacher’s time of arrival were also expressed in evidence by Teacher 1 who stated, “he was late at least once a week”, by the Principal of the School from Term 4 1999 and the Assistant Principal from April 2002.

The teacher in his evidence to the Panel disagreed that he was habitually late stating that while he may have been late on occasions, as a rule he arrived at or before the prescribed time of 8.45am. The teacher further argued that as he stayed late in the evenings, he was already organised for his lessons prior to his arrival at school.

Throughout the minutes of the monitoring meetings, reference is made by the Retired Principal and Teacher 2, a teacher at the School up until October 2003, that the teacher was showing some improvement in this area.

The Panel heard that as a specialist teacher of Art and PE the teacher was expected to manage a number of changeover times during the day. Teacher 2 in her evidence stated that students were often late in returning. Teacher 1 also noted that the teacher would often fail to manage his time well and the students from his group would be still working past the time for return to their classroom. The teacher said that this was only the case on a small number of occasions.

b. Fails to promote the acquisition of the skills required by students in Art and PE

The Panel heard evidence from the Principal and Teacher 2 that the work provided in both PE and Art was not sequentially developmental and that students across the grades were doing the same or very similar tasks. Their evidence was supported by numerous letters from parents. The Panel questioned the teacher on how he would go about teaching a clay modelling lesson, as listed in his weekly program, across the levels. The teacher described the differentiation in terms of the students who were older being expected to do the work at a higher standard. He did not explain the skills for clay handling that the students would be required to produce work at different standards.

c. Uses materials which are inappropriate to the student year levels

With regard to this allegation, limited evidence was led that the teacher stated that he was hindered by budget constraints and that the budget for art supplies was shrinking to the point where he was forced to borrow materials from the classrooms.

d. Fails to provide variety in his program as different year levels are taking home very similar finished work

In the minutes of meetings there were a significant number of references to letters of complaint regarding the fact that children in the same families, but in junior and senior classes were bringing home very similar art work. A letter from a parent dated 10 February 2001 stated that their child was bringing home art work similar to what she had been doing in Grade 1. A letter dated 29 March 2001, reiterated this complaint. When the parent who wrote this letter approached the teacher to express her concerns, she stated that he said that the students just do the work at a higher level. The same issue was raised by another parent in a letter to the Principal dated 16 July 2001.

In response to these accusations the teacher stated that he believed the students were attaining the required skills and that their completed work was testament to this. When the Panel questioned the teacher about how the work was varied across the levels, the teacher stated that while it may have appeared the same, the older children were expected to produce it at a higher level.

e. Fails to cater for the individual differences within each classes

In her evidence to the Panel, Teacher 1 stated that the students in the teacher's classroom were all working on the same curriculum. There was no differentiation and this led, she argued, to a number of the students becoming bored and frustrated. She also noted she could not recall children working in groups and that there was a constant use of worksheets.

Responding to this allegation, the teacher stated that he did cater for individual differences. He said that he did so by appointing monitors on tables to assist those who needed extra help. He also stated that he moved around the room monitoring and assisting students' progress.

The teacher provided the Panel with evidence that in lesson programming, he made modifications to activities for a wheelchair bound student.

f. Fails to provide adequate supervision in that his focus on a particular student or incident means that he is unaware of other students and incidents in his class

The Principal gave evidence that she observed the teacher spoke to a child regarding behaviour while the rest of the class was behind him. The Principal told the Panel that she raised the matter with the teacher and highlighted her concerns about duty of care and the failure to adequately supervise all class members.

The teacher denied that he failed to adequately supervise the students in his care.

g. Fails to implement effective and appropriate classroom management strategies resulting in poor classroom control

Teacher 1 in her evidence stated that the teacher regularly had students sitting on the floor for extended periods of time and as a result of this the students would become restless. Further, Teacher 1 noted that the teacher allowed himself to get into an interplay with students and he appeared to be unable to stop himself from having the last word. Asked by Counsel representing the teacher if she was critical of the teacher's teaching methods because they were at odds with her own, she stated she was open to teachers having different structures, but she did not believe this was the case with the teacher. Rather, she argued, it was her belief that the teacher did not have effective behaviour management techniques.

Evidence was provided to the Panel that the teacher appeared to have difficulty in dealing with children with challenging behaviours and that he some times used

inappropriate management strategies. Among these strategies was the physical handling of students. In the Retired Principal's statement, he noted that it had been brought to his attention that the teacher had been investigated for an incident at his previous position at School 1. The teacher, when questioned about this incident, stated that the child concerned was volatile and that he had thrown scissors that had almost hit another child. The teacher stated that he responded instinctively smacking the child a couple of times.

The Panel heard evidence that between 1995 and 1997 the teacher was again cautioned for two incidents in which he was alleged to have handled students inappropriately. With regard to the incident with one student, the teacher said the Retired Principal had spoken to him and that he had taken heed of the concerns raised. Teacher 1 gave evidence of an incident in which a child was picked up by the teacher. As a result of this action, the child cried for some time. Teacher 1 acknowledged that the child in question could be disruptive, often did not complete work and needed constant monitoring. However, he was a member of her classroom and while he could be challenging, his behaviour was not extreme. The teacher stated in response that the child in question was hitting another child and all he did was move to restrain him and tell him to calm down. The teacher stated his arms may have moved, but he did not shake him.

On 4 November 1999, the parents of another student at the school met with the Principal to discuss the accusation that the teacher had grabbed their child around shoulders and pushed him to the floor. The teacher stated that he did put his hands on the student's shoulders and ask him to sit down, but when he felt him resisting he let go. The teacher stated he was concerned that the year 6 student may run out onto the road. When the student left the room the teacher stayed with the rest of the group.

On 16 May 2000, a parent wrote to the Principal alleging that the teacher had hit his child and another on the head with a ream of paper approximately 4-5cm in thickness. The teacher responded to this by stating that he only gave the students a light tap on the head with a few sheets of A3 paper to alert them to help clean up.

Teacher 2 gave evidence to the Panel that she observed the aftermath of an incident in the teacher's art room that illustrated that he failed to maintain appropriate classroom control. She entered his class to find a chair laying on the floor and the teacher in a state that indicated to her that he had kicked it in anger. She amended her witness statement dated 20 December 2005 that she had seen the teacher kick the chair. A number of letters to the Principal from parents, who had children in the class at the time, supported Teacher 2's interpretation of the incident.

In response to the accusation made by Teacher 2 that he kicked a chair in anger, the teacher stated that what had happened was that two boys from another year 5/6 class had been outside the room of the class the teacher was timetabled to teach. He took the students to the art room with him and placed them outside in the belief that the Assistant Principal 1 would come by and collect the boys. The teacher stated that the boys burst into the room making loud noises and as he stood to ask them to quieten down, he knocked his sore leg (sore as a result of another student kicking him while on

yard duty) and in pain he pushed the chair away. Further, he stated that he only raised his voice to make himself heard over the disruption of the students. He rebuked Teacher 2's evidence that she entered the room to see the chair lying up turned across the room and the teacher looking red faced, stating that she never entered the room for if she did so he would have seen her.

Teacher 2 stated that there were instances of students leaving the teacher's class without him realising and she would send them back. Teacher 2 told the Panel that the students did not have respect for the teacher and a similar view was expressed in many of the letters from parents to the Principal. Teacher 2 stated that it was her view that the teacher allowed the students to push the line too far and as a consequence, the students did not respond to his directions.

The Assistant Principal noted that the teacher's PE students would run past his classroom in an unruly manner towards the drinking fountains. The Assistant Principal expressed concerns that allowing students to move around in this manner was potentially dangerous.

A witness for the teacher, Teacher 4, stated that in her view the teacher had good classroom control. Teacher 4 worked as a Special Education teacher in an office next to the teacher's room and assisted in his room twice a week in 1988/9.

The teacher when examined about his classroom management and control stated that for the vast majority of the time he believed he had good control. He stated that there were the occasional 'glitches'.

h. Uses inappropriate tone of voice and shouts at the children.

In her evidence to the Panel, Teacher 1 said that the teacher would regularly shout at the students as a means of trying to control their behaviour. She stated that it happened on a weekly basis, on two to three days in a row. She noted that she discussed the inappropriateness of this technique with the teacher and that while he appeared to take her advice on board at the time, she did not see any change in his teaching style. Out of frustration, she brought the situation to the attention of the Retired Principal. The Retired Principal discussed the matter with the teacher suggesting some relevant Professional Development courses that he should undertake to assist him in this area. The teacher subsequently attended two courses, one on dealing with difficult students and the other on managing stressful situations.

Teacher 2 told the Panel that she had sent a student back to discuss an issue with the teacher. She stated that the student returned in tears saying that they had been shouted down by the teacher. Teacher 2 expressed the view to the Panel that the teacher did not have control over his temper and this led to his shouting. She stated that a teacher can recognise when another teacher is not in control.

The Assistant Principal, who taught in a room approximately ten metres from the art room, noted that he had heard the teacher shouting on occasions and it was shouting that was suggestive of the teacher not being in control, but rather distressed and angry.

In her evidence to the Panel, the Principal stated that she heard shouting coming from a room in which the teacher had the year 5/6 students. She noted that when she entered the room she saw the teacher was red in the face. She asked him to go to the staffroom while she settled the students. This incident took place in August 2002 which was toward the end of the period during which the teacher had been monitored for difficulties relating classroom control and management. She stated that when she went to discuss the matter with him he was angry at the children. She said she told him she did not believe his behaviour management was improving.

In response to this, the teacher stated that, as some students had knocked down the mats, he was going to make them go back to the previous room and start again. He stated that the only noise was that of the students as he tried to settle them.

Teacher 3, a teacher from the School, and a one time mentor for the teacher during the monitoring period, stated in her evidence that she only ever heard the teacher raise his voice in order to take control.

The teacher in giving his evidence stated that the tone of voice he used was always appropriate and when he was taking sport outside he needed to shout in order to make himself heard.

2. Communication

a. Fails to communicate effectively with students

The Panel heard evidence from Teacher 1, Teacher 2, the Principal, the Assistant Principal and in a number of letters from parents to The Principal that the teacher regularly started lessons with long introductions that failed to engage the students in learning.

As noted above, it was alleged that the teacher shouted at students in order to control their behaviour. With regard to students with challenging behaviours, the Panel heard evidence as noted above, that the teacher would resort to physically chastising them.

While the teacher acknowledged handling the students inappropriately, he explained that it was always in response to extreme behaviour and that the contact was only momentary.

The teacher felt that he effectively communicated with the students in his care.

b. Fails to communicate effectively with staff

While all the teachers giving evidence acknowledged that the teacher was approachable, flexible and easy to get along with, they nonetheless stated that on a professional level he failed to communicate effectively with staff.

Teacher 1 gave evidence that the teacher was expected to mark maths assessments and return them to the teachers for reports due at the end of 1998. Teacher 1 told the Panel that she did not receive them until the following March.

Teacher 2 and Teacher 1 in their evidence both stated that the teacher failed to give teachers adequate instructions with regard to both inter-school sports and the school sports. They stated that he failed to have lists done in time for teachers to be prepared. In the minutes of many meetings the teacher was asked by the Principal to give greater lead time to organising sporting events so as to avoid teachers having to ask what was going on. Teacher 2 stated that there were so many small instances where the teacher failed to organise and communicate sporting events that the teachers just picked up the pieces and ran with it as best they could.

The teacher disagreed that he did not communicate effectively with teachers. He stated that he informed teachers during staff meetings and through the notes in teachers' pigeon holes about what was going on in Sport.

c. Fails to communicate effectively with parents

In presenting her evidence to the Panel, the Principal stated that she received numerous letters from parents who were concerned about the teacher's performance. In one letter dated 29 March 2001, the parent stated that she had gone to the teacher to discuss concerns regarding accusations from her children of repetitive work and lengthy instructions. She stated in the letter that she felt the teacher did not appear to take on board her concerns. It was due to this, she stated, that she wrote to The Principal.

Teacher 1 told the Panel that a parent of a child in the teacher's class came to see her on three or four occasions to complain about the teacher's teaching methods. Teacher 1 stated that the parent only came to see her after having spoken to the teacher who had not acted on her concerns.

In a letter dated 16 July 2001, a parent wrote that despite being a regular volunteer with the netball team that the teacher had never spoken to her to enquire about how the team was going.

The teacher in response to the allegation, stated that he used the Newsletter to communicate sport's news to parents. He stated that he believed he communicated well with parents during parent teacher interviews.

d. Gives explanations at the beginning of lessons which are lengthy and repetitive

Teacher 1 who, as noted above, taught in an open-plan setting with the teacher during 1997, stated in evidence that his lesson introductions would go on for 20-25 minutes. As a consequence, students would become restless and the teacher would lose control of the class. Teacher 1 gave evidence of one bright child becoming so frustrated that she stood and shouted at the teacher.

The Retired Principal in his witness statement, told the Panel that during his travels around the school on a day to day basis he had observed “the teacher taking too long with instructions”. The Principal stated she observed a junior PE lesson where the introduction took twenty minutes.

Having a view of the teacher’s art room through the glass sliding doors, the Assistant Principal noted that the teacher appeared to have his students seated listening for long periods of time. Teacher 2 told the Panel that she believed the teacher’s lengthy explanations of activities impinged on the students’ learning.

All those involved brought this concern to the teacher’s attention on a many occasions, both informally and as part of the formal monitoring process. In all cases they noted that while the teacher appeared to be receptive to advice, he made little or no effort to change his practices. The Retired Principal stated that during his time while there had been some improvement, it had not been to the level required.

In the written evidence supplied to the Panel there were numerous letters from parents that complained of the lengthy introductions to the teacher’s lessons.

The teacher, in his evidence, stated that he did not believe the introductions were overly lengthy as the students needed to understand the task. He further stated that if they were ever too long it was due to having to repeat the instructions as some students had caused a disruption. This related predominantly, he argued, to the years 5/6.

3. Organisation and Management

a. Fails to adequately organise interschool sporting events

Evidence was presented to the Panel of an incident in February 2002 where the teacher had failed to adequately read instructions relating to a tennis tournament. This failure had led to a number of students being left unsupervised at School 2. The teacher had told parents that the students were to be picked up at 3pm. In fact, the correct time had been 1pm. The teacher stated that the confusion came from the fact that it had finished at 3pm the previous year.

Written evidence presented to the Panel accused the teacher of failing to train students sufficiently for the swimming sports, of leaving it to the last minute to organise the teams and of not providing adequate instructions to those assisting. Parents wrote alleging that they had to take the initiative rather than being directed by the teacher.

A casual relief teacher wrote to the Principal to complain of the teacher’s failure, in her view, to be adequately prepared. She stated that she had no written instructions about what she was to do.

The teacher disagreed that he did not organise events in a professional manner. He argued that there were instances of ‘glitches’ but these were by far in the minority. He stated he felt that where events had gone well, the majority in his view, his efforts had not been acknowledged.

b. Fails to adequately check parent permission notes

This allegation arose out of an incident at the swimming sports. It was noted in a letter from a parent of a student who was also a teacher at the school, that her daughter was among four students who had remained with a parent at the swimming sports to compete in the relay. The mother said that she had not given permission for her daughter to be left without a supervising teacher, nor to return to school in a parent's car.

c. Fails to ensure that teams are sent off with the correct equipment for sporting events

In a letter noted above written by the casual relief teacher, it was stated that the teacher failed to ensure that the T-Ball team had the equipment required for the game. It was further alleged that the first aid kits were not complete in that they did not contain any ice packs.

In another incident, the Panel was told that the teacher failed to take the shade shelter to the swimming sports that were held outdoors in February.

The teacher responded that shade shelter had been purchased while he was on long service leave and he was, therefore, unaware of its existence. The teacher denied that he had spoken to a parent about the shade shelter. With regard to the failure to send the T-ball equipment he stated that it had only happened once and that it was not a big problem as the other school had equipment.

In an instance at school, the Principal told of witnessing the teacher taking a PE lesson outside without the students wearing their compulsory sunhats. The teacher stated that the students had not come from their classroom and this was why they did not have their hats.

d. Fails to provide information to the Sports Association in the given time frame.

Teacher 2 and the Principal told the Panel that the teacher had failed to supply the names of the School students competing in the swimming sports to the Association. As a result, the students were the only ones not to have their names published in the program. The Principal stated that she had numerous complaints from parents with regard to this both in writing and verbally.

The teacher stated in response that he did try to send an email but it did not go through. When he sent a fax it did not get there in time.

Other than this incident the teacher asserted that he worked well with the Sports Association.

Further Evidence

The Principal in her evidence stated that she believed that she could not see what more could have been done to assist the teacher. The Retired Principal in his witness statement said that the teacher was “given more assistance than ... to any other teacher, despite his having twenty years experience”. The written evidence provided to the Panel detailed the processes set in place to monitor and assist the teacher. Over a period of 6 years, under the leadership of both the Retired Principal and the Principal, the teacher was given advice and assistance. Processes were followed according to the Victorian Government Schools Teacher Class Handbook, including extensive minute taking and notification to the teacher of all procedures and potential consequences that could eventuate.

He was provided with three separate mentors over the period. Evidence was given that he was encouraged to attend professional development courses as he thought were appropriate. The Principal said she made an extra effort of ensuring professional development courses that she thought would be of assistance to the teacher were brought to his attention. She stated however, that she did not compel him to attend as she believed it was part of his professional responsibility to take the initiative.

In 1998, the Retired Principal told of moving the teacher out of the classroom into the specialist roles of PE and Art in an effort to relieve the teacher of some of the stresses relating to classroom teaching. The Principal stated that the teacher was given 5¼ hours time release per week, where the Agreement stipulated 2½ hours per week (this was the standard time release for classroom teachers). This time was to be used for preparation, planning and organisation. This was later reduced to 3 hours and 45 minutes which the Principal noted was still in excess of the 2½ hours other teachers received.

In giving evidence, the teachers noted that the teacher appeared to take on board criticisms and suggestions, but there was never the required improvement in the areas that were identified over the period of six years. Teacher 2 stated in her evidence to the Panel that the teacher did not appear to comprehend what was required of him.

Both the Retired Principal and the Principal told the Panel that they had many requests from parents that their children not be placed in the teacher’s class. The Retired Principal noted that the teacher had a disproportionate number of requests in this regard compared to the other teachers on staff. The Principal stated in her evidence that she had 40 requests from parents regarding placement of their child and of these the vast majority related to the teacher. She told the Panel that a number of families removed their children from the school. In the case of 14 of the children, the stated reason for their withdrawal was the teacher’s teaching and behaviour management.

The Principal in her evidence stated she felt that the teacher appeared to try and take on advice, but by the end of the process she came to the conclusion that the teacher was simply unable to make the changes required to attain the standard of teaching that was considered satisfactory.

For his part the teacher felt that his teaching was always of an adequate standard. He stated that he had a number of 'glitches' along the way, but that was all they were. Under examination by Counsel Assisting, the teacher maintained that he did not have an anger problem and that he would only need to make minor changes to his teaching practices. When asked if he could accept that his performance may have been a cause for concern the teacher replied, "I do not believe so".

The teacher and Teacher 3 gave evidence to the Panel that they felt the process was not as supportive and positive as it should have been. Teacher 3 argued that incidents should have been dealt with immediately rather than at the meetings as it did not allow them to be nipped in the bud. The teacher stated that he felt he was constantly having to justify his work and that the Principal took the word of parents and students over his. The teacher argued this affected his capacity to teach in his normal manner.

DISCUSSION OF EVIDENCE

The Panel was provided with detailed evidence of the processes adopted by the School administration between 1995 and 2002 covering the leadership of two principals both of whom identified and attempted to deal with serious issues in relation to the teacher's teaching, communication, organisation and management skills. This evidence outlined a range of formal and informal processes to assist the teacher including support groups, professional development, increased time release, mentoring and rearrangement of his classes and duties over an extended period of time. The recurring pattern in the evidence was that the teacher had made little if any improvement over this period despite extensive evidence of a high level of support. The Panel came to the view that the teacher was unable to cope with his work situation despite evidence of ongoing support from the school in a variety of ways. The Panel could not agree with his Counsel's argument that the teacher was subjected to a confusing process with a predetermined result. The Principal provided detailed cogent evidence of the processes followed and the issues identified from a range of sources.

The Panel accepted the evidence of the Retired Principal and the Principal that as successive principals of the School they had gone to great lengths to support the teacher. They both argued that the teacher was given repeated warnings as part of the DE&T Dealing with Local Complaints Procedures and ongoing assistance including significant additional time being provided to him to enable him to prepare for his classes and a reduction in required responsibilities but that he was unable to demonstrate an improvement. The Retired Principal said that he gave the teacher more assistance than he had given any other teacher and that had the Retired Principal not retired, he would have commenced a formal disciplinary process against the teacher. The Principal gave persuasive evidence of ongoing support for the teacher over an extended period. She said she came to the view he did not meet all the professional standards of a level 1 Experienced Teacher and she began the process of managing unsatisfactory performance which resulted in the teacher being dismissed from the Department of Education and Training.

A significant number of witnesses including Teacher 1, the Principal, Teacher 2 and the Assistant Principal gave evidence that the teacher's classroom management showed a

pattern of a lack of supervision and control, students running in and out of classrooms, of students in physical education classes running in a potentially dangerous manner to get to drinking fountains, of students yelling at him and being yelled back at and some students being manhandled. Persuasive evidence was provided that revealed a pattern of carelessness on the teacher's behalf in allowing students to participate in physical education when injured, allowing a student's glasses to be damaged, not providing appropriate sporting equipment or shelter at sporting events. He appeared cavalier in not anticipating the consequences of his actions.

The teacher's witness statements, both written and under oath were generally of limited value as they attested only that at various times prior to commencing at the School he appeared to be a competent teacher. The teacher's witness Teacher 4 had taught with him 17 years ago in 1988/89. Under oath the teacher testified that Assistant Principal 1 a witness who might have been of some assistance to him had refused to attend or testify. Teacher 3 argued under oath that the formal support group did not address issues quickly and allowed them to wait until the next meeting of the group before they were dealt with. When asked whether she had ever heard the teacher yell she gave what the Panel thought was an answer verging on the duplicitous in a misguided attempt to support the teacher.

The teacher's occasional physical handling of students was not appropriate and fell within a number of classroom management techniques which could be described as seriously incompetent. When commencing at the School he was being monitored for the physical handling of a student at his previous school. The teacher claimed that the three incidents involving physical handling of students at the School were exaggerated, involved only minor physical contact and were momentary lapses. The Panel however placed these incidents in the context that he had been warned about his behaviour; his classes were rowdy and uncontrolled; he showed a propensity to lose his temper when confronted by students and yell at students; and parents and students had complained about the curriculum being taught and the teacher's delivery and management style. Evidence was provided and accepted by the Panel that these were not isolated events. The teacher claimed that he had some very difficult students but other witnesses provided evidence that students at the School were generally well behaved and that the school had developed a range of strategies to deal with difficult individual students. The Panel did not accept that the teacher's teaching practice would be better at more junior levels.

The Panel heard a great deal of evidence about the teacher's delivery of curriculum and his teaching style. His planning was merely adequate but the Panel was not able to decide on the evidence presented whether he failed to promote the acquisition of skills or used appropriate materials to a level of being seriously incompetent. His handling of a disabled student showed an effort to modify curriculum for individuals and reflected well on him. It appeared to be at odds however with his general pattern of delivering curriculum. It was of concern to the Panel that the teacher's explanation of the outcomes he sought when teaching grade 5/6 science was vague and his knowledge of the appropriate assessment guidelines was hazy despite this being one of the methods he had specialised in. While the Panel could accept that the teacher's knowledge of the art curriculum would be less because he had not trained in this method, there was clear

evidence that he had received highly detailed curriculum plans from both Assistant Principal 1 and the Retired Principal who by all accounts were highly accomplished art teachers. The teacher's defence that the art budget had been cut, seriously limiting what he could teach, was not put to the Principal when she was giving evidence.

The Panel had some misgivings about the teacher's view that he could present essentially the same material to different age groups and that they would respond according to their maturity. The teacher did not appear to understand that different age groups might be taught in different ways to reach different understandings. Evidence was provided that the teacher gave lengthy, repetitive introductions to classes and his style of answering questions showed a propensity to loquacity which even his Counsel commented on. An example of the teacher's inability to answer a question concisely occurred when he was giving evidence about whether he had been on a bus at a particular time. His answer and a number of others were vague, indirect and unhelpful to his case. While loquacity is not of itself an issue, the effect of this behaviour was to increase management problems and significantly reduce student time on task. In addition, it had been raised by his support group as an issue he needed to address. The Panel formed the view that the teacher was not always able to impart knowledge because he was seriously incompetent in some areas of his teaching skills.

The Panel heard evidence of the teacher's negligence in not anticipating that students would have to sit in the sun at a swimming competition held in February, that he failed to notify parents of the correct collection time after a sporting event, that he failed to take the correct equipment to a sporting event, and that he conducted a PE class outside without the students wearing hats in direct contravention of school policy. The teacher claimed that these were momentary lapses and glitches. It appeared to the Panel that these events added to a pattern which showed a substantial departure from the standards expected of an experienced teacher.

Although the teacher attended some professional development activities he made no effort to systematically address serious issues in the way that a professional person would. The Panel accepted evidence that significant PD opportunities were made available to him. The Panel was unable to accept his Counsel's suggestion that it was the Principal's role to order him to attend PD activities. The Panel was of the view that a professional person takes responsibility in this area in order to maintain appropriate professional standards. The teacher's claim that he was too busy to go to his pigeonhole to check what PD was available was not considered an adequate response by the Panel.

The Panel found a pattern of poor communication with parents, students and other staff. The teacher testified that he did not spend time in the staffroom. His failure to complete mathematics assessments due in December 1998 until March in the following year placed other staff under pressure. Teacher 2 said that "staff were left to pick up the pieces" referring to the pressure one incident placed on staff. Parents and others provided evidence that the teacher had lost the trust of students and this was not disputed at the hearing. He appears to have made no attempt to build his relationship with parents despite having had to respond to a significant number of written complaints from individual parents and the School Council President. While the teacher testified that he attended parent teacher evenings he appeared to be of the view that

problems identified by parents, staff and the Principal sprang from an uncritical acceptance of everything that students said. The significant number of parents requesting that their child not be taught by the teacher and the statistics provided by the Principal of the significant number of parents withdrawing their children from the school were quite damning. Neither of these allegations were disputed by the teacher or his Counsel. From the evidence it was clear that the teacher had lost the trust of the parents, students and teachers at the School to perform his duties as a teacher.

Witnesses repeatedly stressed that they liked the teacher as a person and praised him as “as a genuinely nice guy” with a gentle affable nature. Counsel for the Institute specifically said in her summing up that the teacher’s character was not in dispute. These comments supported the view arrived at by the Panel that complaints about the teacher’s teaching by teachers were made in an objective, fair-minded way and did not reflect differences of philosophical opinion about pedagogy or personal animosity. Even staff who admitted a high level of frustration with the teacher were quick to point out his other admirable qualities. The Panel came to the view that the teacher sometimes failed to understand the seriousness of allegations against him, could not understand parental, staff or student concerns or that his behaviours upset others in serious ways. This lack of insight may have contributed to his lack of response to his clearly identified shortcomings and his seriously incompetent performance. Medical evidence provided by the teacher’s Counsel established that the teacher was not suffering a physical or psychological illness. The Panel disregarded the medical opinions regarding rearrangement of the teacher’s teaching load as outside the witnesses area of expertise.

The Panel found there was a pattern of serious incompetence in the teacher’s teaching, communication, organisation and management skills over a period of six years. The Panel also found that while the teacher was underperforming in some areas such as failing to promote the acquisition of skills required by students in Art and Physical Education, his performance did not reach the level understood and described as serious incompetence. The Panel accepted without equivocation the view of both Counsel that the teacher was fit to teach as no evidence was led which placed his character in dispute.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The first issue the Panel had to consider was whether there was sufficient evidence to support any, some or all of the allegations made against the teacher. The second issue the Panel had to determine was whether the allegations, if proven, amounted to serious incompetence and/or unfitness to teach.

Counsel Assisting the Panel submitted that there is limited precedent in relation to competence in disciplinary proceedings. The Panel found the judgements delivered in *Zechner v Department of School Education* (1999) FCA 445 and *Parr v. Nurses Board of Victoria* decision of Kellam, J President, VCAT 2 December 1998, to be applicable to this case.

Counsel submitted that the Panel needed to consider whether the teacher had been shown to be incompetent or seriously incompetent. In considering this the Panel

recognised that the intention in such proceedings is not to punish the teacher, but to protect the public. In its deliberation and decision the Panel must be satisfied from the evidence that the teacher is seriously incompetent.

The Panel accepted the evidence of the processes adopted by two principals, both of whom identified and attempted to deal with serious issues in relation to the teacher's teaching practice. Their evidence as well as that of other witnesses, included detailed reports, minutes of numerous support group meetings and letters of complaint from teachers and parents over a period of six years. It also contained many examples of warnings by the principal to the teacher of the seriousness of his situation. The Panel considered the length of the teacher's service and the length of time that serious concerns regarding his professional practice had been identified and support provided.

It is the Panel's belief that the teacher was given significant assistance and opportunity to improve his professional performance over an extended period of time, but was unable to demonstrate adequate improvement. The Panel did not accept that the processes designed to assist the teacher by their very nature and application, set him up for failure.

The Panel found that in relation to some of the allegations the teacher had shown carelessness, errors of judgement and underperformance, but not to the level of serious incompetence. However, the evidence leading to the substantiation of a number of the allegations led to the conclusion that the teacher was seriously incompetent in his teaching skills, his communication skills and his organisation and management skills. The teacher did not cater for individual differences within each class. He was not able to adequately supervise his classes because of a focus on individual students or incidents at the cost of a general awareness of the rest of the class. The teacher's ineffective and inappropriate classroom management techniques and strategies were seriously incompetent. The teacher's lengthy and repetitive introductions and his inability to rectify this behaviour are good examples of his serious incompetence. His inability to improve after identification of the problem by the principals and support groups and his failure to recognise that his classes were deteriorating are another indication of his serious incompetence. The teacher's communication skills were seriously incompetent with staff, students and parents. The Panel found evidence that the teacher sent sports teams off without the appropriate equipment in a way that indicated a lack of proper planning and forethought which amounted to serious incompetence. The Panel found that the teacher had lost the trust, confidence and respect of teachers, students and parents. His inability to impart knowledge was compromised by his lack of communication, teaching and organisational skills. Despite having these shortcomings identified and support given, his response was inadequate.

The Panel believes that the teacher's performance is a serious departure from accepted professional practice. This departure is serious because it was within the control of the teacher. The Panel found that in order to protect the public and protect the reputation of the profession it must cancel the teacher's registration. Other penalties as suggested by Counsel for the teacher were discussed, but not accepted. The Panel therefore finds that the teacher is seriously incompetent in his teaching practice.



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GARRY SALISBURY, CHAIRPERSON



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ANNE FARRELLY, REGISTERED TEACHER



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IAN WATKINS, PANEL MEMBER