

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

**NUMBER:** O02

**REGISTERED TEACHER:** Marc Raymond **BOXER**

**PANEL MEMBERS**

Susan Halliday, Chairperson

Peter Ryan, Registered Teacher

Silvana Scibilia, Panel Member

**ATTENDANCE:** The Teacher was represented by Mr Gary Livermore of Council and Mr Peter Brown of Kenna Croxford & Co

Mr Peter Harris      Counsel Assisting

**DATES OF HEARING:** 27 February and 26 March 2004

**DECISION OF THE PANEL:**

On 9 May 2004 the Panel decided to cancel the registration of the Teacher from the date of this decision.

**EFFECT OF THE DECISION**

This means that the Teacher can not undertake the duties of a teacher in a school in Victoria from 9 May 2004.

# REASONS

## BACKGROUND

On 31 December 2002 the *Victorian Institute of Teaching Act 2001* (the Act) was proclaimed in full. On that date most teachers in Victorian schools were deemed registered as teachers. The Teacher was deemed registered pursuant to section 91(1) of the Act because he was registered with the Registered Schools Board under section 37 of the *Education Act 1958* immediately before the Act was proclaimed.

By letter dated 25 March 2003 the Victorian Institute of Teaching (the Institute) was advised that the Teacher had resigned from the School following an investigation by the school regarding inappropriate email messages to a student. A complaint was lodged against the Teacher. The Institute was requested to contact the School for details of the complaint. On 11 April 2004 the Institute received a completed complaint form from the school with copies of 7 emails attached.

On 21 October 2003 the Disciplinary Proceedings Committee, a committee of the Institute Council, decided that this complaint should be referred to a formal hearing. The Teacher was sent a Notice of Formal Hearing with all relevant documents attached on 23 January 2004 advising him that the formal hearing was set down for 27 February 2004.

The evidence of possible serious misconduct or lack of fitness to teach as set out in the Notice of Formal Hearing was:

- on or about April 2003 the Teacher gave to a student of the school, Student 1 a thank-you card with his email address and mobile phone number written on it
- the Teacher sent a number of emails to Student 1 and in particular emails dated
  - o 19 April 2002 at 16.46 pm
  - o 21 April 2002 at 2.08 am
  - o 21 April 2002 at 23.58 pm
  - o 23 May 2002 at 16.50 pm
  - o 13 June 2002 at 12.08 pm
  - o 8 July 2002 at 23.24 pm
  - o 7 August 2002 at 23.58 pm
- The contents of these emails are referred to in the evidence
- The Teacher touched Student 1 inappropriately on the bottom when he put his hands down her PE pants and pulled up her gym shorts

The issues the Panel must address in this matter are:

- Did the Teacher send emails to Student 1 which contained inappropriate comments?
- Did the Teacher touch Student 1 inappropriately?
- Did either or both of the above incidents amount to serious misconduct and/or lack of fitness to teach?
- If either or both of the above incidents were serious misconduct and/or lack of fitness to teach, what is the 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. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

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

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

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools 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 a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*)

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).

## **DOCUMENTS CONSIDERED**

The Panel was presented with documentary evidence as follows:

- A chronology of Events in the Matter of the Teacher
- Statement of Student 1, signed and dated on 15 January, 2004 (Marked as Exhibit 1)
- Statement of Student 2, signed and dated on 14 January, 2004 (Marked as Exhibit 2)
- Statement of Colleague 1 (Teacher), signed and dated on 23 January 2003 (Marked as Exhibit 3)
- Statement of the Vice Principal, signed and dated on 26 December, 2003 (Marked as Exhibit 4)
- Copy of reference written by the School Principal for the Teacher dated 14 August 2002 (Marked as Exhibit 5)
- Letter from the School Principal to the Teacher dated 14 August 2002 (Marked as Exhibit 6)
- Letter from the Teacher to the School Principal signed and dated 16 August 2002 (Marked as Exhibit 7)
- Copies of emails sent by the Teacher to Student 1 (together forming Exhibit 8 and marked as such). The emails were sent on:
  - 19 April 2002 Subject: How divine
  - 21 April 2002 at 2:08 Subject: bella
  - 21 April 2002 at 23:58 Subject: an interesting thought . .
  - 23 May 2002 Subject: thank God
  - 13 June 2002 Subject: doctor?
  - 8 July 2002 Subject: where are you?
  - 7 August 2002 Subject: Interesting . . .
- Statement of the Teacher signed and dated 22 March, 2004
- Statement of the Teacher's present School Principal signed and dated 22 March 2004
- Copy of "Information related to the Teacher, Student 1 and Student 2" written by Colleague 1 and dated 8, 9 and 12 August, 2002.

It is noted that none of Student 1's emails to the Teacher was tabled and that witnesses agreed that the emails tabled from the Teacher to Student 1 represented approximately 60% to 70% of those actually sent. It was agreed that the copies of emails tabled represented the full remnant of those sent by either witness.

## **THE EVIDENCE**

The Panel heard evidence under oath or affirmation from:

- Student 1
- Colleague 1
- The Vice Principal
- Student 2 (per medium of telephone)
- The Teacher
- The Teacher's present School Principal
- Real Estate Agent and friend of the Teacher

- Employee of Coles Myer Ltd. and friend of the Teacher

Colleague 1, the Vice Principal, Student 2, the Teacher and the Teacher's present School Principal affirmed their respective statements.

Student 1 affirmed her statement under affirmation other than the words, "The Teacher had a personal space problem", "Most students noticed he had a personal space problem, particularly in the literature class last year" and "I think he thought he was serious", which were struck out.

Oral evidence strongly corroborated that presented in documentary form. Documentary evidence showed Student 1's date of birth to be 26 July 1986.

The Teacher's present School Principal's evidence changed somewhat under cross-examination. While his written evidence at no time condoned the Teacher's actions in sending the emails, he did agree, in his oral evidence that the Teacher's conduct amounted to serious misconduct.

The Real Estate Agent and the Coles employee appeared as character witnesses for the Teacher. They did not add to the body of evidence, but attested to the Teacher's honesty, integrity, creativity and effervescent personality with an interest in literature and design. Both saw the event of the emails as being out of character as they knew the Teacher, but suggested it to be little more than "creative banter."

## **DISCUSSION OF THE EVIDENCE**

The fact that the Teacher had sent the emails in question was not contested. The Teacher's motivation at the time of sending the emails did remain in dispute, as did the question of the nature of the physical contact the Teacher had made with Student 1 during the year previous.

Some conflict emerged during the deposition of the Teacher's oral evidence with respect to the time he became aware that engaging in email correspondence of this nature with a student was inappropriate. His written evidence suggests that he became aware of this only when confronted by the Principal on 14 August, 2002. At that time he was reported as becoming very contrite and remorseful. However, according to the Vice Principal's written statement, the Teacher, when initially confronted with the allegations (but not the emails themselves) at the school, "said that they were a bit of a joke and that there was not anything wrong or suggestive or provocative about them". The Vice Principal's evidence continued that, even when shown the emails, the Teacher was, initially, at least, "surprised that (we) were reading anything untoward in the emails." However, under cross-examination, the Teacher indicated that he was aware from the beginning of the correspondence that it was inappropriate, yet he continued to engage therein. While on reflection he accepted responsibility for the interaction, he suggested that he had been "caught up" in the on-going exchange and further did not at any time change his position in relation to his belief that his interactions with Student 1 were well founded in his intent to develop her creative writing capabilities.

In both written and oral evidence the Teacher suggested that his purpose was to enhance Student 1's literary talent by providing a forum for "exploring differing writing styles and methods of expression", using, especially, a "Mills and Boon"

genre. While he continued to claim that there was never sexual intent in the communication on his part, he acknowledged that the language and content had “gone over the top” and “got out of hand”. He did agree that the reference in the email of August 7 (“How quickly do you want me to remove all articles of clothing?”) was clearly sexual and an inappropriate conversation for a 30 year old teacher to be conducting with a 15 year old student.

Student 1, in her written statement and in the majority of her oral deposition was clear that she saw the correspondence in its earlier stages as “entertaining” and, at times, “very flattering” and that she “did not think it would ever become physical.” Indeed during the earlier stages she indicated that she felt that she “was in control of what was going on”. However, she did also indicate that at a later stage she found some of the content of the emails to be disturbing and they had started to make her edgy and uneasy. Student 1 stated that she interpreted some of the Teacher’s emails as sexual and in particular the email of 7 August as “an invitation to sleep with him”. That was the latest email presented to the Panel and it was soon after that the disclosure was made to the school on 12 August 2002.

There remained a question about the allegation that the Teacher touched Student 1 inappropriately on the bottom when he “put his hands down her PE pants and pulled up her gym shorts”. Student 1 recollects the event but stated in both written and oral evidence that she “didn’t take it too seriously” and “Didn’t think much of it”. She did not report the incident at the time to the school or to any other authority. It remained unclear to the Panel precisely what garment the Teacher was alleged to have handled and how those garments were juxtaposed. The Teacher claimed no recollection of the incident but conceded that it may have occurred as at that time he was a tactile person with students.

The Panel found that there was little of contention in the evidence presented, particularly in the matter of the emails sent by the Teacher to Student 1. The Teacher acknowledged that he did send them and that they represented more than half of an indeterminate number that were actually sent. The motivation behind these communications, however, was presented as being problematic.

The Teacher contended that the emails were intended as an exercise in creative writing, focussing principally on matters such as fashion and design. He contended further that there was never sexual intent on his part, nor the intent to form any kind of inappropriate relationship with Student 1. For the most part, Student 1 held a view similar to the Teacher, although toward the end of the period of exchanges, she had interpreted at least one of the communications (August 7) as being explicitly sexual in intent and noted that there were times when she had wanted the emailing to stop.

Throughout the hearing, the Teacher acknowledged the inappropriateness of the emails, although it remained unclear to the Panel precisely when the Teacher recognised the inappropriateness. In his discussion with school administration, he had expressed surprise that any negative connotations were being placed on the communications, apparently seeing them as being harmless although, under cross examination, his position changed somewhat and he acknowledged that he knew prior to the email exchanges coming to a halt that they were inappropriate. He acknowledged, too, that a number of elements within the emails were of a sexual nature, for example his reference to the removal of clothing.

The Panel remained very concerned about the Teacher's initial denial of the seriousness of the matter when first confronted by the College, although he later acknowledged that he knew that it was wrong to send emails of this type to a student. However it was of greater concern that the Teacher continued the practice of emailing Student 1, even though he admitted that there came a point in time when he recognised the inappropriateness of the communication, as stated in his oral evidence.

The Panel did not accept that the Teacher's motivation remained at the level of providing a pedagogically-based outlet for Student 1's "creative writing" or at the level of discussion of "fashion and design".

There was no formal teacher-pupil relationship between the Teacher and Student 1 during 2002 as he had ceased to teach her at the end of 2001. Nor was there evidence of any such arrangement being made with the school, with Student 1's Year 11 English teacher, or her parents – or even with Student 1 herself. The Panel acknowledges that the Teacher said in his evidence that in discussion with Student 1's father he had requested that the Teacher continue to have written contact with his daughter. This evidence was not tested. The Panel was not convinced that the message sent to Student 1 on his "Thank You" card of April 2002 (which reportedly read "Let the games begin" – or similar) constituted an arrangement to develop a tutor-pupil arrangement, even if that been appropriate. Similarly, the Panel saw little evidence of discussion of fashion and design in the emails presented. The Panel did accept that the Teacher enjoyed the use of overly florid language and that Student 1, in all likelihood, responded in kind. It accepted, too, that matters had thus, "got out of hand". That said the Panel does not believe that responsibility at any time rested with Student 1 to manage the interaction or provide counsel about the intent of the interaction or its inappropriate nature. The Panel were clear that these responsibilities lie fully with the teacher from beginning to end. During his oral evidence it is the view of the Panel that the Teacher was of the same mind and stated thus on several occasions. It is clear that the Teacher could have at any time brought the interaction to a halt – and he chose not to. Further the Teacher could have, having realised the error of his ways brought the matter to the attention of his employer – and he chose not to.

While the Panel was not convinced that the Teacher did not intend to establish a sexual relationship with Student 1, it found there was, in fact, no need to impute motivation to the Teacher's actions.

In the matter of the Teacher inappropriately touching Student 1 by putting his hand inside her PE pants and pulling up her shorts, the Panel accepts that, on the balance of probabilities such an action did occur, given the Teacher's propensity for touching students.

## **FINDINGS OF FACT**

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

- that the Teacher is deemed registered as a teacher with the Victorian Institute of Teaching
- that the Teacher was employed as a teacher at the School in 2002
- that Student 1 was a student at the School in 2002

- that Student 1's date of birth is 26 July 1986, and that she was 15 and 16 years old at the time she received the emails
- that the Teacher gave to Student 1 on or about April 2002 a Thank-You card in which he had written his email address and a further comment
- that the Teacher and Student 1 exchanged emails from that time until the exchange of emails was revealed to the College authorities in August 2002
- that the Teacher sent to Student 1 emails containing inappropriate material, in particular, emails dated 19 April at 16.46 pm, 21 April at 2.08 am, 21 April 23.58 pm, 23 May at 16.50 pm, 13 June at 12.08 pm, 8 July at 23.24 pm, 7 August at 23.58 pm, all in 2002
- that the Teacher was aware from the beginning of the interaction that it was inappropriate
- that the Teacher was aware of the sexual nature of several of the emails he wrote and sent
- that, on an undetermined date in 2001, the Teacher did touch Student 1 on the bottom, in the action of pulling up her gym pants.

## CONCLUSION

The Panel has considered Mr Livermore's submission and notes his use of the Shorter Oxford Dictionary's definition of "serious" as meaning: *weighty, important, grave*. The Panel rejects, however, Mr Livermore's later substitution of the word "gravest" for "grave" when he argues that "serious misconduct describes the gravest form of dishonourable or disgraceful conduct". The Panel does not contend that the Teacher's conduct is the "gravest form of dishonourable or disgraceful conduct", nor is it required to do so.

To suggest that only the gravest form of dishonourable conduct should be subject to the provisions of this legislation is to suggest that the profession should be judged by its lowest common denominator, a position the Panel wholeheartedly rejects (see *Litchfield*).

The Panel was of the opinion that, regardless of motivation, the sexual overtones and overt sexual references in communications between a 30 year old teacher and a 15 year old student, amount to serious misconduct. The serious nature of this misconduct is exacerbated when it is recognised that the interaction continued in a pre-meditated fashion over some three or four months.

If a teacher loses the respect and confidence of their colleagues because of their conduct the Panel believes that they should no longer be able to exercise the privileges, duties and responsibilities that come with being a teacher.

It is the view of the Panel that the Teacher failed to act in the best interests of his student and that his behaviour, evidenced by email communication, conflicts with the expectations of teacher behaviour currently held both in the education community and the broader community.

Behaviour such as that exhibited by the Teacher in his writing and sending of the emails has compromised the standing of the profession. The Teacher's behaviour has also compromised the professional relationship that must exist between student and teacher.

Teachers of good repute and competency, in the view of the Panel would regard the Teacher's behaviour of continuing inappropriate email contact with a student as dishonourable. The Panel considers that the Teacher's serious lack of sound judgement, over a period of time, indicates an absence of one of the key qualities essential to the practice of teaching. The Panel notes that the teacher's position is one of particular power and influence in relation to a student – a position of trust. The Teacher's actions are viewed by the Panel to have been destructive of this relationship, betraying the trust fundamental to the profession of teaching.

The Panel finds that the Teacher's writing and sending of emails containing overt sexual references and suggestions constitutes serious misconduct on his part, and, given the length of time over which these offences occurred, and their seriousness, that the Teacher is a person unfit to teach.

In the matter of the Teacher inappropriately touching Student 1 by putting his hand inside her PE pants and pulling up her shorts, the Panel accepts that, on the balance of probabilities, it seems that such an action did occur, given the Teacher's propensity for touching students. It remains unable to impute motivation to this action, particularly as it did not overly concern Student 1 at the time. The Panel is of the view that the Teacher's action was foolish in the extreme and, while not diminishing the inappropriateness of the action, the Panel is not in a position to define it as serious misconduct. The Panel acknowledges, too, that this action did not occur during the period of the emails.

For completeness the Panel has set down its rulings and reasons on the two submissions made by Mr Livermore at the commencement of the hearing.

Mr Livermore argued that the Panel should disqualify themselves from hearing this matter because the members were biased or to continue with the hearing would breach the rules of natural justice. In the second submission Counsel argued that the Panel should not hear or consider the allegation that the Teacher had touched Student 1 on the bottom.

Counsel submitted that the Panel had been supplied with documentary evidence that was not logically probative of the issues before the Panel. This evidence consisted of:

1. Notice of Formal Hearing to the Complainant
2. A letter dated 25 March 2003 to the Institute from the Complainant
3. A letter dated 8 April 2003 to the Institute from the Complainant
4. A letter dated 24 September 2002 to the Manager Registered Schools Board (RSB) from the Complainant
5. A memorandum dated 4 November 2002 to the Partner Minter Ellison from the Manager RSB
6. A letter dated 11 November 2002 to the Manager RSB from Minter Ellison
7. A letter dated 11 November 2002 to the Principal from Minter Ellison
8. An email and two facsimile coversheets dated 18 November 2002 to Minter Ellison from the Principal
9. A letter dated 11 December 2002 to the Manager RSB from Minter Ellison attaching a draft 'Notice of Inquiry' to the Teacher
10. A memorandum dated 19 May 2003 to Minter Ellison from the Manager RSB

The Panel was advised by Counsel Assisting that these documents were requested by the solicitors for the Teacher and for completeness were supplied to the Panel. Mr Livermore was particularly concerned about item 9. The Panel noted that this document contained extracts from the emails, references to the documentary evidence provided by the school and the conclusion that there was sufficient evidence to warrant holding a hearing. The remainder of the documents related to administrative matters at the Institute and the RSB.

Mr Livermore argued that by having read this material the minds of the Panel members were tainted and that a fair minded observer would believe the members to be biased. Counsel assisting submitted that this notion was fanciful and there was no appearance of the Panel coming to the hearing with a closed mind. The Panel was able, and in many cases expected to form a tentative view on the documentary evidence, providing their minds remained open to be persuaded by the evidence.

The test for apprehended bias was set out in *Livsey v New South Wales Bar Association* (1983) 151 CLR 288 as:

*The principle is that a judge should not sit to hear a case if in all the circumstances the parties or the public might entertain a reasonable apprehension that he might not bring an impartial and unprejudiced mind to the resolution of the question involved in it.*

The Court went on to refer to the fair-minded observer entertaining a reasonable apprehension of bias if a judge has previously sat on a case and expressed clear views on the facts which were to be decided by him or her in a later case.

However as pointed out in *Laws v. Australian Broadcasting Tribunal* (1990) 170 CLR 70 an indication that a decision maker is developing a point of view but continues to hear further evidence is not bias. It only becomes bias when *the decision-maker's mind is so prejudiced in favour of a conclusion already formed that he or she will not alter that conclusion irrespective of the evidence or arguments presented to him or her.* This was far from the case. The panel had the opinion of a firm of solicitors, that there was sufficient evidence to support a finding by an independent decision maker that the conduct complained of was serious misconduct. The Panel remained willing to hear further evidence and in fact was anxious to hear all the evidence. While Panel members may have formed a tentative view of the evidence and the issues it raised, panel members certainly did not have closed minds.

The issue of apprehended bias relies upon the concept of the fair-minded observer. The notion of the fair minded observer (fictitious bystander) was analysed by Kirby J in *Johnson v Johnson* (2000) 174 ALR 655. He concluded that the fictitious bystander would not reach a hasty conclusion based on appearance and was neither a complacent member of the public nor unduly sensitive or suspicious. In the Panel's opinion only an unduly suspicious bystander would conclude that the Panel was biased.

The Panel finds it unnecessary to elaborate on its ruling in relation to the touching as it has found that even though this took place it did not constitute serious misconduct and nor did it contribute to the Panel's conclusion that the Teacher was guilty of serious misconduct. The Panel does note that a referral by the Disciplinary Proceedings Committee of a matter to a formal hearing is exercised pursuant to either section 30 or 31 of the Act. The Committee refers a matter for a formal hearing when the allegations are serious and there is evidence to support those allegations.

With respect to the procedural fairness requirements the crucial document is the Notice of Formal Hearing which sets out the allegations and supporting evidence. In this matter the touching allegation was included in the Notice.

**DETERMINATION**

Mindful that the responsibility of the Panel is to help maintain the high standard of conduct of the teaching profession, and given that the Teacher's actions constitute serious misconduct and that by those actions he has demonstrated himself to be a person unfit to teach, the Panel has determined to cancel the Teacher's registration to teach from 9 May 2004.



**Susan Halliday, CHAIRPERSON**



**Per:  
Peter Ryan, REGISTERED TEACHER**



**Per:  
Silvana Scibilia, PANEL MEMBER**