

## VICTORIAN INSTITUTE OF TEACHING

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 025

**REGISTERED TEACHER:** BELINDA CAMPBELL

**PANEL MEMBERS** Susan Halliday, Chairperson  
Anne Farrelly, Registered Teacher  
Kathleen Bragge, Panel Member

**ATTENDANCE:** Belinda Campbell (nee Boucher) was represented by Mr Justin Lawrence solicitor of Henderson Ball  
Counsel Assisting: Anne Sheehan with Ms C Pickett solicitor instructing

**DATE OF HEARING:** 22 August, 23 August, 25 October, 17 November and 20 December 2005

#### **DETERMINATION UNDER SECTION 42(2) OF THE ACT:**

On 24 January 2006 the Panel decided:

- (a) to suspend the teacher's registration as a teacher until 1 January 2007;
- (b) to place a condition on the teacher's suspension that she must attend a psychologist for at least 10 sessions of counselling concerning the following matters:
  - (i) trust and power relationships between students and teachers;
  - (ii) maintenance of professional standards when working with young people;
  - (iii) professional boundaries between students and teachers including differentiating between personal and professional relationships;
  - (iv) the legal obligations of teachers; and
  - (v) acknowledgement of the Code of Ethics and Code of Conduct for the Victorian teaching profession; and
- (c) that the teacher must complete the counselling sessions before her suspension will be lifted.

## 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 Act 2001* (the Act) because she was a person who was registered as a teacher under section 37 of the *Education Act 1958* immediately before the commencement of the Act.

The Victorian Institute of Teaching (the Institute) was advised by the Principal of the College, by letter dated 28 October 2004 that they had taken action against the teacher in relation to serious misconduct and/or fitness to teach. The notification was made in accordance with section 27 of the Act.

On 1 December 2004 the Disciplinary Proceedings Committee, a committee of the Institute considered the matter and decided that this matter should be referred for a Formal Hearing. The teacher was sent a Notice of Formal Hearing dated 21 July 2005 with all relevant documents attached advising her that the formal hearing would be held on 22 August and 23 August 2005.

The hearing was adjourned to 25 October, 17 November and 20 December 2005.

The Notice of Formal Hearing set out the following allegations:

2. That on or about July 2004, the teacher sent emails and text messages to a Year 12 student, student 1 including phrases "missing you" and "missing your touch".
3. That the teacher attended a function at the home of a student, student 11, on 10 September 2004. A Year 12 student, student 1 was also in attendance at the function.
4. That the teacher telephoned a student, student 4 on his mobile telephone at 2am on Saturday 11 September 2004 stating "This is the athletics coach. Student 1 will be running in both the 800 and 1500. You're not good enough." The teacher subsequently apologised to student 4 blaming the call on alcohol.
5. The teacher was seen with a Year 12 student, student 1 at the Gardens on 11 October 2004 by student 7, student 8 and student 6.
6. The teacher was seen kissing a Year 12 student, student 1 at the Gardens on 11 October 2004 by student 8 and student 6.

The issues the Panel must address in this matter are:

- Does the teacher's conduct amount to serious misconduct and/or lack of fitness to teach?
- If the teacher's conduct is serious misconduct and/or lack of fitness to teach, what is the appropriate penalty?

### THE LAW

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

## **26. Powers of inquiry**

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

## **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 terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act.

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

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

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools by ensuring that the teacher is not guilty of serious misconduct and is fit to teach. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

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

And later

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

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

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct

must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided VCAT 2 December 1998)).

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

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

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

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

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

In *Health Care Complaints Commission v Litchfield* [1997] 41 NSWLR 630 the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent the conduct departed from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

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

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

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

## **DOCUMENTS CONSIDERED**

The following documents were provided to the Panel

- Witness statements
  - Statement of the Principal numbering 6 pages and attachments
    - File note 14 July
    - Letter 13 September
    - Interview notes 14 September 2004 (2 pages)
    - Letter 24 August 2004
    - File note 14.09.04
    - Letter from the teacher dated 14 September 2004 (2 pages)
    - Letter dated 16 September 2004
    - File note 13.10.2004
    - Handwritten note student 8
    - Handwritten note student 6
    - Letter 18 October 2004
    - Handwritten note student 7
    - Interview notes 13/10 (4 pages)
    - Letter from the teacher dated 13 October 2004
  - Statement of teacher 1 (2 pages)
  - Statement of teacher 2 (2 pages)
  - Statement of student 5 (2 pages)
  - Statement of student 1 (2 pages)
  - Statement of student 4
  - Statement of student 3
  - Statement of student 2 (2 pages)
  - Statement of student 7
  - Statement of student 6 (2 pages)
  - Statement of student 8
- Handwritten notes dated 14/10 at 4.24pm (3 pages)
- Handwritten notes dated 14/10 at 3pm (3 pages)

## **THE EVIDENCE**

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

- The teacher
- The principal of the College
- The Head of the senior campus, teacher 1
- A Physical Education teacher at the school, teacher2
- Student 2, a past student of the school

- Student 3, a past student of the school
- Student 4, a past student of the school
- Student 5, a past student of the school
- Student 6, a past student of the school
- Student 7, a past student of the school
- Student 8, a past student of the school
- The estranged husband of the teacher
- Student 1, a past student of the school
- A Board member of the Board of Directors of the College
- Student 9, a past student of the school.

The proceedings were recorded.

### **Allegation One**

*That on or about July 2004, the teacher sent emails and text messages to a Year 12 student, student 1, including phrases "missing you" and "missing your touch".*

The Panel heard from the Principal of the College, that she had occasion to meet the teacher on 14 July 2004 regarding information that had come to her attention indicating that the teacher had sent emails and text messages to Year 12 student, student 1, while he was overseas. It was alleged that the messages said things such as "missing you" and "missing your touch". The Principal stated that she did not see copies of the emails or the text messages. Year 12 student, student 10 had passed this information to her House Co-ordinators, teacher 3 and teacher 4.

In his evidence, teacher 1, the head of the senior campus stated that he had been told about the emails or text messages also, and he recalled it was Year 12 student, student 5 who told him. He said a search of the school's email server, carried out by the information technology department, had not found the emails.

Student 5 was the girlfriend of student 1 until late March 2004. They had split up, but remained friends. Student 5 stated that she had access to student 1's email password due to their close relationship. Stating their relationship had been up in the air she sent an email to student 1 while he was overseas. Seeking to retract her email she stated she went into his emails, to delete her message. When student 5 did so she said she noticed an email from the teacher, which she then read out of curiosity. Distressed by the content, student 5 said that she printed the email out and stored it in her bedroom. She told the Panel that she did not give it to the school because she did not want to get anyone into trouble, however she did tell her best friend, and student 2 Year 12 student as well as student 4, Year 12 student about the emails.

Student 4 stated that student 5 had talked about the existence of the emails during the period of time that they were dating during the second half of 2004. Student 4 said student 5 refused to divulge the email content.

Student 2 stated that student 5 had told her about the existence of the emails on the first day of third term. Student 2 noted that student 5 appeared distressed and angry

about the content of the emails. Student 2 told the Panel that she asked student 1 about student 5's allegations and that he denied having received any such emails. student 2 stated that she chose at the time to believe student 1.

Student 5 said that she was no longer in possession of the email material as she had burnt it at the beginning of January 2005.

Student 1 denied receiving any emails or text messages from the teacher during his time overseas. He told the Panel that he did not have a mobile phone with him during his time away. He stated that there had been SMS text communications between himself and the teacher on other occasions regarding his break up with student 5, but these text messages numbered no more than ten. He told the Panel that student 5 could not have accessed his email as he gave his password to no-one.

The teacher denied having ever sent any emails or SMS messages containing such statements. In response to evidence given by her estranged husband that he had found a telephone account listing more than 200 SMS messages to student 1's number over a two week period in July 2004, The teacher conceded that she had indeed sent that number of messages, but denied that any had contained intimate statements of the type alleged. The teacher told the Panel that student 1 did have her email address, as did other Year 12 students.

The teacher told the Panel that student 1 had sent her text message containing statements such as "I love you " and "I should be lying beside you eating ice-cream". The teacher said that some of her interactions may have been flirtatious and that the interaction between herself and the Year 12 student, and his attention, made her feel good about herself when her self esteem was low and things were horrible at home .

### **Allegation Two**

*That the teacher attended a function at the home of a student, Student 11, on 10 September 2004. A Year 12 student, student 1 was also in attendance at the function.*

The teacher agreed that she had attended a function at the home of a student student 11 on 10 September 2004 and that Student 1 was also in attendance. Student 1 agreed that he attended the party. Student 2 stated that she was also in attendance. Student 3 a Year 12 student also stated that she attended.

While giving evidence about the events of the function, student 2 stated that during the later part of the evening she had seen student 1 on the couch with the teacher and that he had his head in her lap. Student 3 corroborated student 2's evidence regarding the physical contact between the teacher and student 1 stating that she had seen student 1 leaning on the teacher and that later in the evening student 1 had had his head in the teacher's lap and that the teacher had been playing with student 1's hair.

The teacher denied any physical contact between herself and student 1. Student 1 denied having his head in the teacher's lap. He stated that both student 2 and student 3 were very drunk. The Panel noted that there was some dispute among the witnesses

as to the amount of alcohol consumed by those attending the function; including how much alcohol the teacher had to drink. Student 2 said that she had only a few drinks, while student 3 stated that she had had 7 to 9 drinks.

### **Allegation Three**

*That the teacher telephoned a student student 4 on his mobile telephone at 2am on Saturday 11 September 2004 stating "This is the athletics coach. Student 1 will be running in both the 800 and 1500. You're not good enough." The teacher subsequently apologised to student 4 blaming the call on alcohol.*

The teacher conceded that she telephoned Year 12 student student 4 on student 1's mobile telephone at 2am on Saturday 11 September 2004, from the function at student 11's house. She agreed that she had said, "This is the athletics coach. Student 1 will be running in both the 800 and 1500." She denied having said, "You're not good enough" stating that what she had said was that she had to name the best team she could. The teacher told the Panel that she had had two or three drinks. She stated that she regretted her actions and was aware that they were unprofessional. She agreed that student 4 would have been hurt by her statements and the manner in which they were communicated. Student 4 told the Panel that he felt very hurt and betrayed by the phone call and that he had no wish to have any communication with the teacher.

### **Allegations Four and Five**

*The teacher was seen with a Year 12 student, student 1 at the Gardens on 11 October 2004 by student 7, student 8 and student 6.*

*The teacher was seen kissing a Year 12 student, student 1 at the Gardens on 11 October 2004 by student 8 and student 6.*

It was alleged that the teacher had, on 11 October 2004, been in the Gardens with student 1 and they had been seen kissing in the car park. Three Year 12 students of the College, student 6, student 7 and student 8, gave statements relating to the alleged incident.

Student 7 told the Panel that on the date in question she had skipped class with student 6 and student 8. All three stated that they did not sign out. As she drove toward the local suburban shops, student 7 said that she noticed the teacher driving behind them. She said she mentioned this to the others because it was against the rules to transport friends in your car and she was concerned about being seen. Student 6 who was sitting in the back seat stated he saw the teacher and her car. Student 8, who was sitting in the front passenger seat, stated that having seen the teacher's car she did not know where it went.

Student 6 told the Panel that student 7 did a U turn to enter the car park of the Gardens as they had decided to go there to hang out because they had no money. Having entered the car park, student 6 stated that he noticed the teacher and student 1 standing beside a car. He stated that they were approximately five metres away and



indicated the position on photographs of the car park supplied to him during the Hearing. He said he saw the teacher and student 1 out of the middle of the windscreen as they came together and kissed. He stated that he laughed and told the others "those two have kissed." Student 8 told the Panel that she saw the teacher and student 1 kissing on the lips and that it was more than a hello kiss. Student 7 stated that she did not see the alleged kiss as she was putting CD's away and that by the time she looked up having been told "look the teacher and student 1 are kissing" that they had finished.

Student 6, student 7 and student 8 each stated that giggling, they climbed out of the car and lifted, and hid behind, the boot of student 7's car. Student 6 stated he did not see either the teacher nor student 1 leave the park. Student 7 told the Panel that she saw only the back of student 1's car as it was leaving the car park. Student 8 had indicated in her statement to the Principal that student 1 had been wearing sunglasses. After witnessing the alleged incident student 6, student 7 and student 8 each gave evidence of having remained in the park discussing what they had seen and what they should do.

The teacher denied that she had been in the Gardens on 11 October 2004 and she denied that she had been with student 1, or kissed student 1. Student 1 denied having been in the Gardens with the teacher, and he denied having ever kissed the teacher.

The Principal, after having had the allegations brought to her attention, told the Panel that she met with all parties. In her evidence the Principal stated that she asked the teacher for proof that she had not been in the Gardens with student 1 as alleged. The Principal told the Panel that the teacher had not signed out as was the school protocol. She stated that the teacher told her initially that she had gone into the local suburb to seek advice as she was having marriage difficulties. The Principal asked the teacher to supply substantiation of this alibi. The teacher later retracted her initial alibi and stated that she had gone into the local suburb to buy her lunch. In her evidence, the teacher stated that she fabricated her initial alibi because "The Principal (could) be a very intimidating person" and she felt that the Principal's body language suggested that she had already made up her mind.

The teacher told the Panel that fifth period finished at 2.08pm and that she entered her car at 2.25pm. She said that to get to the Gardens would have taken 10 minutes making it 2.35pm. If she spent five minutes in the park she would have left at 2.40pm and have arrived back at the school at 2.50pm. She stated that she had her Care Group at 2.55pm. On the day in question the teacher said that she had to write out her Bulletin entry and give it to a member of the administration staff. She also had to collect the class roll and get to the room. She told the Panel she could not have done all this if she had been at the Gardens as alleged.

In his witness statement and in giving evidence to the Panel, student 1 stated that he had driven student 2 to the station at 2.15pm and then he had gone straight to the tennis club to train with his friend friend 1. Student 2 told the Panel that student 1 had driven her to the station which was a few minutes down the road. She told the Panel student 1 had sent a text message to her mobile between 5 and 6 pm of that evening and had tried to ring her mobile. He told student 2 that the rumour about the incident

in the park was untrue and that he had been training with friend 1 at the time. Student 2 contacted friend 1 who said he could not be sure about the time that student 1 arrived at the club. Student 1 supplied the Principal with friend 1's home address, but when he offered to go to his locker to get his mobile number the Principal said it would not be necessary. No contact was made with friend 1 by the Principal nor did student 1 seek a statement from him.

When questioned as to why the three students would collude to fabricate such a story, the teacher and student 1 both indicated that the student witnesses were motivated by a desire to undermine the position of those students who were seen as achievers. They both put the position that "high achieving students" such as student 1 were the target of "low achievers" such as student 6. When asked the students denied they would do such a thing and had little interest in student 1, his achievements or his future and that he was not in the same friendship group.

Student 1 also suggested that the Garden incident was fabricated as a means of revenge for student 1 having run into student 7's car. Student 7 in her evidence denied that this was so and stated that the matter had been resolved satisfactorily between their parents and that student 1's family were paying for the damage on a monthly basis.

#### ***The husband's evidence***

Having approached the Institute of his own volition and provided a written signed statement after the commencement of the hearing, the husband sought to withdraw his statement.

Counsel Assisting, argued that the husband having provided a witness statement of his own free will was not in a position to retract it. Section 45 of the Act empowers the Panel to issue a summons. Counsel Assisting argued that the content of the husband's witness statement was highly relevant to the issues to be decided, and the husband should be summonsed to attend. The teacher's representative argued that as the teacher and the husband were still legally married, the content of the statement was privileged, and therefore the husband could not be compelled to give evidence against his wife. It was also argued that issuing a summons would cause further delays and this would be prejudicial to the teacher as it meant a further loss of income and increased legal costs.

The Panel determined that the husband should be summonsed to produce his witness statement and to give evidence. The husband's evidence was relevant to the issues to be decided by the Panel. With regard to the issue of privilege, the Panel found that the husband could raise an objection when he appeared. While acknowledging possible financial disadvantage and delay for the teacher, the Panel held that these factors did not over-ride the primary purpose of these proceedings, the protection of the public. The teacher's representative argued "justice delayed is justice denied". In this matter justice was not denied, but satisfied by all the relevant evidence being heard.

Prior to hearing the husband's evidence, the Panel heard arguments on the question of whether the husband could be compelled to give evidence. The teacher's representative

argued that under s. 27(i) *Evidence Act 1958* communication between a husband and wife was privileged and although the teacher and the husband had been separated for 12 months they were still married. As a consequence, the husband could not be compelled to give evidence. Counsel Assisting argued that the husband was both competent and compellable under s. 24 *Evidence Act* and that the spousal exception under s. 27 *Evidence Act* applied only to communications between a husband and wife and not to events witnessed. The husband's evidence was highly relevant and had been *witnessed* and should be heard. Counsel proposed that the sections in the husband's statement that were communications could be excised.

Upon consideration of the opposing arguments the Panel noted that pursuant to s. 44(c) of the Act it is not bound by the rules of evidence. The sections referred to by both Counsel are rules of evidence and do not apply. The only rule that applies is whether the evidence is relevant. Clearly the husband's evidence is relevant and should be heard.

The husband said that he had found evidence that the teacher had nominated student 1's mobile number as her first contact (ie - priority) phone number. The teacher conceded that this was the case and acknowledged that the anticipated frequency of contact was the reason for her doing this. The husband also stated that he had found a photograph of student 1 in the teacher's wallet. The teacher stated that student 1, along with another student, had given her the photographs as a joke prior to travelling overseas. The husband stated that he only found the one photograph. The teacher stated that she had returned the other student's, but was unable to return student 1's as she could not find it. The husband told of witnessing the teacher brushing student 1's hand while he was playing pool at a gathering at their home. The teacher conceded this took place, but stated that they had been passing a pool cue between them at the time, and there was nothing in it.

The husband stated that the teacher would regularly ring his mobile phone number on football training nights. On a night when he was unable to attend training due to illness, he stated that both his mobile and home phones rang a number of times, but he did not answer them. Some time after this he saw the teacher's car pull into the driveway and then the garage door open, revealing his car was parked inside. He told the Panel the teacher then drove away, and he followed and found that student 1 was in the car with her.

## **DISCUSSION OF EVIDENCE**

### **Allegation One**

With regard to Allegation One the Panel draws a distinction between the alleged emails and the SMS text messages. The Panel notes that there was no direct evidence of the existence emails. The Panel did hear evidence that student 5 told a number of people about the emails, but none of these people ever saw them. Student 5 told the Panel that she had destroyed the hard copies in January 2005. A search by the school of the server found no emails on their system. The Panel could not be satisfied that the

teacher sent emails to student 1, that included phrases such as 'missing you' and 'missing your touch'.

With regard to the allegation that the teacher sent SMS messages to student 1 in July 2004, the Panel heard evidence from her estranged husband that he found an account for her mobile phone that showed over 200 text messages had been sent to student 1's mobile number over a two week period.

The teacher conceded that she had sent more than 200 SMS text messages to student 1 in July 2004. She told the Panel that the messages related to her counselling of student 1 about his break up with student 5 and other information about sport.

Responding to further questioning the teacher said that student 1's SMS messages to herself had contained declarations of his love for her. One message the teacher said read "I love you, I love you, I love you" to which the teacher stated she replied, "I'm married, I'm married, I'm married". The teacher acknowledged that upon reflection, her SMS messages to student 1 were probably flirtatious and may have encouraged his infatuation. She maintained, however, that she did not send SMS text messages containing intimate statements to him, despite receiving them from him.

The evidence of the husband, teacher 2 and several student witnesses, together with the confirmation of the volume of phone and text messages exchanged, suggests a sustained pattern of behaviour on the part of the teacher and student 1. This pattern included the teacher regularly giving student 1 lifts in her car, and contact outside of school including a day rollerblading at St Kilda, when only the two of them were present.

The Panel finds that the teacher sent over 200 SMS text messages to student 1 in July 2004. The Panel makes no finding on the content of the texts sent by the teacher to student 1.

### **Allegation Two**

It was agreed by all parties that the teacher had attended a function at the house of Year 12 student student 11 on 10 September 2004 and that student 1 was also in attendance. The teacher was the only teacher at the function with several Year 12 students. Although student 11's father was in attendance, student 3 and student 2 stated that he went to bed at about 11pm. The Panel finds that the teacher had number of alcoholic drinks with the students, staying into the early hours of the morning. Evidence of physical contact between the teacher and student 1 during the evening was provided by student 2 and student 3, and their evidence was consistent. Both student 2 and student 3 admitted consuming alcohol at the function, but considered their recollections were accurate. The teacher and student 1 denied having any physical contact during the evening.

Throughout the hearing the teacher and student 1 were shown to have been less than forthright, omitting details of meetings outside of school hours until confronted with

other testimony. The teacher admitted in evidence that student 1 had lied when giving evidence about the nature and extent of the text messages he had sent to her.

### **Allegation Three**

The teacher admitted that she had made the phone call to student 4 at 2am from the party using student 1's mobile phone. Student 4 was extremely upset about receiving a call at that hour, particularly given the nature of the call, and the fact that it was made by a teacher. The Panel finds student 4 to be a credible witness and accepts his version of events. It also accepts that the teacher did make the statement that alcohol was to blame for her behaviour.

### **Allegation Four and Five**

The three Year 12 students who stated they saw the teacher and student 1 in the Gardens gave consistent evidence with regard to what they saw and how they reacted to the event. There was some confusion over the colour of the cars involved. By reporting the matter to their parents and to the school the students knowingly put themselves at risk given that they had broken school rules. Both the teacher and student 1 were known well enough to them for the 3 students to be able to feel confident about identifying them.

The teacher could provide no reasonable alibi for her whereabouts at the time in question. She has been shown to have changed her alibi when she knew it could not be substantiated. Her evidence regarding the time break down showing it was not possible that she was in the Gardens relies on her alone saying she left the school at 2.25pm even though period five, by her admission, ended at 2.08pm. Her evidence that it would take ten minutes to get to the Gardens was contradicted by the student witnesses who stated that it would take between four and five minutes.

Student 1's claim that he could not have been in the Gardens at the time because he was at tennis training with his friend friend 1 was never proven. The school made one unsuccessful attempt to contact friend 1. Friend 1 did not come forward to provide student 1 with an alibi. The Panel accepts the evidence given by student 2 that when she contacted friend 1 he was unsure of the time that student 1 arrived at the tennis club.

The Panel does not accept the explanation provided by the teacher and student 1 that the student witnesses were motivated by a desire to undermine the position of students like student 1 who were seen as achievers. The evidence of teacher 1 and all the student witnesses denied the existence of such a culture. The Panel also finds that the suggestion that the Garden incident was fabricated as a means of revenge for student 1 having run into student 7's car to be not credible. The Panel detected no animosity on student 7's part in relation to the damage and accepted that she felt the matter had been resolved to her satisfaction.

The Panel did not detect any inappropriate motivation on the part of the three students. The Panel accepts their evidence and is satisfied that the events as described in allegations four and five did occur.

## **FINDINGS OF FACT**

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

- The teacher is a registered teacher.
- In July 2004 the teacher sent numerous text messages to student 1.
- The teacher attended a function at the home of a student, student 11, on 10 September 2004 and student 1 was also in attendance at the function. The teacher consumed alcohol with the students. There was inappropriate physical contact between the teacher and student 1.
- That the teacher telephoned a student student 4 on his mobile telephone at 2am on Saturday 11 September 2004 stating "This is the athletics coach. student 1 will be running in both the 800 and 1500. You're not good enough." The teacher subsequently apologised to student 4. The teacher was under the influence of alcohol when she made this call. The teacher later made a statement that the alcohol was to blame for her behaviour.
- The teacher was seen at the Gardens on 11 October 2004 by student 7, student 8 and student 6. The teacher was seen kissing student 1 by student 6 and student 8 at the Gardens on 11 October 2004.

## **CONCLUSION**

The purpose of disciplinary proceedings is to protect the public. Scrutiny of all the available evidence has found the behaviour of the teacher to be most unsatisfactory, and lacking in personal and professional insight. The proven behaviour of the teacher demonstrates poor professional judgement and a high degree of immaturity.

The teacher's position is one of power and influence – a position of trust. It is the view of the Panel that the teacher breached this position of trust, and further went on to exploit the position of trust, to suit her own particular purposes.

The Panel finds that the extent of the communication between a teacher and student was highly irregular and inappropriate. Further the Panel viewed the way the teacher conducted herself with student 1 did nothing to discourage his romantic attention, rather she encouraged and fostered it through inaction. The result of the teacher's behaviour was the development of an inappropriate relationship between the teacher, a teacher and student 1, a student.

The Panel is of the view that the teacher's behaviour amounted to serious misconduct. Her wayward behaviour had a deleterious impact on some students. The teacher showed some understanding of the impact of her behaviour; however insufficient depth of understanding to satisfy the Panel that she should return to teaching immediately. Further the Panel was of the view that the teacher as yet did not comprehensively understand the broader significance of her indiscretions and the impact such indiscretions have on the teaching profession as a whole.

The Panel has determined that a return to teaching for the teacher would not be appropriate prior to the 2007 school year, and further that the mandatory condition placed on her return would be for the teacher to provide evidence that she had attended 10 psychological counselling sessions during 2006. The sessions should cover the trust and power relationships between students and teachers, maintenance of professional standards when working with young people, professional boundaries between students and teachers including differentiating between personal and professional relationships, the legal obligations of teachers, and acknowledgement of the Code of Ethics for the teaching profession developed by the Victorian Institute of Teaching (issued in 2005), and the Code of Conduct for the teaching profession developed by the Victorian Institute of Teaching (to be issued in September 2006). The teacher will have the onus of presenting a report to the Institute signed by a psychologist. Once the condition is met the teacher would be able to be registered as a teacher as of 1 January 2007.

**FINDINGS UNDER SECTION 42(2) OF THE ACT**

Based on the above findings of fact and the application of the law the Panel finds that the teacher is guilty of serious misconduct.



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**SUSAN HALLIDAY, CHAIRPERSON**

per



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**ANNE FARRELLY, REGISTERED TEACHER**

per



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**KATHLEEN BRAGGE, PANEL MEMBER**