

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 30

REGISTERED TEACHER: **STUART LINDSAY DEAYTON**

PANEL MEMBERS

Marilyn Mooney, Chairperson

Patricia Ryan, Registered Teacher

Graham Hoult, Member

ATTENDANCE: The teacher was represented by Mr Edward Johnson

Counsel Assisting: Ms Anne Sheehan with Ms C Pickett
solicitor instructing

DATE OF HEARING: 2 and 3 February 2006

DETERMINATION UNDER SECTION 42(2) OF THE ACT

On 10 February 2006 the Panel decided to cancel the registration as a teacher of Stuart Lindsay Deayton.

EFFECT OF THE DECISION

The effect of the decision is that Stuart Lindsay Deayton is not registered as a teacher in Victoria from 10 February 2006.

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(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.

By letter dated 4 August 2004 the employer notified the Institute that they had taken action against the teacher in relation to alleged serious misconduct. The employer notification was made in accordance with section 27 of the Act.

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 23 November 2005 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 13 December 2005 with all relevant documents attached advising him that the formal hearing would be held on 2 and 3 February 2006.

The Notice of Formal Hearing set out the following allegations:

1. That in term 1 2004 The teacher had contact with a year 10 student student 1 outside the classroom including
 - a. Seeing student 1 walking home from school, parking his car on the wrong side of the street and speaking to student 1 from the car for 10 to 15 minutes in L Street home town,
 - b. On 30 March at the College fete and afterwards at the neighbouring town 1's Plaza,
 - c. At the College swimming sports where he took many photographs of student 1
 - d. Discussions with student 1 at the sports stadium
2. That in term 1 2004 the teacher suggested to student 1 that they could keep in touch during his long service leave in term 2, by sms text messaging. The teacher wrote down his mobile telephone number and put it under his keys in the stadium, telling student 1 to copy it down.
3. In the last two weeks of term 1 the teacher and student 1 exchanged sms text messages. In one message, the teacher referred to student 1 by a nickname, Paris.
4. In the last few weeks of term 1 the teacher had a discussion alone with student 1 in the sports stadium. The teacher put his arm around student 1 to comfort her and gave her a hug and kiss on the top of her head.
5. In the last week of term 1 2004 the teacher sent a text message to student 1 'Hi sweetheart how was your day what did you do Stuart'.

6. That contrary to instructions from the principal of the College at a meeting on 2 April 2004, the teacher continued to exchange sms text messages with student 1.
7. On 3 April the teacher sent a text message to student 1 'you know how much you mean to me and how much I love you'.
8. On 3 April student 1 replied by sms advising the teacher that she was in the supermarket car park in neighbouring town 1. The teacher met with student 1 and spoke with student 1 while she was sitting in a parked car with student 2.
9. That contrary to instructions from the principal of the College at a meeting on 2 April 2004, the teacher spoke with student 1 and student 2 about his discussion with the principal.
10. That the teacher and student 1 exchanged sms text messages during the term 1 holiday, three to four messages per day.
11. That contrary to instructions from the principal of the College in a letter of 19 April, the teacher continued to exchange sms text messages with student 1 in Term 2.
12. The teacher exchanged sms text messages with student 1 in term 2 while the teacher was on leave, including the words 'darling', 'sweetheart', 'honey'.
13. That in the second or third week of term 2 the teacher sent an sms text message to student 1 'hi sweetheart what are you doing" student 1 replied that she was going to bed. The teacher sent an sms text message 'ok darling I think I love you'.
14. That the teacher sent student 1 an sms text message on her birthday on 14 May, wishing her luck with her learner driver's license.
15. That the teacher met with student 1 in the Department store car park in neighbouring town 1, following an sms conversation and spoke with student 1 for approximately 25 minutes. The teacher remained in his car during the conversation and held student 1's hand though the driver's window.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 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 terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

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. 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. 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)

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

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).

DOCUMENTS CONSIDERED

The following documents were provided to the Panel

- Witness statement of the Principal dated 27/10/2005 numbering 3 pages and attachments
 - IM1 – Record of interview 2 April 2004
 - IM2 – Letter to the teacher dated 2 April 2004, 2 pages
 - 1. attachment record of interview 2 April 2004
 - IM3 – Handwritten notes of meeting 2 April 2004
 - IM4 – Letter to the teacher dated 19 April 2004, 3 pages
 - IM5 – Record of interview 24 May 2004
 - IM6 – Photocopy of text message
 - IM7 – Letter to the teacher dated 9 June 2004, 3 pages
 - 1. attachment record of interview 24 and 26 May 2004
 - IM8 – Letter to the teacher dated 9 June 2004
 - IM9 – Letter from the employer dated 3 June 2004
- Witness statement of student 1's aunt dated 25 October 2005
- Witness statement of student 1's mother dated 2 December 2005
- Witness statement of student 1 dated 2 December 2005, 4 pages
- Witness statement of student 2 dated 30 November 2005, 2 pages
- Witness statement of student 3 dated 8 November 2005
- Witness statement of the teacher dated 2 November 2005 (5 pages) and attachments
 - SD1 – Photocopy of text message 13 May 2004
 - SD2 – Photocopy of text message
 - SD3 – Photocopy of text message
 - IM2 – Letter from the College to the teacher dated 2 April 2004 (2 pages) and attachment
 - SD4 – Letter of response from the teacher to the College dated 4 April 2004 (4 pages)
 - IM4 – Letter from the College to the teacher dated 19 April 2004 (3 pages)
 - SD5 – Letter of response from the teacher to the College dated 9 June 2004 (3 pages)
 - IM7 – Letter from the College to the teacher dated 9 June 2004 (3 pages) and attachment
 - SD6 – Letter to the employer from the teacher dated 17 August 2005 (4 pages)
- Copy photographs (25)
- Copy the employer's letter to the teacher dated 3 June 2004
- Copy the employer's letter 3 June 2004
- Copy letter from the teacher to the College dated 6 July 2004
- Copy letter from the College to the teacher dated 12 July 2004
- Copy letter from the College to the employer dated 13 July 2004 (4 pages)
- Copy letter the employer to the teacher dated 20 July 2004 (2 pages)

The following documents were provided on behalf of the teacher

- Outline of Submissions on behalf of the teacher by Edward Johnson, Industrial Officer, Australian Education Union (Vic Branch) dated 1 February 2006
- Copy of reference for the teacher from Real Estate Agent and former employer of the teacher dated 23 January 2006.

CLOSURE OF HEARING

Following submission from Counsel Assisting the Panel, the Panel determined that because of the intimate and sensitive evidence being given the proceedings would be closed, in accordance with sections 41(d) and 41(e) of the Act, while the three students, student 1, student 3 and student 2, gave evidence and that their names should not be published or broadcast.

THE EVIDENCE

The Panel heard evidence under oath or affirmation from:

- The Principal
- Student 1's mother
- Student 1
- Student 1's aunt
- Student 2
- Student 3
- The teacher
- Friend 1
- Friend 2

The Principal

The Principal confirmed under oath that his written statement was true and correct.

The Principal informed the Panel that he took up his position as Principal of the College from Term 1, 2004. The Principal stated that, prior to moving the College, he knew the teacher only in a casual manner through his wife who had taught with the teacher. The Principal acknowledged that in a small country town people 'run into each other constantly' and that in that context he probably had contact with the teacher regularly.

In response to Mr Johnston's questioning, the Principal told the Panel that as a new Principal to the school he had not sought any assistance from the teacher. He stated that they had some contact but not a lot. In response to questioning from Mr Johnson, the Principal said that he was unable to confirm the teacher's competence as he had not been at the school long enough to make that judgement.

In response to questioning from Mr Johnson regarding whose responsibility it was to take photos, the Panel heard that the School Magazine was produced by teacher 2 and teacher 3. The Principal told the Panel that it was not the teacher's responsibility or role

to take photos for this publication, and that he was unaware of any arrangement made between the teacher and the magazine producers for him to take photos for that publication.

The Principal said that the teacher sought and obtained his permission to start a “Hall of Fame”. He told the Panel that a strict criterion of elite sporting achievement is placed on eligibility to be included in the Hall of Fame. This criterion was clear to the entire school community. The Principal said that student 1 was not a particularly outstanding swimmer and therefore photos of her would not be necessary for inclusion in the “Hall of Fame’.

The Principal stated that he did not form an opinion of the teacher’s behaviour when he first saw the teacher speaking to student 1 in L Street, home town. Although he did note that the teacher’s car was parked on the wrong side of the street and on the nature strip. It was when he again observed the teacher engaged in a conversation with student 1 at the school fete and later at the record store in neighbouring town 1 Shopping Plaza, that he thought the behaviour “strange and odd”. The Principal informed the Panel that it was the circumstances of the conversations and the body language he observed that made the contact a concern for him. The Principal said that he intended to informally chat with the teacher about these incidents; however the text messages issue then came to his attention so he initiated a formal process instead.

The Panel heard evidence that student 1’s aunt, a staff member told the Principal of a text message that student 1’s mother had seen on student 1’s mobile. The Principal’s written statement informed the Panel that the text message sent to student 1 from the teacher contained words to the effect of ‘hi sweetheart, how was your day?’

The Principal’s confirmed that his written statement outlines the process he undertook when investigating the issues.

In his statement the Principal informed the Panel that he organised a meeting on the morning of 2 April, with student 1 and student 1’s aunt to investigate the claims further. From information received at this meeting regarding text messages and inappropriate contact between the teacher and student 1, the Principal asked the teacher to attend a meeting with him and the Assistant Principal that afternoon. At the meeting the Principal handed the teacher a letter containing a series of allegations regarding his behaviour towards student 1 and verbally requested him to respond in writing by 7 April 2004. The Principal’s evidence included that he gave clear advice, both verbally and written, to the teacher that the proceedings are confidential, and that the teacher was not to approach any of the people named in the complaint.

The Principal considered the teacher’s written response and in consultation with the employer, wrote to the teacher informing him of his findings as to the substance of the allegations. The Principal found that some of the allegations against the teacher were substantiated including sending inappropriate text messages to student 1 and having inappropriate contact with student 1.

As a result of this investigation the Principal required the teacher to:

- familiarise himself with:
 - the professional standards and dimensions of teaching applicable to teachers;
 - the College's Staff Code of Conduct;
 - the employer's Sexual Harassment policy.
- provide evidence to the Principal that he had undertaken and successfully completed the employer's online *Workplace Discrimination and Sexual Harassment* training course.
- Utilise the Student Welfare Co-ordinator as a mentor throughout the monitoring period, which continued until the end of the year. Areas for mentoring include: counselling, pastoral care, and welfare support to students,

In the Principal's statement and letter to the teacher he reiterated the requirements for confidentiality as well as not approaching any persons involved in the complaint.

The Principal informed the Panel that none of the above requirements were completed as the teacher took long service leave in Term 2 and did not return to the school. He added that student 1 had received counselling at school as well as privately.

Student 1's mother

Student 1's mother gave evidence under oath and confirmed that her written statement is an accurate and true account.

Student 1's mother told the Panel that she works at a Nursing Home as an Administrative Assistant. She said that the teacher taught her daughter, student 1, Mathematics and Physical Education and that neither she nor student 1 had any problems with his teaching.

Student 1's mother's evidence was that on her 15th birthday in May 2003, student 1 received a mobile phone as a present. It was a prepaid plan where student 1's mother would buy \$25 worth of credit when needed. student 1's mother was unable to say just how many new cards or \$25 top ups she purchased. The Panel was told that there was no particular monitoring of student 1's calls but rather it was covered in general conversation.

In response to Mr Johnson's question regarding the text message that student 1's mother saw on her daughter's mobile, student 1's mother said that she was offended and concerned by the term used by the teacher. She showed her sister, student 1's aunt, who works at the school, so that she could get a second opinion and to see if her reaction was 'normal'. In student 1's mother's written statement she said that the teacher used words to the effect "Hi sweetheart, how was your day. What did you do?" Student 1's mother told the Panel that she found the term "Sweetie" offensive when used by a teacher to a student.

Student 1's mother's written statement proffered the belief that after discussions with her daughter that further text messaging had finished. However, the Principal told her

on 24 May 2004, that this was not the case. Student 1's mother's statement mentions that she had a further conversation with her daughter student 1, who "indicated she had not known how to end the relationship with the teacher. She was upset and embarrassed."

Student 1

Student 1 gave evidence under oath and confirmed that her written statement is an accurate and true account. Student 1 told the Panel that she is a Year 12 student at the College and that she has two part-time jobs.

She informed the Panel that the swimming sports are held as a Twilight meeting starting at around 2 in the afternoon and ending about 7pm. On the day of the sports students are not required to attend school in the morning. House colours are worn to the swimming sports whereas a school uniform is worn on normal school days.

Student 1 told the Panel that in 2004 she was in quite a few events, including freestyle and a relay. She said that she was an average swimmer and that swimming was her weakest sport. She could not recall being placed in any event or if she did it could only have been a 3rd placing. Other sports she played included netball and basketball, with basketball being her strongest sport.

Student 1 informed the Panel that she noticed the teacher with a camera and that she felt it was angled towards her a lot. She said that approximately 30 photos were put on the notice board for the Hall of Fame including a lot of photos of her. She said that some boys commented, "who's the favourite?"

Ms Sheehan, counsel assisting, took student 1 through a series of 25 photos taken by the teacher at the swimming sports and the school fete. These photos were found on the teacher's laptop computer. Student 1 was unaware of the existence of these photographs, she could, however identify herself in all but 3 of them. There were 7 photos of student 1 standing around in her bathers at the swimming; the remainder were of student 1 standing around at the fete.

Student 1's evidence to the Panel of the meeting in L Street with the teacher was that the teacher swerved his car to the wrong side of the road so that he could talk to her. Their conversation was about general everyday events. She said that during March she talked to the teacher a lot in the stadium at lunch-time. Student 1 could not recall talking about any specific problems but the conversation may have been about her boyfriend problems. She could not recall the teacher's responses but told the Panel that their conversations were mainly general apart from boyfriend problems.

Student 1 told the Panel that she knew that the teacher was going away in Term 2 but after their relationship became more personal in terms of her "finally finding a teacher she could talk to", she did not want him to go. She informed the Panel that the teacher said that he did not want to go either - that he wanted to stay with her at school. Student 1 said that the teacher comforted her by putting his "arm around me and kissed the top of my head".

The Panel heard that the texting began about 6-7 weeks into Term 1. Student 1 told the Panel that the teacher came up with the idea of texting to keep in touch. Student 1's evidence was that in the gym one day the teacher said he had put his number under his car keys and for her to copy it down. She did and left her number as well.

In relation to the "Paris" nickname, student 1 told the Panel it probably started at the end of Term 1. Student 1 said that she had confided to the teacher that she wanted to go to overseas, particularly to Paris. From then on the teacher would refer to her as "Paris" when texting.

Student 1 informed the Panel that she was angry and embarrassed when she found out that her mum had read the text message from the teacher in which he said words to the effect "Hi sweetie". She said that she felt her mum had invaded her privacy. Student 1 said that they discussed the issue and she realised that her mum was 'looking out for me' but that she was still a bit angry.

In response to questioning from Counsel Assisting about the meeting with the Principal on 2 April, 2004, student 1 said that she attended with her aunt. In her statement, student 1 said she told the Principal that she and the teacher "talked quite often and met outside school, but were just friends." She also told him about the text messages that the teacher had sent her, including the "hi sweetheart" text. Student 1's written statement provides evidence that it was made clear to her at this meeting, that this sort of friendship and text messaging between a student and a teacher was not appropriate. Student 1 said that she was told by the Principal that he would be speaking to the teacher and for her to keep the discussion confidential.

Student 1 told the Panel that a couple of weeks after the meeting with the Principal she was receiving 3 or 4 text messages a day from the teacher. She said she talked with him about it not being 'right' and that "he was putting his job at risk". Student 1 stated that the teacher said, "I'm willing to go on if you are." In her written statement student 1 said, "I did not really know how to get out of the situation."

On the night of 2 April 2004, the same day as the meeting with the Principal, student 1 attended the Debutante Ball. She told the Panel that she was seated downstairs but at one stage went upstairs to visit friends. She saw the teacher, said hello and he responded, "Your dress is nice."

The Panel heard that the next day she ran into the teacher and another teacher in neighbouring town 1. Student 1 said that she was sitting with student 2 in student 2's mother's car in the supermarket carpark in neighbouring town 1. In student 1's written statement she says that while sitting in the car she received a text message from the teacher asking, "what I was up to". Student 1 said she told him where she was. A short time later he arrived with his daughter. She said that the teacher was cross and defensive because people had complained to the Principal about there being more photos of girls than boys from the swimming sports. Student 1 recalled that his bad language shocked both her and student 2.

Student 1 told the Panel that the teacher, at some stage, had received a new phone number. She was not sure if it was a prepaid plan.

Text messages increased a lot after this and became more personal with him using terms such as 'honey', 'darling', 'sweetie', and 'Paris'. In her written statement, student 1 describes how she kept warning him that he was putting his job in jeopardy. She said "I felt like I was the adult and he was the child." In the statement, student 1 said that at about the 2nd or 3rd week of Term 2 she received an SMS from the teacher, which said, "Hi sweetheart, what are you doing." She replied that she was going to bed, which got the response from the teacher "OK, darling, I think I love you". Student 1 said that on her birthday, 14 May 2004, she received a text message from the teacher wishing her good luck with her 'Ls'.

Student 1 told the Panel that around her birthday she had gone to neighbouring town 1 with a friend who was trying out for the state netball team. She watched her for a while and at approximately 8 pm walked to the Plaza to get some water. She said she received a text message from the teacher asking, "where are you?" Student 1 responded that she was in the Department store. The teacher then drove up, met student 1 and they chatted in neighbouring town 1's Department store carpark.

Student 1 told the Panel that she felt uneasy and uncomfortable because both of them had been spoken to by the Principal and knew that they should not be meeting. Student 1 said that the teacher asked her to stay "Just 5 more minutes." The Panel heard that the teacher tried to kiss student 1 but she said no and left.

Student 1 informed the Panel that she received other text messages from the teacher but that after she met with the Principal on May 24 she did not reply. In her written statement, student 1 provided a signed and witnessed copy of the last text message received from the teacher. This was on 29 May 2004 and read "how ya going!"

In response to Mr Johnson's questions regarding how she financed her mobile, student 1 told the Panel that sometimes she bought Sim cards and sometimes her mum and dad did. She stated that she saw her dad every second weekend but that her father rarely gave her any money. She told the Panel that she had no arguments or problems with her mother. She said that if she did have problems she could talk to the School Nurse or the Student Welfare Co-ordinator (SWC). In response to Mr Johnson's questioning, student 1 said that she spoke to the teacher about her boyfriend problems because "I could talk to him at that time."

Student 1 said that if other students had problems they would probably go outside the school or to the SWC. When asked how the teacher singled her out, student 1 said that he would ask her to stay behind and they would talk about things not normally talked about by teachers with students. She said that sometimes other students were there and sometimes it was just the two of them.

During Mr Johnson's questioning, student 1 clarified that to be included in the Hall of Fame a student had to perform to a high standard of swimming whereas the same criteria did not apply to the school magazine.

Student 1 told the Panel that sometimes she initiated text messages and that they would occur at various times throughout the day. She explained that she had enough money to SMS.

Student 1 was asked about the affectionate terms that she said the teacher called her. In response she said that at first they made her feel uneasy but then it became commonplace. Mr Johnson asked her if she had at any time asked the teacher to stop the texting. She replied that on 2 April she said to the teacher “I think we should not do this any more – it’s putting your job at risk.”

In response to further questioning from Mr Johnson, student 1 confirmed to the Panel that, although no messages were received while the teacher was in Queensland, she and the teacher were still sending messages up to 24 May. This was when she stopped sending text messages. When asked about the meeting at the Department store carpark she acknowledged that the teacher did not attempt to get out of the car. She did however say that he “shouldn’t have met me out of school and he shouldn’t have tried to kiss me’.

Mr Johnson questioned student 1’s veracity in regard to her comment about the meeting at the Department store carpark being a ‘chance meeting’. Student 1 acknowledged that she was not honest about this in her 24 May meeting with the Principal because, as she said in her written statement, it was not a chance meeting it was arranged.

Student 1’s aunt

Student 1’s aunt gave evidence under oath and confirmed that her written statement is an accurate and true account. She told the Panel that she is a School Support Officer (SSO) at the College and has been at the school for 6 years. She has worked with the employer for 18 years.

The Panel heard that student 1’s aunt was contacted by her sister who was distressed over a text message that she had found on her daughter’s mobile. Student 1’s aunt went to her sister’s home where she was shown the text message containing words to the effect “hi sweetheart, how was your day. What did you do? Stuart”.

In student 1’s aunt’s written statement she says that she thought the message was from the teacher. She felt the messaging was inappropriate and was asked by student 1’s mother to raise the matter with the principal, which she did.

Student 2

Student 2 gave evidence under oath and confirmed that her written statement is an accurate and true account except for point 7, where the last three lines should read: “Student 1 was seated downstairs and the teacher was seated upstairs. Staff were also seated upstairs. Student 1 came upstairs during the evening and spent most of the time she was there speaking with the teacher.”

Student 2 told the Panel that she is a Year 12 student at the College.

In response to questioning from Mr Johnson, student 2 said that she went to see the Principal on 24 May because she felt that the relationship between student 1 and the teacher was going too far. She stated that by the 24 May she was concerned that the messaging was becoming more frequent. She added that student 1 also told her that the messaging was becoming more personal. Student 2 felt that student 1 'couldn't see the involvement'.

Student 2 could not recall the exact days that the stadium was open but she said that when it was open she, student 1 and other friends would go in. Student 2 told the Panel that student 1 would often go off alone with the teacher. In response to Mr Johnson's suggestion that this contact was through the teacher joining in the game/activity – student 2 responded that the teacher did not very often play games with students.

When asked by Mr Johnson if the nickname "Paris" was serious, student 2 replied, "I hope not. I didn't think it appropriate." In her written statement, student 2 said that student 1 told her that the teacher had given her the nickname "Paris" because he wanted to take her to Paris. In her written statement she also said student 1 told her that on one occasion the teacher gave her a hug and kissed her.

Student 2 told the Panel that on the night of the Deb Ball, 2 April, The teacher sat upstairs with his daughter. She said that student 1 came up, spoke to her and her boyfriend and then spoke with the teacher for some time.

Student 2 told the Panel that student 1 said to the Principal that she had sent 10 messages but she admitted to student 2 that it was more like 100. In her written statement student 2 said that student 1 also told the teacher this so he could give the same response.

In student 2's written statement, she states that while they were in her mother's car on 3 April in the Supermarket carpark, student 1 received a text message from the teacher. student 2 said that student 1 showed her the message which was along the lines of "you know how much you mean to me and how much I love you". Student 2 said that student 1 sent a text message back to the teacher telling him where they were. The teacher arrived and spoke to them. Student 2 said that he was agitated, swearing a lot, and annoyed that someone had 'dobbed him in for taking too many photos of girls."

Student 2's written statement says that throughout Term 1 and at the beginning of Term 2 she was aware that contact between student 1 and the teacher was continuing. She contacted the Principal on 24 May to give him this information.

Student 3

Student 3 gave evidence under oath and confirmed that his written statement is an accurate and true account except in the second paragraph where it should read that student 1 and her friend student 2 were clearly favourites of the teacher **in class not out of class.**

Student 3 told the Panel that he was a Year 12 student at the College. He said that he and student 1 were in a relationship for about two and half years but it ended in approximately February 2005.

In student 3's written statement he said that student 1 told him that she was receiving text messages from the teacher, which expressed his love for her. He said that the teacher referred to her as Paris. Student 3 said that he only saw one message and this was when he picked up student 1's phone once when she left the room. He was unable to recall the content of that message.

Student 3 told the Panel that on one occasion he went to the gym to see student 1 and to ask her to come out. She refused and said she would come out later. Student 3 said that it greatly annoyed him that she spent time alone with the teacher.

The teacher

The teacher gave evidence under oath and confirmed that his written statement is an accurate and true account.

The teacher said that in early January 2004 he introduced himself to the Principal, as he was new to the school. Also he wanted to tell the Principal of the administrative tasks he was doing.

The teacher told the Panel that teacher 3 and teacher 2 were the people who organised the school magazine and that they had been the only ones to take photos. He explained that they still used film not digital, which meant that fewer photos could be taken due to the cost. The teacher said that he came to an arrangement with teacher 3 and teacher 2 that he would use his new digital camera to take photos for the magazine.

The Panel was told that the teacher was a Stroke Judge and photographer at the sports. He said that he did not believe that he had taken too many photos of student 1. He said that she was a Hall of Fame contender because she made the school's 'rep team' and to do that a swimmer had to come a place.

The teacher explained to the Panel that he met up with student 1 in L Street after she had "sort of beckoned me over". She said, "Can I say something to you?" In his written statement the teacher said that it was a chance meeting where student 1 thanked him for advice he had previously given her, they exchanged pleasantries and he told her to have a good weekend.

The teacher's explanation of the contact at the school fete was that the event was occurring in a small area and because of this he came into contact with student 1 fairly frequently. A group of Year 10 girls were helping him with a particular activity and during this he would engage in general conversation with student 1.

The Panel was told that the teacher ran into student 1 by chance when he was shopping at a music shop. He said he went there to check out some prices, he did not see student 1, then she appeared and said 'hello, how are you going?' They had a brief

general chat and then he left. The teacher said he saw other parents there, as well as the Principal.

The teacher informed the Panel that he has no knowledge as to how student 1 got his mobile phone number. He suggested that student 1 must have picked it up from where he left his keys, diary and business cards. The teacher suggested to the Panel that student 1 initiated all text messages. He said that student 1 told him that she was having problems with her boyfriend and at home. The teacher said that her texting became more familiar and that she was looking for support but that he was trying to keep some distance.

The teacher told the Panel that he was never alone with student 1 in the gym. In response to student 3's assertion that when student 1 was in the gym, the teacher would join in the activity, he denied doing this as he was on duty and would have to keep an overall eye on things.

The Panel was told that by the end of Term 1, from April 3 onwards the teacher was receiving 4-5 messages a day from student 1. He said that he did tell her to stop and that she was "overstepping the line". The teacher told the Panel that he never sent a message to student 1 saying that he loved her.

The teacher told the Panel that he wanted to take his daughter to the Deb Ball but realised that student 1 would be in attendance. He contacted the Principal who told him that it was his choice. He did not see student 1 but knew that student 2 was sitting behind him. He said that student 1 later came up said hello to student 2, and then shocked him when she came and said hello to him and his daughter.

The teacher informed the Panel that he did not go to the Supermarket carpark deliberately to meet student 1. He said that he had to organise some things for his daughter's dance concert and as such drove to the Supermarket where he saw student 1 and student 2 sitting in student 2's mother's car. He said they had a brief conversation. He said that he did not receive student 1's text message telling him that she was in the Supermarket carpark until he arrived home.

The teacher told the Panel that he did not initiate the texts but that he did respond sometimes. He said that often he would not read them, he would just delete them. He said that he could not understand why student 1 continued to text as he thought she was happy with her boyfriend and at home. "I thought she would just stop." When asked why he did not tell the principal, the teacher said that he thought they would just die out.

The teacher told the Panel that student 1 repeatedly told him about her birthday, asking him if he was going to wish her a happy birthday. The teacher said that one of his last messages to student 1 was simply "H.B."

In explaining the incident at the department store, the teacher said that he had called down to do some incidental shopping. He said that he spotted student 1, she came over and they had a general conversation, lasting about 2-3 minutes, about his

upcoming holiday. The teacher said that student 1 was standing about 2-3 metres away from the car. He told her that he was going and she said, "I don't want you to go." The teacher said he responded to the effect that he was sick of these messages and told her not to send any more. He said that student 1 then told him that she had this affection for him to which he replied, "Well you can't do that – I'm your teacher."

The teacher said that he did not favour student 1 over other students. He said that he used a variety of tactics and approaches to share jobs and attention around so that all students were treated fairly.

He told the Panel that as an experienced teacher he was well aware of duty of care issues and of the difference between being friendly and being their friend. He said that teachers were in a powerful position where they were trusted and given responsibility to look out for students.

In response to questioning by Ms Sheehan, the teacher acknowledged that some of the content of his text messages to student 1, e.g. "hi, sweetie", he may have overstepped the line. He suggested to the Panel that this was more him repeating and clarifying student 1's text to him. Further to this point, the teacher's letter to the Principal dated April 19 acknowledged that he did send a text message to this effect to student 1, that he regretted it, and that it was a stupid and inappropriate thing to do.

In response to questioning, the teacher said that he did not have permission from the Principal to take photos at the fete. He said that he had an arrangement with teacher 3 to take photos of students involved in activities at the fete for the school magazine. He said that he asked students, including student 1, if he could take their photos. He disagreed with student 1's assertion that she did not know that the photos were being taken. He said that she asked him to take photos of her and that she saw the photos on the day.

When asked what was the purpose of taking photos of student 1 at the fete was, the teacher replied that students like to have their photos taken while they are involved in an activity. When shown a series of approximately 15 photos of student 1 and asked what the activity was that she was involved in, the teacher could not say.

The teacher told the Panel that he transferred the photos he took on to his school laptop, with the intention of burning the appropriate ones for teacher 3 on to a CD. He explained that he had culled 100s of photos so that about 200 were left. The teacher said that when several students indicated to him that student 1 appeared in a lot of photos, he pointed out to them that there were other boys and girls in more than one photo. He explained that the swimming photos were predominantly of winners and placegetters.

Regarding the issue of students now believing that he favoured student 1, the teacher said that he was unaware of that. He said he found student 2's evidence of him favouring student 1 strange.

The teacher told the Panel that student 1 sought his advice with difficulties she was having with some boys in the PE class and with maintaining interest in her LOTE class. He said that he gave her some strategies to use in both situations.

In relation to the incident in L Street, the teacher said that as he had previously talked to student 1 in the stadium about bullying, he followed this issue up when talking to her in L Street. He disagreed with student 1's evidence that he asked her what she was doing on the weekend, etc.

In response to questioning about when he suggested to student 1 that if the issues were continuing she should seek assistance from the School Welfare Co-ordinator and the school nurse, the teacher said that student 1 felt that the school nurse was a family friend and School Welfare Co-ordinator was new in the position and she would feel uncomfortable.

The teacher told the Panel that, prior to the L Street meeting, the text messages that student 1 was sending him were based around her wellbeing and activities such as basketball, TV, football and music. He could not recall if any involved personal issues or problems. The Panel heard that later text messages covered problems with school work, problems with boys in class, problems with her father in neighbouring town 2 and problems at home. The teacher said that student 1 did not go into any detail, she would just allude to things. The teacher said that student 1 did not look like her normal self. He said that there was 'emotion there'. He told her that if she just needed someone to talk to that he was there but if it was more than that she needed professional help.

The teacher explained to the Panel that in the L Street meeting he was driving home when he saw student 1. He said, "I stopped and wound down the window, she walked past, she waved and beckoned me over. She thanked me for the advice that I had given her". We exchanged pleasantries and I told her to have a good weekend. The teacher said student 1 was not upset or teary but she still did not look her normal self. The teacher said that he felt that student 1 was going through some difficult times in her life. He agreed with Ms Sheehan that student 1 was vulnerable at that time.

When asked why he then sent a vulnerable 15yo girl a text message calling her "Paris", he said that he was replying to student 1's text. He said that this event happened later when he was on long service leave. The teacher said he used the term "Paris" in the context of the country that student 1 wanted to visit. He said that he was not referring to Paris Hilton and if that is the interpretation, it is inappropriate and he regrets it. The teacher said that he regretted it because the name has other connotations and conjures up inappropriate images. In response to the assertion that he was being over-familiar, the teacher denied any intent to be over familiar, although he acknowledges his actions display over familiarity.

Counsel Assisting asked the teacher if in the first meeting with the Principal he expressed remorse and if he saw it as a "a wake up call". The teacher agreed with these conclusions and could offer no reason as to why the contact continued. The teacher denied student 1's evidence that she sent him a text that read, "it has to stop".

In clarifying the teacher's statement that he did not open the text message from student 1 telling him that she was in the Supermarket car park, until he got home, Ms Sheehan asked the teacher, why would student 1 send him a text message telling him where she was if she already knew that he knew where she was. The teacher was unable to clarify the text but acknowledged that there was a reference to being in the Supermarket car park.

The teacher had no response when Ms Sheehan put to him that it would have been important and relevant to include, in his 4 April letter to the Principal, that he had had contact with student 1 in the Supermarket car park and by text. The teacher said that he regretted not mentioning these facts in his letter and added that it was a chance meeting and was not in response to student 1's text. The teacher told the Panel that even after the 2nd meeting on 20 April with the Principal, where his professional requirements were made clear again both in written form (19 April), and verbally, he still did not think it important enough to tell the Principal of the contact he had had with student 1 as "I thought it was all over because I asked her to stop the texting."

The teacher informed the Panel that during this time he was experiencing personal problems and he felt like his "life was falling apart". His parents and his wife's parents were living in a capital city in another state, and his wife's father had been diagnosed with a serious illness. On one occasion he sought counselling in regard to teacher/student relationships from a counsellor who has had experience in counselling teachers. The Panel was told that the counsellor was used more as a listening post than for receiving advice. The teacher said that he tried to contact the counsellor to obtain a statement from him for the Hearing but he was unable to locate him.

The teacher and his wife also had counselling regarding their issues with the counsellor at a later date. The Panel heard that because he went on long service leave he did not have time to complete the employer's Sexual Harassment training nor take up the mentoring opportunity.

The teacher said that as at 20 April 2004 he did not think that he had done anything wrong. He said that he was finding the situation difficult to comprehend as he felt that the allegations were unfair.

The teacher acknowledged to the Panel that he was aware that student 1 was attracted to him and that any contact they had was "fuelling the flames". He also said that he talked to no one about the situation. He sent a text to student 1 on her birthday (14 May) because she had pestered him and insisted that he do so. He acknowledged that on reflection perhaps it was not the right thing to do.

The teacher told the Panel that when he came back from Queensland, he planned to talk to the Principal about the mistakes he had made and the remorse he felt. In response to Ms Sheehan's observations that the teacher's evidence centred on him and his emotional issues she questioned his thoughts regarding student 1's welfare. He said that he told student 1 that she should get on with her life and that her attention towards him was inappropriate and she should cease.

The teacher was unable to say why he sent a text message to student 1 on 29 May 2004 other than perhaps that he was responding to a text from student 1. He said that his poor characterisation of student 1 in the letter dated 17 August 2005 to the employer was incorrect and that he does not agree with that characterisation now. He told the Panel “I made mistakes and she has made some mistakes”. In response to the question asking what his mistakes were, the teacher said they “were being involved in a grinding, continual phase of sending text messages.” He said he told student 1 that, “someone of her age should be spending time with her friends, her boyfriend, etc. I didn’t help matters and I’m sorry.”

Mr Johnson asked the teacher if he had needed to remove any files from his laptop computer. The teacher explained that there was nothing on it that he was worried about including the photos of the swimming sports and the school fete.

When asked by the Panel to identify the professional standards required of a teacher, the teacher said that a teacher needed to be open and transparent in dealing with students.

Friend 1

Friend 1 gave evidence under oath. He told the Panel he was a Manager in neighbouring town 1 and has known the teacher for 12 years.

He said that the teacher had been very supportive during his wife’s illness with motor neurone disease and her subsequent death.

Friend 1 told the Panel that as far as he knew the teacher did his job well. He said that the teacher spoke to him about this whole issue and said that he wanted to clear it up as he was determined to resume his teaching career.

Friend 1 said that in April 2004 the teacher told friend 1 that a student wanted to talk about a family break up and was using text messaging to do this. Friend 1 said that he heard about more text messages after that. He suggested to the teacher that he contact the principal to discuss what was happening.

Friend 2

Friend 2 gave evidence under oath. Friend 2 said that she had been a teacher at the College and that she taught with the teacher in Physical Education/Sport areas in a team teaching situation. She knew him as having a thorough knowledge of his subject area, having a calm approach and not displaying favouritism with students. She observed the teacher taking photos with his new camera as well as officiating at the swimming sports.

Friend 2 told the Panel that she was unaware of any text messages at school. She said she had a conversation with the teacher at the beginning of the holidays in April 2004, where he told her he was upset because he had been reprimanded about the photos. Friend 2 told the Panel that the teacher also told her that student 1 had sent text messages to him and that he had replied. The Panel heard that friend 2 advised the teacher that this “was probably not a wise thing to continue”.

DISCUSSION OF EVIDENCE

The Panel was required to make a number of decisions around conflicting evidence as presented to it.

In considering the evidence the Panel noted a number of inconsistencies in the evidence given by the teacher. His evidence under questioning often differed in detail from the statements in his letters to the Principal of 4 April and 9 June and his letter to the employer of 17 August. In addition, his evidence was contradicted in a number of instances by the evidence of the student witnesses and that of student 1's mother and student 1's aunt.

The Panel found the evidence of student 1, student 2 and student 3 to be clear, frank and consistent, as was the evidence of the Principal, student 1's mother and student 1's aunt.

Allegation 1: *That in Term 1 2004 the teacher had contact with a Year 10 student student 1 outside the classroom.*

There is no dispute that a number of meetings between the teacher and student 1 took place outside the school. They were attested to by the evidence of the Principal and/or the student witnesses and not denied by the teacher. What is contested is the nature of those meetings and how they were initiated.

The teacher claimed that in his conversation with student 1 in March 2004 he had "sensed that she was having some problems inside and outside the school", and that she had approached him towards the end of Term 1 and indicated that she was having a rough time at home and with some of the boys at school. He advised her to approach the teacher in question about the boys' behaviour

With respect to the meeting in L Street, student 1 claims that the teacher saw her and then turned across to the wrong side of the road to engage her in conversation for 10-15 minutes. The teacher claims that he saw student 1 crossing the road and that she stopped and spoke to him through the window, and that he turned right in order to park legally. She thanked him for the advice he had previously given her. In his statement to the hearing he claimed that student 1 beckoned him and that she looked upset.

It was of interest to the Panel that, although he claimed that this was just a chance meeting, the teacher felt so uneasy about this conversation having been witnessed by a number of people that he mentioned it to his wife and rang the Year 10 Coordinator to tell her about it.

The teacher denies having spent time with student 1 at the College fete, and claims that his meeting with her afterwards in neighbouring town 1's Plaza was accidental. This meeting was witnessed by the Principal but there was no evidence presented to the Panel to suggest that it was pre-arranged.

The teacher explained in his evidence that with the knowledge and approval of the principal he had taken a number of photographs of students competing in the swimming sports with the intention of displaying them in a College "Hall of Fame". However student 1 herself, when questioned by Counsel Assisting, commented that her performance as a swimmer would not warrant her inclusion in a "Hall of Fame". This opinion was confirmed by the testimony of the Principal and student 3. The Panel also noticed that the photographs presented in evidence of student 1 taken at the swimming sports, did not depict her competing, but merely as a spectator.

The Panel found more disturbing the number of photographs (13) of student 1 taken at the school fete. It was obvious to the Panel that student 1 was taken aback when presented with these photographs and that they had been taken without her knowledge or consent. Neither the teacher's explanation that a digital camera enables the photographer to take several shots in order to select the best ones, nor his claim that he was commissioned to photograph the activities at the fete for the school magazine could explain, in the Panel's view, this concentration on one student who is, in most shots, a spectator, not a participant.

The evidence of student 3 attests that he observed student 1 going to the stadium on a number of occasions, and that on one of these occasions he went to get her but she was reluctant to leave. He testified to the hearing that student 1 and the teacher were alone in the stadium at the time. This was an instance of evidence disputed by the teacher that was clearly and consistently detailed by at least two students.

There was, in the Panel's opinion, considerable consistent evidence presented that the teacher's contact with student 1 outside of school, was more than casual or co-incident, especially after the 2 April meeting with the Principal. The Panel therefore finds the allegation substantiated.

Allegation 2: *That in Term 1 2004 the teacher suggested to student 1 that they could keep in touch during his long service leave in Term 2, by SMS text messaging. The teacher wrote down his mobile telephone number and put it under his keys in the stadium, telling student 1 to copy it down.*

This allegation is supported by the witness statement of student 1, who claims that the teacher suggested that they keep in touch by text messaging while he was on long service leave, and left his mobile phone number under his keys for her to copy. The teacher claims that it was student 1 who initiated the text messaging, and that she must have obtained his mobile number either from his diary or from his home answering machine. At the hearing he also suggested she might have obtained the number from his business card. As there was no corroborating evidence for either claim the Panel was unable to substantiate this allegation

Allegation 3: *In the last two weeks of Term 1 the teacher and student 1 exchanged sms text messages. In one message, the teacher referred to student 1 by a nickname, Paris.*

The teacher did not deny that an exchange of text messages took place between him and student 1. However he claims that they were initiated by her and were initially so cryptic that he was unaware of the identity of the sender. He denies that he bestowed the nickname "Paris" on student 1 though he confirms that he used it in the context of a text message. He agrees that in a general conversation about travelling overseas student 1 mentioned France as a place she would like to visit. However in his letter to the employer on 17 August 2005 he states, "I never gave student 1 any nicknames. I have no idea why she would come up with such a name. I did reply to an early message from someone with that name."

In the absence of any corroborating evidence the Panel was unable to establish beyond doubt who initiated the text messaging. However it is not in question that the teacher continued the exchange of messages when it was his responsibility to discontinue it.

Allegation 4: *In the last few weeks of Term 1 the teacher had a discussion alone with student 1 in the sports stadium. The teacher put his arm around student 1 to comfort her and gave her a hug and a kiss on the top of the head.*

This incident is attested by student 1 in her witness statement. Student 2 was told of this incident by student 1 but her evidence is hearsay. The teacher's defence against this claim is that he was never alone in the stadium with student 1. This claim is challenged by the evidence of student 3 who, on one occasion, went to the stadium to fetch student 1 and found her alone with the teacher.

There was no witness to the incident. However the Panel is more inclined to accept the veracity of student 1's statement, in view of the consistency of her evidence, and the evidence of student 3 that, at least on one occasion, student 1 was alone with the teacher in the stadium.

Allegation 5: *In the last week of term 1 2004 the teacher sent a text message to student 1 "Hi sweetheart how was your day what did you do Stuart."*

This allegation was supported by student 1's mother who found the message on her daughter's phone and by student 1's aunt who was shown the message by student 1's mother.

The teacher in his letter of 4 April to the Principal does admit to sending a text message on 31 March 2004, which contained something along the line of "Hello sweetie" and a silly reference to the lolly from the fete. "I did not have the words 'love Stuart' in the message". The Panel found the allegation substantiated.

Allegation 6: *That contrary to instructions from the principal of the College at a meeting on 2 April 2004, the teacher continued to exchange text messages with student 1.*

The teacher's Witness Statement confirms that he continued to receive text messages from student 1 over the school holidays and that he did respond to some of them, though that was largely to tell her to stop sending them. Student 1's Witness Statement on the other hand asserts that she was receiving three or four text messages

a day by the second week of the holidays and that the number of messages escalated markedly and became more personal, using such terms as “darling”, “sweetheart” and “honey” in the first few weeks of Term 2. She also claims that she warned the teacher that he was putting his job in jeopardy by continuing to send her messages. The Panel finds the allegation substantiated, regardless of who initiated the messages.

Allegation 7: *On 3 April the teacher sent a text message to student 1 “you know how much you mean to me and how much I love you”.*

This allegation is supported by the evidence of student 2 who was shown the message by student 1 when they were seated in her mother’s car in the parking area at the neighbouring town Plaza. The 1’s Panel finds on the weight of evidence presented that this allegation is substantiated.

Allegation 8: *On 3 April student 1 replied by sms advising the teacher that she was in the supermarket carpark in neighbouring town 1. The teacher met with student 1 and spoke with student 1 while she was sitting in a parked car with student 2.*

The teacher claims that the meeting in neighbouring town 1’s carpark on 3 April was a chance meeting. However the evidence of student 1, corroborated by that of student 2, is that it followed a text message to student 1 from the teacher asking, “what are you up to” and her reply, which told him, she was in the carpark with student 2. It was particularly significant to the Panel that this meeting took place the day after the teacher’s interview with the Principal, in which he was directed to avoid future contact with student 1. The teacher claimed that he did not read the message from student 1 until he arrived home that night. The Panel questioned why, if this were the case, he had not reported this incident to the principal.

On the weight of evidence presented the Panel finds that this allegation is substantiated.

Allegation 9: *That contrary to instructions from the principal of the College at a meeting on 2 April 2004, the teacher spoke with student 1 and student 2 about his discussion with the principal.*

Both student 1 and student 2 attest to the teacher’s agitated behaviour and his comment that someone had dobbed him in for taking too many photos of girls at the swimming sports. He is described as cross and defensive and using bad language.

The Panel finds on the weight of evidence presented that this allegation is substantiated.

Allegation 10: *That the teacher and student 1 exchanged sms text messages during the Term 1 holiday, three to four messages a day.*

This allegation is not contested by the teacher, though he claims he only responded to some of student 1’s messages and mainly to tell her she should stop sending them.

Student 1 claims that by the second week of the holidays she told the teacher that the messages should stop and that he was putting his job in jeopardy. The Panel finds the allegation substantiated, regardless of who initiated the messages.

Allegation 11: *That contrary to instructions from the principal of the College in a letter of 19 April, the teacher continued to exchange sms text messages with student 1 in Term 2*

As noted above (Allegation 6) student 1 claimed that the messages were becoming more frequent and personal and she told the teacher that they should stop.

The evidence of student 2 is that throughout the Term 1 holidays and at the beginning of Term 2, she was aware that the teacher and student 1 were still in contact. It was this awareness and concern for student 1 that prompted her to approach the Principal about the matter.

The photocopy of the text message received by student 1 on 29 May 2004 from the teacher's number with the words "how ya going" indicates that the exchange of messages was still continuing at that date, and that some at least were initiated by the teacher.

The allegation was found to be substantiated.

Allegation 12: *The teacher exchanged sms text messages with student 1 in Term 2 while the teacher was on leave, including the words "darling", "sweetheart", "honey".*

The use of these terms in sms messages is confirmed by student 1 in her evidence, but is denied by the teacher. As the use of the term "sweetheart" in the sms message in the last week of Term 1 was witnessed by student 1's mother and student 1's aunt the Panel would favour the evidence of student 1 in regard to this allegation

The Panel finds the allegation substantiated, regardless of who initiated the messages or any of the expressions.

Allegation 13: *That in the second or third week of term 2 the teacher sent an sms message to student 1 "Hi sweetheart what are you doing" student 1 replied that she was going to bed. The teacher sent an sms text message "ok darling I think I love you."*

This allegation is denied by the teacher and there is no evidence to corroborate student 1's story.

The allegation was found not to be substantiated.

Allegation 14: *That the teacher sent student 1 an sms text message on her birthday on 14 May, wishing her luck with her learner driver's licence.*

The teacher did not deny this allegation but claims he only sent the message because student 1 had been demanding a birthday message.

The Panel finds the allegation substantiated, regardless of who initiated the messages.

Allegation 15: *That the teacher met with student 1 in the Department store car park in neighbouring town 1, following an sms conversation and spoke with student 1 for approximately 25 minutes. The teacher remained in his car during the conversation and held student 1's hand through the window.*

The teacher did not deny that this meeting took place but he denied that it was pre-arranged, and that he held student 1's hand and tried to kiss her. There was no corroborating evidence and the Panel cannot find the allegation substantiated. However the Panel has on the whole found student 1's testimony to be consistent and supported by other evidence and therefore more likely to give a true account of this episode.

Although some of the allegations could not be substantiated the Panel was satisfied that there was sufficient evidence to support the allegation that the teacher had developed an inappropriate relationship with student 1. This relationship began with student 1 being singled out for attention in a way which she found flattering, and was continued by some out- of- school meetings and an exchange of text messages, which on the teacher's part became more personal and affectionate as time went by.

The attention paid by the teacher to student 1 was obvious to other students, and student 2 was aware of the inappropriateness and the dangers of the relationship developing between them. The teacher continued this relationship in defiance of a directive from the Principal, delivered on 2 April 2004.

The Panel considered that the photographs found on the teacher's computer, of student 1 at the swimming sports and at the fete are graphic evidence of his inappropriate interest in her.

The Panel observed that, in his letter to the employer on 17 August 2005, the teacher blamed the development and maintenance of the relationship on the student, student 1 and claimed that she had lied in her statements. His failure to accept any blame for the situation exhibits a lack of understanding of the professional responsibility of a teacher and the nature of the duty of care inherent in this role.

In response to questioning during the hearing, the teacher claimed that, "we both made mistakes", an implication of shared responsibility, which indicated a lack of understanding of his professional duty. He also saw his worst mistake as being not to seek advice, rather than that of breaching the trust conferred on a teacher and his duty of care towards the student.

In his letter to the employer and also in his testimony before the hearing the teacher claimed that his actions in this matter were the result of physical and mental exhaustion stemming from family bereavement and tensions in his marriage, which eventually culminated in its breakdown. However he produced no evidence from a doctor or counsellor to support this claim.

The character witnesses called in support of the teacher were not in a position to give evidence relevant to these allegations and therefore did little to support his case.

FINDINGS OF FACT

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

- The teacher is a registered teacher
- An inappropriate relationship developed between the teacher and student 1 a student at his school
- Such relationship involved out of school meetings and contact through SMS messages
- The teacher disregarded lawful directives from the Principal, that he was not to have out-of-school contact or SMS student 1; and that he was to maintain confidentiality
- The teacher had a number of photos of student 1 on his computer. The images portrayed in these photos is inconsistent with the officially sanctioned purpose
- The teacher demonstrated a serious lack of professional judgement

FINDINGS UNDER SECTION 42(2) OF THE ACT

The Panel was requested by the teacher's representative to seriously weigh the seriousness of the allegations against the teacher, in that those admitted to, in his opinion, did not constitute serious misconduct. It was argued that the teacher's inappropriate behaviour was a series of isolated acts reflecting a combination of extraordinary circumstances surrounding the teacher's private life and the alleged infatuation of a young student for the teacher. It was said that the teacher had apologised for any upset the behaviour may have created, that he had learnt from the experience, that he had already suffered sufficiently for his poor judgement, and that the public interest would be well served by him returning to teaching.

The Panel disagreed with this view of the evidence.

Whilst the teacher has indicated some remorse, he failed to demonstrate to the Panel that he had seriously reflected on his lack of judgement. Nor did he show any significant understanding of how his continued behaviour, post the 2 April meeting with his principal, not only adversely affected a student, but also was injurious to the profession's reputation. It was of grave concern to the Panel that the teacher did not heed the directions or counselling of the principal. The Panel commends the actions of the Principal; had the teacher followed the instructions of the 2 April meeting the impact of the experience on student 1 would have been minimised, and no further action would have been called for. The Panel also commends student 2 for her strong care and concern for her friend by reporting the situation to the Principal in the way she did.

In terms of serious misconduct the Panel found that:

1. The teacher was responsible for the inappropriate relationship that developed between himself and student 1, whether or not it was instigated by student 1, or in any way maintained or desired by her. As a registered teacher the teacher had a responsibility to manage the relationship, especially after he had been alerted to it by his principal. He claims he knew it was wrong, and yet took no real action to stop it. He claims an unblemished and excellent record of 15 years teaching; His behaviour in this matter does not reflect that experience.
2. The teacher engaged in text messaging with a student. Except in exceptional circumstances such communication with a student would be inappropriate. Once instructed by his principal not to engage in any such behaviour its continuance, in the Panel's view, clearly constituted serious misconduct, irrespective of who initiated the exchanges. The 29 May message "how ya going" left no doubt in the Panel's mind that the teacher was actively engaged in this entirely inappropriate behaviour.
3. The teacher was alone with student 1 in the Stadium at the school on at least one occasion. On the weight of evidence the Panel was inclined to believe that the two were alone on more than one occasion, that there may not have been inappropriate physical contact between them but that the issue reflected serious lack of judgement by the teacher that was likely to inflame the inappropriate relationship that was developing between them.
4. The teacher took and stored photos of student 1 that were inappropriate for either purpose claimed. The photos presented to the Panel would not have been appropriate for the Hall of Fame even if student 1 had been an outstanding swimmer. The photos did not portray her as a swimmer; they were photos of her watching others swim. Nor would the photos of her at the Fete have been appropriate for a school magazine. The photos did not portray student 1 involved in the Fete; they were simply of her.

The Panel found that the combination of these matters clearly constituted serious misconduct by the teacher. The Panel finds the teacher guilty of serious misconduct.

In relation to his fitness to teach, the Panel found that


1. The teacher had failed to demonstrate a serious level of remorse that could demonstrate to the Panel, the profession, future students, parents and colleagues that he well understood the impact on student 1 or the profession of his serious misconduct.
2. The teacher failed to demonstrate an understanding of his Duty of Care to students throughout the incidents involved in the allegations, or subsequently or at the Hearing. Under questioning the teacher could only offer a very superficial understanding of this crucial concept and professional obligation.
3. The teacher failed to demonstrate that he has learnt from his inappropriate behaviour, his lack of judgement or the subsequent repercussions. In fact the teacher and sought to often shift the blame for the situation on to the student.
4. The teacher has clearly demonstrated a serious lack of professional judgement about the relationship that developed between himself and student 1, irrespective of whether he sought such a relationship. If in fact, as he claims, it was student 1 who became infatuated with him he fuelled it by continuing to

- respond to and instigate text messages with her, and spending time with her out of class.
5. The teacher demonstrated a serious lack of professional action to seek guidance and support to deal with the situation. His inability to discuss his concerns with valued colleagues, or his Principal, and the unsubstantiated one counselling session does not demonstrate an understanding of his responsibilities in this matter.
 6. The teacher demonstrated a blatant refusal to follow clear, appropriate and lawful directions of his Principal. Given the very clear, on-going instructions given to him by the Principal, this matter alone questions the teacher's fitness to be part of the teaching profession.

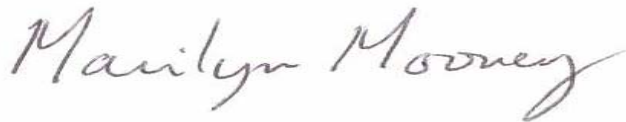
Collectively these findings compelled the Panel to find that the teacher is not fit to teach.



MARILYN MOONEY, CHAIRPERSON



**Per:
PATRICIA RYAN, REGISTERED TEACHER**



**Per:
GRAHAM HOULT, SPECIALIST MEMBER**