

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 060

REGISTERED TEACHER: Gavin Frederick DORE

PANEL MEMBERS: Terry Hayes, Chairperson
Drew Hopkins, Registered Teacher
Kay Bodna, Panel Member

ATTENDANCE: The teacher was represented by Ms Trish Riddell, Barrister with Mr Christopher Bunnett, Christopher Bunnett Lawyers, instructing
Ms Anne Sheehan, Counsel Assisting with Ms A Haslam instructing

DATE OF HEARING: 14 and 15 April 2008

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION TRAINING AND REFORM ACT 2006*:

On 21 April 2008, the Panel suspended the registration of the teacher from the date of this decision until 31 December 2008. This means that the teacher is unable to apply to be registered as a teacher until 1 January 2009.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching ('the Institute') since 31 December 2002.

On 19 December 2006, the Institute received notice from the teacher that he no longer wished to be registered with the Institute, effective from 10 December 2006.

By letter dated 15 January 2007, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. The teacher resigned from the employer with effect 13 December 2006.

The matter was referred to the Disciplinary Proceedings Committee ('the Committee') on 14 March 2007 and under section 43 of the *Victorian Institute of Teaching Act 2001* (now section 2.6.47 of the *Education and Training Reform Act* [the Act]), the Committee decided that the teacher should be treated as if he is a registered teacher. The Committee also decided that the matter should proceed to formal hearing pursuant to section 2.6.34 of the Act.

The Institute arranged for an investigation of the allegations and on 12 September 2007, the Committee considered the investigation report and confirmed its decision to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 4 March 2008 was served upon the teacher's solicitor by registered post on 4 March 2008.

DOCUMENTS

The Panel was provided with the following documentary evidence:

1. Notification from the employer of action taken against the teacher, dated 15 January 2007 (2 pages) **001-002**
2. The teacher – Victorian Institute of Teaching Registration Details (4 pages) **003 - 06**
3. Notice of Withdrawal of Registration signed by the teacher dated 10 December 2006 (1 page) **007**
4. Chronology of Events (1 page) **008**
5. Witness statement of the principal dated 17 August 2007 (9 pages) **009 - 17**
 - o 1 – Printout of mobile phone SMS messages sent between 3 July 2006 and 9 July 2006 (2 pages) **018 - 019**
 - o 2 – Email from the teacher dated 7 July 2006 (1 page) **020**
 - o 3 – Email from the teacher dated 4 July 2006 (1 page) **021**

- 4 – Notes of Interview of the student’s parents with the principal dated 10 July 2006 (2 pages) **022 - 023**
- 5 – Notes of Interview with the student dated 11 July 2006 (2 pages) **024 - 025**
- 6 – Printout of mobile phone SMS messages sent between 3 July 2006 and 9 July 2006, with handwritten notes (2 pages) **026 - 027**
- 7 – Printout of mobile phone SMS messages from 5 July 2006 to 7 July 2006, with handwritten notes (2 pages) **028 - 029**
- 8 – Email from the teacher dated 25 June 2006 with attached photo (2 pages) **030 - 031**
- 9 – Email from the teacher dated 26 June 2006 with attached photo (2 pages) **032 - 033**
- 10 – Email from the teacher dated 26 June 2006 with attachments (5 pages) **034 - 038**
- 11 – Email from the teacher dated 26 June 2006 with attached photo (2 pages) **039 - 040**
- 12 – Email from the teacher dated 27 June 2006 (1 page) **041**
- 13 – Email from the teacher dated 27 June 2006 (3 pages) **042 - 044**
- 14 – Email from the teacher dated 27 June 2006 (1 page) **045**
- 15 – Email from the teacher dated 4 July 2006 with attached photos (10 pages) **046 - 055**
- 16 – Letter from the principal to the employer dated 19 July 2006 (1 page) **056**
- 17 – Letter from the employer to the principal dated 21 July 2006 (1 page) **057**
- 18 – Letter from the principal to the teacher dated 24 July 2006 (2 pages) **058 - 059**
- 19 – Letter from the teacher to the principal dated 6 August 2006 with attachments (10 pages) **060 - 069**
- 20 – Letter from the teacher to the principal dated 7 August 2006 with attachment (2 pages) **070 - 071**
- 21 – Statement of the student’s mother dated 8 August 2006 (2 pages) **072 - 073**
- 22 – Statement of the student’s father dated 8 August 2006 (1 page) **074**
- 23 – Statement of the student’s sibling dated 17 August 2006 (1 page) **075**
- 24 – The principal’s notes of interview with teacher 3 (1 page) **076**
- 25 – Letter from the principal to the teacher dated 25 August 2006 with attachments (11 pages) **077 - 087**
- 26 – Letter from the teacher to the principal dated 8 September 2006 (17 pages) **088 - 104**
- 27 – Notes of interview between the teacher and the principal dated 29 September 2006 (6 pages) **105 - 110**
- 28 – Letter from the principal to the teacher dated 6 October 2006 (6 pages) **111 - 116**
- 29 – Letter from the teacher to the principal dated 16 October 2006 (2 pages) **117 - 118**
- 30 – Email from the teacher dated 13 December 2006 (1 page) **119**
- 31 – Letter from the principal to the teacher dated 13 December 2006 (1 page) **120**
- 32 – The principal’s investigation report (18 pages) **121 - 138**

The Panel agreed to a request from the teacher's Counsel that the material from half way down page 000114-000118 be removed from the hearing book as it was considered to be potentially prejudicial and irrelevant to the Allegations as stated.

The following exhibits were tendered at the hearing:

- A.** Letter from the teacher's lawyer to the Victorian Institute of Teaching, dated 8 April 2008.
- B.** Agreed Statement of Facts
- C.** Letter from the teacher to Disciplinary Proceedings Committee dated 6 April 2007.
- D.** Medical Report from the Medical Practitioner re the teacher, dated 14 April 2008
- E.** Report from the Psychologist re the teacher, dated 14 April 2008
- F.** Letter from the teacher to the student's parents, dated 14 April 2008
- G.** Davidson v Victorian Institute of Teaching [2007] VCAT 920
- H.** Submissions on behalf of the teacher

THE EVIDENCE

During 2006, whilst employed as a registered teacher at the school, the teacher engaged in inappropriate contact of a personal nature with a year 10 student of the school-

1. In July 2006, sent the student text messages via his mobile telephone stating words to the effect of:
 - a. "Please don't think now school has started that we will lose touch. I don't see you as a student & ur way more than a friend."
 - b. "Ur never interrupting me with your messages or emails as they make me feel wanted and loved xxoxox."
 - c. "I don't think I took any of it the wrong way....lol it was nice and things I wanted to hear from you. It's when u say ur sick of me or hate me that's when I die inside..."
 - d. "That was so funny, your message came through when I was talking in front of 60 people at a sports course. My pocket buzzed and I thought of u lol."
 - e. "No no no I loved it, in fact it made me feel a little nervous. I love getting messages from u, makes me feel closer to u xoxox."
 - f. 'stop saying that or I'll have to....Kiss u."
 - g. "Oh I really want to see u to. We will have to work out the best day to meets that's safe! Lol...Just showed the trip pics again and I love u even more. Hows the knee?"

- h. "Thinking of u. Driving back from country Victoria wishing u were next to me...xxxxx."
 - i. "Oh how I wanted to hold u. That was so good to see u I really want to make it a regular thing. Sorry about your knee but u look so cute. Love u so much...xoxox."
 - j. "Oh I want to be with u. What a great day this has been to see and touch u again. I don't want to wait so long again to see u. 2 weeks is far too long."
2. In June and July 2006, emailed the student stating words to the effect of:
- a. "Me and my girlfriend...don't get jealous" (a picture of the teacher's bike was attached).
 - b. "thanks so much for that beautiful email you sent. I thought you were preparing me for some bad news like "I don't want to see you again" but I was so relieved you said you love me and thats exactly how I feel about you, in fact you have taken over all my thoughts and I miss you desperately. I know our age difference is an absolute horrible reality and not many others would understand how we feel for each other but I don't care what others think, It's what WE think. I feel closer to you now we are at school, may sound strange but i know where you are and I get comfort from that...I can't believe how lucky I am to have found you...Nothing is more important than you...I'll always be here for you...I look at your picture every day which brightens me up so much...I love you... and always will...xoxoxoxoxoxox."
 - c. "When I think back to before the trip I would have no idea that 4 weeks later Id be so ummmm.. whats the word??... totally engrossed in one person... I ache so much about our age difference, it really feels like a nightmare that thought. You make me feel so young. You make me feel whole. You make me feel loved....you really are a really special person and I don't want to lose you. I hope and know we can be close for a long time.....I really do hope so. Thanks for being you. 'D'...xxxxooooooooxxxxx."

The teacher attended the hearing but did not give evidence. Through Counsel he presented the following documents which the Panel considered.

- Letter from the teacher's lawyers, in which the teacher "admits the allegations that have been made against him and he also admits that he is guilty of serious misconduct." (Exhibit A)
- Agreed Statement of Facts in which the teacher indicated that he had written to the VIT Disciplinary Proceedings Committee indicating the following: "I fully accept that my behaviour was inappropriate and unacceptable...My behaviour was totally out of character and that I deeply regret. I am extremely disappointed with myself....I have learnt an extremely valuable lesson in life and I am so remorseful for my behaviour." (Exhibit B)
- Letter from the teacher to the student's parents in which he expresses his "sincere apologies to yourselves and your family from my inappropriate behaviour towards the student in early July 2006." (Exhibit F)

- A Statutory Declaration attached to Exhibit C in which the teacher states that he resigned from the employer on 13 December 2006 and de-registered himself from the Victorian Institute of Teaching effective from 25 December 2006. As well, the teacher declares he will never seek employment with any educational institution either in Australia or overseas or seek registration with the Victorian Institute of Teaching or equivalent authorities in Australia or any other country.

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

Teacher 1
Teacher 2
Witness 1
Witness 2

Teacher 1

The panel was advised that teacher 1 was a former colleague of the Panel Chair.

Both Counsel Assisting and Counsel for the teacher raised with the Chair an issue of possible bias. Neither Counsel objected to the Chair continuing to hear this matter. The Chair considered the matter and decided that his previous professional relationship with the witness, teacher 1, would not reflect on his ability to make a fair decision.

Teacher 1 informed the Panel that he had been a teacher for 31 years, the last 14 at the school where he is currently employed. He also lectured in the Diploma of Education course at University from 1993-2000 where he first met the teacher as a pupil in that course in 1996. The teacher was a career change student having previously worked as an accountant. Teacher 1 considered the teacher “born to be a teacher” because of his passion and competence within the classroom, as well as his commitment to the extra curricular dimensions of teaching life which he demonstrated both in the course and on teaching practicums. In fact, teacher 1 considered the teacher to be a role model for other teachers in the course.

Teacher 1 also explained that he was instrumental in the teacher being employed at the school. He had informed his class that there was a position advertised, and encouraged them to apply. The teacher was the successful applicant and teacher 1 had been one of his referees. Teacher 1 said that in his ten years at the school, the teacher displayed the same passion and commitment to teaching and all aspects of the school’s extra curricular life that he had demonstrated as a Dip Ed student. As well as being an exemplary class room teacher, he organised sporting events at lunchtime and after school, organised bike rides and school camps, assisted with school productions and organised excursions. In his role as VCE coordinator, he was respected by students because of his willingness to see their point of view in any difference of opinion with teachers. Teacher 1 said students “adored” the teacher and many Year 12 students nominated the teacher as their favourite teacher. Teacher 1 also said that the teacher’s reputation as an umpire who had been inducted into the Hall of Fame and therefore considered to be an elite sportsman preceded him to the school, but it was never a reputation he exploited. Rather, he used it for the benefit of the students and the school

community. Teacher 1 said that the teacher's enthusiasm for participating in school activities, such as dressing up in school uniform on free dress days, sometimes crossed a line he would not cross himself. He said the teacher was "like one of the kids." On such occasions, possibly once a year, he implicitly "advised" the teacher "not to go there, mate", especially when he took on a position of responsibility as VCE Coordinator. Teacher 1 believed it was important to keep "a distance" and it was up to the individual teacher to work out the "balance" "everyone finds in a different way" between maintaining that distance and maintaining popularity.

Teacher 1 stated there was no school policy as such regarding staff giving students their email addresses and mobile phone numbers. However, providing them to senior students for work purposes was an increasingly common practice, and he knew some teachers did so with Middle School students as well. In some cases, such as with students on City Experience excursions, providing mobile phone numbers was essential. However, it was up to the discretion of the individual teacher, depending on the circumstances. Regarding the idiom and terminology – "kids lingo" – of emailing and messaging, teacher 1 said it was common to find on work from students terms such as "lol" hearts as dots for "i" and hugs and kisses symbols as sign-offs. Teacher 1 said he was fairly ignorant about such "language", but many teachers were not. He believed the teacher was familiar with the "lingo."

Teacher 1 said he was shocked to hear of the teacher's behaviour and the content of the emails and text messages. He "did not condone it", but could see how the informal pally nature of the camp environment spilled over into informal contact back at school, "how it's got from one stage to the next." He believed that the teacher "gave absolutely no thought at all about his behaviour." He said the teacher had not discussed pressures on him leading up to the camp. This was a reference to a traumatic moment in the teacher's life when as a teenager he was taking part in a trip which ended in tragedy, an accident in which a student (a friend of the teacher's) was killed and fifteen other students injured. Teacher 1 did not see how being "adored" or well liked by students could be seen as a pressure. In fact he thought the reverse was the case: it enhanced one's abilities as a teacher. He also added that a lot of teachers were unaware that they were under pressure and said it is up to the individual teacher to recognise when they are under such pressure.

Teacher 1 stated that he still held the teacher in the highest regard as a teacher and would be happy for him to teach his children. He is sure that such behaviour would not occur again and that it would be a shame to lose someone to the profession, "given the quality of the teacher, given the quality of the person", who "has made one mistake." If he were in a position to give the teacher any advice it would be to "learn from your mistake."

Teacher 1 informed the Panel that, to his knowledge, there had been no professional development at the school on developing professional boundaries in teacher-student relationships, especially in relation to communications with students, either before or after the incident. He assumed first year out teachers received some form of advice about these matters through mentoring and in induction discussions with the administration.

Teacher 2

Teacher 2 informed the Panel that he had been teaching for 31 years, the last four at the school, where he was currently a Coordinator. He believed he had succeeded the teacher in that position and, at first, thought of him as a hard act to follow. Instead he found the teacher an incredibly supportive professional colleague, willing to give advice and share materials, a colleague who made a potentially awkward year for him manageable. As Sports Coordinator, the teacher co-opted staff into coaching and supervision activities by a mixture of humour and good natured repartee. Regarding the teacher's rapport with the students, teacher 2 said "the kids just loved him. It was 'D'...." He was "the teacher the kids made a link with" because of both his classroom teaching and the enthusiasm with which he committed to the school's extra-curricular life. In fact the teacher struck teacher 2 as more like an "enthusiastic second year outer than someone who had been teaching for ten years."

As someone who had had experience of three trips at his previous school, teacher 2 was aware of their emotionally charged atmosphere for students and the more informal relationships in a "warm and fuzzy environment" that were permitted between teacher and students. Students referred to teachers by their first name and the return to school was often accompanied by hugs all round, though he himself "was not a hugger." He also said it was expected practice at his previous school that, once back at school, the teacher-pupil relationship would revert to its more formal patterns. He believed that, after the school trip, the teacher would have provided opportunities for students to relive the experience of the camp by organising occasions to show videos taken on the trip.

Teacher 2 stated that he became aware after the camp that the teacher had taken some emotional baggage on the trip though he had never discussed it with him. He recalled the teacher's excitement leading up to going on the trip.

Regarding the practice of providing students with email addresses and mobile phone numbers, teacher 2 said there was no school policy regarding this, although providing email addresses for work related communication was an increasing practice between staff and senior students. Overall, however, it depended on the discretion of the teacher and the circumstances. He, for example provided his Year 12 students with his departmental email address but not his phone number. He also stated that many students used their own idiom and terminology such as "lol" meaning "laugh out loud", when sending emails to teachers and some teachers responded in kind.

Teacher 2 said that when he became aware of the incident involving the teacher and that it involved text messaging and emailing a student about personal matters, he regarded it as a "serious error of judgment." He attributed the teacher's behaviour to a mixture of naïveté and over enthusiasm, based on his assumption that the student involved was probably "a bit of a loner who needed support." Teacher 2 thought "He (the teacher) needs to step back and think a little more." He, himself, would have shown "a little more nous." In subsequent conversations, the teacher stated "I can't believe I've been so naïve and stupid." Teacher 2 believed the remorse the teacher expressed was genuine. This remorse, however, was of a general kind rather than

specifically expressed about the effect of his behaviour on the student and her family. Teacher 2 did not press him on this matter as he thought it best not to know the identity of the student. Having been shown the content of the text messages and the emails at the hearing, teacher 2 conceded they reflected more than naïveté. They were “inappropriate communication (that) crossed a ‘bound of duty’ of care, that sort of stuff.”

Teacher 2 stated that he could not imagine the teacher engaging in such emailing and texting again and that in any future employment in a school his relationship with students would be more formal and less familiar. He said, of his appearing as a witness for the teacher, that he “wouldn’t be here today if I did not think he was worthy to come for.”

Teacher 2 said that at his previous school there had been no discussion of guidelines about appropriate behaviour on school camps directed specifically at teachers. Nor was he aware of any occasion at the school where teacher-student boundaries had been addressed in specific professional development sessions, though there had been the occasional mention at staff meetings about such matters as duty of care regarding informal discussions with students. “It’s a known, if you’ve been in the game long enough.”

Witness 1

Witness 1 informed the Panel that he was a consultant. He was also the President of a suburban Education Centre. The centre was founded by his wife and has gained a reputation as “the best in the world.” It has developed training courses for the Victorian Government and was currently developing global contacts. He stated that “our reputation has to be impeccable” and he was not prepared to put his principles at risk. He was attending the hearing in support of the teacher because of those principles.

Witness 1 stated that he first met the teacher in September 2005 through a mutual interest in coaching junior sports in which their children were involved. That relationship then developed into social contacts between both families. Witness 1 considered the teacher and his wife to be “delightful, happy people” who light up peoples’ lives.

Witness 1 said that the first thing that struck him about the teacher was his humility, then, over time, the positive influence on the children he coached. He had a lovely caring manner with them and was passionate about enabling people to enjoy the learning process. Witness 1 added he was pretty protective of his kids and trusted the teacher with them implicitly.

Witness 1 saw the teacher as a person who “focuses on the welfare of other people.” This was evident not only in his work with the sporting clubs but with the charity work he had done for the Education Centre. The teacher was responsible for obtaining an umpire as an ambassador for the Centre, something which he believed spoke highly of the teacher’s standing in the umpiring world. Witness 1 said he had heard nothing but compliments and praise for the teacher from that world.

Witness 1 believed that he was one of the first adults that the teacher spoke to about the incident at about the time the date of the VIT hearing was announced. The teacher was very emotional. Without providing the exact details of the emails and text messages he admitted that he had done something inappropriate, something “very dumb, very stupid.” Witness 1 said he thought at the time “I know the fellow, I know the decency of who he is” and “Let he who is without sin cast the first stone”, or words to that effect. Witness 1 also recalled asking the teacher if the police were involved. When informed they were not, he said it gave him some basis for assessing the teacher’s behaviour. He thought “This is serious but it is not in the criminal system.”

Since hearing of the details of the emails and text messages, Witness 1 thought that there was no question that such communication was inappropriate behaviour, a “professional mistake”, but he believed it to be “totally out of character with the family man I know.” He stated his admiration for the teacher had increased even more so because of the way he has handled himself through “this terrible ordeal, this terrible mistake.” Witness 1 added, “I know the cross he bears now”, the “remorse, anguish, pain and suffering” he is feeling. He said the teacher, when he knew knowledge of his behaviour would enter the public domain, was keen not to raise any problems for the student involved and her family. He also said that the teacher has been devastated by the impact of his behaviour on his reputation and the loss of two careers, in teaching and then with the sporting association.

Witness 1 believed that the teacher, because of his experience and reputation as an umpire, valued his integrity and honesty highly. They are “the epicentre of who he is.” It would be, he stated, a tragedy if the teacher were lost to education because he was “meant to be a teacher.” Witness 1 said he would be prepared to swear on a Bible that in the teacher’s case what occurred would never happen again.

Witness 2

Witness 2 presented written (Exhibit E) and oral evidence to the Panel.

Witness 2 informed the Panel that he was a registered psychologist of 13 years standing employed by a company which provides counselling services to employees of large companies and corporations. The Employee Program is one of the company’s clients. It was through this program that the teacher self referred himself to witness 2 who counselled him over four sessions during May-July 2007. The teacher was seeking support for the stress associated with his resignation from the teaching profession. During counselling the teacher informed him of the incident which led to the termination of his employment and the issues surrounding it with a view to working through what had happened. The teacher informed him that he had been involved in an inappropriate relationship with a student as a result of a close bond that had developed on a school camp. Witness 2 believed this had occurred because the teacher had over-identified with the student’s particular issues and vulnerabilities. He also recalled that the teacher informed him of his own emotional issues associated with the camping trip, issues which he had shared with the student. Witness 2 believed the teacher was genuine about how the bond developed and stated that, at that stage, he could see nothing inappropriate in it. He was informed that text messaging and emails

were involved, but did not question the teacher about them as knowing the full details was not essential to the therapeutic process. Witness 2 believed the teacher's motivation for sending the messages was a combination of an over-identification with the student's experiences and the emotional effects of what he himself was going through because of his traumatic experience. Witness 2 said they discussed how the sending of the messages was inappropriate and consequently the importance of boundary setting in teacher-pupil relationships. In particular, they discussed the need to be conscious of crossing boundaries whenever issues of a personal nature and vulnerabilities of either a student or a teacher are raised. "Warning bells" need to go off because things can be misconstrued." Witness 2 stated that in his experience over-identifying with students' emotional problems is common amongst teachers. He also stated that the teacher was absolutely adamant that he had not formed a romantic attachment with the student and witness 2 was convinced that that was true.

In witness 2's expert opinion there was no risk of the teacher repeating his behaviour. He was aware that apologies had been written to the family concerned (Exhibit F). He also stated that he was very disappointed with the sports association in terminating the teacher's employment. He believed the teacher had been dealt a "raw deal", given his good character, his standing as an umpire and his community service. He was also aware of the straitened financial circumstances the teacher and his family were in because of that action.

Witness 2 stated that the teacher's condition was fragile and required anti-depressant medication because of the stress he was under. However, he was focused on building a positive future for himself and was undertaking Certificate IV training.

Witness 2 informed the Panel that his counselling sessions with the teacher focussed on working through the stresses he was under and not on any potential future in teaching. Personality tests were not conducted: the focus of the therapeutic relationship was to look at personal issues the teacher was dealing with.

Witness 2 also informed the Panel that the hearing was the first occasion at which he had been shown the specific details of the text messages and emails in question. He believed that what had been discussed in the consulting sessions matched up with what had been revealed in them. In particular, he did not believe that, given his recollection of the discussion in those counselling sessions, statements in which the teacher expressed feelings for the student, told her that he missed her and expressions of that nature could be construed as romantic. He believed these expressions and words of affection could be misconstrued if the words on the page were considered in isolation from the contexts in which they were expressed. Given his discussions with the teacher, witness 2 stated that he believed they demonstrated that the teacher felt strongly for the student and cared about her and her welfare. He believed that the teacher's desire to take care of the student because of her vulnerability was akin to a father being caring for his daughter. Considering the details of the text messages (specifically 1d, 1g, 1f) he believed that these expressions could be misinterpreted.

When asked by Counsel Assisting if the teacher could have been in denial about these expressions being romantic in nature, witness 2 conceded that it was "possible." He

later clarified this comment by stating that, even though it was possible for a person to express such sentiments and be in denial about their romantic nature, he did not believe this was the case with the teacher. Regarding email 2b, he believed that on the surface “it does not look very good”, but could be explained by the fact that often with grief one feels alone. The teacher shared his personal grief with the student and this kind of sharing can create an emotional bond. He conceded that the second part of email 2b could be described as an expression of romantic feeling.

In discussing the matter with the teacher, witness 2 stated that the teacher realised that he had behaved inappropriately and he had “crossed the line” regarding boundaries in teacher-student relationships. Witness 2 believed that this was true of all the text messages. Witness 2 used text message 1(h), related to the teacher attending his friend’s grave in country Victoria, as an example of crossing the boundary. He believed that it was inappropriate for a teacher to draw a student into his private grief and things he is dealing with as an adult because of the implicit danger of boundaries being crossed. Witness 2 stated that he did not explore with the teacher other options open to the teacher to discuss these feelings.

In response to a question from Counsel Assisting, witness 2 stated that he believed that, even though his area of expertise was not student-teacher relationships, psychological counselling could assist teachers to differentiate between personal and professional relationships and to differentiate between appropriate adolescent student and adult relationships. He stated that, even though his sessions with the teacher focused on the latter’s personal stress rather than on his future in teaching, such issues had been canvassed in discussions about the fact that boundaries can be lowered in the friendly informal environment of a camp and that the sharing of personal issues and emotional feelings can lead to a bond being formed. Witness 2 said he discussed with the teacher the need to recognise potential dangers in allowing an inappropriate bond to be formed and agreed with the suggestion of Counsel Assisting that further counselling would be necessary to deepen the teacher’s awareness of such. As well, witness 2 agreed with Counsel Assisting that further counselling should focus on a series of interrelated issues such as:

- understanding power relationships between students and teachers, ensuring a non-sexist analysis of the issues is progressed and understood
- developing and maintaining professional standards when working with young people and actively developing and implementing professional boundaries with individual students
- risk assessment and early issue identification of potentially problematic situations and venues and progressing credible natural responses as well as initiating realistic solutions for all the parties. Included in this would be risk analysis of behaviour on school camps
- an in-depth examination of student, colleague, parental and community trust inherently invested in the teacher

- personal and social behaviour that would compromise the professional standing of a teacher and the profession of teaching
- appropriate ways to affirm and develop a student's self esteem. This is of particular concern where a bond becomes apparent.
- developing an understanding of what constitutes flirtation, mixed messages and inappropriate communication
- insight into an ability to recognise and deal appropriately with personal stressors
- identifying and expressing feelings in a way that is appropriate to the occasion

Witness 2 reiterated that he had been informed of an apology the teacher had written. He also stated that in the counselling sessions, while there was to some extent, discussion regarding the effects of the teacher's behaviour on the student, there was no explicit discussion of how his emails might be read by a vulnerable student.

When shown the letter from the Medical Practitioner (Exhibit D) witness 2 agreed with its sentiments especially the final paragraph which stressed the teacher's need for "final closure" on the matter and "to complete the task of working through his remorse over this matter." He also agreed with the suggestion of Counsel Assisting that remorse must then be followed by other steps which would lead to the teacher coming to terms with "what it all means" and to have a greater understanding of his behaviour from a professional perspective. Witness 2 reiterated that further counselling might be useful in helping the teacher to achieve that understanding but he had already done "an awful lot of work" towards it.

Witness 2 informed the Panel that his was short term counselling and in the course of a year he would probably engage in 1000-1200 hours of counselling, seeing each client for about four one hour sessions. If he made a decision that further counselling would be useful he referred the client on. He did not, however, feel the need to do so with the teacher. It was the teacher who brought the counselling to an end and he did so, witness 2 believed, with a sense of hope for the future without negating an awareness of the mistakes he had made. Witness 2 also informed the Panel that he was unable to locate the teacher's file prior to the hearing. However he trusted to his memory. When he had to recall specific information or a specific context all he needed was "a face, a name, a set of circumstances."

DISCUSSION OF EVIDENCE

The Panel's deliberations were assisted considerably by the fact that the teacher acknowledged the allegations and that his behaviour constituted serious misconduct. This ensured that the student and her family were spared the potentially traumatic experience of reliving the events at a public hearing which attracted a fair degree of media publicity because of the teacher's public profile as a well known umpire.

The Panel considered that the teacher's remorse was genuine and that his behaviour was a single transgression in an otherwise impeccable teaching career. However, the fact that he chose not to give evidence under oath also hampered the Panel's ability to make a fully informed judgment about the degree to which his remorse was complemented by a full understanding of the ramifications of his behaviour in relation to its effect on the student, its impact on the profession and any future predictions about his future behaviour if he were to return to teaching.

All four witnesses called on the teacher's behalf left little doubt that they considered his behaviour constituted an inappropriate relationship with a student. His teaching colleagues were shocked and dismayed and considered he displayed an alarming lack of judgment. Witness 1 regarded it as a serious professional mistake though, thankfully not criminal in nature. These were their initial responses when they first heard that the behaviour entailed text messaging and emailing about personal matters. Their responses were reinforced when they learnt of the specific details of the messages and emails either shortly before or at the hearing.

Both the teacher's colleagues, teacher 1 and teacher 2, attested to his passion, commitment and excellence as a teacher citing examples of his collegiality, his exemplary teaching and his significant contributions to the extra curricular life of the school. They also described the high regard in which students held him, and the affection they felt for him. However, teacher 1 also expressed his concern that the teacher's enthusiasm and familiarity with students also blurred professional boundaries in ways that a more experienced teacher such as himself would not. He believed that the teacher found it difficult to strike the appropriate balance between maintaining a professional distance and maintaining popularity, between being friendly and being a friend. Given that fact, in the informal and emotionally intense atmosphere of the school camp, combined with the vulnerabilities of the student in question and the emotional baggage that the teacher took on the trip, what occurred was an accident waiting to happen.

Teacher 1 said he believed achieving the right balance between professionalism and popularity was something each teacher must develop for himself. The Panel agrees, but only in part. It also believes that all teachers would benefit from individual and collegiate professional development related to issues of developing and maintaining professional boundaries in teacher-student relationships. The Panel is aware that the Victorian Institute of Teaching's Code of Conduct currently exists in draft form and that it has been subject to widespread consultation. In the light of what the Panel heard about the increased use of electronic communication between teachers and students, the Panel believes that professional discussion of the Code has become an imperative. The Panel recognizes that the established technologies have been accompanied by their own idioms in which less formal language and even symbols and terms of endearment have become accepted practice in communication between teachers and students. In such a scenario it would be highly desirable for schools to develop guidelines and protocols for such usage while recognizing the importance of the individual teacher's professional judgment regarding such usage.

Witness 1's evidence provided eloquent testimony to the teacher's honesty and integrity, his decency, his good character and values as a family man, his capabilities as an educator and his selfless community service. He believed unequivocally that the teacher's remorse was genuine and that, if he were to return to teaching, he would not err again. However, he was unable to shed much light on a crucial question for the Panel. That is the degree to which the teacher had gained a deep understanding of, and a genuine professional perspective about, the full import of his behaviour.

The Panel found witness 2's evidence problematic. He stated that counselling teachers was not his area of expertise yet he offered the Panel authoritative and decisive interpretations, not only of the teacher's behaviour, but of his possible future behaviour as a teacher. Witness 2 did so on the basis of four one hour long counselling sessions almost one year ago in a busy professional schedule and without having recently re-read the notes he made of those discussions.

Based on his recollection of those discussions, witness 2 believed the teacher's behaviour could be attributed to an over-identification with the student's problems and feelings. When asked to consider the precise details of several of the messages and emails, he said that they could be construed as the expressions of feelings akin to the feelings a father might have when concerned about the care and welfare of his daughter. He conceded, however, that they could also be construed as romantic in nature. It took witness 2 some time to clarify his opinion that he did not believe that the teacher was in denial about the possible romantic intention of the messages.

On face value, the Panel believes that the literal content of several of the emails are romantic in nature. Furthermore, irrespective of the teacher's intentions or whether he was in denial about the possible romantic nature of some of them, the Panel believes that individually and collectively the text messages and emails were inappropriate communication for a teacher to be engaging in with a student. At the very least they sent mixed messages to a vulnerable student.

Furthermore, while it was sympathetic to the teacher's emotional state as a result of his traumatic experience as a teenager, the Panel agreed with witness 2 that it is both inappropriate and dangerous for a teacher to use his personal grief as the basis for forming a bond with a student.

The Panel believed that the four counselling sessions may have gone some way to helping the teacher alleviate the stress he was suffering and to express the mixture of guilt and remorse he obviously felt. The Panel does not believe, however, that there is any evidence that the sessions were sufficiently focused and rigorous for the teacher to gain the necessary depth of insight and professional perspective on the full import of his behaviour, especially on the key question of his future professional behaviour as a teacher. Witness 2 conceded that this was the case. In response to questions from Counsel Assisting, he agreed that the teacher would benefit from further counselling in order to achieve a greater understanding of his professional responsibilities by focusing on matters such as the nature of the power in teacher-student relationships, risk assessment and the early identification of potentially problematic situations and venues such as school camps, the importance of the trust the school community and the wider

public puts in teachers' capabilities to exercise their professionalism, appropriate means for affirming and developing a student's self esteem and a capacity to both recognize and avoid flirtation, mixed messages and inappropriate communication.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel found that Allegations 1 and 2 were proved and that the teacher is guilty of serious misconduct. The panel considered that the teacher's conduct was a substantial departure from the accepted standards for the teaching profession, and the departure was his fault (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998). His behaviour involved inappropriate communication of an intimate personal nature with a vulnerable student in language that could be construed, whatever its intentions, as romantic in nature. As such, it crossed the professional boundaries of the teacher-student relationship and violated the trust that students, parents, colleagues and the community invest in teachers in their work with young people. The damage such a breach of trust causes to the student concerned, her family and the profession in general, is enormous.

The Panel declined to find that the teacher is not fit to teach. In coming to this conclusion, the Panel reflected on the words of Justice Harbison, Vice President and Mr. Eccles, Member at [169] when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 (30 May 2007). The Panel noted -

"We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct."

From the evidence there is nothing to suggest that the teacher's behaviour is of a "continuing and persistent nature" or that his whole approach to teaching and to children in his care is "profoundly and irretrievably flawed." In fact there is strong evidence to the contrary from his character witnesses.

In making its decision, the Panel was mindful of previous panel decisions – *Vahe Sargsyan* [2007] VIT 40 and *Kenneth Mills* [2007] VIT 53. Those decisions involved teachers found guilty of serious misconduct in which the Panel decided to suspend the registration of the teacher and impose conditions involving psychological counselling.

The panel considered that the counselling sessions undertaken by the teacher assisted him to deal with his personal stress but further counselling would enable him to

understand more fully the professional import of his behaviour and assist him to avoid such behaviour in the future.

On 19 December 2006 the teacher advised the Institute that he no longer wished to be registered as a teacher. Section 2.6.47 of the Act allows the Institute to extend its jurisdiction in disciplinary matters to cover teachers who are no longer registered if the conduct the subject of the notification by the employer occurred when the teacher was registered. The conduct the subject of the notification in the teacher's case occurred in June and July 2006 when the teacher was registered as a teacher and the Institute decided on 14 March 2007 to extend its jurisdiction in this matter. The Panel's jurisdiction in a matter such as this extends to the Panel having the ability to make findings in relation to the teacher's conduct and to impose a determination where appropriate. However the jurisdiction does not extend beyond this point. That is, the Panel can not impose a determination that imposes an obligation on the person to undertake certain activities while that person is no longer a registered teacher. The determinations under the Act enable the Panel to impose conditions on a teacher's registration, suspend a teacher with or without conditions or cancel a teacher's registration. If the teacher is no longer registered the Panel could not impose conditions on their registration because that registration no longer exists. However the Panel does have the power to suspend or cancel the person's registration. Cancellation of registration has a number of repercussions in relation to the person seeking to be registered in the future in Victoria or else where. Suspension prevents the person applying to be registered for a period of time.

For the above reasons the Panel determined that the teacher's registration will be suspended rather than exacting the more extreme penalty of cancellation of registration. This determination is based on the following:

- The teacher admitted to the allegations and to the fact that his behaviour constituted serious misconduct.
- The teacher's admissions spared the student and her family the embarrassment and trauma of a public hearing.
- There was no physical contact between the teacher and the student.
- The communication occurred over a relatively short period of time as the consequence of a bond and friendship formed in the sharing of vulnerabilities in the informal and emotionally intense atmosphere of a school camp.
- The teacher's behaviour was a single transgression in what was considered by his peers to be an exemplary teaching career. It reflected naïveté and a failure of professional judgment about maintaining appropriate professional boundaries rather than any covert attempt to circumvent such boundaries.
- The teacher has shown genuine remorse for his actions.

The Panel believes that the teacher would benefit from treatment from a psychologist experienced in teacher/student relationships. It recommends that the teacher consider seeking such treatment before reapplying to be registered as a teacher in Victoria.



TERRY HAYES, CHAIRPERSON



**per:
DREW HOPKINS, REGISTERED TEACHER**



**per:
KAY BODNA, PANEL MEMBER**