

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 043

REGISTERED TEACHER: Courtenay Peter Charles BAKER

PANEL MEMBERS:

Garry Salisbury	Chairperson
Jenny Wajsenberg	Registered Teacher
Anne Farrelly	Panel Member

ATTENDANCE: MR BAKER did not attend the formal hearing
MS ANNE SHEEHAN Counsel Assisting with Ms Annabel Haslam instructing

DATE OF HEARING: 20 February 2007

DETERMINATION UNDER SECTION 42(2):

On Tuesday 20th February 2007 the Panel decided to cancel the registration of Courtenay Baker.

REASONS

BACKGROUND

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

This inquiry is the result of a notification from the school pursuant to section 27 of the Act, that it had taken action in relation to the registered teacher. The teacher resigned from the school by letter of 15 June 2005 during an investigation by the school into allegations of inappropriate conduct.

The notification was referred to the Disciplinary Proceedings Committee on 10 August 2005 and the Committee determined pursuant to section 31 to refer the inquiry to a formal hearing.

On 19 January 2006 the Institute arranged for a consultant to take witness statements in preparation for the formal hearing. On 9 August 2006 the Disciplinary Proceedings Committee confirmed that the inquiry would proceed to a formal hearing.

A Panel was constituted in accordance with section 39 of the Act and a notice of formal hearing dated 21 September 2006 was served upon the registered teacher by registered post on 21 September 2006.

Nature of allegations:

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

1. In 2000, whilst a teacher at the school, the teacher had an improper relationship with the student, when the student was in year 8 including:
 - a) Inappropriate email communication in 2000 with the student , including sending 116 emails between 5 April 2000 and 23 October 2000, including comments:
 - i. 'why don't you come and talk to me now?' I want you to'
 - ii. 'I'm still really confused, I'm not sure what is going on – how serious it is!'
 - iii. 'Did I do something wrong? Have you had enough?'
 - iv. 'Go to the toilet or something – say your not feeling well. Come by yourself. I've got something for you.'
 - v. 'Besides I'd miss you!'
 - b) Inappropriate msn internet communication in 2000 with the student including sending messages between 23 November 2000 and 12 December 2000 including comments:

- i. 'You looked sooo hot – I was serious, it was classic, I just stopped...But by then you had put your top back on – spoil sport!! You were also looking very cute when you came in my office!'
 - ii 'It's been amazing to talk to you on the phone the times that we have been able to. That's something that I thought would never happen, and couldn't believe it when we did... But I want you to know that everything I have said about you or how I feel comes from the bottom of my heart... I guess what I'm trying to say, is that I care for you so much and I really do love you.... How is it that I can love you so much then? Some people are just right for each other though I guess. So you have four years left that I'm not allowed to see you. You know, until you leave school... She must know that we love each other, does she? Does she know I'm actually your teacher? That is so funny. I really adore you so much!!! ...Whatever happens, and whatever you want to happen, I will always love you and totally understand everything.. I love you so much.. I would have loved to see you in your skirt and singlet - sexy'
 - iii 'I would have loved that hug, and I wouldn't have cared who was watching!!!... I did come to school just to see you. I was missing you so much... Do both your parents work? So that that mean during the holidays, they won't know what you are up to'
 - iv 'Is it really worth it? You could be having a so much better relationship with someone else.'
 - v 'I wanted to hug you everytime that I saw you today.. I wanted to talk to you alone so I could tell you how much it meant to me and thank you so much. Well, I will see you tonight. You have to come and say hello to me, ok? I will definitely be wearing it!!! You really are so sweet and adorable baby. I see you around and I just wish things could be so different'.
2. In 2000, contrary to a warning by the principal of the school on 30 October 2000, the teacher continued communication with the student as set out in 1(b) above.
3. In 2001, whilst a teacher at the school, the teacher had an improper relationship with the student, when the student was in year 9, including:
- a) msn internet messages between 20 May 2001 and 6 December 2001 including comments:
 - i. 'u were sooo irresistible today!! I nearly did something that I shouldn't have after school!! Hehe'
 - ii 'My feelings or you were incredible. I couldn't stop thinking about you. I had fallen so in love with you again!. I'm not just

praising myself here, but if it were any other teacher doing it, you would be in so much more – but I guess that’s why you did do it hey!

- iii ‘I think I am the luckiest guy around, and you make me feel so special!’.. ‘I’ve been thinking about you so much lately – as always. I didn’t sleep at all last night!’.. What if you come to my office when all the other staff are in morning briefing... there definitely won’t be anyone else in there then. I’ll pull my window blind up about half way when it’s cool to come in, ok?’

Copies of the messages have been provided and are numbered 183 to 190 inclusive

- b) sending flowers to the student at her home
 - c) making phone calls to the student at her home
 - d) contrary to a warning by the principal of the school on 30 October 2000, communication with the student continued in 2001 as set out in 3(a) above.
4. That contrary to a written direction by the principal of the school, signed by the teacher on 4 February 2002 that all contact or communication, in or out of the school with the student will cease immediately, communication with the student continued including -
- a) phone calls and sms text message contact towards the end of 2003 when the student was in year 11
 - b) phone calls and sms text message contact during 2004 when the student was in year 12
 - c) meeting with the student on a number of occasions after the student’s exams in 2004 and in 2005, and giving her gifts including
 - i a CD
 - ii money to buy a concert ticket.

THE LAW

Section 27 of the Act states:

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. 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).

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

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

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency. Allinson v General Medical Council [1891-4] All ER 768

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

The degree of remoteness of the conduct in question from professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales (2004) HCA 11* which it is stated at paragraph 34:

...the nature of the trust, and the circumstances of the breach, were so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous.

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 Panel was presented with the following documentary evidence:

- Witness statement of the principal dated 03/02/2006 (5 pages) **001-005** and attachments
 - A – Copy emails 2000 (166 pages) **006-171**
 - B – Copy emails provided by the student's parent (19 pages) **172-190**
 - C – Copy letter 5 February 2002 (1 page) **191**

- D – Copy letter 14 February 2002 to the clinic (1 page) **192**
- E – Copy letter 8 June 2005 (1 page) **193**
- F – Copy letter of response 14 June 2005 (2 pages) **194-195**
- G – Copy letter of resignation 15 June 2002 (1 page) **196**

- Witness statement of the deputy principal dated 03/02/2006 (3 pages) **197-199** and attachment
 - A – Copy notes conversations (4 pages) **200-203**

- Witness statement of teacher 1 dated 17/02/2006 (2 pages) **204-205** and attachment
 - A – Copy statement October 2000 (2 pages) **206-207**

- Witness statement of student 1 dated 16/02/2006 (3 pages) **208-210** and attachment
 - A – statement (1 page) **211**

- Witness statement teacher 2 dated 17 February 2006 (1 page) **212**

- Witness statement of the student dated 02/06/2006 (2 pages) **213-214**

- Witness statement of the teacher dated 05/05/2006 (4 pages) **215-218**

The following exhibits were presented to the Panel:

- A** Correspondence and attachment from the teacher dated 7 February 2007, received by facsimile on 8 February 2007.
- B** Correspondence and attachment from the teacher dated 14 November 2006, received by facsimile on 14 November 2006.
- C** Statement of the principal dated 3 February 2006
- D** Notes of the principal, “Confidential Report for Legal Advisors”
- E** Statement of the deputy principal dated 3 February 2006
- F** Statement of teacher 1 dated 17 February 2006
- G** Statement of student 1 dated 16 February 2006

THE EVIDENCE

The Panel heard evidence from the principal that she became aware of allegations of email communication between the student, a year 8 student and the teacher, in late October 2000. A request to the IT department to investigate the internal school email server found one hundred and sixteen emails from the teacher to the student between 5 April 2000 and 23 October 2000 and fifty emails from the student to the teacher between 12 October 2000 and 25 October 2000. On 7 June 2000, the teacher stated, “he must be upset breaking up with you! (I would be)”. On 9 June 2000, he told the student, “you will have to send me a photo so I don’t miss you so much”! On 13 October 2000, the teacher told the student who was in class, to “go to the toilet or say

something – say your not feeling well. Come by yourself. I’ve got something for you”. On 16 October 2000, the teacher asked, “Did I do something wrong? Have you had enough”?

In her evidence to the Panel, teacher 1, a teacher at the school, noted that during 2000 she taught the student. As the year passed, teacher 1 stated that she became concerned over the regularity of the emails between the teacher and the student during her class time. She stated that she knew the teacher was emailing as she had seen his name as the student shut down when she approached. Teacher 1 stated that she discussed the matter with the teacher who admitted to her that he was emailing the student although he was trying to put a stop to the communications. When she saw no evidence of this, teacher 1 stated that she placed a ban on the student’s email. She stated that she advised the teacher of this, but did not tell the student until the following day. The Panel heard that before teacher 1 could advise the student of the email ban she became aware of the fact that the student already knew. Teacher 1 stated that she came to the conclusion that the teacher must have told the student that evening as there was no other way she could have known.

In response to the nature and content of the emails, the principal met with the teacher on 30 October 2000. She stated that she told the teacher that the correspondence between him and the student was inappropriate and that all contact other than normal teacher student communication should cease. By way of explanation, the teacher stated that he had been assisting the student with problems. The principal noted, in her statement, that the teacher assured her that there would be no further contact. The principal stated that she advised the student of her decision.

The principal stated in her evidence, that on 31 January 2002, the student’s parent came to her with emails found on her home computer. The emails dated from 23 November 2000 to December 2001. In response to this information, the principal stated that she, along with the deputy principal, met with the teacher on 4 February 2002. During the meeting the teacher admitted to sending the student flowers and making phone calls to her home. The principal stated that the teacher again portrayed the nature of the communication as one of friendship. She stated, however, that when confronted with the content of the emails-including statements such as, “You look sooo hot” (23 November 2000); “How are you baby”; “I really do love you”; “I can’t always understand why you love me so much”; “I would have loved to see you in your skirt and singlet – sexy!!!!!!!!”, (26 November 2006); “Do both your parents work? So does that mean during the holidays, they won’t know what you are up to” (1 December 2000), “u were sooo irresistible today!! I nearly did something that I shouldn’t have after school!! hehe” (14 June 2001), the teacher admitted the emails “indicated a deeper attachment”.

The teacher agreed to a number of conditions, including a cessation of any contact with the student either in or outside the school and undertaking therapy sessions with a psychologist of the school’s choice, in order to continue his employment at the school. The principal and the deputy principal in evidence both stated that the teacher was apologetic and willing to undertake counselling although this was with some reluctance as he did not believe it was necessary.

The teacher received counselling until November 2002. At this time the principal stated she received a letter from the psychologist stating that the teacher had successfully completed the sessions.

The teacher taught throughout 2003-04 without incident, although the principal stated there were rumours, but nothing of substance and these appeared to relate to the past incidents. In December 2004, a non-teaching staff member and parent of a daughter in the same year level as the student, approached the principal and told her that there had been conversations within the group about the student having had a physical relationship with the teacher. The principal stated she met with the student, who had completed her schooling on 28 January 2005. The student stated there had been no contact since 2002.

In June 2005, another member of the student's social group, student 1, met with the deputy principal and the principal and told them that she had been present in December 2004, when the teacher and the student had been together in the house she was house sitting. She also stated that she was aware of the teacher messaging the student at the end of 2004 informing her, prior to any formal announcement, who was to be appointed School Captain in 2005. Student 1 stated in her evidence that the student had shown her the message because it also contained details regarding who was to be the Vice Captain. Student 1 had previously told this to another person with whom she was living at the time, but had retracted her story when the person she was living with said she would have to go to the police. Student 1 noted that the teacher called the house to talk to the student on a number of occasions in December and January 2004/5. During this time, student 1 stated the teacher gave a present to the student via student 1. One evening the student told student 1 that she was going out to stay at the teacher's house.

In her written statement, a teacher at the school, teacher 1, stated that in early 2005 two ex-students came to see her and told her that the student had been in regular contact with the teacher outside of school and in one instance, while the teacher's wife had been on school camp, the student had stayed overnight. When questioned by the Panel as to the students' credibility, teacher 1 stated, while the boy had a history of exaggeration, she had total trust in the girl. The principal in her written evidence stated that she discovered that the teacher's wife had been away on staff retreat and that the teacher had not attended because he was ill.

In the light of this new information, the principal met with the teacher and put the new allegations to him. The teacher was then placed on paid leave. On 15 June 2005, the principal again met with the teacher and put the allegations to him. After prompting and challenging, the teacher admitted to SMS and telephone contact with the student from the end of Year 11 through Year 12; telephone contact while his wife was on Staff Retreat; a conversation at the valedictory dinner; a number of coffee shop meetings from end of 2004 into 2005; picking her up at the house student 1 was house-sitting on at least two occasions; picking her up from the railway station; giving the student a CD via student 1; giving the student money towards a concert in Perth; attending a gig in February 2005 at which he was aware the student would be; and lying in March 2005 when the allegations had previously been put to him.

Responding to the principal and in his written statement to the Institute, the teacher stated that given the contact had taken place when the student had finished school he was not in any breach of the earlier agreement that he had signed. He also stated that it was the student who had initiated the contact in 2005. The principal in her evidence to the Panel stated that the teacher was not truthful nor trustworthy. When asked for her explanation of his behaviour she felt he was “unable to face the reality of what he was doing”. In the “Confidential report for Legal Advisors” the principal’s notes on her comments to the teacher at the meeting of 14th June 2005 saying “...you were grooming her and that your actions earlier were setting her up for later contact, that you are a danger to the teaching profession, whether you recognise it or not”. The principal said that in all other respects the teacher had been an exemplary member of staff. The deputy principal stated that the contact with the student in 2005 was totally inappropriate in the light of the previous events. He stated it was “a huge breach of our trust and a denial of the processes that had been put in place”.

The teacher did not appear to answer the allegations.

DISCUSSION OF EVIDENCE

The teacher admitted to being the author of a series of emails to the student between 5 April and 23 October 2000 in his signed statement of 5 May 2006. A reading of these emails indicates that the teacher developed an improper relationship with the student by discussing personal and non school topics in a typical adolescent, ‘gossipy’ way and then arranging meetings and inquiring about her feelings and relationships. In the email dated 25 May 2000 the teacher indicates that he has been discussing “this problem” only with the student and asking why she no longer can have a double bed. In the 29 May 2000 email the teacher indicated that he was leaving class to go to see the student immediately. In the email of 5 June 2000 the teacher suggested that they needed to get together properly because there were too many people around. In a later email on the same day the teacher wrote “Does anyone else read these letters”? In the 7 June email the teacher suggested that he would be upset if he had broken up with the student as she seemed to have just done with another boyfriend. On 9 June 2000 he asked for a photograph of the student and in an extended series of emails he repeatedly asked for a copy of her photos. In the Panel’s view, the tenor of the emails provided in evidence became increasingly personal and had not been of a professional nature since their commencement.

Teacher 1 provided sworn evidence that the teacher and the student were corresponding using emails in class time during the year 2000. As a result the student was unfocussed on her work and the behaviour was impacting on teacher 1’s class to the extent that teacher 1 confronted the teacher and reported the matter to the Head of Secondary School at the school.

It was within this background and context that an email of 13 October 2000 sent by the teacher tells the student at 9.55 am to “go to the toilet or something-say your not feeling well”. The Panel understood that this was an invitation to the student to leave her class by telling her teacher a lie in order to meet the teacher. On the 17 October 2000 the teacher wrote “I’m not totally sure what is going on-and how serious it is”. In

the context of the emails the Panel took this to be a plea from the teacher to the student to clarify their relationship. Their relationship could not be characterised as anything apart from a personal one and was a serious departure from acceptable professional standards. Suggesting to a student that she lie to a teacher to meet another teacher, particularly in the light of the emails that had been exchanged between the teacher and the student, constitutes serious misconduct and a substantial departure from the accepted standards of the teaching profession. The teacher was using his authority, power, prestige and the trust placed in him as a professional teacher to encourage and sanction student behaviour which undermines the trust that should exist between the student and the other teacher. The other teacher had the right to believe that the teacher would not act so unprofessionally. It was within the teacher's will, power and control to stop these departures from accepted standards but he did not. These acts were undertaken wilfully and recklessly without regard for the consequences particularly when considered in the light of the student's age when the relationship commenced and the fact that the teacher's wife taught in the same department in the same school.

The pattern of the emails indicated that the teacher developed a relationship discussing personal matters completely unrelated to his role as a professional teacher despite the claim in his letter of 14 June 2007 to the principal and the deputy principal that "I am strong...in my conviction that our relationship (ie the teacher and the student's) was not greater than concerns of caring or friendship matters". The Panel came to the view that the teacher, as an adult, skilfully expanded discussions between himself and the student into increasingly personal matters while maintaining secrecy and a conspiratorial tone. It was apparent that he was deliberately and skilfully cultivating a personal relationship with a year 8 female student and using class time to do so. The Panel believes that this is a completely unacceptable breach of professional responsibilities to the student and also the teacher. It undermines the trust that a parent and the community is entitled to place in teachers and is evidence that the teacher is unfit to teach.

When these emails were discovered and admitted to by the teacher, he was clearly warned by his employer of the need to maintain a clear boundary between being friendly with students and maintaining a professional distance. The principal's evidence as Principal was unequivocally clear that all contact between the teacher and the student must cease. The teacher indicated his agreement when he signed the contract with the principal on the 4 February 2002.

Evidence that the teacher had not ceased contact as instructed on 30 October 2000 was provided by the student's mother who supplied copies of a series of msn internet communications between 23 November 2000 and 6 December 2001. The teacher admitted to sending the communications in his signed statement of 5 May 2006.

The Panel noted that the nature of these communications were qualitatively different from the earlier emails. The tone and content were much more explicitly sexual. References such as "You looked sooo hot..." and "...you had put your top back on...spoil sport !!" in the msn message of 23 November 2000 suggest that the relationship between the teacher and the student had significantly changed. In the msn

message of 26 November 2000, the teacher writes “I care for you so much and I really do love you”. He suggests that he could not put off his marriage because the student may not feel the same about him in the future. This is an inappropriate remark between a teacher and a year 8 female student and indicates a crossing of the appropriate professional boundaries. In the msn message of 1 December 2000 he asks if the student’s parents both work in the holidays and if so, they (the student’s parents) would not know what she does. The impression the Panel gained was that he was working towards an activity which would be kept a secret from the student’s parents. This is a betrayal of trust between the teacher and the student’s parents and the school. References to “Baby”, “sweet” and “gorgeous” are contained in the msn message of 10 December 2000 and this and the msn message of 11 December 2000 contain similar inappropriate sentiments and a discussion of personal feelings which are highly inappropriate and cross the professional boundary for a teacher. In the msn message of 8 November 2001, the teacher invites the student to come to his office when all the other staff will be at a briefing and that he will alert her that no other staff are present by leaving the blind drawn halfway. This is clear evidence that the teacher was actively deceiving his colleagues and abusing the trust placed in him.

In the msn communication of 26 November 2000, the teacher writes “so, you have four years left that I’m not allowed to see you. You know until you leave school”. The Panel interpreted this as evidence that the teacher had considered his situation and had formed the view that it was permissible for him to wait until the student had completed her secondary schooling and then resume their relationship. He indicates in his statement of 6 March 2006 that since the student had left the school at the end of 2004, his contact with her in late 2004 and 2005 was not contrary to the contract he had made with the principal in 2002.

The evidence of student 1 was compelling that the teacher had resumed his relationship with the student in late 2004 and early 2005.

The Panel was provided with two cases, *RJT v Nurses Board of Victoria* (2000) VSC 498 and *R v Rodney Stewart Howes* (2000) VSCA 159. In the latter case, Winneke J stated that “*The offence created by the section is also aimed at those who, by virtue of an established and on-going relationship involving care, supervision or authority, are in a position to exploit or take advantage of the influence which grows out of that relationship.*”

In the former case Nathan J found there was no professional misconduct on the part of a nurse who had a sexual relationship after a long since terminated nurse/patient relationship because it was not a case of “...*a medical practitioner with superior age, intellect and position abusing those factors...*” he also noted that both parties were mature adults.

The Panel was of the view that the teacher had abused his professional position by deceiving colleagues and developing an inappropriate relationship with a student. The Panel also found evidence that the teacher had planned to recommence his relationship with the student in late 2004-05 once she had completed year 12. What the teacher never seems to have understood was that the relationship with the student was an abuse of his status and power as a teacher and it had always been so. Despite being

clearly told to have no contact with the student the teacher had done so. When confronted, he presented an argument that shifted the responsibility from him to the student. The argument that he was in an awkward, tense situation and so he had contact with the student after being explicitly told not to is disingenuous. He made no effort to refer the matter to senior colleagues who had already shown their support for him.

The msn message of 23 November 2000 shows that the teacher had in his mind that if he waited four years he would be able to resume his relationship with the student believing that in some legal or professional sense he would not have broken the contract he signed on 4th February 2002. The authority of the two decisions provided by Counsel for the VIT make it clear that the teacher's belief was mistaken. In this light, the meetings in 2004-05, the gifts including money and concert tickets which he has admitted to, support the view that he had been merely biding his time before he became more open about a relationship which had sprung from his abuse of his power and authority as a teacher. This relationship had been fostered and developed against the express wishes of the school and the teacher's commitment to cease all contact with the student. It is the Panel's view that this amounts to serious misconduct.

The teacher's behaviour breached the standards of acceptable behaviour for teachers. It brought the profession of teaching into disrepute and undermined the trust the community can rightly place in teachers' hands.

The Panel found that the teacher lied to his principal and deputy principal despite significant levels of financial, moral and professional support provided to him. The Panel found the principal a most impressive, reliable witness and she provided evidence that the teacher's counsellor had provided written confirmation that the teacher had successfully completed his therapy in November 2002. It was very clear to the Panel from the evidence of the principal and the deputy principal that they felt betrayed when the teacher admitted further contact with the student. In the teacher's letter of 14 June 2005, he admits to not being "entirely truthful" in regard to his relationship with the student but says that "the content of our relationship was not greater than concerns of caring or friendship matters." The content of emails and msn messages produced in evidence show that this statement is clearly untrue. The Panel could find no suggestion that the teacher was remorseful for his actions or that he fully comprehended the abuse of trust he had committed on his employer, school, community and the individual student.

The teacher's behaviour and his written evidence led the Panel to the conclusion that the teacher has serious character defects that undermine his fitness to teach. The teacher claimed in his written statement of 5 May 2006 that he was only responding to the student's persistent attempts to find out why he was not talking to her. A more reasonable approach would have been to return to his Principal or other senior staff to seek assistance. The Panel was of the view that he contacted the student because he wanted to. The teacher has admitted to lying on a number of occasions over a period of time and this undermined his credibility and his explanations on a number of matters. As such, he clearly is unfit to teach and could not be trusted by a school, fellow professionals, parents or students.

The Panel found all of the allegations against the teacher proven.

FINDINGS UNDER SECTION 42(2)

The Panel found that the teacher was guilty of serious misconduct and unfit to teach

DETERMINATION UNDER SECTION 42(2)

The Panel decided to cancel the registration of the teacher.



Garry Salisbury, CHAIRPERSON



**per:
Jenny Wajsenberg , REGISTERED TEACHER**



**per:
Anne Farrelly, PANEL MEMBER**