

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 065

REGISTERED TEACHER: Julie Elizabeth STRAHAN

PANEL MEMBERS: Susan Halliday, Chairperson
Christine Holloway, Registered Teacher
Graham Hoult, Panel Member

ATTENDANCE: The teacher attended the Formal Hearing and was not represented
Ms Anne Sheehan, Counsel Assisting with Ms A Haslam instructing

DATE OF HEARING: 12 May 2008

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

On the 29 August 2008 the Panel decided to suspend the registration of the teacher until 30 June 2009. The teacher is not able to apply to be registered as a teacher in Victoria until 1 July 2009.

REASONS

BACKGROUND

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

By letter dated 16 November 2006, the employer notified the Institute that it had taken action in response to allegations of the serious misconduct of the teacher. The teacher resigned from the employer with effect from 13 October 2006.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 14 March 2007. The Committee decided to refer the matter to a formal hearing.

On 3 July 2007, the teacher notified the Institute that she no longer wished to be registered with the Institute.

On 11 July 2007 the Committee determined that it was appropriate to continue with the inquiry into the allegations of serious misconduct in relation to the teacher.

The Notice of Formal Hearing, dated 15 April 2008 was sent to the teacher by registered post on 15 April 2008. The teacher received the Notice on 1 May 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 15 April 2008
2. Letter the employer to the Institute dated 16 November 2006 (2 pages) **001- 002**
3. The teacher - Registration Details (4 pages) **003- 006**
4. Document entitled 'Chronology' (2 pages) **006.1-006.2**
5. Letters the Institute to the teacher dated 16 July & 17 August 2007 (5 pages) **006.3- 006.7**
6. Witness statement of the principal dated November 2007 (6 pages) **007-012**
7. 1- Letter from the principal to the teacher, dated 31 March 2003 (1 page) **013**
 - o 2 - Letter from the principal to the teacher, dated 10 June 2003 (1 page) **014**
 - o 3 - Letter from the principal to the teacher, dated 28 November 2003 (2 pages) **015-016**
 - o 4 - Note from school attendance diary, dated 11 December 2003 (1 page) **017**

- 5 - Letter from the principal to the teacher, dated 12 December 2003 with attached minutes (4 pages) **018-021**
- 6 - Letter from the principal to the teacher, dated 12 December 2003 (1 page) **022**
- 7 - Letter from the principal to the teacher, dated 16 December 2003 (2 pages) **023-024**
- 8 - Letter from the teacher to the principal, dated 17 December 2003 (4 pages) **025-028**
- 9 - Letter from the principal to the teacher, dated 27 January 2004 (1 page) **029**
- 10 - Letter from the teacher to the principal, dated 10 February 2004 (1 page) **030**
- 11 - Letter from the principal to the teacher, dated 24 February 2004, attaching order (10 pages) **031-040**
- 12 - Letter from the principal to the teacher, dated 2 April 2004 (1 page) **041**
- 13 - Letter from the principal to the teacher, dated 17 November 2004 (2 pages) **042-043**
- 14 - Letter from the principal to the teacher, dated 22 November 2004 (1 page) **044**
- 15 - Letter from the teacher to the principal, dated 22 November 2004 (1 page) **045**
- 18 - Assistant principal 1 notes of meeting on 1 December 2004 (2 pages) **046-047**
- 19 - Letter from the principal to the teacher, dated 1 December 2004 (2 pages) **048-049**
- 20 - Letter from the teacher to the principal, dated 6 December 2004 (2 pages) **050-051**
- 21 - Letter from the principal to the teacher, dated 7 December 2004 (4 pages) **052-055**
- 22 - Diary note and extract of 10 December 2004 (2 pages) **056-057**
- 23 - Letter from the principal to the teacher, dated 14 December 2004 (4 pages) **058-061**
- 24 - Letter from the teacher to the principal, dated 23 December 2004, with attached medical certificate (3 pages) **062-064**
- 25 - Letter from the principal to the teacher, dated 4 May 2005 (1 page) **065**
- 26 - Handwritten note from the principal to the teacher attaching letter, dated 16 September 2005 (4 pages) **066-069**
- 27 - Record of diary note of conversation with teacher 2 on 6 December 2005 attaching diary extract (2 pages) **070-071**
- 28 - Record of diary note of conversation with teacher 4 on 7 December 2005 attaching diary extract (2 pages) **072-073**
- 29 - Record of parent phone complaint by parent 1 on 8 December 2005 attaching diary extract (2 pages) **074-075**
- 30 - Record of diary note of conversation with teacher 1 on 9 December 2005 attaching two diary extracts (3 pages) **076-078**
- 31 - Letter from the principal to the employer, dated 9 December 2005 (2 pages) **079-080**

- 32 - Letter from the employer to the teacher (1 page) **081**
- 33 - Record of diary note of conversation with the teacher on 15 December 2005 attaching diary extract (2 pages) **082-083**
- 34 - Letter from the teacher to the employer, dated 15 December 2005 (1 page) **084**
- 35 - Record of parent phone complaint by parent 2 on 19 December 2005 attaching diary extract (2 pages) **085-086**
- 36 - Record of diary note with the teacher on 20 December 2005 attaching diary extract (2 pages) **087-088**
- 37 - Record of diary note with the teacher on 21 December 2005 attaching diary extracts (3 pages) **089-091**
- 38 - Letter from the principal to the psychologist, undated (4 pages) **092-095**
- 39 - Letter from the principal to the teacher, dated 18 January 2006 (2 pages) **096-097**
- 40 - Letter from the employer to the teacher, dated 23 January 2006 (2 pages) **098-099**
- 41 - Record of diary note of conversation with assistant principal 3 on 8 February 2006 attaching diary extract (2 pages) **100-101**
- 42 - Letter from the principal to the teacher, dated 9 February 2006 (1 page) **102**
- 43 - Letter from the principal to the teacher, dated 20 February 2006 (2 pages) **103-104**
- 44 - Letter from teacher 3 to the principal, dated 20 February 2006 (1 page) **105**
- 45 - Notes by the principal from meeting with the teacher, dated 20 February 2006 (1 page) **106**
- 46 - Record of diary note of conversation with witness 1 on 20 February 2006 attaching diary extract (2 pages) **107-108**
- 47 - Letter from the principal to the teacher, dated 20 February 2006 attaching weekly timetable (2 pages) **109-110**
- 48 - Letter from assistant principal 3 to the principal, dated 21 February 2006 (1 page) **111**
- 49 - Letter from assistant principal 3 to the principal, dated 21 February 2006 (2 pages) **112-113**
- 50 - Letter from the employer to the principal, dated 27 February 2006 with attached letter to the teacher enclosing a letter to the teacher in relation to the Notice of Allegations from the principal (15 pages) **114-128**
- 51 - Letter from the teacher to the principal, dated 16 March 2006 with an attachment marked Appendix 1 (18 pages) **129-146**
- 52 - Minutes of meeting of 5 April 2006 (3 pages) **147-149**
- 53 - Records of Interviews with various people, including letter from assistant principal 4, dated 25 May 2006 (6 pages) **150-155**
- 54 – Investigator’s Report (29 pages) **156-184**
- 55 - Letter from the teacher to the employer (3 pages) **185-187**
- 56 - Letter from the employer to the teacher, dated 28 September 2006 with attachments (32 pages) **188-219**
- 57 - Letter from the teacher to the employer, dated 13 October 2006

- (2 pages) **220-221**
 - o 58 - Letter from the employer to the teacher (1 page) **222**
 - o 59 - Letter from the employer (1 page) **223**
- 8.** Witness statement of assistant principal 3 dated 19 November 2007 (1 page) **224**
- 9.** Witness statement of assistant principal 2 dated November 2007 (1 page) **225**
- 10.** Witness statement of assistant principal 1 dated November 2007 with attachment (2 pages) **226-227**
- 11.** Witness statement of teacher 1 dated 28 November 2007 (1 page) **228**
 - o 1- Statement by teacher 1 to principal about the teacher, dated 9 December 2005 (2 pages) **229-230**
- 12.** Witness statement of teacher 2 dated 25 November 2007 (1 page) **231**
- 13.** Witness statement of teacher 4 dated 20 November 2007 (1 page) **232**
- 14.** Witness statement of teacher 3 dated 14 November 2007 (1 page) **233**
- 15.** Transcript of Interview between the teacher and the investigator (27 pages) **234-255**
- 16.** Written submission by Counsel Assisting
- 17.** *Ferguson v Walkley & Anor* [2008] VSC 7 (31 January 2008)

The following exhibits were tendered at the hearing:

- A.** Statement of the principal, dated November 2007 and attachments
- B.** Statement of assistant principal 1, dated November 2007
- C.** Statement of teacher 1, dated November 2007
- D.** Statement of assistant principal 2, dated November 2007
- E.** Statement of teacher 2, dated November 2007
- F.** Statement of teacher 3, dated 14 November 2007
- G.** Statement of teacher 4, dated 20 November 2007
- H.** Statement of assistant principal 3, dated November 2007
- I.** Written submission by Counsel Assisting

J. *Ferguson v Walkley & Anor* [2008] VSC (31 January 2008)

THE ALLEGATIONS

The allegations as set out in the Notice of Formal Hearing were:

Whilst employed as a registered teacher at the school from 2003 to 2006, the teacher failed to maintain proper professional standards of conduct in that she:

1. Behaved in an aggressive, unprofessional and intimidating manner towards other staff of the College and failed to demonstrate collegiality –
 - a. On or around 27 November 2003, during a staff meeting said words to the effect of, ‘this is crap.’
 - b. On or around 11 December 2003, was rude and aggressive to the assistant principal assistant principal 1 at a staff briefing.
 - c. On or around 11 December 2003, after a staff briefing said words to the effect of, ‘this is shit’ and ‘it’s all fucked.’
 - d. On or around 12 December 2003, referring to the Year 7 Home Group rooms said words to the effect of, ‘I’ll trash the room before they use it.’
 - e. On or around 12 December 2003, said to assistant principal 1, words to the effect of, ‘fuck you.’
 - f. On or around 9 November 2004, during a staff briefing, stated words to the effect of, ‘they’ve fucking mucked up SOSE.’
 - g. On or around 16 November 2004, at a Finance Committee meeting of the School Council yelled comments including:
 - h. ‘None of you care. Money is all that matters’.
 - ii. ‘All that you fucking care about is the dollars.’
 - iii. ‘It’s a fucking school. There is a complete lack of interest in the staff.’
 - h. On or around 2 August 2005, said to teacher 1, words to the effect of, ‘you have caused the demise of the SOSE’ and ‘you have undermined my position in the school.’
 - i. On or around 10 October 2005, said to teacher 1, words to the effect of, ‘you are to blame for causing my excess situation’ and ‘you have taken my history classes off me.’
 - j. On or around 6 December 2005, told teacher 1 to ‘fuck off’ when she offered suggestions regarding report writing.
 - k. On or around 7 February 2006, during a Year 8 teacher’s meeting made comments to the effect of:
 - i. ‘I thought this was a year 8 teacher’s meeting, why is there a presentation?’
 - ii. ‘This is going to be a waste of time’
 - iii. ‘If you don’t know the kids by a few weeks in, then you’re bloody hopeless anyway’
 - iv. ‘How can a computer program help build bloody relationships?’
 - v. ‘Teacher 5, this is going to be a waste of time. What is the point of all this?’
 - vi. ‘When the hell am I supposed to do all this?’

- I. Failed to comply with reasonable instructions, advice and directions given by the principal and assistant principal 3 of the school.
 - i. On or around 7 December 2004, failed to correct and return project work for her Year 8 SOSE classes, despite the principal's written direction on 1 December 2004, and verbal direction on 2 December 2004.
 - ii. On or around 8 December 2004, told the principal that she would 'probably' return the work referred to in paragraph 2a.i., and repeatedly asked why she had to return work on the date specified.
 - iii. On or around 20 February 2006, when asked by assistant principal 3 to do bus duty for 15 minutes, replied with words to the effect of, 'No! I have better things to do.'

THE EVIDENCE

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

- The principal
- Assistant principal 1
- Teacher 1
- Assistant principal 2
- Teacher 2 (by telephone)
- Teacher 3 (by telephone)
- Teacher 4 (by telephone)
- Assistant principal 3 (by telephone)

The Panel was confident that the principles of natural justice had been applied, and made this assessment mindful of the teacher's circumstances, given that she attended, but was not represented. Counsel Assisting and the Panel provided support to the teacher as and when appropriate, to ensure that the teacher understood the process and what was expected of her.

Legal precedent in relation to conduct and behaviour that amounted to 'serious misconduct' and 'fitness' of persons in professional roles was identified and tabled by Counsel Assisting in her opening submission.

The Panel is confident that the teacher had access to, and an opportunity to comment on, all of the material that was before Panel. It is the view of the Panel that the teacher was appropriately informed about the process and what was expected of her. Further the Panel was satisfied that the teacher was provided with ample opportunity to put her side of events, and sufficient time in front of the Panel to address all of the allegations, inclusive of context, posed by the Institute.

The teacher in her opening submission stated that much of what was before the Panel (that is housed within the allegations) related to freedom of expression. The teacher stated that much of what she had said while employed at the school had been misinterpreted. The teacher also claimed that due to the fact that what she had said had

been taken out of context, she found herself in a position where she had been completely misrepresented. Further, the teacher stated that much of what she had said had been said in jest, or when she was standing up for what she thought was right, or when being sarcastic.

In her opening submission the teacher said “everyone makes mistakes.” The teacher noted that she “really had been singled out” and said staffrooms had always been “a place to let off steam.”

The teacher put to the Panel that teaching is a stressful job and that by the end of 2004 because of the stressful nature of the job, accompanied by personal medical and family reasons which she did not disclose, she was burnt out. The teacher stated that she took Long Service Leave at the start of 2005 because she knew she needed a break. Upon returning in the second semester of 2005 the teacher stated that she was “declared in excess” and not given the opportunity to prove that she was recharged and ready to “get back into it.”

In drawing her opening submission to a close the teacher stated that she was an “excellent teacher” and that the problem was the Principal, and that the Principal did not like her, and in particular did not like her behaviour in the staffroom. The teacher stated that in her view her behaviour was no different to that of others in the staffroom. The teacher stated that in her view she got on with most people at the school.

The Principal

Under affirmation the principal stated that he was in his sixth year as principal at the school and that he had had over thirty years teaching experience. The principal said there were 820 students and just over 90 staff at the school currently. He stated that his six page statement of 64 paragraphs, signed and dated November 2007, was true and correct. Following his statement a further 200 pages of notes and related material were submitted for the Panel’s consideration.

In addition to his written statement, the principal disagreed with the teacher’s position that her language and behaviour was typical of what went on at the school. He indicated that he was surprised by her behaviour and her language, and her aggressive tone. He stated that it was not something that he had witnessed in other schools. He stated that he did notice in the staffroom that people sat in the same seats and spoke to the same people, and that there was not the same degree of movement and acceptance of all people, and further that people operated in particular groups. He said that while this struck him as unusual, the language and behaviour amongst the staff did not stand out as being a major issue. He went on to note that the teacher’s behaviour was the exception. The principal considered the teacher’s behaviour to be out of the ordinary.

The principal said that many staff did not talk up at staff meetings or other public forums because of the belief that if you disagreed with certain people you would be treated in an aggressive manner. He said that people were reluctant and intimidated to speak out or express a different viewpoint. The Principal indicated that people felt this way about the teacher in question.

The principal was asked to comment on the positive qualities of the teacher, as a teacher. He stated that when he first went to the school he considered the teacher to be a dedicated, high quality classroom teacher, who was passionate about her area, which was history. The Principal stated he felt that the teacher generally had a good relationship with students, especially the senior students. He acknowledged these qualities in writing to the teacher and stated his support for her.

The principal stated that the concerns he had had with the teacher's lateness in completing student reports, were dealt with as a separate issue. He noted that the teacher's comment that he needed to learn her reports were always late, was not acceptable to him because of the importance of the administrative time line. He said that this position may have been accepted by others, but the incidents of continual late reports on the part of the teacher were not acceptable to him. He said that this did not alter his opinion that she was a capable teacher in the classroom. The principal stated that the teacher did improve as a result of his action.

The principal noted that when the other issues and complaints arose with regard to the aggressive and inappropriate behaviour of the teacher towards colleagues, he felt that her behaviour should be dealt with. He said that while some people put up with, accepted, or excused the behaviour of the teacher, he considered it sent the wrong message to the rest of the staff to overlook the behaviour. He believed people had become accustomed to her pattern of poor behaviour, and that he knew that it was a major contributing factor when it came to people feeling reluctant to express different viewpoints, or to volunteer how they felt. The principal stated that the teacher's behaviour had not been dealt with in the past. He noted that the behaviour was hostile and aggressive, and that quite often people took it personally. The principal said staff had approached him about their concerns, but were unwilling to put their complaints in writing. He said he believed that the people in question felt under threat or intimidated, and therefore all follow up letters to the teacher were based on his own observations and those of assistant principal 1.

The principal maintained that everyone had the right to express a different opinion, and that he had no problem with people holding different views. He noted that it was the manner in which you present such views, including where, when and how, that's also important. He stressed the need for people to work together, and to work collegially. He stated that everyone's views need to be given consideration and weight. He stated that he did not want a school environment where people felt attacked or intimidated by an individual's aggressive and hostile comments. He said this was not reflective of a professional work environment, and was not an acceptable one.

The direct communications between the principal and the teacher (as detailed in paragraphs 21 – 25 of the principal's statement) concerned the specific allegation of the non return of student project work in December 2004. It was suggested to the principal that the late return of work would not be unusual, and that many teachers would be in the habit of returning work late. The principal stated that he had not received many complaints about extended delays when it came to the return of students' work. He stated that some of the work returned by the teacher in question, was over two terms late. He said that occasionally he'd spoken to teachers with regard to much shorter

delays but this was not a regular occurrence at the school either. On such occasions the principal said that the other teachers would be apologetic, hand back the work quickly and accept it was their issue. The principal said he did not experience the same response from the teacher.

The principal stated that he had expected the teacher to comply with his verbal and written requests about returning the students' work, and based on that he had given the parents an assurance that the work would be returned. The principal stated that the teacher's remarks about "probably getting the work back" and the teacher's request that he take her class while she retrieved the work, and then her excuse about not having enough money for petrol to collect the corrected work from her home, all surprised him. The principal noted that although the teacher was hostile during this conversation, the principal gave the teacher \$10.00 petrol money and allowed her to leave the school to collect the students' work that had not been returned. The teacher returned with only a couple of pieces of the required students' work, not all the work as clearly instructed. The principal stated that the teacher was aggressive, non apologetic and seemed aggrieved as well as personally insulted on her return. He indicated that an issue that could have been dealt with quickly had instead been escalated.

Although a significant concern, it was not the poor pattern of returning students' work late that necessarily amounted to serious misconduct for the principal. He stated that it was the hostility, aggression and personal attacks that the teacher engaged in that constituted the serious misconduct from his perspective. When asked by the teacher why he had not instigated a mediation process between her and teacher 1, the principal stated that he believed that teacher 1 would not agree to that due to teacher 1 feeling threatened by the teacher.

The principal stated that both internal and external counselling sessions were suggested and offered to the teacher on a number of occasions. He stated that he had also made a couple of referrals to a psychologist for a fitness to teach assessment.

The teacher's position that the problem was not hers, rather it was the principal's, was not accepted by the principal. The teacher's position, that if the principal had stopped bullying and harassing her, the problem would not exist, was also disputed by the principal. The principal stated that he did not bully or harass the teacher.

Assistant Principal 1

Under oath, assistant principal 1 stated that while he had retired, previously he had been the assistant principal at the school for and had been a teacher for 35 years. He stated his witness statement of 10 paragraphs, signed and dated November 2007, was true and correct.

In addition to his written statement, assistant principal 1 when asked to comment on the language and behaviour between staff in the staffroom, and more generally about the way in which staff spoke to one another, he stated that in his view the language was normal, civil, adult professional conversation. He noted that there were instances and outbreaks of inappropriate language especially when passions were enflamed but this

was the exception rather than the rule. Paragraph 5 of his statement was noted. Here he stated that the teacher typically responded back at other staff members using coarse language. Assistant principal 1 said while a couple of the other staff spoke similarly on occasions, they did not do so as commonly as the teacher.

On his return from leave in second semester 2003, assistant principal 1 said that he had noticed that the landscape of the school had changed. He said that the teacher was particularly “anti” and quite often outspoken about proposals that may impact on her teaching duties. While he was not personally offended by her behaviour and language towards him, he did take up with her his concerns about the way she spoke in public forums.

Assistant principal 1 stated that he did not take the teacher’s comments about trashing the room seriously, because of her care and maintenance of the room in the past. While he agreed with the teacher that her remark may have been flippant, he noted that he did not see the remark as constructive criticism with respect to the proposal. The witness indicated that when the teacher disagreed with what was happening, remarks of this type were commonly made. He added that on more than one occasion he believed her language, comments, and behaviour to be inappropriate and unprofessional, and below the standard expected in a school.

When asked if the teacher’s language and behaviour would intimidate people and stop them from speaking up at meetings, assistant principal 1 said, from his observation, the answer was yes.

With regard to the effect late reports had on the school, assistant principal 1 stated that if the timeline was not met, the report process could not be completed in time to ensure all reports had been checked and seen by the correct people. Assistant principal 1 acknowledged that two or three teachers might hand in reports late each time. He stated that while it was not necessarily the same teachers each time, the reports of the teacher in question were invariably always late. Assistant principal 1 confirmed that with regard to the pattern and frequency, as well as the period of time of lateness, the teacher in question was the worst teacher he had to deal with. Assistant principal 1 stated that once reports were received from the teacher in question, they were in fact comprehensive.

With regard to the missing Year 10 history exam paper and the affect on students, assistant principal 1 stated that while students were able to have the experience of exam practice in other areas they could not do so in history due to the teacher’s conduct. He noted that students would have prepared for the exam, but were unable to sit the exam on the timetabled day as it had not been handed in prior by the teacher, and further the teacher was absent on the day. He said it was the only exam paper that was missing.

Teacher 1

Under affirmation teacher 1 stated that she had been teaching for over 20 years, had been at the school for 9 years, and a Co-ordinator since 2005. The witness testified that

her signed 8 paragraph statement dated 28 November 2007, and that her letter to the principal dated 9 December 2005, were true and correct.

In addition to her written statement teacher 1 acknowledged that she could understand that the teacher would have had negative feelings due to the fact that she was identified as “in excess” and had experienced the loss of her senior classes.

While on reflection, teacher 1 thought she may have been a bit paranoid when it came to being concerned that damage to her car and/or herself was possible at the hand of the teacher in question, she stressed that the teacher’s hostility towards her was very concerning. She stated that she was not used to that sort of behaviour at school or elsewhere in her day to day life. The witness indicated that there were more appropriate ways than hostile confrontation, to deal with work situations. She stated that for the teacher to have approached the issues concerning her in a different way, would have assisted the situation. When asked by the teacher if mediation between them may have been successful, teacher 1 said that it was a possibility.

Assistant principal 2

Under oath assistant principal 2 stated that he was Assistant Principal at the school prior to retiring. He had worked at the school for 20 years and was a teacher for 35 years. He stated that he has since returned to temporary relief and contract work. He testified that his signed statement of 7 paragraphs dated November 2007 was true and correct.

In addition to his written statement, assistant principal 2, when asked to comment on staffroom culture, responded that the staffroom at the school was generally a social staffroom. He noted that there were sections occupied within the environment where there were different view points and that staff knew the places to go and not to go. He said that while some teachers spoke in a forthright manner, the tone and language of the teacher in question was often aggressive. He noted that this was not typical of other staff, some of whom questioned the teacher’s behaviour with him. He said that the demeanour of the teacher had not changed after she returned from Long Service Leave and that her continual aggressive behaviour had forced school administration to do something, in order to maintain a professional standard.

The witness stated that unlike other teachers, you would never know how the teacher in question was going to react, when it came to making normal requests about reports and exam papers. He stated that while others may be late, it was with trepidation that you approached this particular teacher to ask about reports and exams. The teacher was considered by assistant principal 2 as the most difficult teacher to deal with because of not knowing what her reaction would be.

Teacher 2

Under affirmation, teacher 2 said he’d been at the school for 19 years and a teacher for 27 years. He testified his signed statement of 5 paragraphs dated 25 November 2007 was true and correct.

In addition to his written statement, when asked to comment on the incident in the staffroom on 6 December 2005, teacher 2 said he was in the staffroom at the time, and told the teacher not to speak to her colleague the way that she had. He said he did so, not only because the person who was being treated badly was his friend, but also because he viewed what was happening as inappropriate. Teacher 2 said the incident in the staffroom was the only time he had heard the teacher use inappropriate language to other staff, and he said that at the time she was very angry.

Teacher 3

By affirmation, teacher 3 stated that she had been teaching for 24 years and had been at the school for 5 years. She testified that her signed statement of 4 paragraphs dated 14 November 2007 was true and correct.

In addition to her statement, when asked to comment on the Year 8 meeting, teacher 3 said that it had been a difficult meeting and that she had felt uncomfortable. She stated that the team was trying to introduce new ideas and let everyone know what was going on. She stated that she felt embarrassed for the person chairing the meeting because the teacher kept regularly making very negative and inappropriate comments. She stated that other people at the meeting told her that they also felt uncomfortable due to the behaviour of the teacher. Teacher 3 stated that she was so upset that she wrote a letter to the Principal stating her concerns. Teacher 3 further stated that while the Year 8 meeting was particularly hard, the teacher often called out, swore and made negative comments in other meetings. Teacher 3 said that she was new to the school, and while she was not easily intimidated, she felt intimidated by the teacher in question. She stated that she knew that a number of other staff felt the same way as they had spoken to her about it.

Teacher 4

Under affirmation, teacher 4 stated that she had been at the school for 19 years. When asked if her signed statement of 5 paragraphs dated 20 November 2007 was true and correct, teacher 4 requested her statement be amended. She stated that she did not remember the teacher saying "fuck off". Once amended, the witness testified that her statement was true and correct.

In addition to her statement, when asked to comment on the incident in the staffroom teacher 4 stated she was behind the pigeon holes and that she heard the co-ordinator give a report back to the teacher, as the report was very short in length. The witness said that the teacher in question got very upset and angry. The Co-ordinator left and another teacher who was present at the time told the teacher in question that she needed to act in a professional manner.

With regard to the School Council Meeting (attended by parents and staff) Witness 7 said the teacher became distraught during the meeting and shouted out that 'all the school thought about was money, not about the students.' the teacher then stormed out of the meeting.

Teacher 4 commented that she did at times admire the teacher in question because she stood up for what she believed in, and what she thought. Teacher 4 added that the teacher was a fantastic classroom teacher from what she knew. Teacher 4 stated that she believed that over time the teacher had become frustrated with the system.

Assistant Principal 3

Under affirmation, assistant principal 3 stated that she had been teaching for 13 years and was assistant principal at the school. She testified that her signed statement of 4 paragraphs, dated 19 November 2007, was true and correct.

In addition to her written statement, when asked about the Year 8 meeting, assistant principal 3 said that the teacher in question continually interrupted the presentation in a threatening and provocative manner. Assistant principal 3 stated that she felt this was disrespectful, and in turn made other teachers embarrassed, as well as reluctant to contribute.

With regard to the date of the bus duty incident, assistant principal 3 said it was definitely 20 February 2006. Assistant principal 3 stated that there was a 15 minute period that needed to be covered and the daily organiser suggested the teacher. It was the recall of this witness that when the teacher was asked, she reacted in a rude and disrespectful manner. Assistant principal 3 did not agree with the teacher's recall of the incident.

The Teacher

Under affirmation the teacher stated that she had commenced teaching in 1978, and had taught until retiring from the school on 13 October 2006. The teacher restated her opening comments under affirmation and added that the hearing was a soul destroying experience for her.

The teacher stated that what had been presented was only one small part of what makes up who she is. The teacher said that she believed that she had always been the same, and how she was had never been a problem until the change of principal at the school. The teacher stated that she had been targeted by the new principal because she was an outspoken woman. The teacher stated that while her comments were not always appropriate, she was of the view that others at the school did far worse things, and they are still there at the school.

The teacher stated her only regret was what had happened at the School Council Meeting. She stated that she felt acutely embarrassed having behaved as she did, and indicated that she was apologetic about the incident. The teacher said it pained her that all the other good things that she had done seemed to have been overlooked and only negative things were spoken about.

The teacher stated that she had been unjustly treated by the principal because she did not keep her mouth shut. The teacher stated that she wasn't offered mediation.

The teacher stated that she sought Long Service Leave because she knew that she was not performing the way she should. On returning, she was declared “in excess” which she questioned as she was the only specialist history teacher at the school. The teacher stated that her classes were taken by English teachers and she had no office or desk and sat around just doing extras. She stated that then she had no career.

The teacher claimed that it was the principal who did the intimidating, not her. Further she stated that she was forced to quit a career she loved and was good at because of the principal.

When she was asked if she felt it appropriate to be aggressive and make life miserable for people she disliked or had no respect for, the teacher answered that she had considered her behaviour assertive, not aggressive in the given circumstances. The teacher claimed that she believed that she made people laugh the majority of the time. She said that people had thanked her for speaking up as they were too afraid to.

The teacher stated that she was not aware of the impact of her behaviour on others, and didn't see how she could be aware unless they told her. The teacher indicated that aggressive behaviour to her is standing up and shouting, and that intimidation implies a physical threat. She stated that she did neither. The teacher indicated that she'd ask the questions and then jokingly made flippant or sarcastic remarks. The teacher stated that she did not believe that a person could be intimidated into silence unless the person causing the problem stood up and shouted at them, or made threats.

The teacher said that in her view heckling during meetings and forums was acceptable. The teacher stated anything that benefited the students was acceptable in her view. She added that education was about the students not about balancing the budget. The teacher stated that what made her mad and upset was that the students were the last people to be thought about, and someone had to “bloody stand up for them.”

With regard to the allegations about her inappropriate interactions with staff, the teacher dismissed the idea that her behaviour towards others, and her interactions with other staff members had anything to do with her fitness to teach. The teacher stated that she taught children not staff. The teacher added that in her view only a minority of teachers at the school would have seen her behaviour as unacceptable or unprofessional.

When asked to reflect on her behaviour the teacher stated that she did not believe that the way she behaved caused any intimidation to either the presenters or other people attending the meetings. She said that while it might sound like she spent her whole life screaming and yelling, this was not true. The teacher stated that for the majority of her teaching career she had gone to work, done her job, gone home, and then gone to work and done her job again.

The teacher who was currently working in another industry stated that she missed the actual teaching part of teaching, as well as the students, the social aspect, the pay and the holidays. The teacher stated that she did not miss the politics.

The teacher stated that she did not think she would go back to teaching as she was unable to be a mouse in the corner and keep her mouth shut, and that is what it takes now to be a teacher. She stated that the job was not the same as when she started teaching, and indicated that this was a negative thing that didn't sit well with her.

When questioned about the extended role and responsibilities of the teacher with regard to collegiality, the teacher did not answer the question, nor did she provide any generic position, or touch on the concept of collegiality itself. The only answer provided by the teacher was one where she personalised the response and dismissed the idea that she did not get on with people.

Several unsuccessful attempts were made to engage the teacher in a discussion about her views on collegiality and teachers' professional interaction, by Counsel Assisting and the Panel. The teacher did however say that it was not humanly possible to get on with everyone and that it was only a small number of people that she did not get on with. The teacher indicated that she was unable to say what she would do differently if she taught again, and noted that she could not predict the future. The teacher again added that it was unlikely that she would return to teaching. The teacher stated that given what she had been asked, all she could say is that she would try.

The teacher also raised in her defence that she thought it was her responsibility to speak up about things that she considered wrong. She stated that you can't teach young people to think about world affairs, and what's going on in the world if you yourself are just a mouse in the corner. The teacher indicated that in her view you can't teach independent thought and critical analysis if you don't have the skills yourself. The teacher stated that she "had a big mouth" and "sort of says things that she probably shouldn't" but her behaviour was not misconduct, and it was not unprofessional.

The teacher stated she was remorseful about "this whole sorry business and wished it had never happened" however she added that how she spoke to colleagues was not as important as how she taught in the classroom, and that is why she had stayed in the classroom and not gone up the ladder. The teacher stated that she believed that other teachers would say she was an excellent teacher, outspoken, protective of her department, and that she stood up for what she thought was right. The teacher added that she thought other teachers would say that she was the one who said things that needed to be said. The teacher did not call any witnesses or present statements from teachers, or others, to back up her assertions.

DISCUSSION OF EVIDENCE

The Panel noted that it was bound by the principles of natural justice. The Panel also acknowledged that it was not bound by the rules of evidence. Further, in examining and discussing the evidence, the Panel was mindful that it was only the allegations in the Notice of Hearing which the teacher had been served with, that were relevant to the hearing process. Matters that formed part of the employer's inquiry, and issues that were investigated by the employer that did not form part of the allegations before the Panel, were confirmed to be not relevant to the proceedings.

The Panel found all of the witnesses for the Institute to be credible. The Panel was mindful that the teacher admitted some, but not all, of the alleged behaviour. That said the Panel noted that where certain behaviours were admitted by the teacher (in part or in full) the context and specific circumstances were disputed, except in the instance where she exited the School Council meeting.

It was the view of the Panel that the evidence, provided in written form and under oath/affirmation, mapped a consistent pattern of unacceptable behaviour on the part of the teacher, despite the fact that a range of significant attempts to rectify the situation were made by the principal and others within the school.

After extensive review and discussion of the evidence the Panel concluded that the teacher's 'perspective' in relation to context, her environment and the surrounding circumstances (with specific reference to the allegations) greatly lacked perspective and further exemplified that she was generally oblivious to the impact of her behaviour, and the fall out associated with the way in which she often interacted. That said the Panel did fully consider the teacher's side of events in 'general terms' as put forward by the teacher, as well as the specific positions, explanations and excuses provided by the teacher when questioned by Counsel and the Panel.

In the end it was the Panel's view that the teacher fell short of being a credible witness, and further that much of the information provided by the teacher was unfounded. The Panel viewed the contributions of the teacher at the Hearing to be lacking in balance, as well as personal and professional insight. In addition the teacher relied on a series of accusations, for which she provided no evidence, as her defence. The Panel believed that the teacher's view of what had transpired and the impact (or lack of impact) of her behaviour, and how it was unrelated to her status, ability, competence and professionalism as a teacher, was devoid of reality. In turn the Panel felt the teacher's views showed that she had a particularly limited understanding of the breadth and depth of her role and responsibilities as a teacher in the twenty first century, particularly in relation to the people with whom she worked.

With respect to showing appropriate levels of understanding of the situation in its entirety and hence remorse, the teacher due to her limited comprehension of how she had impacted on others, generally saw herself as the victim. While she said that some of what she had heard on the day of the Hearing had been a shock to her, in the end it was the view of the Panel that with respect to the particulars of the primary allegation, the teacher only demonstrated legitimate remorse in relation to the way in which she had left the School Council meeting.

The Panel did not believe that the teacher by the end of the Hearing had come to terms with how and why her behaviour impacted negatively on students or on a range of others with whom she was required to be collegiate, civil and professionally supportive. In addition the teacher's insistence on several occasions that there were not any relevant or necessary links between her behaviour with her adult colleagues and school administrators, and how she was viewed or performed in her role as a teacher, remained of significant concern to the Panel.

The Panel considered, given the information provided by the teacher, that she had not in any way reflected on what it would have been like to have been a recipient of her own behaviour, nor had she reflected on the impact that such behaviour had on the reputation of her profession. The teacher's emotion and remorse appeared only to relate to her own personal circumstances and the way she exited the School Council meeting.

The Panel acknowledged the teacher's classroom activity was not being challenged, and indeed that there was a level of agreement on the part of witnesses that the teacher was good at what she did in the actual classroom. However the teacher's lack of timely and appropriate follow through regarding the return of students' work, and her non compliant behaviour when it came to administrative requirements related to students' reports and the History exam, were in the view of the Panel, essential to whether or not she could operate as an effective, responsible and reliable teacher. The Panel viewed this conduct and the detrimental consequences for students, other teachers, school staff, parents and the reputation of the school, seriously. It was generally conduct for which the teacher offered no reasonable or credible excuse, nor did she appear to fully comprehend or have taken on board the real or likely consequences. There was no legitimate argument in the Panel's view for context being relevant on these counts.

The Panel does not consider forceful expression of one's views to be misconduct. The Panel was intent on ensuring that it was not acting in a manner that might appear to require the quashing of the teacher's views. The Panel was also fully cognisant of the teacher's legal right to freedom of expression, including the forceful presentation of her views, when considering the evidence and making its finding.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel's deliberations often focused on context. Accountability for how and why the teacher's views were expressed and the nature of the teacher's conduct also featured significantly in the Panel's deliberations. Provocative, threatening, sarcastic, cynical and offensive presentation of one's views, that causes detriment and intimidation, does not in the Panel's view equate to 'speaking up' and fulfilling the responsibility and desire to be 'teaching independent thought and critical analysis' as was argued by the teacher. In taking this position the Panel did consider key segments of *Ferguson v Walkley & Anor* [2008] VSC 7 (31 January 2008) per Harper J., and noted that "*The principles of democratic governance have had difficulty in accommodating laws designed to deal with offensive behaviour – with which I include offensive language*" and further "*.... the majority should be diffident about opposing its view of morality on others. Behaviour deemed unacceptably offensive by some, may not trouble others at all.*"

Based on the balance of probabilities the Panel concluded that whilst employed as a registered teacher at the school from 2003 to 2006, the teacher failed to maintain proper professional standards of conduct. The Panel agreed that the allegation that the teacher *behaved in an aggressive, unprofessional and intimidating manner towards other staff of the College and failed to demonstrate collegiality* was substantiated, as were the particulars detailed from (a) through to (l). That said the Panel did note with reference

to particular (d) that they were not of the view that the teacher did actually plan, when referring to the Year 7 Home Group room, to trash the room. The Panel when making this determination was mindful that there was limited information in relation to the teacher's behaviour that showed a direct impact on students and their learning. Issues around the delays in returning students' work, the late completion of reports and the consequences of the missing exam were however viewed as related and significant by the Panel.

In considering the evidence the Panel acknowledged the responsibility to inform itself thoroughly and in turn gave the teacher many opportunities to discuss what had transpired and why. The Panel was aware that it must act with care and caution, mindful of the teacher's reputation and the possible consequences for the teacher. That said the Panel formed the firm view based on the available evidence and all the information provided by the teacher, that the teacher's behaviour fell well short of what was expected and required. The facts before the Panel proved to the reasonable satisfaction of the Panel that the nature and pattern of the teacher's behaviour amounted to aggressive, intimidating and unprofessional misconduct of a serious nature. Based on the evidence, and the personal and professional positions provided on the day by the teacher, the Panel considered that it had no alternative other than to find that the teacher had engaged in serious misconduct, and further that she was not currently fit to teach.

When deciding that the conduct in question was 'serious misconduct' the Panel called upon a number of authorities. *Parr v Nurses Board of Victoria* VCAT (2 December 1998, cited with approval in *Domburg v Nurses Board of Victoria* [2000] VSC 369, per Ashley J.), was of particular interest when considering the teacher's pattern of behaviour over a period of time and the significant on-going consequences for a number of the affected parties. The Panel noted that "... whether a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be a departure in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure."

The Panel also considered the relevance of *Christine Trigger & the Australian Telecommunications Commission* (1984) 4 FCR 242 and noted that the acts that constitute the misconduct were within the will, power and control of the teacher, and hence more likely to fall within the realms of 'serious misconduct.' Further the conduct in question was, in the view of the Panel, done wilfully and recklessly, without regard for the consequences.

The final determination of the Panel is not a punishment. Further in line with the High Court decision in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 this is a finding made in the public interest, as well as one that seeks to ensure the maintenance of proper standards of conduct for the profession, and is additionally a determination that takes a step in order to protect the reputation of the teaching profession as a whole.

In making its determination and deciding that the teacher is currently not fit to teach, the Panel also drew upon several authorities including per Kirby P, *Pillai v Messiter* (no 2) 1989 16 NSWLR 197 which indicates that *in giving meaning to the phrase 'misconduct in a professional respect' in the context within which it appears, it must be kept in mind that the consequence of an affirmative finding is drastic for the practitioner and the purpose of finding such a drastic consequence is not punishment of the practitioner as such, but protection of the public.*"

The 'public' are in fact students, teachers, administrators, other school staff, parents, and the broader community. This authority talks to protecting the public. It challenges the right of professional people who are *ignorant of the basic rules or indifferent as to the rudimentary professional requirements* to stay on a professional register. The serious nature or degree of the misdemeanours will in the end determine whether someone "should be removed from the register." The Panel is of the view that the teacher in question should not currently be on the register, and further that this status is appropriate until she can demonstrate that her "disqualifying imperfections have been removed."

Additionally the Panel noted in making this finding that as per Gleeson CJ, Meagher JA, Handley JA *Health Care Complaints Commission v Lichfield* (1997) 41 NSWLR 630 it is clear that while "the gravity of professional misconduct is not to be measured by reference to the worst cases, but by the extent to which it departs from proper standards."

With further reference to *Ziems*, the Panel considered the importance of noting and acting when conduct illustrated that a professional could not work satisfactorily within their professional environment, and further the importance of noting when the conduct in question exceeded conduct simply deserving of disapproval.

The Panel considered that even at the end of the Hearing the teacher had failed to understand that the behaviour complained about was of a serious nature, and highly relevant with respect to negative short and long term consequences for several parties. The teacher could not articulate how she might prevent, or even curb, such behaviour in the future, and did not convince the Panel that she believed that there was a legitimate reason and responsibility to do so. This contributed to the Panel's finding that the teacher was not fit to teach. The Panel drew upon *Anthony Davidson v Victorian Institute of Teaching* [2007] VCAT 920 per Justice Harbison Vice President & Mr Eccles, Member at 169, noting "we take the view that a finding that a teacher is unfit to teach must carry with it the perception that the conduct complained of is of a continuing and persistent nature....." Additionally the test set out in *Allinson v General Medical Council* (1981-4) All ER 768, was considered and it was noted that the behaviour of the teacher in question was "dishonourable" with respect to "professional brethren of good repute and competency."

Based on the balance of probabilities the Panel found that whilst employed as a registered teacher at the school from 2003 to 2006, the teacher failed to maintain proper professional standards of conduct. The Panel found that the allegation that the teacher *behaved in an aggressive, unprofessional and intimidating manner towards other*

staff of the College and failed to demonstrate collegiality was substantiated, as were the particulars detailed from (a) through to (l).

The Panel found that the Principal and other staff had attempted to work with the teacher to address these matters. The Panel was also of the considered view that the teacher's inappropriate behaviour was not momentary or isolated, but rather party to an established pattern of behaviour that had been present and unfairly impacting upon people and students, over a significant period of time.

The Panel did not accept the teacher's evidence that the behaviours of concern were taken out of context and misrepresented by a Principal who disliked her, that the behaviour was uncharacteristic, and that the conduct of concern housed within the allegations did not amount to unprofessional, threatening or intimidating conduct.

The Panel felt that the evidence, and the way in which the teacher herself presented during the Hearing, indicated that the teacher did not have a sufficient level of emotional intelligence to perceive and in turn understand how her behaviour was adversely impacting on students, other teachers, the school community and the profession at large.

The Panel and Counsel Assisting provided the teacher with a range of opportunities at the Hearing to demonstrate remorse and further to show a realistic awareness of how her behaviour might have negatively impacted on others. In the absence of appropriate responses the Panel concluded that the teacher needed to spend further time reflecting on the circumstances that had led to the Hearing as well as the information that had been provided about herself during the Hearing. In addition the Panel considered it important that the teacher take steps to come to terms with, and address her emotional intelligence deficiencies, as well as partake in professional development activities directly related to the issues of concern raised by the Panel.

The Panel considered that the teacher demonstrated a particularly inadequate understanding of the important broader roles and responsibilities of a teacher beyond that of classroom teaching, and was adamant that prior to applying for registration again in the future, the teacher should address these matters. The Panel determined it appropriate to suspend the registration of the teacher until 30 June 2009. This determination is not a form of punishment, rather an outcome struck in the public interest.

As the teacher had resigned from the Institute, the Panel had no power to impose conditions. The Panel is of the firm view however, that a significant level of remedial work and personal development should be progressed by the teacher prior to applying for teacher registration in the future. The Panel is of the considered view that if the teacher had been registered, conditions would have been imposed given the substantiated allegation and particulars. Indeed the Panel in discussing the matter were of the view that given the teacher's current mindset and seemingly limited personal and professional insight, that the following two conditions would have been imposed, had the teacher been registered

1. Attend a professional development activity that explores emotional intelligence, workgroup dynamics and conflict resolution.
2. A minimum of six sessions with a registered psychologist and the submission of a psychologist's report evidencing that the teacher had worked on
 - (i) appropriate workplace conduct and professional interaction with peers with specific reference to the Victorian Institute of Teaching Code of Conduct
 - (ii) ethical behaviour and professional courtesy with specific reference to the Victorian Institute of Teaching Code of Ethics
 - (iii) understanding, assessing and reflecting on the impact personal behaviour has
 - (iv) bullying and conflict management
 - (v) team member responsibilities and interacting with diverse personalities
 - (vi) personal reflection and preparation for re-entry into the teaching profession

It is the firm view of the Panel that given the teacher is not registered and hence conditions can not be imposed, that the onus rests with the teacher to diligently attend to the need for significant reflection and to progress in good faith the personal and professional development in the areas stipulated, prior to seeking re-registration.

Finally, while the teacher indicated that she thought it unlikely that she would return to teaching, the Panel remained unconvinced and considered it reasonably likely that the teacher would aim to return in the not too distant future.



SUSAN HALLIDAY, CHAIRPERSON



**per:
CHRISTINE HOLLOWAY, REGISTERED TEACHER**



**per:
GRAHAM HOULT, PANEL MEMBER**