

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 081

REGISTERED TEACHER: Bradley John McGRATH

PANEL MEMBERS: Garry Salisbury, Chairperson
Jeanette Barclay, Registered Teacher
Jane O'Shannessy, Registered Teacher

ATTENDANCE: Ms Rachel Ellyard of Counsel represented the teacher
Ms Anne Sheehan Counsel Assisting with Ms A Haslam instructing

DATE OF HEARING: 2 December 2008

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

On 5 February 2009 the Panel decided that the following conditions are imposed on the registration of the teacher.

1. That the teacher attend a minimum of ten counselling sessions between the date of this decision and 5 March 2010. These sessions should occur with a registered psychologist.
2. That the teacher will provide a report by the psychologist he has consulted to the Victorian Institute of Teaching setting out the dates when these sessions occurred and the teachers understanding of the matters set out in point 3.
3. The sessions with the psychologist must address the following matters:
 - a clear understanding of the appropriate professional boundaries between teachers and students.

- a clear understanding of the policies and procedures in his current school to maintain appropriate professional boundaries.
 - a clear understanding of the importance of professional behaviour in maintaining the reputation of the teaching profession and the trust that the community is entitled to place in teachers.
 - a clear understanding of the uneven balance of power between teachers and students and the potential damage that can be caused by inappropriate relationships with vulnerable students.
4. That the teacher provide the Panel with a statement that shows a clear and comprehensive understanding of the conduct required of a teacher as outlined in the Victorian Institute of Teaching's Code of Ethics and Codes of Conduct. This statement is to be provided in writing.

REASONS

BACKGROUND

The teacher was provisionally registered as a teacher with the Victorian Institute of Teaching (the Institute) on 23 March 2005 and was granted full registration on 14 December 2005.

By letter dated 19 December 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 a registered teacher, the teacher. The teacher's employment at the school was terminated with effect from 19 December 2007.

On 30 January 2008, the matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute and the Committee decided to refer the matter to an investigation.

The Institute arranged for an investigation of the allegations and on 13 August 2008, the Committee considered the investigation report and determined to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 31 October 2008 was served upon the teacher by Registered Post on 3 November 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Letter the employer to the Institute dated 19 December 2007 (1 page) **001**
2. Extract from Public Register of Teachers – the teacher (1 page) **002**
3. Notice of Investigation letter the Institute to the teacher dated 20 February 2008 (3 pages) **003 – 005**
4. Document entitled 'Chronology' (2 pages) **006 - 007**
5. Witness Statement of the employer dated 28 April 2008 (2 pages) **008-009**
6. Witness Statement of the principal dated 7 May 2008 (4 pages) **010 - 0013**
 - Attachment 1 – Record of Friday 23 November 2007 (4 pages) **014 – 017**
 - Attachment 2 – Statement of the principal dated 14 December 2007 (8 pages) **018 – 025**
 - Attachment 3 – Diary Planner 2007 (1 page) **026**

7. Witness Statement of teacher 1 dated 24 April 2008 (3 pages) **027 – 029**
 - Attachment 1 – Statement of teacher 1 dated 13 December 2007 (10 pages) **030 - 039**
 - Attachment 2 – PD Certificate (1 page) **040**
 - Attachment 3 – Registered School Attendance Roll (1 page) **041**
8. Witness Statement of teacher 2 dated 8 May 2008 (2 pages) **042 - 044**
 - Attachment 1 – Statement of teacher 2 dated 13 December 2007 (3 pages) **044 - 046**
9. Witness Statement of the student’s mother dated 7 May 2008 (3 pages) **047- 049**
10. Witness Statement of the student dated 7 May 2008 (3 pages) **050 - 052**
11. Record of Interview between the Institute’s investigator and the teacher (45 pages) **053 - 97**
 - Site Plan of the school (1 page) **098**
12. Letter from the employer to the teacher dated 3 December 2007 (1 page) **099**
13. Letter from the employer to the teacher dated 17 December 2007 (2 pages) **100 - 101**
14. Report for the employer: the teacher, dated December 2007 (11pages) **102 -112**
 - Attachment 1 - Contract of Employment dated 14 December 2004 (9 pages) **113 - 121**
 - Attachment 2 - Code of Ethics – the employer (3 pages) **122 - 124**
 - Attachment 3 - Standards of Professional Practice for Full Registration, VIT (1 page) **125**
 - Attachment 4 - Draft Code of Conduct, VIT (5 pages) **126 - 130**
 - Attachment 5 - Personal Service Record: the teacher (3 pages) **131 - 133**
 - Attachment 6 - Statement of teacher 1 (11 pages) **134 - 144**
 - Attachment 7 - Statement of the principal (4 pages) **145 - 148**
 - Attachment 8 - Statement of teacher 2 (4 pages) **149 - 152**
 - Attachment 9 - Interview notes of meeting with the student’s parents (6 pages) **153 - 158**
 - Attachment 10 - Statement of Respondent re meeting of 5/12/07 (7 pages) **159 - 165**
 - Attachment 11 – Statement and transcript from meeting with Respondent dated 13/12/07 (5 pages) **166 - 170**
 - Attachment 12 - Interview notes from meeting with Respondent on 5/12/07 (5 pages) **171 - 175**
 - Attachment 13 – Interview notes from meeting with the principal on 5/12/07 (8 pages) **176 - 183**
15. Notice of Formal Hearing dated 31 October 2008.

The following exhibits were tendered at the formal hearing:

- A.** Witness Summons for Production of Documents & Statement of the Support Liaison Officer, Singtel Optus Pty Ltd, dated 26/11/2008 attaching requested mobile telephone records.
- B.** Witness Statement of the principal dated 7/5/2008 including attachments.
- C.** The School Staff Handbook
- D.** Extract from the School Policy and Procedures Handbook 2005
- E.** The School Operational Policy – Mobile Phones Brought in by Students
- F.** Witness Statement of the student dated 7/5/2008
- G.** Witness Statement of the student’s mother dated 7/5/2008
- H.** Witness Statement of the teacher dated 24/4/2008 including attachments
- I.** Witness Statement of the employer dated 28/4/2008 including attachments
- J.** Witness Statement of teacher 2 dated 8/5/2008 including attachment
- K.** Statement of the teacher dated 13/12/2008 at page 167 of Hearing Book
- L.** Selected pages of the teacher’s diaries in 2007 & 2008
- M.** Formal Record of Interview between the Institute’s investigator & the teacher at pages 53-98 of Hearing Book

THE EVIDENCE

The allegations of serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

During 2007, whilst employed as a registered teacher at the school, the teacher failed to maintain a professional relationship with a Year 10 female student, the student.

1. On 23 November 2007, engaged in inappropriate communication with the student by mobile telephone text messaging as follows:
 - a. Student (8.54am): ‘Hey...how r u this morning? Did u sleep well?’
 - b. Teacher: ‘feeling pretty good actually. Slept good. How bout u? what time u get to bed?’
 - c. Student (9.06am): ‘Slept good. Went to bed at 12.30. what time u going today?’

- d. Teacher: 'After second period did u have good happy thoughts last night?'
- e. Student (9.22am): 'I had some... did you think of me at all?'
- f. Teacher: 'yeah... had a bad dream though... the principal saw all the phone calls I had made to you from school. But u then covered for me! What were your thoughts bout?'
- g. Student (9.32am): 'That's no good. Don't see how I would cover 4 u but...I just thinking that you r thinking that u r crazy and got no brains! Do u reckon u will still want 2 do this after the holidays?'
- h. Teacher: 'Why am I crazy and got no brains? I will still want to do this? What about you?'
- i. Student (9.38am): 'Cos u love me... I think I will still want to do this'
- j. Teacher: 'so does that mean your crazy and got no brains?'
- k. Teacher: 'So why is it that I am crazy for loving you but you are not crazy for loving me? Please explain?'
- l. Student (9.52am): 'I don't know... All I know is that it means u do'
- m. Student (10.09am): 'U just are okay.'
- n. Teacher: 'are you complaining?'
- o. Student (10.12am): 'Nope'
- p. Teacher: 'r u happy being with me?'
- q. Student (10.14am): 'Yep ... is that okay?'
- r. Teacher: 'that is fine... why do you love me? And why are you not crazy for loving me?'
- s. Student (10.25am): 'I don't know. Lots of reasons why I love u..'
- t. Teacher: 'what u doing this afternoon?'
- u. Student (10.44am): 'Going on the Coon! How about u?'
- v. Teacher: 'don't know are you staying on it tonight or are you just gettin ready?'
- w. Student (10.46am): 'Youth are having tea there?'
- x. Student (10.51am): 'Nope...gonna keep sleeping... R u? Did you get out last night?'
- y. Teacher: 'no not tonight? And definitely not last night! Got no message from her bout 1 this morning that 'N' found and she told her to fuck off! I love you. Xoxo'
- z. Student (10.59am): 'Serious... did she know u had been talking to her?'
- aa. Student (11.15am): 'How is ur meeting going?'
- bb. Teacher: 'so far so boring?'
- cc. Teacher: 'Well we just finished two dates and have to go! How was school been? Do you think you could kiss me this afternoon? Love you xoxo'
- dd. Student (13.22): 'Long and boring... maybe u could get a kiss if ur lucky...'
- ee. Teacher: 'come make out with me in my room'
- ff. Student (13.39): 'No'
- gg. Student (13.44): 'Did you think of me @ ur mtg or was it all business?'
- hh. Teacher: 'I thought about you lots... it was hard to even concentrate on business... do you have a problem with me?'
- ii. Student (15.36): '????'

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The teacher's Counsel conceded on her client's behalf that he was guilty of serious misconduct on the basis that he had engaged in inappropriate communication with the student as alleged in allegations 1a-z, aa & bb. No evidence was provided in support of allegations cc, ee and hh as to the author of these messages and thus these allegations are not proven.

The contents of the allegations admitted to by the teacher satisfy the requirements for the elements of serious misconduct because his conduct was a departure from proper professional standards. It was alleged that the principal of the school was at fault but in *Anthony Davidson v. Victorian Institute of Teaching (2007) VCAT 920* it was said that while the standards of an individual school may make it difficult for a teacher to uphold proper professional standards, it is the teacher's obligation to uphold the standards of the profession at large. The Panel did not accept the teacher's argument that his behaviour could be somehow excused because the principal did not act properly. The Panel finds that the college's procedures and protocols were clear about the proper professional boundaries between student and teacher but the teacher wilfully ignored them. Evidence from the principal, teacher 1 and teacher 2 showed how the boundaries between students and teachers were maintained in the school. The employer's evidence reinforced the idea that the fundamental principles of appropriate boundaries between teachers and students were obligatory and when the teacher broke the rules, his employment was terminated. As to the issue of whether the teacher or the principal should tell the student's parents of her issues the principal said in evidence that the teacher had said he would do so because he had a better relationship with the parents. The teacher's evidence was he would not feel comfortable doing so because of the closeness of their relationship. The Panel did not accept the teacher's version of events.

The Panel came to the view that the teacher did not communicate to the principal the seriousness of the student's issues because otherwise the principal would have acted on these very serious issues. Teacher 2 gave evidence that the principal had never refused to help with a student's problems or told her to go and deal with them herself. The school had clear, well-understood procedures in place that the teacher should have followed resulting in the principal having a much clearer picture of the teacher's relationship with the student. That he did not do so contributes to the seriousness of his misconduct and raises questions about his honesty and integrity.

The contents of the teacher's SMS messages suggest a teacher with an overly familiar relationship with a student. Comments on the contents of the teacher's bad dream in which he dreamt that all his phone calls to the student were discovered by the principal and that the student covered for him suggest a conspiratorial relationship with the student being cultivated by the teacher. The tone of his messages suggests that the teacher showed little loyalty to the principal or understood his professional obligations towards the student.

The teacher's assertions that his references to "love" in allegations (1k) and (1r) were meant in a brotherly or platonic way were not accepted by the Panel. Teacher 2 provided evidence that the ethos of the school was based on the notion of "agape" love which

stressed advocacy, justice and kindness and that the school had delineated the different types of love quite clearly. The teacher's interpretation of these notions as part of his attempts to help the student were seen by the panel as an expression of his romantic love for the student. These messages were inappropriate and crossed the proper professional boundaries between student and teacher in an indefensible way. Rather than boosting the self-esteem of an adolescent girl the messages read as an intimate exchange between two people with a romantic attachment to each other. In *Anthony Davidson v. Victorian Institute of Teaching (2007) VCAT 920* it was pointed out that teachers must maintain professional detachment from students. The teacher did not do this. The teacher developed an inappropriate relationship with the student and her message at (1s) suggests the development of an emotional dependency on the teacher. Rather than helping the student the forming of this relationship may have had deleterious effects on her. By the teacher developing this relationship he abused the power relationship between student and teacher. He was older, had to make decisions on her academic achievement, had the power as a teacher to make requests of her which the school would expect to be followed and could make comments and add notes to her personal file which other teachers would be bound to take note of. Other teachers would assume that the comments he made on an individual student would be made in an objective professional way with the best interests of the student at heart. The evidence is that the teacher did not use his power in an appropriate way and thus damaged the reputation of the teaching profession and placed the student in an invidious position. A young, impressionable female student, particularly one who is trying to manage some serious personal issues is not in a position to cope with the advances of an older authority figure who has very real power over her as a student.

The teacher did not tell the student's mother of his concerns about her daughter, or of the extent of his mobile phone contacts with her daughter. As a result her defence of the teacher is based on the limited information he supplied to her. That he was not honest with the parent of a student in his care is reprehensible. One of the effects of the teacher's self- confessed serious misconduct is that it placed the student in an invidious position. She showed loyalty to him in her evidence based on the information that he gave her. She believed that the principal had not acted on her concerns and that the teacher was not given the support he needed. The source of these ideas is the teacher himself. The student is a victim of the teacher's abuse of her trust as a professional because he has not only developed an inappropriate relationship with her but relied upon her innocence and immaturity to defend his behaviour when it became public knowledge. This again contributes to his serious misconduct and undermines the reputation of the profession and the community's trust in the profession.

His argument that he went to the principal with his concerns and that the principal chose to not act is not supported by the evidence. The principal had clear procedures in place and the college had a reputation for following up on welfare issues promptly with a supportive network of psychologists and counsellors. The Panel came to the view that the principal understood that the student had a range of issues but she was reliant on her staff to inform her when issues were occurring. The teacher's serious misconduct also stems from his failure to be honest with his principal about issues occurring with one of the students under his care. He admitted that he had no training in dealing with these difficult issues and the consequences of his behaviour could have been very serious for

the student, a young, emotionally fragile student whose trust she had extended to him. The phone records indicate that he sent 1727 SMS messages and 272 voice calls between 1 April 2007 and 30 November 2007. Optus records show that between Friday 10 August 2007 (the first day of the school ski camp) and Monday 10 September there were over 550 SMS messages and 91 voice calls at all times of day and night. The teacher's lack of honesty and candour with his principal as discussed previously raises issues as to the contents of this flood of messages. However, the Panel was not provided with the contents of these messages. It is the view of the Panel that the volume and timing of these messages was not appropriate particularly when their existence was not shared with the principal or parents or in the context of ongoing concerns about the student's mental health.

A teacher with better judgement would have realised that this approach to dealing with a troubled young woman was not working and he should have taken the matter to his principal. That he did not do so indicates to the Panel that he had other motives.

The panel was guided by *Guss v Law Institute of Victoria* (2006) VSCA 88 citing *Allinson v General Council of Medical Education and Registration* (1894) 1 QB 750,763 that misconduct in a professional sense is conduct which would reasonably be regarded as disgraceful or dishonourable by fellow professionals of good repute and reputation. The content of the teacher's messages with their declarations of love, their bad language and their transmission during the school day are all matters that fellow professionals would find disgraceful. That the teacher simultaneously agrees that they amount to serious misconduct but were made in the context of trying to help the student is confusing and disingenuous.

The Panel was also guided by *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 which found that a good relationship with a student is central to the teacher's exercise of professional skill but that a too close or over-familiar relationship may endanger the teacher/student relationship and cause real harm to the student. The Panel found that this was the line or boundary over which the teacher had crossed. The teacher's relationship was clearly a personal one, he stepped over that boundary and became too close and kept the real nature of the relationship a secret from his principal, the girl's parents and other teachers. It was only after the accidental discovery of his phone messages leading to the search of his other voluminous SMSs and voice calls that the relationship came to light. While the Panel was only able to read the text messages of 27 November 2007, they clearly show a teacher who has taken a relationship with a student across acceptable professional boundaries. The teacher's behaviour was not trivial and was a substantial departure from the standards which might reasonably be expected of a registered teacher. The Panel was also guided by *Parr v Nurses Board of Victoria* (1998) VCAT, Kellam J, who said that the departure from such standards must be blameworthy and deserving of more than passing censure. The Panel considered that the teacher's serious misconduct impacted on the reputation of teachers as a profession, the school at which he was employed and on the potential health and well being of the student.

In regard to the teacher's fitness to teach the Panel found evidence that he was not entirely honest with his principal, the student's parents or the principal at the school where he is now employed. His answers to the Institute's investigator at his interview

about volume of the texting with the student suggesting that it had only begun recently, were shown to be lies when the Optus records were produced. The Panel could not rely on the teacher's assertion that the entries in his Teacher Diary (sic) in relation to mentioning the student's issues to the principal were made contemporaneously. In finding that the teacher had not been truthful with the principal about the student generally, the Panel found that the diary entries did not support the assertion by the teacher that he had regularly raised the seriousness of the student's situation with the principal.

While the Panel had serious misgivings about the teacher's honesty and integrity at the time of his serious misconduct he showed in oral evidence on the day of the hearing that his thinking had changed. In hindsight he believed that he had allowed the lines between student and teacher to become blurred and that he would never again repeat his behaviour. He would not take on the role of counselling a student without keeping parents and the principal informed. He would refer matters straight to the school nurse or another appropriate person. He said that he would never again send inappropriate messages to a student and allow himself to be influenced by his emotions. He accepted that he had done wrong and that he had been untruthful to the Institute's investigator. He felt that he had been naïve and acted in an inexperienced way. He acknowledged that his text messages and phone contact were excessive and not an appropriate way to address the student's needs. He acknowledges that he should have handled the matters better but that he had improved insight into proper professional behaviour and was regretful for what occurred. The Panel was of the view that while his insight had improved, it remained limited. The teacher gave evidence that in his new school he has demonstrated an understanding of the limits of his role as a teacher and the need to refer students to more appropriate persons for support.

The Panel found that on balance, the teacher is fit to teach. In *Anthony Davidson v. Victorian Institute of Teaching (2007) VCAT 920* the Tribunal said that an assessment of unfitness to teach indicated that the teacher should not be in a position of authority and trust with children because their whole approach to teaching and the children in their care was profoundly and irretrievably flawed. Evidence from principal 1, the teacher's present principal, indicated that the teacher's conduct had been good and he was exceptionally satisfied with him. He had had no issues with the teacher who he said handled difficult students well. Principal 1 also gave evidence that the charges against the teacher had cut the teacher to the core. The Panel accepted that the loss of his previous position and the emotional impact of these proceedings had caused the teacher to experience remorse and insight into his previous behaviour.

DETERMINATION UNDER SECTION 2.6.46(2) OF THE ACT

The Panel found the teacher guilty of allegations of serious misconduct and placed conditions on his registration as outlined above. The Panel found that the teacher remained fit to teach. The Panel found that the teacher's serious misconduct which he admitted to was based on a serious lack of understanding in regard to the appropriate boundaries between a teacher and a student and knowledge of his ethical responsibilities. The teacher abused his power and authority and the Panel needed reassurance that he

understood the appropriate boundaries and the ethical context in which he must operate. To achieve this end the Panel placed the conditions outlined above on the teacher's registration to ensure he had a clear understanding of the uneven balance of power between teachers and students; the potential damage that can be caused by inappropriate relationships with vulnerable students; a clear understanding of the policies and procedures in his current school; the importance of professional behaviour in maintaining the reputation of the teaching profession and the trust that the community is entitled to place in teachers.



GARRY SALISBURY, CHAIRPERSON



**per:
JEANETTE BARCLAY, REGISTERED TEACHER**



**per:
JANE O'SHANNESSY, PANEL MEMBER**