

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 017

REGISTERED TEACHER: Edward Zinovy CUROV

PANEL MEMBERS	Peter Ryan	Chairperson
	Kevin Pope	Registered Teacher
	Loula Rodopoulos	Specialist Member

TEACHER REPRESENTATION: The teacher was represented by Mr Chris Winneke of Counsel and Mr P Galbally instructing solicitor

COUNSEL ASSISTING THE PANEL: Ms Anne Sheehan of Counsel

DATES OF HEARING: 16 March, 5 and 28 April, 1, 2, 16 and 17 May 2005.

DECISION OF THE PANEL:

On 15 July 2005 the Panel decided to cancel the registration of the teacher from the date of this determination.

EFFECT OF THE DETERMINATION.

The effect of the determination is that the teacher cannot undertake the duties of a teacher in a Victorian school from 15 July 2005.

REASONS

BACKGROUND

On 31 December 2002 most teachers in Victorian schools were deemed registered as teachers. The teacher was deemed registered pursuant to section 91(1) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was registered as a teacher under section 37 of the *Education Act 1958* immediately before the Act came into operation.

By letter dated 15 October 2003 the employer lodged a complaint with the Victorian Institute of Teaching (the Institute) against the teacher regarding allegations of serious misconduct. The complaint was lodged in accordance with section 26 of the Act. Documentation that formed part of the internal inquiry was provided to the Institute by the employer.

The Disciplinary Proceedings Committee, a committee of the Institute Council, considered the complaint and decided that this matter should be referred to a formal hearing. The teacher was sent a Notice of Formal Hearing with all relevant documents attached on 21 February 2005 advising him that the formal hearing would be held on Wednesday 16 and Thursday 17 March 2005.

The Notice of Formal Hearing stated that the Institute had received information from the employer that provided evidence of possible serious misconduct and/or lack of fitness to teach.

Nature of allegations

The information the Institute received as evidence of possible serious misconduct and/or lack of fitness to teach was:

1. Allegations of a sexual relationship with a student:
 - i. On 7 April 2001 during the Easter school holidays in 2001 the teacher called Student 1, a student at the school where the teacher was teaching, and arranged to meet her. The teacher picked Student 1 up in his car, drove to a vacant lot near the school and had sexual intercourse in the back seat of the car.
 - ii. On 10 April 2001, the teacher picked Student 1 up in his car from Flinders Street Station at midday as arranged. He drove her to his flat where they watched television and then twice had sex on his parents' bed.
 - iii. On 12 April 2001 the teacher picked Student 1 up from her residential address. They went to McDonalds in the city, to the address of Student 1's sister, and then to a factory area where he and Student 1 had sex on the back seat of the car.
 - iv. On 20 April 2001 the teacher picked up Student 1 from a Plaza at approximately 3.30 pm. They ate Chinese food and went to his flat where they had sex on his parents' bed.
 - v. On 26 April 2001 the teacher and Student 1 arranged to meet. The teacher drove to a vacant lot in the western suburbs and they had sex in the back seat of his car.
2. Allegations of inappropriate comments and conduct with students:

- i. The teacher called student A into a classroom and blocked her exit. He said to her 'How's it going sexy'. This occurred two weeks before he left the College.
- ii. Whilst in class the teacher told student A. and her friend student B that they had 'nice tits'.
- iii. The teacher asked students for their mobile telephone numbers and rang them to talk. He had the mobile telephone number for a student C. He had called student C 'gorgeous' and 'sexy'.
- iv. The teacher used inappropriate language and classroom management techniques such as suggesting a 'physical demonstration' in sex education, offering one student a cigarette if he would follow class instructions and not being attentive to integration students.
- v. The teacher related to the students as friends and did not establish appropriate boundaries with students, after being advised to do so
- vi. The teacher allowed students to call him 'a nick name' after being advised not to do so.
- vii. The teacher drove female students unaccompanied to lunch at McDonalds.
- viii. Speaking to Student 1 alone in a classroom. The teacher and Student 1 were sitting close to each other and laughing. The behavior was indicative of a friendship and not a teacher-student relationship.
- ix. The teacher spoke to male students about a female teacher, Teacher 2, in an inappropriate manner. The teacher stated that male students were lucky to be taught by such a sexy teacher.

THE ISSUES

The issues that the Panel must address in this matter are whether by act or omission the teacher engaged in serious misconduct and/or is not fit to teach and thereby guilty of serious misconduct and/or is not fit to teach. If the Panel is satisfied that, on balance of probability, the case is made out, the Panel must determine whether the teacher's registration should be suspended for a period and/or be subject to conditions, limitations and restrictions, or whether his registration as a teacher should be cancelled.

THE LAW

Section 27 of the Act states:

27. Employer to notify Institute of action against teacher

(1) The employer of a registered teacher must inform the Institute if the employer has taken any action against the registered teacher in response to allegations of serious incompetence of the registered teacher, serious misconduct of the registered teacher or that the registered teacher is unfit to be a teacher or any other actions that may be relevant to the registered teacher's fitness to teach.

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. However the terms *professional misconduct* and *fit and proper purpose* have been used by the courts in relation to disciplinary proceedings and these cases provide some assistance when deciding the meaning of these terms in relation to these proceedings.

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. 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).

DOCUMENTS CONSIDERED

- a) Witness statements
 - Witness statement of the Principal dated 19 November 2004 and attachments
 - GCS1 – document headed ‘information obtained from interviews’
 - GCS2 – document headed ‘attention investigator’
 - Witness statement of Teacher 3 dated 19 November 2004 and attachments
 - JMM1 – statement to police dated 25 March 2002
 - Witness statement of Teacher 2 dated 9 December 2004

- Witness statement of Integration Aide dated 14 December 2004 and attachments
 - JMR2 – document commencing ‘I am an aide’
 - Witness statement of Teacher 4 dated January 2005 and attachments
 - KJB1 – document headed ‘Notifications 29.05.01 and 5.06.01 (KB-3)
 - KJB2 – document headed ‘Amendments to Statement’
 - KJB3 – statement to employer, undated and unsigned
 - Witness statement of Teacher 5, unsigned and attachment
 - VDE1 – statement to DET signed 2002
 - Witness statement of Teacher 6 dated 27 January 2005 and attachment
 - JEH1 – statement to DET signed 2001
 - Witness statement of Assistant Principal dated 16 January 2005 and attachments
 - JMR1 – statement to DET signed 2001
 - JMR2 – document commencing ‘I am an aide’
 - Witness statement of Student 2 dated December 2004 and attachment
 - JEC1 – statement to police, unsigned
 - Witness statement of Student 1 dated 31 January 2005
- b) Police brief obtained under FOI
- LEAP – Incident report and case progress
 - Memo dated 28/11/02
 - Memo dated 12/07/02
 - LEAP – summary report
 - Victoria Police letter 30 May 2002
 - Copy email dated 25 June 2001
 - Victoria Police letter dated 19 March 2002
 - LEAP – Summary report
 - Summary of charges
 - Charge and summons
 - Witness list, numbering
 - Exhibit list
 - Photograph log
 - Copy photographs, numbering 10 pages
 - Statement of Student 1 dated 14 May 2001
 - Statement of Student 1 dated 25 May 2001
 - Statement of Student 2 dated 18/06/2001 (provided above as annexure JEC1 to Student 2’s witness statement)
 - Statement of Student 3 dated 30/07/01
 - Statement of Teacher 3 dated 25/03/2002, (provided above as annexure JMM1 to Teacher 3’s witness statement)
 - Statement of the Principal dated 13/03/02
 - Statement of Senior Constable of Police, dated 17 April 2002
 - Statement of Informant dated 5/10/2001
 - Document headed ‘the Teachers House’
 - Undated handwritten note
 - LEAP – intent to summons report 26/06/2001
 - Handwritten note dated 18-6-01
 - Handwritten note dated 30/7/01
 - Handwritten notes commencing ‘6/4-’
 - Handwritten notes commencing ‘sex pen’

- Undated handwritten notes
- c) Documents from employer
 - Copy letter 15 May 2001 from the Department of Human Services
 - Copy letter Principal 29/5/01
 - Copy log of events, Principal
 - Copy letter dated 7 May 2001
 - Copy facsimile transmission 15/06/01
 - Handwritten Interview notes dated 5/5,
 - Handwritten note 4/5 Assistant Principal
 - Handwritten Interview notes Principal
 - Handwritten undated interview note
 - Handwritten Interview note Tuesday 3 pm
 - Handwritten note dated 8.5.01
 - Statement of Teacher 3, numbering 5 pages, unsigned, 2001 and attachment JM-1 – notes of 30 April 2001.
 - Document headed Notification 29.05.01 by Teacher 4 (KB-1)
 - Student incident report 5/6, (KB-4)
 - Handwritten notes by Teacher 4, (KB-2)
 - Handwritten notes by Teacher 4 12 June (KB-5).
 - Outline of evidence of Student 4 and the Mother of Student 4
 - Victoria Police letter 9 December 2002
- d) Transcript of Record of Interview

Summoned Documents

- Service provider Five - case notes dated 10/04/01; 05/05/01; 07/05/01; 10/05/01; 16/05/01
- The Department of Human Services- a folder of General Case notes provided by that Department in accordance with its statutory obligations
- The school
- Victoria Police - three documents containing the mobile telephone records of the teacher for the relevant period

Documents submitted by the teacher

- Extract of Bank Statement 11 April 2001-30 April 2001
- Testimonial March 2005
- Testimonial March 14 2005
- Testimonial from Principal 2 23 March 2005
- Handwritten and typed version of Testimonial 13 March 2005

CLOSURE OF HEARING

Following submission from Counsel representing the teacher, the Panel determined that:

- the teacher's name be suppressed, in accordance with section 41(f) of the Act, until after the making of the final determination;
- The proceedings be closed, in accordance with section 41(d) and (e) of the Act, while Student 1 and 2 gave evidence and that their names not be published.

THE EVIDENCE

On behalf of the teacher the Panel was asked to summons documents from the service provider and the Department of Human Services in relation to their dealings with Student 1. The Panel was also asked to summons documents in the possession of the School Counsellor at the school when Student 1 was a student. The School Counsellor provided the documents to the Panel but the Panel decided that none of the documents were relevant. The service provider and the Department of Human Services objected to the production of all documents in their possession. The Panel decided that it would inspect the documents and make available to Counsel for the teacher and the Institute only those documents that were relevant to the allegations.

The Institute requested that the Panel issue a summons to Victoria Police for the telephone records of the teacher during the relevant period. Victoria Police produced these documents.

The Institute called the following witnesses:

Student 1; Student 2; the Principal; Teacher 3; Teacher 2; Integration Aide; Teacher 5; Teacher 6 and the Assistant Principal.

The teacher did not give evidence and did not call any witnesses.

At the commencement of the hearing Ms Sheehan on behalf of the Institute requested that the following allegations be withdrawn:

- The teacher called student A into a classroom and blocked her exit. He said to her 'How's it going sexy'. This occurred two weeks before he left the College.
- Whilst in class the teacher told student A and her friend student B that they had 'nice tits'.
- The teacher asked students for their mobile telephone numbers and rang them to talk. He had the mobile telephone number for a student C and he called student C 'gorgeous' and 'sexy'.

The Panel agreed to these allegations being withdrawn.

1. Allegation of a sexual relationship with a student

In 2001 Student 1 was aged 15 and a student at the College. The teacher was a graduate teacher in his first teaching appointment at the College.

Student 1 commenced as a student at the College in 1999. The incidents resulting in the allegation that the teacher and Student 1 had had a sexual relationship occurred in April 2001. The allegations were investigated by the school, the employer and the police from May 2001. The Institute investigated the allegations in late 2004 and early 2005.

Student 2

Student 2 told the Panel that she was the twin sister of Student 1. Student 1 attended the College at the time of the events that are the subject of this hearing but Student 2 did not. Student 2 was questioned about the two Witness Statements which were provided to the Panel. The first, unsigned statement dated 18 June 2001 was given to the Informant. In summary this statement records that in the

holidays before Easter Student 2 claimed that after spending a few hours in the city, with "a guy" Student 1 visited her in the dark, at Student 2's Hostel to pick up Student 1's shoes and introduce Student 2 to the man whom Student 2 thought was called Andrew but was actually another name. He was seated in a four door car which Student 2 thought was silver. Student 2 questioned the person about his age as her sister had said that he was 24 but he said that he was 19. When he did state that he was 19 Student 2 questioned him as to why he did not have P plates on his car. Student 2 was given one of his cigarettes by her sister. This was her first contact with the man by another name. The second contact was a couple of days later and occurred when Student 2 was awoken at around 2 a.m. by Student 1 who knocked on her bedroom window. Student 1 was with the same man and he gave her a cigarette before her sister jumped out of the window and told "Andrew", or she called him by another name, "Come on, let's go."

The second signed statement is dated 9 December 2004. Questioned on the discrepancies between the two statements Student 2 conceded that there were discrepancies such as the name of the male person Student 1 had allegedly brought to her Hostel window at night to meet her and as to whether it was day or night that the first meeting had occurred and whether or not she had climbed out of the window to meet this person. Student 2 recalled people waking her up and that it was dark and early morning. Student 2 did not actually see the person who remained in the car and she was not sure whether the car he was driving was silver or blue. It was "probably correct" that the car was silver. Student 2 commented that it was now four years since the events had occurred and her recollections were "fuzzy" and she may have confused events. In preparing for this hearing she had refreshed her memory by looking at the Police statement which she now considers is correct. She had had "slight conversations" with Student 1 about the statements and if Student 2 had been asked to sign the Police statement she would have asked them to delete the name Andrew. Student 2 was now aware that the name was the teacher's nick name. Student 2 had not been asked to identify the person but agreed to the description given to her by the Police. Nor was she asked by the Police as to whether this person was a teacher. She added that "If he lied about his age I'm sure he would have lied about his occupation". Student 2 said that she was not aware/did not understand why the Police were interviewing her at the time. She had not, therefore mentioned, as she has in her second statement, that the teacher had touched Student 1 during the meeting. Referring to the second occasion that Student 2 met this person with Student 1, Student 2 said "I knew it was the teacher...not think it was...". She also told the Panel that she tended to "remember when I am a smart arse".

Asked about their home life Student 2 said that they did not get much attention at home and they tried to get out. She was not aware of Student 1's false pregnancy claim but she knew that Student 1 had hurt herself at school and an ambulance was called. She had not witnessed attention seeking behaviour. Student 2 said that she was not a liar and would not lie to protect Student 1.

In her second statement Student 2 stated at paragraphs 24 and 25:

"Student 1 also told me that the teacher had told her that he hated her. Student 1 told me that the teacher said that Student 1 had ruined his career. I have no reason to doubt the truth of what Student 1 went through."

STUDENT 1

Student 1, referring to her Witness Statements of 31 January 2005 and 25 May 2001, told the Panel that she had started schooling at the college for the final five weeks of the year 1999 and the full years of 2000 and 2001 where she was in Years 9 and 10. Due to serious family problems she had experienced a difficult young life and had just left home, living in a hostel, under the care of the employer of the Department of Human Services. She found things very "difficult and scary". Her behaviour at the school was "pretty bad" and attention seeking. Her year 10 schooling offered a better support system than in the past. She was on the Green Card program which meant that she was allocated support teachers available to her to go to, out of class, when there were problems. One of her support teachers was Teacher 3.

At first Student 1 did not like Teacher 3 but she realised that he just wanted to help her and she came to look up to him a lot. She thought that he was "perfect" and "did not do anything wrong". She acknowledged that she had a "crush" on him as she had not had a strong male role model in her life. She was confused and did not intend that her "crush" go any where. Teacher 3 was very clear about the boundaries between a teacher and student. It was around mid 2001 that she told him that she was pregnant. He advised her to speak to another teacher, the Assistant Principal, at the school and her mother and to go to a doctor. She had no reason to believe that she was pregnant as she said that she had not had a sexual relationship at the time. Subsequently she admitted to Teacher 3 that she had "made it up"; that she had lied. She was "out of control" as "no one cared for her".

In year 10 Student 1 had originally enrolled in Italian but decided to transfer to biology taught by the teacher. She had met the teacher previously through a school friend in his class. On Friday 6 April 2001, at the end of term one, she walked into the end of the biology class end of term party. She recalled that a student mentioned a sex party and that the teacher responded in an encouraging manner. She said that she was interested in going to a sex party and told the teacher that if he was to go to one to call her. She said that they spoke for 10 to 15 minutes and she wrote her telephone number on a piece of paper and she gave it to him suggesting that he call her during the holidays. He passed the piece of paper on to a male student saying "You call her. I can't do it because I am your teacher". But when she saw him after school he made it obvious to her that he had her number and that he would call her.

That night the teacher called Student 1 when she was at her friend's house. He also spoke to her friend, telling her to keep Student 1 inside and that it was too late to go out. Student 1 convinced him to drive to where she was staying overnight and he drove over from an inner suburban location, between 10.30-11pm. Student 1 claimed that she met the teacher after telling her friend's parents that there was something wrong at her home. She alleged that they drove around a western suburb then parked at a paddock across from the College where they kissed, engaged in foreplay but did not have sex as the teacher did not have a condom. He dropped her off at her mother's house about 2.30 a.m. but she walked around to her Aunt's house nearby where she slept on the driveway until the household woke up.

Student 1 alleged that the teacher called her the next day (Saturday 7 April) on his mobile phone and that she directed him to her Aunt's house where they met at the end of the street. They drove to a paddock where they had consensual sex between 11pm and 2am without the use of a condom even though the teacher brought one, along with lubricant. Student 1 said that she lost her virginity that night and that after intercourse she and the teacher discussed their relationship. The teacher allegedly told her that they could not be together as a couple and when they got back to school the whole relationship had to stop. Student 1 was upset as she considered that her first sexual experience should be more "special". The teacher promised that he would make the next occasion special and that they would have sex at his house. The teacher dropped Student 1 off at her Aunt's house and said he would call her.

Student 1 is "pretty sure" that they spoke by telephone on the Sunday but there was no direct contact until Monday 9 April 2001 when she alleged, they "fooled around" but did not have sex as they had decided that they would go to his house on the Tuesday. Student 1 was upset and sad that the teacher could not be her boyfriend. The teacher rang her several times as Student 1 was upset and kept hanging up. Student 1 wanted their relationship to be "more special" so the teacher suggested that he would pick her up at the same place that they had met on the Saturday night and that he would take her to his house.

On Tuesday 10 April 2001 the teacher picked Student 1 up from Flinders Street Station after doubts that he could get his father's car. They drove to the teacher's parents' house. Student 1 said that she did not know the address and has never been there by herself. Student 1 said that the teacher showed her around the house, showed her some photographs and then he called a friend to come over. The friend came over "pretty quickly" but Student 1 and the teacher had sex on his parents' bed before the friend arrived. The teacher did not use a condom. When he washed himself Student 1 got dressed and talked with the friend. Student 1 said that she then had sex with the teacher again with the friend watching and masturbating. Student 1 was naked and refused a request from the friend to have sex with him saying that she was tired. The friend stayed for a while then kissed her on the cheek and left. The teacher's mother telephoned to say that she was on her way home. The teacher discouraged Student 1 from waiting to meet his mother and drove her home. Student 1 had an appointment at 7pm and did not want to be late.

On the night of Thursday 12 April 2001 Student 1 alleged that she climbed out of her hostel window to meet the teacher. The teacher lost his way then wanted to get something to eat so they stopped at McDonalds in Elizabeth St where the teacher withdrew money from an ATM. They then went to Student 2's hostel and woke her up. Student 2 spoke to the teacher through the window and refused to give Student 1 two packets of lubricant that she had. After leaving the hostel Student 1 and the teacher went to a service station bought some lubricant and drove to an abandoned area near some factories where they had unprotected sex in the back of the teacher's car. Student 1 told the teacher that she planned to go with her sister to Daylesford (presented as "Dandenong" in written statements)

On Friday 20 April 2001, on her return, Student 1 was allegedly picked up by the teacher outside the KFC at the Plaza. They then drove to a Chinese Take Away, where he was known, near his home. They ate the food at the teacher's home and then they had sex on his parents' bed. At around 7pm the teacher drove Student 1

to her mother's house. En route they dropped by Student 2's hostel where the teacher stayed in the car while Student 1 asked her sister to come out to speak with him. Student 2 enquired about the teacher's age and questioned why he did not have P plates if he was 19 years old. The teacher gave Student 2 a cigarette.

Second term commenced on Monday 23 April 2001. On the evening before Student 1 alleged that the teacher sent her an SMS message saying that he wanted to speak before school commenced and that they would need to keep their relationship "low key." On the Saturday the teacher had telephoned and told Student 1 that he loved her. Student 1 said that, on the Monday, she misbehaved in biology class. She acted like a "little brat" knowing that the teacher would not reprimand her. The teacher called her outside and told her that he was upset and disappointed with her behaviour. If he did punish her "their secret would be out". In an incident where she initiated a physical altercation with another student, the teacher intervened and threatened to call Student 1's parents. Student 1 said that as she did not want to be suspended she apologised for her behaviour.

Student 1 said that, on Thursday 26 April 2001, she again misbehaved in the biology class. The teacher called her that night and met her around the corner from her mother's house. The teacher said that Student 1 was being disrespectful and she was tearful. Student 1 said that she was upset that the teacher was treating her like a friend and being cautious about their relationship. They then drove around to the back of her old primary school where they had sex for the last time. Student 1 was driven home by 10 pm.

Student 1 then recounted the events that transpired after she decided to tell a friend and then Teacher 3 what had happened. Questioned by Counsel Assisting about discrepancies between her first witness statement given to the Police when she was 15 years old, and the second, more recent, statement, Student 1 indicated that at the time she did not fully understand "what the big deal was" or the reason the statement was sought. She had left out incidents such as the teacher's friend watching them have sex as she felt "ashamed, dirty and sick" and she did not want the police to judge her badly.

Pressed further by Mr Winneke to explain discrepancies in the witness statements and the reasons she had lied about being pregnant prior to the incidents that are the subject of this hearing, Student 1 told that Panel that she was living at the hostel at that time. Other girls living there were "doing drugs". Student 1 was separated from her sister and family and she was not feeling well. She felt that no one cared about her. Teacher 3 was the first person that she felt did care and the pregnancy was "definitely a lie" to gain his attention. Student 1 knew that the teacher would treat her well. She admired Teacher 3 and had a crush on him. Student 1 was not aware that around March 2000 Teacher 3 had been advised to keep the door open when speaking to her. Around this time she threatened self harm as she was having a very difficult time. She hated herself "felling like crap." She said that she had never been taught that there are other means of seeking attention. She knew that she was in a parlous position at the school, and she feared suspension or expulsion because of her previous behaviour.

Student 1 said that she was in the habit of running hypothetical situations before Teacher 3 and this was how she initially hinted at her relationship with a teacher. Teacher 3 did not respond immediately, telling her that he would get back to her

and when he did he told her that “this is serious”. Student 1 was “really angry” when he reported the matter to the Principal and told Teacher 3 that she was not prepared to make an allegation. When she was interviewed on Tuesday 1 May 2001 she denied that there was a sexual relationship. When speaking to her Counsellor Student 1 said that she did not want to go through with the allegations as “I really liked the teacher and did not want to hurt him.”

When Student 1 did finally confirm the allegations she prepared the map of the teacher’s house to prove that she was telling the truth. When it was put to her by Mr Winneke that the only occasion on which Student 1 had visited the teacher’s apartment was on the evening of Tuesday 1 May so that she could obtain the information necessary to draw such a map, Student 1 strongly reiterated her position.

Giving evidence about the police statement that Student 1 gave to the Informant on the 14 May 2001, Student 1 said that she was not opposed to making the statement but she was not aware that she would be required to until the day she did so. As she really cared about the teacher she felt she betrayed him and tried to protect him. Student 1 feared being suspended from the school but when she made the statement nothing was made clear to her about the seriousness of the situation or about leaving things out of the statement. She was asked questions and believed that she needed to be truthful and that significant details needed to be correct.

As Mr Winneke’s questioning continued, Student 1 became irritable, angry and impatient reiterating that she was answering questions to the best of her recollection. Four years had passed since the events had occurred and Student 1 had spent the intervening years trying to forget about things that troubled her at the time. The discrepancies between the statements were minor (for example about the piece of paper that she gave the teacher with her telephone number; whether or not she spoke to the teacher in the classroom or outside) and she preferred the first statement. Questioned on the details of the various allegations she vehemently and consistently disagreed with what was put to her by Mr Winneke or that she had lied.

Teacher 3

Teacher 3, a teacher of mathematics at the College since 1997, was questioned about his two Witness Statements. The first statement was prepared in 2001 and has appended to it handwritten notes of a conversation with Student 1 at the time. The second statement was made to the Informant on 25 March 2002 and was confirmed for these proceedings on 19 November 2004. Teacher 3 was asked to recall events without referring directly to these statements. In the year 2000 Student 1 was a student in his Year 9 maths class. He was also one of a team of teachers allocated to deal with her welfare, discipline and counselling needs. Teacher 3 confirmed that Student 1 was, at that time, at risk of dropping out of school because she displayed significant behavioural problems emanating from family problems. Student 1 was not getting on with other teachers; was disrespectful and frequently swore. She was depressed and threatening suicide. In March 2000 she came to school with a knife and threatened self harm. Assistance was sought from the Crisis Assessment Treatment Team resulting in her being treated at a facility.

Responding to questions from Mr Winneke, Teacher 3 said that at this time consideration was giving to expelling her from the College. He told the Panel that he gained Student 1’s confidence and that she sought him out during school hours

to talk about her problems. Student 1's biggest fear was that she would be expelled from the college because of her behaviour. She was on the Green Card program that gave her "time out space" to seek out one of her support teachers if she was angry or unhappy.

Addressing the issues of central concern to this Panel Teacher 3 recounted an incident in 2000 when Student 1 claimed that she was pregnant. When she raised the matter with him he encouraged her to speak to another teacher, Assistant Principal, to seek counselling and to see a doctor. Teacher 3 learnt a week or so later that she had made up the story and from then he wondered whether he could trust what she said. Responding to questions from Mr Winneke, Teacher 3 said that he believed the issue was raised mid 2000 and that when he found out that she was not pregnant he did not feel it necessary to retain notes about the issue. Teacher 3 recalled that Student 1 said that she had fallen pregnant to a friend of her brother on a "special day". Student 1 had come and told him it was a lie after he had already been informed by the Assistant Principal that Student 1 had lied. Teacher 3 said that "telling lies" was not uncommon behaviour for Student 1 at the college.

On Thursday 26 April 2001, Student 1 now in Teacher 3's Year 10 maths class, approached him after the class, visibly upset. Student 1 said that something had happened over the holidays that could result in her expulsion. Teacher 3 asked Student 1 to tell him what had happened Student 1 said that "the issue was too big". Teacher 3 commented that he could not see how a holiday activity could cause her to be expelled. Teacher 3 encouraged Student 1 to talk, but as she was reluctant to do so Teacher 3 suggested that Student 1 go outside the school to talk to someone and to "let it go". Student 1 then put to Teacher 3 the scenario of a student having a relationship with an older person. At this point the idea occurred to Teacher 3 that Student 1 was hinting at a relationship with a teacher but Teacher 3 did not want to jump to any conclusions.

Responding to questions from Mr Winneke, Teacher 3 said that as far as he could recall, this was the first time Student 1 had raised this matter. Teacher 3 had asked Student 1 to put something in writing but she refused. At this stage Teacher 3 had not reported to anyone as he had only made an assumption about what had occurred – Student 1 had not told him anything concrete. Teacher 3 made no link with her having lied about being pregnant.

The following Monday 30 April 2001 Student 1 approached Teacher 3 again and repeated her concerns about being expelled as she was involved with an older man, a teacher. Teacher 3 then surmised that it was Student 1's biology teacher. Teacher 3 said that until that time he was not aware that Student 1 had transferred from her Italian class to Biology and he realised that she must be referring to the teacher. Responding to questions from Mr Winneke, Teacher 3 said that Student 1 had asked what she should do if she had slept with a teacher. He told her that this was a very serious matter. He believed that "deep down she knew that I would have to report it". Teacher 3 told Student 1 that he was required to report the matter at which point she said that she would deny the allegation. Teacher 3 did not question her further considering it better that the allegation be investigated more formally. Teacher 3 reported the matter to the counsellor and took it up with the Principal. Teacher 3 also reported to the Principal that Student 1 had told him that the teacher had driven three girls to McDonalds and discussed being involved with them as a foursome.

At a meeting on Thursday 3 May 2001 with Student 1 attended by the Assistant Principal, the counsellor and himself, Teacher 3 recalled that Student 1 "pretty much" denied everything until Assistant Principal indicated that she had to leave the meeting to attend to other duties. At this point Student 1 reaffirmed what she had told Teacher 3 – namely that she had had sex with one of the teachers. Student 1 was quite upset and in tears at various times during this meeting. Teacher 3 and the counsellor supported Student 1 and endeavoured to calm her down and then after Assistant Principal left, Student 1 withdrew her allegations stating, "I made it up, nothing happened."

Teacher 3 said that, on that same day, or the day following, Student 1 approached him and Assistant Principal "quietly" telling them that "it was no longer her word against his" as she had information about the layout of the teacher's house. Teacher 3 later learnt that the teacher had told the Principal that Student 1 had alleged that she had sex with Teacher 3, -an allegation Teacher 3 had denied and which Student 1 had later retracted.

Responding to questions from Mr Winneke, Teacher 3 said that Student 1 had walked out of Teacher 3's classes but had not sworn and sometimes came into his classes when she was not supposed to. Teacher 3 knew that Student 1 had been taken out of her home environment and was not comfortable living in the various placements she had been assigned to and being away from Student 2. He acknowledged that Student 1 was attention seeking and that he and the Assistant Principal assured Student 1 that she was okay. Teacher 3 could not specifically recall that he had been advised to meet with Student 1 with the doors open. There had been occasions when Student 1 had been suspended for breaking the Green Card agreement but she was in "more peril" if they were to expel her.

The Principal

In 2001 the Principal was Acting Principal for three terms. The Principal recollected that in that year Teacher 3 had come to tell the Principal that an allegation had been made against the teacher. The Principal requested that Teacher 3 obtain a written account of the allegation. In the first instance the Principal received a note that Student 1 had gone on holidays with her aunt over the holiday break.

The Principal had not heard about the allegation prior to this and once he confirmed that an allegation had been made he called a meeting on Tuesday 1 May 2001 which included the Assistant Principal and the teacher. At this meeting the teacher denied that he had sex with Student 1 during the holidays but acknowledged that there had been three telephone calls between them. The teacher also said that he had taken three girls to McDonalds and was instructed not to repeat this behaviour.

The Principal said that he discussed the three telephone calls with the teacher who claimed that he discussed school work with Student 1. At this meeting it was decided to follow-up the allegations with Student 1 to obtain evidence and ascertain Student 1's viewpoint. The Principal does not recall giving the teacher any specific instructions not to contact Student 1. The next day, Wednesday 2 May 2001 the Principal said that the Assistant Principal met with Student 1 and reported to him that Student 1 had confirmed that there had been no sexual contact over the holidays and that three telephone contacts were made. It was a busy school day when the Principal met the teacher informally and told him that Student 1 had

confirmed his version of events. The Principal said that the teacher had the opportunity to say what he wanted at this open meeting. The Panel notes that this conversation occurred the day after Student 1 had, according to the teacher's account, been an unwelcome visitor at his home.

On Thursday 3 May the Principal recounted that Teacher 3 had been contacted by Student 1 who reiterated then retracted her claim of a sexual relationship between herself and the teacher. Student 1 then gave Teacher 3 a map she had drawn purportedly of the teacher's flat. In his written statement of 19 December 2004 the Principal records that:

"Given Student 1's repeated allegations and her reproduction of a plan of the teacher's house, I called the teacher in for another meeting with the Assistant Principal. The reproduction of the house plan set "alarm bells" off for me."

The Principal then convened a meeting with the teacher on Friday 4 May, involving the Assistant Principal and took notes of the statements made by the teacher about a number of contacts and incidents with Student 1 in the week since he had been asked to cease contact with her. One note refers to an incident on the Thursday where Student 1 allegedly tried to grab a dissecting scalpel in the teacher's biology class.

The notes include a record of an allegation made by the teacher, 15 minutes or so into the discussion, that on the Tuesday 1 May Student 1 had visited the teacher's house at approximately 10.15 pm. The teacher was home alone and was shocked as Student 1 walked through the house. Student 1 remained there for about 7 minutes, during which time she broke a cup in the kitchen. The teacher said he threatened to call the police if Student 1 did not leave.

The Principal said that he questioned the teacher several times about the allegations as to whether he had sexual relations with Student 1; whether the teacher and student 1 had met during the holidays and whether he had omitted anything else he thought he should tell the Principal. The teacher consistently answered no and told the Principal that the possession by Student 1 of a map of the teacher's house "frightened the crap out of me".

At the conclusion of this meeting the Principal again instructed the teacher to cease contact with Student 1 and that as the allegations were serious the Principal would refer them to the employer for investigation. The Principal's statement of 2004 records that the Principal "had concerns over how the teacher was not acting professionally and that further events as serious as a student visiting his home, were not reported to me."

A consultant for the employer scheduled a meeting with the teacher for the following Monday. However the meeting did not take place as over the weekend Student 1 had made the allegation to the service provider of an inappropriate sexual relationship between Student 1 and the teacher and the matter was referred to the Department of Human Services and subsequently to the police.

Photocopies of the Principal's notes, at pages 157-163 of the panel papers, record that the teacher alleged that Student 1 had claimed that she had sex with Teacher 3. The Principal repeated this comment in his oral evidence, stating that the teacher

had made the same allegation to the police and that Student 1 had said to the teacher "I'm going to tell them we had sex. You can deny it. Let's have a bit of fun". The Principal did have some further conversation that week with the teacher but does not recall the teacher referring to Student 1's troubled life and the teacher's special interest in Student 1 as a student with problems.

The Principal was referred to a record of interview conducted with the teacher by the Police on Friday 22 June 2001 where at page 212 of the Panel documents the teacher states that he spoke to the Principal about being "hounded and chased and pursued by Student 1. It's becoming a problem. Student 1's coming to classes, where she does not belong, almost every day. And on busy days, three or four times a day, you know". The Principal said that he did not recall the teacher telling him this prior to the allegations being made. The Principal also was "not sure" about another alleged interchange with the teacher recorded in this interview at page 205 where the teacher told the police that the Principal and Assistant Principal were shocked when the teacher had told them of an incident where Student 1 flashed a condom and lubricant in front of the whole class. The Principal said that even if a student was not in a particular teacher's class every teacher had a duty of care to students.

Responding to questions from Mr Winneke the Principal said that he knew of Student 1 in 2000 even though he did not have direct interaction with her. There were occasions when Student 1 had misbehaved in class and an incident of self harm when psychiatric help was requested and she was taken to hospital after she was pinned down on the ground until assistance arrived. In his 2004 statement the Principal refers to a "straight (sic) jacket" being used to restrain Student 1. She had been placed at the school in the last six weeks of year 8 and even though she tested the limits of the school and was suspended with some minor difficulties they got through the six weeks. Student 1 had difficulties with authority. She tended to be "very black and white in extremes and if she got very angry she would be very angry". The Principal knew that Student 1 was particularly fond of Teacher 3 and the support team had discussed the need for Teacher 3 to protect himself by maintaining the professional boundaries with her. When the Principal learnt about the map he said this was a "mortifying element for me" and decisive in his conducting a protracted discussion with the teacher. The Principal knew that Student 1 "stretched the truth on occasions". However, no matter what the past had been, the Principal saw it as his responsibility to take the matter seriously. It was complicated and all the Principal sought to do at that time was to establish whether to refer the allegation to anyone else. The Principal's role was not to establish whether the alleged events had occurred but to decide whether it was something to report.

Mr Winneke led the Principal through the series of events outlined above and the nature and timing of his notes. The Principal said that he could not record all the discussions word for word but was confident that the main events concerning Student 1; her allegations of having sex with the teacher; the telephone calls and the teacher taking girls to Mc Donald's were accurate. The Principal could not recall how the telephone contacts had been initiated but it was fairly clear on the information he had that the teacher claimed that Student 1 had asked the teacher to call because Student 1 said that she had problems with her school work.

The Principal said that there had not been much discussion with the teacher early in the week in question but he became very concerned when he learnt about the alleged visit to the teacher's house by Student 1 on the Tuesday night. The Principal accepted that new teachers learnt on the job, but noted that professional development sessions were conducted for first year teachers that addressed issues of appropriate behaviour. There were procedures in place about the appropriate process required if students were to be driven in private cars. Due to issues of confidentiality teachers were given very little information about the background of students. The Principal confirmed that on the Friday it had become apparent and of concern, that even though the school had asked the teacher to cease contact with Student 1 their contact was continuing. By the end of term 1 2001 Student 1 had been suspended 4-6 times but even so her behaviour was generally improving.

Assistant Principal

For a period in 2001 the Assistant Principal was Acting Principal responsible for the students from the preparatory to year 12. The Assistant Principal chaired the Selection Committee that appointed the teacher and was his performance manager. The Assistant Principal told the Panel that new teachers were taken through a quick but structured program for induction, support and mentoring. The teacher was a member of the Gold Team. In 2000 the Assistant Principal had quite a lot of contact with Student 1 who was in year 9 as her behaviour with students and teachers was particularly difficult. Over the year there were signs of improvement and in 2001 the Assistant Principal received fewer suspensions and was "certainly not" on the point of expulsion.

To the best of her memory, the Assistant Principal recalled that when Student 1 came to her with a complaint the Assistant Principal would refer Student 1 to the counsellor to avoid disruption and taking up the Assistant Principal's time with attention seeking behaviours. Staff tried to be consistent in their handling of Student 1 and always encouraged her to seek out the counsellor. Efforts were made to separate school based problems from external problems. The Assistant Principal could not recall details of specific instances. The Assistant Principal does recall Student 1 coming to her wanting to discuss a "secret" and that Student 1 had "something important to tell me". The Assistant Principal referred Student 1 to the counsellor as had been agreed. At that point the Assistant Principal was not aware that Student 1 had spoken to Teacher 3 about the sex allegation. The Assistant Principal did not press Student 1 to reveal her secret as, according to the Assistant Principal's 2001 statement:-"This was a game Student 1 sometimes played. ... My usual approach was to ensure that she was receiving assistance rather than indulge in her games."

The Assistant Principal said that her understanding was that the counsellor then spoke to the Principal about a sex allegation that Student 1 raised with the counsellor and a meeting was arranged with the teacher attended by the Principal, the counsellor and the Assistant Principal. This brief meeting was held on Tuesday 1 May 2001 with questioning conducted by the Principal seeking to ascertain whether the teacher had contacted Student 1 over the holiday period as Student 1 claimed. The teacher did eventually say that there had been some SMS and telephone contact between the teacher and Student 1, as Student 1 wanted help with her school work. The teacher was counselled that it was unwise of him to give his telephone number to students no matter how well intentioned and contact should occur during school hours only. In her 2001 statement the Assistant Principal says that "We reminded

the teacher of the importance of maintaining professional boundaries and maintaining a distance from students”.

The teacher was told that the matter would be investigated further. However the Assistant Principal, the Principal and the counsellor were unsure of how to proceed as they were aware that Student 1 had made up stories in the past. They decided to arrange to interview Student 1 using the Assistant Principal’s authority to impress on Student 1 the seriousness of the allegation.

On or about Wednesday 2 May 2001 the Assistant Principal spoke with Student 1 in the presence of the counsellor and Teacher 3. Student 1 said that the teacher had rung Student 1 over the holidays and left a message. She returned his call and she rang him again. Student 1 did not say that they had a sexual relationship.

On Thursday 3 May 2001 a further meeting was conducted involving the same teachers and Student 1. For some period of time during this meeting Student 1 just sat, not saying anything but appearing very upset. The Assistant Principal said that when she indicated that she was pressed for time and needed to leave the meeting to take assembly, Student 1 said that she had sex with the teacher. The Assistant Principal then left Student 1, with the counsellor and Teacher 3 to comfort and support Student 1 as she was very upset.

About half an hour later, after the assembly, the Assistant Principal said that Student 1 approached the Assistant Principal “bouncy and happy” saying that she needed to see the Assistant Principal and that it was not true that Student 1 had sex with the teacher. The Assistant Principal says that she was surprised at the change in Student 1’s demeanour and that Student 1 had changed her story again. The Assistant Principal’s response to this retraction was “Wow! What! Come into my office.” In her statement of 2001, the Assistant Principal says that “I was quite angry with Student 1 and told her that I just could not believe that Student 1 would lie about something of that nature”. The Assistant Principal sent Student 1 back to her classroom.

On the following day, Friday 4 May 2001 Student 1 asked to see the Assistant Principal who said that she was happy to see Student 1 as things had become complicated and serious. Student 1 said that she had retracted her allegation because she did not want to hurt anybody or for anybody to lose their job. Student 1 then produced a map of what Student 1 said was the teacher’s house and asked if the Assistant Principal now believed her. The Assistant Principal told Student 1 she had to tell the Principal about the map and seek follow-up. The Principal and the Assistant Principal then met with the teacher and ascertained that the teacher had made a few more calls to Student 1 (less than 10) than he had previously indicated. The teacher then recounted how Student 1 allegedly had visited his house unexpectedly on the Tuesday before and broken a cup in the kitchen. The teacher had threatened to call the police and made it quite clear that Student 1’s behaviour was inappropriate. At this point the school decided that the matter had to be referred externally for investigation. The Assistant Principal recalled that the Principal had taken notes during the interview and collated them chronologically to hand over to the police.

At paragraph 19 of her 2001 statement, the Assistant Principal records being approached by the Integration Aide, who reported her concerns about the teacher’s

classroom management. This confirmed the Integration Aide's oral evidence to the Panel.

Closely questioned by Mr Winneke about her evidence the Assistant Principal said, *inter alia*, that the Assistant Principal initially had contact with Student 1 in 2000. Many meetings were held to discuss Student 1's highly disruptive school behaviours including missing classes without permission and making students and staff fearful for their safety. The school worked really hard to keep her enrolled and devised the Green Card agreement for her - one of many behaviour management strategies. The Assistant Principal said that, at times Student 1 became very angry then cooled down quickly. During 2000 Student 1 was on the verge of expulsion but things improved by the final term. She was less disrespectful and did not swear as much. The school endeavoured to keep a separation between "on" site school problems and "off" site personal difficulties as advised by the counsellors. The Assistant Principal conceded that when Student 1 raised the allegation she did have doubts about its veracity because Student 1 had told untruths in the past. Student 1 did attach herself to teachers creating difficulties and monopolising their time. The Assistant Principal said that her use of the word "game" in her 2001 statement was a "poor use of words" but referred to Student 1's propensity to say things then change her mind and seek attention as Student 1 was in the habit of doing. When shown the map of the teacher's home, the Assistant Principal did not challenge Student 1's veracity nor did the Assistant Principal remember whether she told Student 1 that if she was telling lies she would be in trouble. The Assistant Principal did tell Student 1 that the situation was serious and that the Assistant Principal would need to talk to the Principal.

At the time the Assistant Principal was not aware of Student 1's transfer to the teacher's biology class. If she had been, the Assistant Principal would have advised the teacher how to deal with Student 1 – that she was "self destructive and attention seeking".

Teacher 5

Teacher 5 has 22 years teaching experience. Teacher 5 was first employed at the College in 1998. From term 1 to term 3 2001 Teacher 5 was the teacher's unofficial mentor in the Gold Team offering teaching guidance and assisting him with his integration at the school as a new graduate.

Asked to comment on the information provided in his statements of 2002 and 2005 Teacher 5 said that his recall was better in 2002. In the 2005 statement, at paragraph 36, Teacher 5 recounts an incident when the teacher came to Teacher 5's office to tell Teacher 5 that Student 1 had told another teacher that the teacher had slept with her. Teacher 5 states that the teacher had "protested his innocence when he explained this to Teacher 5 and told me that he had not done it. The teacher seemed very upset and preoccupied." Teacher 5 recalls that the teacher had difficulty accepting that his behaviours could have given rise to this accusation. Responding to questions from Mr Winneke, Teacher 5 reflected on his view that the teacher was an enthusiastic teacher who was too informal with his students (14/15 year olds) who could take advantage of the teacher. As an inexperienced teacher he considered that "the teacher needed a bit of guidance". Teacher 5 acknowledged that he did not hear what the teacher and Student 1 were discussing in the classroom but knew that male teachers had been cautioned about not being in too close proximity with female students.

Teacher 2

Teacher 2 spoke to the Panel via conference telephone. Teacher 2 currently holds a position with an interstate agency and has undertaken further studies in Psychology. Teacher 2 spent two years at the College commencing at the same time as the teacher as a newly graduated teacher in 2001. Teacher 2 first met the teacher at the new graduate meeting where they were introduced to the school and given orientation materials. Teacher 2 had some interaction with the teacher at Key Learning Area Leader meetings and at ad hoc staff meetings. She was a Key Learning Area leader in mid 2001.

Teacher 2 said that at the end of first term, when she went to collect some science material from the teacher's office, she saw Student 1 leaving the teacher's office and assumed that Student 1 had been given detention. Before Teacher 2 entered his office, the teacher volunteered that Student 1 was "either stalking him or had a crush on him" adding that he thought Student 1 saw the teacher as a father figure. Teacher 2 cannot recall her response but wondered at the teacher's apparent amusement in making these comments without her prompting.

Responding to questions from Mr Winneke, Teacher 2 said that rumours about the teacher and Student 1 had come "to the fore" at the start of second term but there was not much discussion about them. The discussion that did occur was "in a respectful way." Teacher 2 conceded that due to the time lapse between the events and her statement in December 2004 that her exact recollection of the timeframe of these incidents may not be accurate:- "all I know is what I saw and (but) I can't remember (exactly) when it was."

When the allegations became public knowledge, Teacher 2 stated that "I thought that what I witnessed was likely the beginning of the alleged events." Teacher 2 referred to Student 1 as seeming "to be a vulnerable student to fall into this kind of relationship due to the nature of her non-conforming behaviour and her emotional instability at school at the time". In her oral evidence Teacher 2 added that these observations had arisen from her experience gained in her current work.

Teacher 2 said that her contact with Student 1 was in the school yard where Student 1 would often comment about her clothes. Teacher 2 saw Student 1 crying and upset at times and witnessed Student 1's arguments with different students in the yard. Teacher 2 knew that Student 1 also had arguments with teachers.

Teacher 6

Teacher 6 has taught at the college since Term 1 1998. Teacher 6 was Student 1's form teacher when Student 1 came to the school at the end of 1999. In 2001 Teacher 6 was one of Student 1's support home teachers teaching English. Teacher 6 recalled that in 2001 colleagues approached her regarding concerns they had with Student 1. Teacher 3 indicated that there were issues but did not elaborate at the time. Teacher 6 taught Student 1 in Years 8 and 9 and as part of the agreed strategy in dealing with Student 1 she would direct Student 1 to the appropriate person for assistance when Student 1 had problems. In Year 10 Student 1 was moved onto the Green Card system and she was referred on to her counsellor when problems arose. The support team worked closely together and Teacher 6 did not have too much trouble with Student 1. However she withdrew herself from the support team after

disagreements, early in 2000, about whether Student 1 should remain at the school. At this stage Student 1 had been suspended a number of times.

Teacher 6 stated "I overheard the teacher asking Teacher 7 (a year 10 form teacher) how he should deal with Student 1 because she was hanging around a lot. I didn't overhear the rest of the conversation but Teacher 7 later told me that she had dealt with the matter and advised the teacher to talk to Teacher 3." Teacher 6 did not hear mention of stalking or harassment. She agreed that the teacher appeared to be seeking support.

Other evidence

The Victoria Police provided copies of the telephone record for the teacher's mobile phone which had been obtained from Telstra. These records were tendered by the Institute and were not challenged by the teacher.

2. Allegations of Inappropriate Comments and Conduct with Students

In addressing the second set of allegations, namely those surrounding the issue of the teacher's classroom management and over familiarity with students (2(iv) – 2(xi)) witnesses gave the following evidence:-

iv. Inappropriate language and classroom management such as suggesting a 'physical demonstration' in sex education, offering one student a cigarette if he would follow class instructions and not being attentive to integration students.

In addressing this allegation the Integration Aide at the College, said that in Terms 1 to 3 2001 she was, at times, attached to the teacher's class. The Integration Aide was asked to recall the incidents that are highlighted in her Witness Statement dated 14th December 2004 and her handwritten note dated 6 December 2001. The Integration Aide said that she observed the teacher express statements of a sexual nature with year 8 girls and in one instance saw the teacher put his arm around one girl while they were sitting down to complete their work. At the time the Integration Aide thought that she would not like her children to be taught in the same manner - they were at school "to learn not for cuddles". The Integration Aide was aware that the teacher gave his telephone number to students as the Integration Aide saw it written in students' diaries when she flicked over pages to enter a note in the diary. In one class the Integration Aide witnessed the teacher saying that he would give a student a cigarette if the student completed his work and in a sex education lesson the teacher offered a physical demonstration. Sex education was not part of the science curriculum. The Integration Aide said that there was no problem with the content of the subject that the teacher taught but some of his lessons were not on subject and the teacher easily got off track.

The Integration Aide considered that the teacher was overly familiar/friendly and joked with students. The Integration Aide thought that this was due to the teacher's inexperience. She said that, in her view, the teacher was not attentive to the integration students where she had to do more modification work for the students than was usual with other teachers. The Integration Aide was so concerned about the teacher's classroom behaviour she reported the teacher to the Assistant Principal. In her statement of 2001 at paragraph 19 the Assistant Principal stated that the Integration Aide "felt the language in the teacher's class was inappropriate. The Integration Aide claimed that students were making comment with sexual innuendo but that the teacher did not challenge such behaviour." The Assistant Principal

asked the Integration Aide to put her concerns in writing which she did in December 2001.

Questioned by Mr Winneke as to why it had taken her so long to provide this written statement to the Assistant Principal, the Integration Aide could not recall exactly what had transpired. She denied knowing that by this stage the teacher had left the school. She knew nothing about Student 1 until she was asked to provide her second statement in 2004 where more detail was requested. Questioned about her recollections and the differing details and comparative omissions in her statement the Integration Aide consistently claimed that she had witnessed the incidents as outlined above. For instance she clarified that the teacher had not actually given the boy a cigarette in class but the cigarette packet was evident. The Integration Aide named the student to whom the sexual demonstration offer remark had been addressed. The Integration Aide acknowledged that the teacher had consulted her about the learning needs of one of the integration students but she remained of the view that the teacher was basically dismissive of their needs. The Integration Aide had never before felt so concerned about the professional conduct of a teacher to report the teacher. On the day in question she left the teacher's class feeling very concerned and went to see the Assistant Principal.

v. Relating to the students as friends and not establishing appropriate boundaries with students, after being advised to do so.

vi. Allowing students to call him ' a nick name'' after being advised not to do so.

The Assistant Principal was chair of the selection committee that had appointed the teacher. She assessed the teacher as being an enthusiastic and innovative teacher. There were "slight worries" about the teacher allowing students to call him by a "nick name" as the teacher was a bit too familiar with students. There were no complaints made to the gold team about teacher's performance. Teacher 5 informed the Panel that he recalled advising the teacher not to allow the students to call him by his first name as it could impact adversely on the teacher's classroom management and professional relationship with students.

vii. Driving female students unaccompanied to lunch at McDonalds

The Assistant Principal gave evidence that she was taken back when she realised, on the stand, that the car that the teacher had driven to get food for the students at the sports carnival was hers. The Assistant Principal then recalled that she had given the keys to a teacher to use her car for the carnival. The Assistant Principal elaborated on the regulations for utilising private vehicles for school business and the requirement for parental permission to carry students in a private vehicle. She was not aware to whom the keys to her car were given on the day.

Questioned about the alleged incident on the sports day and provided with the evidence that the teacher had driven the Assistant Principal's car on that day to get food, Teacher 2 stated "I believe that I saw the teacher get into the car with children."

Teacher 6 was questioned on paragraphs 12-14 of the statement that refers to an incident at the Sports Carnival where Teacher 6 stated that one teacher was looking for the teacher and students said that the teacher had left the sports ground, with students. Teacher 6 observed the teacher return to the ground in the teacher's car from which a number of students alighted. The students had purchased fish and chips. Comment was made by other teachers as to how inappropriate it was for a

teacher to do this without having signed permission from parents to transport students in a teacher's vehicle. Signatures had been obtained to transport students by bus to the sports ground.

In responding to questions from Mr Winneke Teacher 6 said that she had no contact with Teacher 2 since that teacher had left the school. Nor was she aware that the teacher had been given the Assistant Principal's car keys to obtain food for students complaining about the food offered by the canteen at the sports ground. Notwithstanding this new information Teacher 6 recalled "most clear the teacher emerging from the car with students". She refuted Mr Winneke's assertion that no students were in the car. Newly graduated teachers had discussed the inappropriateness of his action. Teacher 6 queried whether in questioning her about the sentence at paragraph 8 of her statement of 2001 Mr Winneke found it unclear.

vii. Speaking to a female student, Student 1, alone in a classroom. He and Student 1 were sitting close to each other and laughing. The behavior was indicative of a friendship and not a teacher-student relationship

In addressing this allegation Teacher 5 informed the Panel that to enter Teacher 5's office, Teacher 5 had to pass through the teacher's classroom. On one such occasion Teacher 5 witnessed the teacher speaking with Student 1 alone in the classroom, "giggling and laughing". Even though the classroom door was open Teacher 5 recalled telling the teacher that he should be very careful being in such a situation with a female student. Teacher 5 cannot recall how the teacher responded. On another occasion Teacher 5 recalled that the teacher had expressed some concern about Student 1 entering and disturbing the teacher's classroom. Teacher 5 advised the teacher that, in future he should seek help from another teacher in order to remove Student 1 from the classroom. It was for this reason that Teacher 5 spoke to the Year Level 10 Coordinator telling her that he thought that Student 1 "had a crush or something like that on the teacher" and Student 1 should not be enrolled in the teacher's class. Teacher 5 was subsequently surprised and disappointed to learn in conversation with the teacher that the enrolment went ahead because the teacher told the Year Level 10 Coordinator that he could manage Student 1 in class. Teacher 5 commented that he was "exhausting his memory" about the exact details of events and the teacher's responses.

xi. Speaking to male students about a female teacher, Teacher 2, in an inappropriate manner. You stated that male students were lucky to be taught by such a sexy teacher.

In addressing this Teacher 2 described an incident that involved a male student, who had learning difficulties and required special attention. On one occasion, when Teacher 2 was discussing a P.E. assignment with this student, the teacher approached them. The student called out to him-"Yo teacher [by his nick name]" and the teacher responded "So (student) how does it feel hanging out with the sexiest teacher at the college?" The student commented that "the teacher's cool". Teacher 2 said that she was shocked and embarrassed about the uninvited and unwelcome interchange – especially in the presence of a difficult student whom she expected would then, as a consequence, embarrass Teacher 2 in front of the class. A further incident transpired when Teacher 2 and the teacher were time keeping a lane at the school swimming carnival. The teacher volunteered information about his partner commenting that the teacher was a night person unlike his partner who was a day person. The teacher expressed his dissatisfaction then asked Teacher 2 whether she was sexually satisfied. Teacher 2 says that she was very embarrassed

and offended by the teacher's questioning and changed the subject. As it was very early in her career, Teacher 2 did not know what the avenues for complaint were. However Teacher 2 was "very upset" and did speak to other staff about the incident and her embarrassment.

It is noted that on 17 May 2005, Counsel for the teacher sought leave of the Panel to call the male student as a witness. This leave was refused as the Panel determined that its Order of 17 March 2005 should stand. The teacher had been given dates by which time he must advise the Panel of the names of his witnesses. Adequate time had been allowed for the teacher to bring forward his witnesses.

Again, the teacher elected not to give evidence.

DISCUSSION OF THE EVIDENCE:

The Panel did not find Student 2's evidence particularly convincing. There were too many significant inconsistencies. The Panel is prepared to acknowledge that the discrepancies may well be a function of the time between the events and of Student 2's restricted knowledge of the context in which she was making the earlier statement. The Panel is of the view that it is not beyond possibility that Student 2 has embellished her evidence to support Student 1. However, the Panel believes that the case does not turn on Student 2's evidence.

The Panel carefully considered Student 1's evidence. Counsel for the teacher highlighted the inconsistencies between the two statements made by Student 1 which raised doubts about Student 1's credibility. However, the Panel has considered Student 1's evidence in the light of the records of the teacher's mobile telephone usage, and is satisfied that the parallels existing between these records and Student 1's evidence, point to Student 1's evidence as being fundamentally credible, despite apparent inconsistencies in detail.

ALLEGATION 1.

The Panel is aware of Student 1's troubled history and her past propensity for fabrication, variously put during the hearing as "attention seeking", "game playing", "stretching the truth" or, indeed, "lying". Counsel for the teacher made much of this history and, indeed, that may have been a telling factor for the Panel deciding that her evidence was unsubstantiated. However, Student 1's evidence was substantiated to some degree. The evidence of the teacher's mobile phone usage during the period in question clearly substantiated significant portions of Student 1's evidence.

The Panel agrees with Counsel Assisting that the records of the teacher's mobile telephone activity for the period 6 April 2001 to 20 April 2001 are particularly telling when compared to Student 1's evidence. The Panel is able to draw conclusions from those records. Those records show forty nine calls made from the teacher's mobile phone, along with four text messages, a far cry from the two calls the teacher originally claimed to have made and even from the number of calls to which the teacher later admitted.

The phone records are clear and unequivocal and show the numbers called from the teacher's mobile phone, the time of the call, the duration of the call and the location from which the call was made. The Panel does not accept the alternatives suggested by Counsel for the teacher, particularly as Student 1 would have had to construct an extraordinarily pre-meditated plot to maintain an awareness of this pattern of use.

The Panel has given full consideration to the inconsistencies apparent in Student 1's various accounts. However, the Panel remains of the view that the essential elements of Student 1's evidence are consistent and remain sound, while there may be inconsistencies with the detail. It is the comparison of Student 1's evidence with the teacher's telephone record that remains the telling factor, along with the lack of congruence between those telephone records and the teacher's (admittedly unsworn) statements to the police. The teacher chose not to give evidence at the hearing and so these telephone records remain unrefuted. Indeed, sixteen of those calls lasted over two minutes, with a significant number being over 10 minutes in length. The Panel cannot accept that these were simply to tell Student 1 to desist from "pranking" the teacher's phone. Neither does the teacher's apparent need to deny that these calls had been made point to the clear conscience that might be expected if the teacher were helping Student 1, during the holiday period and often very late at night, when Student 1 was not, in fact, in the teacher's class at the time, or even if the teacher was merely interested in Student 1 as a "problematic" type he had never met before.

The comparison noted by the panel is presented here in tabular form:

Student 1's written evidence	Call Time	Duration	Phone Location
6 April Friday – last day of Term The teacher called at around 9:30 pm (15) The teacher drove over to a western suburb between 10.30 and 11. We were in contact by mobile phone (18)	10.02 pm 10.05 pm 10.36 pm 11.11 pm 11.23 pm 11.27 pm 3.43 (Sat am)	8.00 31.00 5.00 2.00 0.30 8.30	Unknown unknown unknown unknown unknown unknown West Gate Bridge
7 April Saturday The teacher made contact with me by telephone the next day. . After everyone went to bed at approx 9:00 pm I directed the teacher, over the mobile telephone, to meet me at a place. . (27)	10.01 pm 10.19 pm 11.30 pm 11.31 pm	13.00 14.49 0.30 8.54	Inner city suburb Inner city suburb Western suburb Western suburb
Sunday 8 April I received a call from the teacher the next day (40)	6.00 pm	0.30	Inner city suburb
Monday 9 April We did not see each other again until Monday night. The teacher called me about three times each day on the Sunday and Monday	10.26 pm 10.36 pm 10.37 pm 10.44 pm	9.30 1.08 5.57 4.13	Inner city suburb Inner city suburb

(41)	11.40 pm 11.44 pm 11.46 pm	0.30 1.21 0.50	Inner city suburb Inner city suburb Western suburb Western suburb Western Suburb
Tuesday 10 April The next day on the train on the way into Flinders St... the teacher called me (47) ... The teacher called me within 10 minutes (48) ... The teacher took between 10 – 20 minutes before he turned up ... we found each other by giving directions over the telephone (49)	12.04 pm 1.00 pm 1.34 pm 1.38 pm 7.02 pm 7.02 pm 7.02 pm	1.21 1.50 1.06 0.37	Inner city suburb Inner city suburb Inner city suburb Inner city suburb Text Text Text
We did not meet the following day, on the Wednesday (April 11)	8.16 pm 8.17 pm 8.22 pm 9.23 pm 11.33 pm	0.30 0.30 0.30 0.30 0.30	Inner city suburb Inner city suburb Inner city suburb Inner city suburb Inner city suburb
April 12 Thursday, I snuck out of the hostel. I waited for about 20 minutes as the teacher got lost on the way over	2.31 pm 3.43 pm 5.38 pm 5.38 pm 10.23 pm 10.38 pm 10.42 pm 10.44 pm 10.45 pm 10.46 pm 11.59 pm	0.30 0.30 0.30 4.54 3.39 0.30 Text 0.30 0.30 2.20 1.29	Inner city suburb Inner city suburb Inner city suburb Inner city suburb Inner city suburb Inner city suburb Text Inner city

			suburb Inner city suburb Inner city suburb Inner city suburb Western suburbs
On Saturday night ... I received a call from the teacher. The teacher then called back (73).	8.01 pm 8.20 pm	19.17 0.42	Inner city suburb Inner city suburb
I received an SMS message from the teacher on the Sunday night before Term 2	11.09 pm	Text	Text
Para 66 – 71 Visit to Student 2 Friday 20 April	12.20 pm 12.27 pm 12.37 pm 1.01 pm 2.50 pm 10.14 pm 10.14 pm 10.14 pm	0.30 0.30 0.30 10.34 0.38 0.30 0.30 10.17	Inner city suburb Inner city suburb Inner city suburb Inner city suburb suburb Western suburbs Inner city suburb Inner city suburb Inner city suburb
On Thursday, I misbehaved again. That night, the teacher called me (80)	No Records		

Further, the Panel finds it implausible that a matter so serious as Student 1's unsolicited and unwelcome visit to the teacher's home (as he alleged occurred at approximately 10:15 pm on Tuesday 1 May) would not be reported to school authorities as a matter of real urgency. Particularly as the matter of contact between the teacher and Student 1 had been raised with the teacher by school authorities on that very afternoon. It seems extraordinary to the Panel that the teacher would fail to report this at the first opportunity, given that he did not know of Student 1's retraction until some time later. In fact, evidence was given that the teacher only made the claim that Student 1 had been an unwelcome visitor to his home about 15 minutes into a meeting with school authorities some days after the visit supposedly occurred.

Further on this matter, the Panel is of the view that it is highly improbable that Student 1 would be able to construct a story that relied on her keeping phone records of her calls from the teacher and then to go to the extent of strengthening her fabrication by forcing herself into the teacher's home – at some inconvenient distance from her own home - in order to draw a map. The Panel does not accept the teacher's account of events leading to the production, by Student 1, of an accurate map of the teacher's home. On the balance of probability, the Panel accepts that Student 1 was in the teacher's home at times other than that the teacher claimed and for purposes other than those the teacher claimed.

The Panel has considered whether the teacher was subjected to attention seeking behaviour initiated by Student 1, a situation he found difficult to handle. Some of the written evidence suggests that the teacher found Student 1 of special interest as a "vulnerable" and "problematic" student with significant interpersonal and family problems. Student 1 was, certainly, a vulnerable student receiving school based support. If the teacher was experiencing difficulties dealing with Student 1's behaviour the teacher should have spoken to Student 1's support teachers for advice on how to deal with Student 1. The Panel is therefore not persuaded that the teacher was merely interested in Student 1 as a "problematic" student.

That teacher/student contact took place outside schools hours and was often late at night, which in itself in the Panels view, constitutes serious misconduct. In the Panel's view, responsibility for such a clandestine relationship rests squarely and solely with the teacher. Indeed such conduct would be condemned by the teachers colleagues, as indeed, it was by various members of the school staff and administration who gave evidence to the Panel. The fact that the teacher permitted such a clandestine relationship and, in fact, actively pursued it by meeting with Student 1 at some distance from his home, is indicative that it was more likely than not that a sexual relationship had developed.

DISCUSSION OF THE EVIDENCE: ALLEGATION 2

The Panel found the VIT witnesses credible and tempered in their demeanour as witnesses, taking into account that the teacher was a newly graduated teacher and offering the teacher mentoring and support. The VIT witnesses were consistent and adamant in recalling the incidents of concern. In the case of the Integration Aide it was the first time that she felt it necessary to report a teacher. The Panel accepts that Teacher 2, also a new graduate at the time, was unsure as to what action to take to address her concerns about the incidents described, including her discomfort with the teacher's questions about her personal life. All these witnesses became distressed at the suggestion that their recall was remiss.

There were, certainly, some inconsistencies in the details, a matter that is not surprising given the length of time that has passed. The Panel agreed with the suggestion from Counsel for the teacher, that some of the further allegations against the teacher may have been raised only after the first set of allegations about the teacher's conduct came to light. However, if this is in fact the case, it is not to say that they did not occur. The Panel was given no reason to believe that any staff member had ulterior motives for raising these issues.

FINDINGS OF FACTS

After considering all the evidence the Panel finds that:-

- The teacher was a teacher at the college in 2001.

- Student 1 was a student at the college in 2001.
- The college is managed by the employer.
- The teacher telephoned Student 1 49 times on his mobile telephone during the period 6 April, 2001 to 20 April, 2001 and sent 4 text messages to Student 1 during that same period. This was during the school holiday period and the calls were made often at night and on occasions from the vicinity of Student 1's home.
- The teacher had a sexual relationship with Student 1 in April 2001.

FINDINGS PURSUANT TO SECTION 42(2):

ALLEGATION 1

The Panel understands that the Institute must prove that the teacher is not fit to teach and/or is guilty of serious misconduct. According to *Bringinshaw* the Panel must be satisfied on the balance of probabilities that the evidence presented by the Institute and tested by the teacher's Counsel is more than mere inference and *might reasonably be considered to have some greater degree of likelihood* (*Jones v. Dunkel* (1959) 101 CLR 298). The seriousness of the allegations against the teacher and the consequences for the teacher means that the Panel must act with care when deciding that the allegations are proved. In this matter the consequences can result in the cancellation of the teacher's registration as a teacher, which means that the teacher could not practice as a teacher. The Panel is of the clear view that, in light of the contemporaneous evidence of the teacher's mobile telephone records that he did have contact with Student 1 on the days and times stated, the teacher engaged in a sexual relationship with Student 1 during the school holiday period as alleged.

It is noted by the Panel that the teacher chose not to give evidence explaining the nature of the teacher's contact with Student 1 during the holiday period.

The Panel is satisfied that the teacher did maintain and encourage an inappropriate clandestine and sexual relationship with a student at the school at which the teacher taught. A relationship of the nature evidenced in this case is entirely unacceptable to the profession. Accordingly, that Panel finds that the teacher did engage in serious misconduct and is not fit to teach.

ALLEGATION 2

On the basis of the testimony provided by the witnesses called, the Panel finds that these allegations are proved. However, the Panel is of the view that, while they represent misconduct and are inappropriate and foolish on the part of the teacher, they do not, in themselves, constitute serious misconduct nor render him unfit to teach.

DETERMINATION OF THE PANEL:

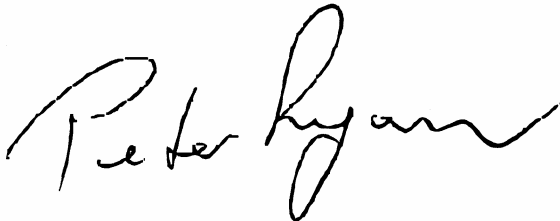
On 15 July 2005 the Panel decided to cancel the registration of the teacher from the date of this determination.

A handwritten signature in black ink that reads "Peter Ryan". The signature is written in a cursive style with a large, looping initial 'P'.

Peter RYAN, CHAIRPERSON

A handwritten signature in black ink that reads "Peter Ryan". The signature is written in a cursive style with a large, looping initial 'P'.

Kevin POPE, REGISTERED TEACHER

A handwritten signature in black ink that reads "Peter Ryan". The signature is written in a cursive style with a large, looping initial 'P'.

Loula RODOPOULOS, SPECIALIST MEMBER