

**VICTORIAN INSTITUTE OF TEACHING**  
**DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 009

**REGISTERED TEACHER:** Katherine Laura **NASH**

**PANEL MEMBERS:** Janet Sherry, Chairperson  
Toni Meath, Registered Teacher  
Nick Sciola, Member

**TEACHER REPRESENTATION:** The teacher was represented by Mr John Handley of the Australian Education Union

**COUNSEL ASSISTING:** Ms Anne Sheehan

**DATE OF HEARING:** 29 November 2004

**DECISION OF THE PANEL**

On 24 December 2004 the Panel decided to cancel the registration of the teacher from the date of this decision.

**EFFECT OF THE DECISION**

The effect of the decision is that the teacher cannot undertake the duties of a teacher in a Victorian school from 24 December 2004.

## REASONS

### HISTORY

The Victorian Institute of Teaching (the Institute) is a statutory authority established under the *Victorian Institute of Teaching Act 2001* (the Act) on 20 June 2002. On 31 December 2002 the Act was proclaimed in full. The teacher applied to be registered as a teacher with the Institute on 13 January 2003. She was granted provisional registration on 24 January 2003.

By letter dated 28 January 2004, the employer advised the Institute that it had taken action against the teacher. Documentation that formed part of its internal enquiry was provided by the employer.

On 12 May 2004 the Disciplinary Proceedings Committee, a committee of the Institute Council, having received information from the employer that provided evidence of the teacher's possible serious misconduct or unfitness to teach, decided that this complaint should be referred to a formal hearing. On 11 August 2004 the teacher was sent a Notice of Formal Hearing with all relevant documents attached. The formal hearing was to be conducted on the papers following advice from the teacher she did not propose to attend the hearing.

The Panel constituted for the hearing was unable to make a decision on the papers and on 28 October 2004 the teacher was advised that a formal hearing had been set down for 29 and 30 November 2004. The teacher was invited to be present.

The Notice of Formal Hearing set out the following allegations:

#### ***Allegation 1***

On 17 June 2003 the teacher participated in an MSN messenger conversation on the internet with Student 1 between 5:37 pm and 5:52 pm in which she made inappropriate comments such as

"I was just about to say how nice you were for saying [you're cool] but now you can bugger off"

#### ***Allegation 2***

On 19 June 2003 the teacher participated in an MSN messenger conversation on the internet with Student 1 between 6:46 pm and 9:18 pm in which she made inappropriate comments such as

"It won't make it hard at school because that just means we would have to go back to being just student and teacher"

"Well, I can tell you that you're my favourite person at school. Probably shouldn't say that but I will anyway1 ...And favourite includes out of students and staff1... Gmust think your cool!"

***Allegation 3***

On 22 to 23 June 2003 the teacher participated in an MSN messenger conversation on the internet between 11:03 pm and 1:45 am with Student 1 in which she made inappropriate comments, such as

“You’re far from ordinary!...you’re just...great!”

In response to a comment from Student 1 “I like you..as in err... as in like like? ARCH! I DID IT. I said it. But you feel the same way?”

“And I do feel the same...”

***Allegation 4***

On 6 July 2003 the teacher engaged in a telephone conversation with Student 1 of approximately 7 minutes 53 seconds as a result of Student 1 telephoning her.

***Allegation 5***

On 6 July 2003 the teacher engaged in a telephone conversation with Student 1 of approximately 96 minutes and 8 seconds as a result of Student 1 telephoning her.

***Allegation 6***

In or about July or August 2003 the teacher allowed Student 1 to visit her at her home without the permission or knowledge of Student 1’s parents.

***Allegation 7***

On 25 July 2003 the teacher sent an email to Student 1 in which she made inappropriate comments, such as

“And then there’s all the cool stuff, like the fact that when we first told each other our feelings I spent the next week feeling so aroused it was almost unbearable!!!!

“I love you Student 1!”

***Allegation 8***

On or about 31 July 2003 the teacher gave Student 1 a birthday present of *J’adore* perfume from the Dior range valued at approximately \$125. She purchased this perfume from the Myer Eastland store on or about 29 July 2003.

***Allegation 9***

On or about 31 July 2003 the teacher gave Student 1 a birthday card which included the comment

“I also want to say thank you for making my life better and happier than I ever thought possible! You are the most beautiful and special person and I hope you never forget how much I love and need you. I love you Student 1 and I hope I get to spend another 80 birthdays like this one with you!!!!”

***Allegation 10***

In or about mid 2003, the teacher gave Student 1 a silver bracelet with an inscription that read 'Student 1, love forever'.

***Allegation 11***

In or about mid 2003 the teacher gave Student 1 a teddy bear as a present.

***Allegation 12***

Late in the evening on Saturday 9 August and/or early Sunday 10 August 2003, Student 1 was in the teacher's company without permission or knowledge of her parents.

***Allegation 13***

In 2003 the teacher wrote a poem to Student 1 which commences "for Student 1 xxx"

***Allegation 14***

In 2003 the teacher wrote a note to Student 1 which begins "Where to begin... You have made me feel a way that I didn't believe possible. I thought I knew love, had been in love and had been loved before. But you have changed everything" and "I know our relationship is far from perfect and that we have virtually every conceivable thing working against us".

***Allegation 15***

In 2003 the teacher wrote a note to Student 1 which included inappropriate comments such as "I am in class now..." and "But the thought of not having you, not being able to talk to you, not being able to touch or hold you or having you loving me was unbearable".

***Allegation 16***

In or about mid to late 2003 the teacher made arrangements for Student 1 to meet her in a Victorian town without the knowledge or permission of Student 1's parents.

***Allegation 17***

On 22 August the teacher sent an email to Student 1 in which she made inappropriate comments to a student, such as

"Its so hard to think about our future. Its like whatever way I look at it, a relationship seems impossible. And I think about how much I need to be with you again but then I think if we were to have one more time together, it would make it harder in the long run. But then I think about your skin and how warm it is. And how good it felt to lie in bed and just hold you. And how very very good it felt the last time we kissed. And how very very very good it felt when you touched me ... there. And at that point I lose all sense of reason!!!"

***Allegation 18***

On 26 August 2003 the teacher sent an email to Student 1 in which the teacher made inappropriate comments such as

"I don't think we should talk about "where we stand" at school. For one, I really want to avoid doing anything non teacherish. Plus, I wouldn't really talk honestly as I am not good at saying how I feel face to face (sic)"

***Allegation 19***

On 30 August 2003 the teacher sent an email to Student 1 in which she made inappropriate comments to a student, such as

"I'm really happy with what we have worked out. One thing I was just wondering about... in this 2 years, are we going to see other people?"

***Allegation 20***

In 2003 the teacher kissed Student 1

***Allegation 21***

In 2003, the teacher engaged in acts of sexual intimacy with Student 1

**THE ISSUES**

The issues the Panel must address in this matter are:

1. Is there sufficient evidence to support any, some or all of the allegations made against the teacher?
2. If any, some or all of the allegations were proved, would it be sufficient to amount to serious misconduct and/or lack of fitness to teach?
3. If the Panel finds the teacher's conduct amount to serious misconduct and/or lack of fitness to teach, what would be an appropriate penalty?

**THE LAW**

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 provides:

***26. Powers of inquiry***

*(1) The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.*

*(2) The Institute must in writing notify--*

*(a) the registered teacher; and*

*(b) the employer of the registered teacher; and*

*(c) the person who made the complaint--*

*of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.*

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public
- to maintain proper standards of conduct for the profession, and
- to protect the reputation of the profession.

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools by ensuring that the teacher is not guilty of serious misconduct and is fit to teach. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established*.

And later

*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.*

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW* [2001] NSWSC 1191).

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* (decided VCAT 2 December 1998)).

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct (see *Re: Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242).

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

*which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.*

*Allinson v General Medical Council* [1891-4] All ER 768

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

In *Health Care Complaints Commission v Litchfield* [1997] 41 NSWLR 630 the Full Court of the Supreme Court described serious misconduct as not to be measured against the worst cases of misconduct, but by the extent the conduct departed from proper standards. Otherwise, the worst members of the profession will set the standard of professional conduct. If a teacher is to adequately perform their duties and act in the best interests of their students they should be able to command the respect and confidence of the education community. If a teacher loses that respect and confidence because of their conduct they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South Wales Bar association v Cummins* (2001) NSWCA 284).

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW* [2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

A continuing lack of moral responsibility and an absence of insight and understanding of right and wrong in the context of ethical fitness would be a strong indication of unfitness (see *New South Wales Bar Association v Cummins* (2001) NSWCA 284 and *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46 ).

## **CLOSED HEARING**

At the outset, the Counsel Assisting requested that the hearing be closed in accord with section 4(d) and (e) of the Act, because of the intimate and personal nature of the evidence to be presented by the student. The teacher did not oppose Counsel's request. The Panel agreed to close the hearing. The screening of the student from the teacher whilst the student was giving evidence was opposed by the teacher on the grounds of the student's mature age (17 years) and the directly conflicting evidence of the teacher and the student.

The Panel, having considered the submissions made by Counsel Assisting and the teacher's representative, decided that due to the serious personal and intimate nature of the allegations that the student would, notwithstanding her age, be screened from the teacher. The Panel further stated that they did not believe that this would be of detriment to the teacher or her case.

## **DOCUMENTS CONSIDERED**

### **1. Statement of the Principal of the School**

#### **Attachments:**

- Notes of meeting 9 September 2003 with Student 1's grandfather, and Student 1's parents
- Letter dated 10 September 2003 to the Principal of the school from Student 1's grandfather and Student 1's parents
- Letter dated 11 September 2003 to the Principal of the school from Student 1's grandfather and Student 1's parents
- Letter dated 11 September 2004 to Student 1's parents from the Principal of the school
- Notes of meeting 18 September 2003 with Student 1
- Notes of interview 20 September 2003 with Student 2 and 19 September 2003 with Student 3
- Letter dated 19 September 2003 to the teacher from the Principal of the school
- Letter dated 7 October 2003 to the Principal of the school from the teacher with attachments
- email 17 January 2003 to the teacher from Student 1
- email 4 July 2003 to the teacher from Student 3
- email 22 July 2003 to the teacher from Student 4
- email 28 August 2003 to the teacher from Student 3
- email 28 August 2003 to the teacher from Student 6
- Statutory declaration dated 5 October 2003 signed by the teacher's mother
- Letter dated 9 October 2003 to the teacher from the Principal of the school
- Letter dated 15 October 2003 to the Principal of the school from the teacher
- Letter dated 20 October 2003 to the employer from the Principal of the school

### **2. Statement of the mother of Student 1**

#### **Attachments:**

- Poem commencing 'For Student 1 xxx'
- Letter commencing 'where to begin...'
- Birthday card to Student 1
- Letter commencing 'I'm in class'
- Handwritten letter to Student 1 from Student 5
- Myer receipt dated 29/7/03 value \$125
- Email commencing 'Hi K' from Student 1
- MSN conversations commencing June 19 2003
- See 'AS 2'
- See 'AS 3'
- See 'AS 4'



3. Statement of the IT manager with the employer  
Attachments:
  - EnCase Computer Analysis Report dated 12 November 2003
  - See 'TS 9'
  
4. Statement of the grandfather of Student 1  
Attachments:
  - Telstra Bill issued 29 July 2003 to grandfather
  - See 'TS 9'
  - See 'AS 2'
  - See 'AS 3'
  
5. Statement of Student 1 (ALS 1)  
Attachments:
  - See 'TS 1'
  - See 'TS 6'
  - See 'TS 3'
  - See 'TS 5'
  - See 'TS 4'
  - See 'TS 7'
  - See 'IW 5'
  - See 'TS 2'
  - See 'TS 8'
  - See 'IW 2'
  - See 'IW 3'
  - Email message commencing 'Ok, let me start by saying'
  - See 'TS 9'
  
6. Statement of Student 1 (ALS 2)  
Attachments:
  - See 'ALS 1-ASH2'
  - See 'ALS 1-ASH3'
  - See 'TS 9'
  - See 'TS 1'
  - See 'TS 3'
  - See 'TS 2'
  - Email 25 July 2003 and email dated 24 July 2003
  - See 'TS 4'
  - See 'TS 5'
  - MSN hotmail messages (two) 22 August 2003
  - MSN hotmail messages (two) 26 August 2003
  - MSN hotmail messages (two) 29 August 2003 and 30 August 2003
  - See 'IW 5'
  - See 'TS 6'
  - See 'ALS 1-ASH 5'
  - See 'TS 8'

- See 'TS IW 5'
- See 'ALS 1-ASH15'
- See 'IW 2'

7. Statement of Student 4

Attachments:

14. See 'ALS 1-ASH 5'

15. See 'IW 2'

8. Statement of Student 2

9. Statement of Student 5

Attachment

- See 'TS 6'

10. Statement of the Acting Student Welfare Coordinator 1 from the School

11. Statement of the Youth Worker from the School

12. Statement of Acting Student Welfare Coordinator 2 from the School.

13. Statement of the Social Worker

14. Letter dated 10 December 2003 to the employer from the teacher with attachments

- Statutory declaration dated 8 December 2003 signed by ex-partner of the teacher
- Statutory declaration dated 9 December 2003 signed by third party

15. Letter dated 25 November 2003 to the teacher from the Employer

16. Undated letter to the Employer from the IT manager

17. Notes of meeting 12 December 2003 the teacher with employer representatives

18. MSN Message 19 December 2003

19. MSN Message 20 December 2003

20. MSN Message 19 December 2003

21. Letter dated 17 December 2003 to the teacher from to the employer

22. Chronology of Events

23. Non-compliance of Acceptable Use Policy

24. Letter dated 9 October 2003 to the teacher from the employer

## **THE EVIDENCE**

At the commencement of the hearing, Counsel Assisting formally withdrew Allegations 10, 11 and 16.

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

the teacher,  
Student 1, and

the grandfather of Student 1

The proceedings were taped.

### ***Background***

Documents supplied by the employer indicated that the teacher was appointed as a teacher at the School on a fixed term contract commencing 28 January 2003. The contract was due to expire on 22 December 2003. This was her first appointment to a school. In 2003, amongst other classes, the teacher taught a Year 10 English class. Student 1 was a student in this class.

On 9 September 2003, the Principal conducted a meeting with the parents of Student 1, and the grandfather of Student 1, at their request. At this meeting the parents of Student 1 and the grandfather of Student 1 advised that they had formed an absolute belief that the teacher was involved in a romantic relationship with Student 1. The grandfather of Student 1 produced a folder containing documents the family had collected in support of these allegations.

During Terms 2 and 3 of 2003 Student 1 frequently sought out the teacher at school to discuss problems she was having. Initially she saw her to discuss the death of her guinea pig (late May). During May, the Middle School Coordinator and Acting Student Welfare Coordinator 1 spoke to the teacher about the dependence Student 1 was displaying towards her. Acting Student Welfare Coordinator 1 concerns were heightened when she was informed that Student 1 had been found sitting at the teacher's desk, knew the teacher's car numberplate and had volunteered to attend detentions the teacher had supervised. At the end of May the teacher also referred Student 1 to the Student Welfare Coordinator. On 13 June Student 1 informed the Youth Worker that she had deliberately cut herself, however the Youth Worker could see no evidence of this. She also indicated to the Youth Worker that she had spoken to the teacher and Acting Student Welfare Coordinator 1 about the self harm incident. In his witness statement the Youth Worker indicated that he informed the teacher that she should not speak to Student 1 in any detail about this and that the matter would be best left to experienced staff. He noted that he said this partly because he had concerns about obsessive behaviour he had observed Student 1 demonstrating toward the teacher.

From 11 August to 13 October Student 1 had regular meetings with Acting Student Welfare Coordinator 2 to discuss issues she was having at home. Acting Student Welfare Coordinator 2 arranged for Student 1 to be referred to the School Social Worker. One of the parents of Student 1 met with the Social worker on 20 August.

On 20 August the School Social Worker pointed out to the teacher the need for her to maintain a degree of personal protection and distance from Student 1.

### ***Allegations 1, 2 and 3***

Allegations 1, 2 and 3 relate to MSN messenger conversations which took place on 17 June, 19 June and 22 to 23 June 2003 respectively. A printout of these conversations was supplied to the Principal of the School by the grandfather of Student 1. His witness

statement indicates that he obtained these transcripts after his daughter, the parent of Student 1, took the family computer to a 'contact of his'.

These transcripts were made available to the manager of IT who, in an initial examination, did not locate these conversations on the family computer. Subsequently the manager had cause to reload data from the family computer and found the log file containing the conversations in the transcripts provided by the grandfather of Student 1. She indicated that the discovery of these MSN conversations validated the authenticity of the grandfather's evidence and that the log file had not been modified since the date and time of the last conversation recorded in the transcript.

The manager also examined the teacher's personal computer and found on 12 November 2003 that "there was no evidence found confirming the claims that the teacher was communicating in an intimate way with her student via Microsoft Messenger" from this computer.

### ***Allegation 1***

In her sworn evidence, under cross-examination, the teacher agreed that communication between herself and Student 1 took place on 17 June 2003 and that she would have made a comment like "I was just about to say how nice you were for saying [your cool] but now you can bugger off". She further acknowledged in her letter dated 10 December 2003 to employer that "these MSN conversations were inappropriate for a teacher to have had with a student and should not have taken place".

### ***Allegation 2***

In her sworn evidence, under cross-examination, the teacher agreed that communication between herself and Student 1 took place on 19 June 2003 and that she could have made a comments along the lines of "It won't make it hard at school because that just means we would have to go back to being just student and teacher" and "Well, I can tell you thay (sic) your my favourite person at school. Probably shouldn't say that but I will anyway!...And favourite includes out of students and staff!...C – I must think your cool!

She further acknowledged in her letter dated 10 December 2003 to the employer that some of the language used and comments made were inappropriate but maintained that the copy of the MSN supplied was not an entire or accurate transcript of the conversation.

### ***Allegation 3***

In her sworn evidence, under cross-examination, the teacher agreed that communication between herself and Student 1 took place on 22/23 June 2003 however she stated that she believed that the record of conversation had been tampered with. Notwithstanding this, the teacher agreed she could well have said made some of the comments contained in this conversation but not in these particular words nor at this time or in this context. She categorically denied making the comments contained in this allegation during this MSN conversation. The teacher gave further evidence that she did not think she had ever been involved in an MSN conversation over a period of three hours. She was unable to give any explanation as to who might have tampered with

this communication and further stated that she “accepts the expert evidence” of the IT manager.

#### ***Allegations 4 and 5***

Evidence supplied in the form of a Telstra Bill dated 29 July 2003 indicates that on 6 July 2003 four STD telephone calls were made from the telephone of the grandfather of Student 1 to that of the ex partner of the teacher, also at that time the address of the teacher. The details of the calls were as follows:

10:17 am, duration 5 seconds

10:18 am, duration 6 seconds

10:41 am, duration 7 minutes, 53 seconds

01:43 pm, duration 96 minutes, 08 seconds

In responding to this allegation the teacher advised the employer that she “did not have a telephone conversation with Student 1 and that it was her belief that Student 1 either did not hang up the phone properly (as claimed in her witness statement), that for some reason Student 1 stayed on the phone for an extended period of time after the answering machine was cut-off, or that the call was made by someone else who did one of the above”. Under oath the teacher denied that she had any telephone contact with Student 1 on 6 July.

In her second written statement Student 1 indicated that when with her grandparents she called the teacher a couple of times to speak but got her answering machine but did eventually get to speak to her and had a long conversation.

#### ***Allegation 6***

In her second written statement Student 1 indicated that she had arranged via telephone from her grandparent’s home to meet the teacher on 8 July 2003 which was in the second week of the school holidays. She states that she was picked up at a point reasonably close to her home and driven to a Melbourne suburb. Student 1 further went on to state that she was picked up close to home on 10 July and driven to the teacher’s home and that on 12 July she also went to the teacher’s home subsequent to going to the beach at Williamstown.

The teacher categorically denied allowing Student 1 to visit her at her home without the permission or knowledge of her parents in July or August 2003. She further indicated that to her knowledge Student 1 had never been to her residence and that she did not encourage or permit her to visit there.

#### ***Allegation 7***

The teacher in her letter dated 7 October 2003 addressed to the Principal of the School stated that in June 2003 she began using an email account for the students of her Year 10A English class to contact her because they had work experience at the end of Term 2. She stressed that the email address was solely for the use of her Year 10 students. The teacher acknowledged some of her students “made friendly chat as well, in the same way they do face to face.” She listed a number of students who had emailed her and she emailed back in reply, including Student 1. Examples of copies of emails from students 3, 5, 6 to the teacher were provided to the Panel. The teacher also

acknowledged Student 1 sent her some emails that were of a personal nature and that she did respond to some of the emails.

In her statement Student 1 identified a copy of an email dated 25 July 2003. She stated the teacher had set up an email address to email her. She stated the address had a hidden message, namely 'kt' being the teacher, 'al' herself and '2005' the year that she turns 18 and could legally be with the teacher. Student 1 stated the content of the email dated 25 July 2003 was very similar to a number of emails sent between the teacher and herself.

The teacher in her statement denied she had sent the emails on 25 July, 22 August, 26 August, and 30 August 2003. The teacher in her statement and sworn evidence claimed that it was possible to fabricate emails. She contended there were programs available over the Internet that could be used that allowed one to use another person's email address to send a message. Furthermore, she stated she was at her parent's house on the night of 25 July 2003. The teacher referred to Student 1's statement where she alleged on 29 August 2003, they had sent emails to each other where they had come up with a plan to hide their relationship. The teacher questioned why the IT manager had not found evidence of such emails on Student 1's family computer.

In her statement the IT manager indicated that pursuant to performing a forensic examination of the personal computer of Student 1's family computer she had produced a report which included a table containing a list of emails retrieved from the computer. The table contains the name of the file, when it was last written and if and when the entry was modified. The table had an entry created 25 July 2003.

The IT manager stated the forensic software she used enabled her to retrieve deleted temporary files not located on the hard drive of the computer. She stated most of the files found had been deleted. Of the 23 emails contained in the table, the date appearing in the 'File Created' column and the date appearing in the 'Last Written' column are the same. As there were no entries in the 'entry Modified' column, the IT manager opined that the emails had not been modified or tampered with. Furthermore the IT manager opined that a person using Student 1's family computer could not have written some of the messages to Student 1.

In response to the teacher's statement the IT manager acknowledged email messages can be made to appear as if they are being sent by somebody other than the sender. The IT manager stated further investigation of the teacher's notebook, and possibly her home computer, could substantiate the identity of the actual sender. She considered that it was doubtful Student 1 could consistently fabricate so many messages.

The teacher under sworn evidence denied she had written the email dated 25 July 2003 and also denied Counsel's submission that it was not possible the email could have been sent by someone else.

### ***Allegation 8***

Evidence in the form of a receipt shows that the teacher made a credit purchase at Myer on 29 July 2003. The teacher agrees that she made this purchase and that it was for

J'Adore perfume for her own personal use. She further maintains that in late July or early August Student 1 came to her office and asked her for a bag and that she gave her a bag she had in her desk. She indicated that she believes the receipt was in that bag.

The mother of Student 1 in her written statement indicated that in searching her daughter's room she found a bottle of perfume, J'Adore, hidden in a Myer bag with a receipt.

The witness statement and the oral evidence of Student 1 indicated that she was given a wrapped bottle of J'Adore perfume inside a Myer bag, together with a birthday card, on 31 July 2003. Student 1 stated that she was given the bag, containing the perfume, inside a manila folder in a classroom at the beginning of recess.

### ***Allegation 9***

A partial copy of a birthday card to Student 1 on her 16<sup>th</sup> birthday was supplied by the family of Student 1. The original of the card was found by the mother of Student 1 on searching her daughter's bedroom and a copy was made. The card contained the following message: "I also want to say thankyou for making my life better and happier than I ever thought possible! You are the most beautiful and special person and I hope you never forget how much I love and need you. I love you Student 1 and I hope I get to spend another 80 birthdays like this one with you!!!"

Student 1 stated that the card was given to her by the teacher, along with the J'Adore perfume referred to in Allegation 8. The card is not signed and the original has not been produced or sighted. Student 1 stated that when she was in Tasmania with her grandparents she "cut-up and destroyed the card". The teacher denies giving Student 1 the card and that it is in her handwriting. There is no evidence of it being the teacher's handwriting.

### ***Allegations 10, 11 – withdrawn***

### ***Allegation 12***

The substance of this allegation is that Student 1 was in the company of the teacher, late in the evening of Saturday 9 and/or Sunday 10 August 2003, without the permission or knowledge of her parents. Student 1, in her written statement stated that she and the teacher had made arrangements to go out on August 9. She further stated that they could not go to the teacher's house, because her boyfriend was at home. Her sworn evidence to the hearing outlined the following sequence of events:

- at 9:30 pm on 9 August she sent a text message to the teacher telling her that her parents had left home for the evening
- she was picked up at a bus stop near her home a little before 10:00 pm, she had a guinea pig with her
- The teacher drove her to a Motel and they went straight to a room, where they talked and played with the guinea pig
- at about 11:00 pm she received a telephone call from her mother but did not answer it because her mother had previously left a voicemail. (Her written statement described this voicemail as using a "lot of explicit language and I really didn't want to talk to her")

- she was then rung by her friend Student 4, who had been rung by Student 1's parents. Student 4 agreed to ring Student 1's parents and tell them that Student 1 was OK but did not want to speak to them.
- she decided to ring home but was told by her brother that their parents were not at home. A short time later Student 1 spoke to her father when he called her.
- she also spoke to Student 1's grandfather. Her evidence was that her grandfather was concerned, not angry. After initially stating to him that her situation was very complicated and that she could not come home she indicated she would come home
- Student 1's grandfather telephoned again and asked to speak to the person who was with her. Student 1 gave evidence that the teacher was laughing when she spoke to her grandfather and that he had joked with her.
- she was dropped at the end of her street at some time between 1:00 and 2:00 am.

The mother of Student 1's witness statement indicated the following had occurred on 9 and/or 10 August:

- she and her husband had found Student 1 missing from home shortly after 10:00 pm on 9 August
- she contacted Student 4 in her endeavour to locate Student 1 and she had subsequently been rung by Student 4 to say Student 1 was safe
- Student 1 had had spoken to her father and expressed a reluctance to come home
- Student 1 spoke to her grandfather who indicated to Student 1's mother that he had also spoken with an older woman who was with Student 1
- Student 1 arrived home between 3:30 and 4:15 am on 10 August
- when Student 1 got home she and her husband asked Student 1 if she had been with the teacher, Student 1 denied this and said she had been with a female friend, whom she had met on the Internet, who lived in Hawthorn and who was a university student.

Student 1's grandfather, in sworn evidence indicated that:

- he had been telephoned by his distraught daughter somewhere between 11:00 pm and 12 midnight on 9 August who asked him to speak to Student 1 and to try and get her to come home
- he rang Student 1 and spoke to her. She indicated, after some avoidance, that the matter was very complicated and that she could not go home. She did, after further conversation, say she would go home
- approximately an hour after this telephone call he received a further call from his daughter to say that Student 1 was still not home, he then telephoned Student 1 again and told her to go home. Student 1 informed him that she was with someone and that she was in a friend's bedroom. He then demanded that Student 1 put this person on the phone. He indicated that this person greeted him politely and said she knew about him. He then stated that he may have used strong language and that he screamed at this person "for God's sake get this child home".



- his daughter confirmed with him by telephone that Student 1 had come home between 3:30 am and 4:15 am on 10 August and that Student 1 had said she had been in Hawthorn with a person she had met on the Internet
- after the events of 9 August both he and Student 1's parents started to look for information to help explain who Student 1 was with that night.

Under oath, the teacher denied that she met Student 1 on 9 and/or 10 August.

A Statutory Declaration declared by mother of the teacher on 5 October, indicates that on 9 August 2003 she and her husband spent the afternoon assisting the teacher to shift heavy furniture and that they returned to town with the furniture whilst the teacher remained behind for a few hours cleaning. She further states she spoke to the teacher on the phone at least three times during this period of time and that the teacher returned to the family home during the evening and spent that night at home. The mother of the teacher also stated that she and her husband were at home on the night of 9 August 2003.

The teacher in sworn evidence agreed with the details outlined in her mother's Declaration.

A Statutory Declaration declared by the ex partner of the teacher on 8 December 2003, indicates that they lived together for just under three years and "after having problems for over six months, their relationship ended amicably on July 21 2003. He further states that they continued to live together until 2 August when he moved his belongings and that the teacher moved her belongings on 9 August. He stated he had not seen her since 11 August when their lease expired.

The teacher in sworn evidence agreed with the details outlined in the teachers ex partner's statutory Declaration.

### ***Allegation 13***

The Panel was supplied with a photocopy of an unsigned handwritten poem which commences "for Student 1 xxx". The poem was found by the mother of Student 1 in a box under her daughter's bed, copied and replaced. In her written statement Student 1 states that poem was written for her by the teacher when she was at the teacher's house on 12 July 2003 and that she took it from a notepad before they left.

The teacher denies writing the poem and there is no evidence of it being the teacher's handwriting or that she is the author. This letter was not referred to in the oral evidence.

### ***Allegation 14***

The Panel were provided with a photocopy of a note which was found by the mother of Student 1 in her daughter's bedroom. The original was not sighted. Student 1 claims that she destroyed it. The note begins with the following: "Where to begin... You have made me feel a way that I didn't believe possible. I thought I knew love, had been in love and had been loved before. But you have changed everything" and "I know our relationship is far from perfect and we have virtually every conceivable thing working

against us". The note is not signed. Student 1 stated that she received this letter at the teacher's house on 8 July 2003.

The teacher agrees she wrote the letter, but to her boyfriend. Student 1 was seen at the teacher's school desk by staff, where she may have been able to access the letter. Student 1 had access to the teacher's desk and was found alone at the teacher's desk by other colleagues. Staff addressed this situation by not allowing further student access to the staffroom.

In the week after being found at the teacher's desk Student 1 wrote the teacher's signature on the board. The teacher claims it was identical to her signature and that she was most concerned about this as she used this signature for bank accounts and other personal documentation. She stated that she discussed this with a colleague and Acting Student Welfare Coordinator 1.

#### ***Allegation 15***

Student 1 claimed in her witness statement that she received a letter from the teacher, at school in the week beginning 4 August 2003. It includes comments such as " I'm in class right now..." and "But the thought of not having you, not being able to talk to you, not being able to touch or hold you or having you loving me was unbearable".

The note is not signed and appears to be incomplete. The handwriting is almost identical to the letter referred to in Allegation 14. The note was found by the mother of Student 1 in her daughter's bedroom.

The teacher in her written statement says that she believes that the letter may have been written to her boyfriend but not in 2003, given the slightly different style of handwriting. She also states that she would find it totally inconceivable that she would have had the time in class to write the note in her then position at the school. She further stated that there was a second page to the letter that was not included but which had been produced in an initial meeting with the parents of Student 1 and the grandfather of Student 1. According to the teacher, and witness statements, staff reported Student 1 being alone in the staffroom and at the teacher's desk.

#### ***Allegation 16 – withdrawn***

***Allegations 17, 18, 19***, relate to emails allegedly sent by the teacher to Student 1 that contained inappropriate comments.

#### ***Allegation 17***

Student 1 stated the email dated 22 August 2003 sent from an e-mail account not in the teacher's name had been set up by the teacher. The address the e-mail had been sent to was an address Student 1 had set up and part of the address was a nickname the teacher used to call her.

The teacher did not specifically refer to the above email in her statement. However she denied she had set up the email account to have email conversations with Student 1 and stated she had never referred to Student 1 by a nickname.

The teacher in her evidence denied she had written the email dated 22 August 2003 but acknowledged it contained matters she may have said to Student 1 during a verbal conversation.

***Allegations 18 and 19***

Student 1 in her statement identified a copy of an email dated 26 August 2003 and 30 August 2003 as being sent by the teacher to her. The teacher in her statement and during her evidence denied writing the emails.

***Allegations 20 and 21***

The teacher categorically denied kissing Student 1 or engaging in acts of sexual intimacy with her however the content of the emails attributed to the teacher mention the act of kissing and contain reference to sexually intimate acts.

**DISCUSSION OF THE EVIDENCE**

On the basis of the evidence supplied by the teacher in relation to Allegations 1, 2 and 3 the Panel had no alternative but to conclude that these communications took place between herself and Student 1 on the dates specified. The claim that some of the material is not an entire or accurate transcript or had been tampered with did not seem to the Panel on balance, to be possible. This view was further validated by the findings of the IT manager after examination of Student 1's family computer. The Panel noted the teacher's acknowledgement that the communications were inappropriate between a student and a teacher notwithstanding evidence that Student 1 was a student 'at risk' and that the teacher felt it was important to communicate at a level where she could be seen to be supportive.

In relation to Allegations 4 and 5 the Panel accepts that a series of telephone calls were made from the home of the grandfather of Student 1 to a telephone number in the name of the ex partner of the teacher who shared accommodation with the teacher. Student 1 confirmed that she made the telephone calls and that on all but the last occasion got through to an answering machine. The critical issue is whether she actually spoke to the teacher during the final telephone conversation or whether Student 1, as the teacher claims, failed to properly hang up the telephone. On balance, the Panel concluded that Student 1 had a lengthy telephone call to the teacher. The Panel was unable to draw any conclusions about the nature of the call.

In relation to Allegation 6 the Panel had to weigh up the statement of Student 1 that she was picked up by the teacher on 8, 10 and 12 July and taken to the teacher's home against the statement of the teacher which categorically denied this. In the absence of any further evidence the Panel was unable to come to any conclusion as to whether these events actually took place.

In relation to Allegations 7, 17, 18 and 19 the critical issue is whether the teacher sent the emails in question. In both her written and oral evidence Student 1 identified the emails as having been sent by the teacher. The teacher in her written and oral evidence

denied she was the writer of the emails and in fact intimated that they had been fictionalised or fabricated or cut from another conversation.

The evidence from the IT manager was that a person using Student 1's family computer could not have written the messages from the email account not in the teachers name to Student 1. The IT manager did however acknowledge email messages could be made to appear to have been sent by somebody other than the sender. She stated further investigation of the teacher's notebook, and possibly her home computer, could substantiate the identity of the actual sender. She considered that it was doubtful Student 1 could consistently fabricate so many messages. A subsequent investigation of the teacher's personal computer by the IT manager led to her reporting on 12 November 2003 that "there was no evidence found confirming the claims that the teacher was communicating in an intimate way with her student via Microsoft Messenger".

The Panel, without expert evidence to refute the IT manager's evidence, was satisfied based on the content of the emails containing very intimate and personal knowledge of the teacher's personal affairs that the said emails were sent on the dates and time as alleged to Student 1. On the evidence the only inference that could be drawn, and on the balance of probabilities, the Panel was satisfied the teacher was the person that sent the said emails. In so finding, the Panel had regard to the fact that the teacher did not call an expert IT witness to refute the IT manager's evidence.

In relation to Allegation 8 the Panel is in no doubt that the teacher purchased J'Adore perfume on 29 July 2003 and that the Myer bag which contained the perfume and the receipt came to be in Student 1's possession. The teacher claims that Student 1 requested a bag from her that she gave it to her, and the receipt was in the bag. Student 1 claims that she obtained the bag when the teacher gave her the perfume as a birthday present. The teacher denies this claim maintaining that the perfume was bought for her own personal use. A bottle of J'Adore perfume was found by the mother of Student 1 in a Myer bag in her daughter's room together with the receipt. If the Panel accepts the teacher's version of events then someone other than her must have obtained a bottle of perfume and placed it in the bag along with the receipt. On the balance of probabilities this seems unlikely.

In relation to Allegation 9 the Panel noted that they were supplied with a partial photocopy of the card in question and that the originals had been destroyed. On comparison with other material, which the teacher acknowledged as being in her handwriting, there was no evidence to indicate that the handwriting was hers. The Panel concluded that they could not be certain, on balance of probabilities, that the teacher had written the card.

In relation to Allegation 12 the Panel took particular interest in the times which were mentioned around the allegation. The teacher, under oath, placed herself at her parent's home during the evening on 9 August and maintained she spent the night there. This is supported in a Statutory Declaration by her mother who states that the teacher "returned home during the evening and spent that night at home". Student 1 under oath said that she sent a text message to the teacher at 9:30 pm advising that her

parents had left home and that she could be picked up. She also stated that she was picked up by the teacher at little before 10:00 pm and taken to a motel. If the Panel accepts the evidence of the teacher and her mother and that of Student 1 it seems difficult to place the teacher at 10:00 pm. The Panel were also unable to determine whether Student 1 was picked up and if so by whom.

From the time her parents found her missing from home, shortly after 10:00 pm there were a series of telephone calls to Student 1 from her parents, friend Student 4 and her grandfather. The evidence is such that the Panel accepts that these calls took place. Sworn evidence from the grandfather of Student 1 and Student 1 confirm that they spoke somewhere between 11:00 pm and midnight and that Student 1 was told to return home. Student 1 and her grandfather also stated that the grandfather had spoken to a female who was with Student 1. The grandfather of Student 1 stated that he may have used some strong language and had been forceful in demanding his granddaughter be brought home on the other hand Student 1 gave evidence that the conversation had been jovial. The Panel found it difficult to reconcile these two versions of the conversation.

In her sworn evidence Student 1 stated that she was dropped off at the end of her street at some time between 1:00 and 2:00 am, her mother's witness statement has her arriving home between 3:30 and 4:15 am and this was confirmed by the grandfather's sworn evidence. The Panel was unable to determine with any certainty what time Student 1 arrived home or how she got home but is satisfied that she got home some time after 1:00 am and before 4:15 am.

In relation to Allegation 13 the Panel noted that they were supplied with a photocopy of the poem which was unsigned and that the original had been destroyed. On comparison with other material, which the teacher acknowledged as being in her handwriting, there was no evidence to indicate that the handwriting was that of the teacher. The Panel concluded that they could not be certain, on balance of probabilities, that the teacher had written the poem.

In relation to Allegation 14 the Panel accepts that the note was written by the teacher and that it could possibly have been written to Student 1 but equally it could have been written to the ex partner of the teacher, as claimed by the teacher. As the note is not dated the Panel could not come to any conclusion about when it had been written. The Panel were also mindful of the fact that Student 1 had access to the teacher's desk at school and could have accessed her personal possessions.

In relation to Allegation 15 the Panel accepts that the note was written by the teacher and that it could possibly have been written to Student 1 but equally it could have been written to the ex partner of the teacher, as claimed by the teacher. As the note is not dated the Panel could not come to any conclusion about when it had been written. The Panel also question why the second page of the letter was not produced by student 1's parents and student 1's grandfather as photocopied evidence, given it was referred to in their initial meeting with the Principal. The Panel were again mindful of the fact that Student 1 had access to the teacher's desk at school and could have accessed her personal possessions.

In relation to Allegations 20 and 21 the Panel was of the opinion that the content of the emails sent between the teacher and Student 1 was sufficiently explicit enough to conclude, on balance, that the teacher kissed Student 1 and engaged in acts of sexual intimacy.

## **FINDINGS OF FACT**

After consideration of all the evidence, the Panel made the following findings:

### ***Allegations 1, 2 and 3***

That the teacher and Student 1 took part in MSN Messenger conversations on 17, 19 and 22/23 2003;

That these MSN Messenger contained inappropriate comments by the teacher to Student 1

### ***Allegations 4 and 5***

That on 6 July 2003 a series of telephone calls was made from the home of the grandfather of Student 1 to a telephone number in the name of the ex partner of the teacher who shared accommodation with the teacher;

That on the same date Student 1 had a conversation of 96 minutes and 8 seconds with the teacher, the nature of that conversation is unknown.

### ***Allegation 6***

On the balance of probabilities the evidence did not support this allegation.

### ***Allegations 7, 17, 18, and 19***

That the teacher and Student 1 exchanged emails;

That the teacher was the writer of the emails sent on 25<sup>th</sup> July, 22<sup>nd</sup> August, 26<sup>th</sup> August and 30<sup>th</sup> August 2003;

That the teacher sent emails on 25<sup>th</sup> July, 22<sup>nd</sup> August, 26<sup>th</sup> August and 30<sup>th</sup> August 2003 in which she made inappropriate comments.

### ***Allegation 8***

That a bottle of J'Adore perfume was purchased by the teacher on 29 July 2003 at Myer;

That a bottle of J'Adore perfume was given by the teacher to Student 1, as a birthday present, on or about 31 July.

### ***Allegation 9***

On the balance of probabilities the evidence did not support this allegation.

### ***Allegation 12***

On the balance of probabilities the evidence did not support this allegation.

### ***Allegation 13***

On the balance of probabilities the evidence did not support this allegation.

### ***Allegation 14***

On the balance of probabilities the evidence did not support this allegation.

***Allegation 15***

On the balance of probabilities the evidence did not support this allegation.

***Allegation 20***

In 2003 the teacher kissed Student 1.

***Allegation 21***

In 2003 the teacher engaged in acts of sexual intimacy with Student 1.

**CONCLUSION**

The first issue the Panel had to consider was whether there was sufficient evidence to support any, some or all of the allegations made against the teacher. The second issue the Panel had to address was whether the allegations, which were proved, amounted to serious misconduct and/or lack of fitness to teach?

Counsel Assisting referred to case law and noted the Panel must act with care and caution when making a finding in respect of the allegations made against the teacher.

The Panel considered Mr Handley's submission and noted he acknowledged that if the Panel were to find the teacher participated in the MSN conversations and emails then the teacher's lack of fitness to teach would be unchallengeable.

The Panel had regard to the fact that the teacher was a first year teacher. A teacher's position in relation to students is one of power and influence, but most importantly, a position of trust. It is the view of the Panel that based on the evidence before it, the teacher showed a lack of moral responsibility, a severe lack of judgement and limited insight as to the proper boundaries in respect of the MSN and email communications between a teacher and a student

The Panel was of the opinion that the MSN and email communications between the teacher and her Year 10 student, having regard to their content, duration, and dates was not merely a serious error of judgement, but was improper, beyond unprofessional, and was a substantial and wilful breach of the standards required in any professional relationship that should exist between a teacher and student. The communications were highly inappropriate and clearly breached the accepted professional boundaries between a teacher and her student. The Panel also formed the view, based on the evidence, that there had not merely been a blurring of the professional boundaries, but that a personal and intimate relationship between the teacher and Student 1 had taken over.

The Panel was therefore of the opinion that, the communications, comprising numerous MSN and email communications between the teacher and Student 1, a 15 year old student in her Year 10 English class, amount to serious misconduct. The Panel considered the sexual overtones and overt sexual references contained in several of the

communications would universally be regarded as disgraceful and dishonourable by the teaching profession and constitute highly inappropriate behaviour.

Further, the Panel does not consider the teacher fit to teach. The teacher failed to meet her full obligations as a teacher to Student 1, the teaching profession and the broader education community, due to the series of inappropriate communications with her, bringing the teaching profession into disrepute.

#### **DETERMINATION**

The responsibility of the Panel is to help maintain a high standard of conduct for the teaching profession, and given that the teacher's actions constitute serious misconduct and that by those actions the teacher has demonstrated herself to be a person unfit to teach, the Panel has determined to cancel her registration to teach from 24 December 2004.



Janet Sherry, Chairperson



For Toni Meath, Registered Teacher



For Nick Sciola, Member