

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 0044

REGISTERED TEACHER: John Adrian WATTS

PANEL MEMBERS

Marilyn Mooney, Chairperson

Robert Bertagnolio, Registered Teacher

Sophie Panagiotidis, Panel Member

ATTENDANCE:

Mr Watts was represented by Mr Richard Lawson of Counsel with instructing solicitor Mr Brendan O'Halloran, Messrs Roger O'Halloran and Co.

Counsel Assisting: Ms Anne Sheehan with Ms A Haslam solicitor instructing

DATE OF HEARING: 16 and 17 November 2006

DETERMINATION UNDER SECTION 42(2):

On 13 December 2006 the Panel decided that the teacher remain registered as a teacher.

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.

On 6 January 2006 the student lodged a complaint with the Victorian Institute of Teaching (the Institute) against the teacher. The complaint was referred to the Disciplinary Proceedings Committee on 18 January 2006. The Committee decided pursuant to section 29 to refer the complaint to a preliminary investigation.

On 9 August 2006 the preliminary investigation report was referred to the Disciplinary Proceedings Committee and the Committee decided pursuant to section 30 of the Act to refer the complaint to a formal hearing.

A Panel was constituted in accordance with section 39 of the Act and a notice of formal hearing dated 14 September 2006 was served upon the registered teacher's legal representative by registered post on 14 September 2006.

A notice of formal hearing was also served on the complainant by registered post on 14 September 2006 as required by section 38(f) of the Act.

Nature of allegations:

The information the Institute has received as evidence of possible serious misconduct and or lack of fitness to teach is that:

- 1) That whilst a teacher at the school, the teacher had an inappropriate relationship with the student. The particulars of that relationship are:
 - a. In 1979 when the student was in year 10 and in the teacher's Art class
 - i. Allowing the student to spend lunchtimes with him in the Art room for her to finish her work when no other students were present.
 - ii. Engaging in conversations of a personal nature with the student in the Art room at lunchtimes when no other students were present.
 - b. In 1980 when the student was in year 11
 - i. Inviting the student to be part of an informal group meeting in the Art room at lunchtimes.
 - ii. Being alone with the student in the school's dark room.
 - iii. Holding the student in a close and intimate way in the dark room at the school and kissing her.
 - iv. Catching a bus with the student to her house for dinner.
 - v. Kissing the student on the head when leaving the student's house after dinner.

- vi. Suggesting to the student that she and another student be helpers at a school camp at a venue called camp A.
 - vii. That one night on the camp after the students were in bed the teacher allowed the student to consume alcohol.
 - viii. That one night on the camp after the students were in bed the teacher and the student hopped into a fold out bed, the teacher touched the student's genital area and rubbed his penis on her leg.
 - ix. That the day after the incidents referred to in (vii) and (viii), the teacher followed the student to a secluded area of the camp, where the teacher embraced and kissed the student.
 - x. That the day after the incidents referred to in (vii) and (viii), in a secluded area of the camp, the teacher asked the student to 'hold him'.
 - xi. That after the camp the teacher told the student that he could not see her any more and that he was going to patch things up with his wife.
 - xii. That in an interview with the acting principal at the school, the teacher admitted to inappropriate conduct with the student on the camp and was transferred from the school at the end of 1980.
- 2) That whilst a teacher in 1981 the teacher had an inappropriate relationship with a year 12 student at the school (the student). The particulars of that relationship are:
- a. Telephone contact with the student.
 - b. Meeting with the student in the Gardens.
 - c. Telling the student that he wanted to have a cuddle, that he missed her and thought about a future with her.
 - d. Meeting with the student at his flat in street A, suburb A, once a week or fortnight during the school day when the student was supposed to be at school.
 - e. Commencing a sexual relationship with the student.
 - f. Writing the student a letter telling her that he loved her.

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. 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))

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

which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.
Allinson v General Medical Council [1891-4] All ER 768

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

profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*)

In *Health Care Complaints Commission v Litchfield* [1997] NSWCA the Full Court of the Supreme Court said that professional misconduct was 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. To adequately perform their duties, a teacher must 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 conduct that includes 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 (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 following documents were provided to the Panel:

- Notice of Formal Hearing dated 14 September 2006 -
- Copy of complaint by the student (7 pages) **001-007**
- Witness statement the student dated 30 April 2006 (5 pages) **008-012** and attachments
 - 1 – school report 1977 (1 page) **013**
 - 2 – school report T1- 1979 (1 page) **014**
 - 3 – school report T2- 1979 (1 page) **015**
 - 4– school report T3- 1979 (1 page) **016**
 - 5 – photograph (1 page) **021**
 - 6 – photograph (1 page) **022**
 - 7 – copy letter (4 pages) **017-020**
- Witness statement the student's parent dated 28 June 2006 (3 pages) **023-025**

- Witness statement the acting principal dated 5 June 2006 (3 pages) **026-028** and attachments
 - 1 – diary note (1 page) **029**
- Witness statement teacher 1 dated 2 June 2006 (2 pages) **030- 031** and attachment
 - 1 – camp plan (1 page) **032**

The following exhibits were presented to the Panel:

- A** Complaint Statement
- B** Statement of the student dated 30 April 2006
- C** Photo dated April 1982
- D** 37 black & white negatives/transparencies
- E** Statement of the acting principal
- F** Diary entry of the acting principal dated 28 July 1981
- G** Statement of the student’s parent
- H** Photos of the student’s family & the teacher
- I** Letter of teacher 2
- J** Letter from the employer dated 7 September 2006
- K** Divorce papers
- L** Teacher Application Form + Letter from the teacher dated 5 August 1984
- M** Letter from teacher 3 dated 10 August 1984
- N** Statement of the teacher’s sibling

THE EVIDENCE

The Student

The student gave evidence under oath and confirmed that the statement taken by the investigator for the Institute and provided to her was true and accurate. She said that her date of birth in her statement is accurate but that on page 1 and page 8 her age should read 17 and 10 years respectively. She told the Panel that she has been a secondary teacher for 19 years and is a teacher at school 1.

The student stated that:

- In 1979 she was a 15 year old Year 10 student.
- Her relationship with the teacher was an ordinary student/teacher relationship initially but then developed into a more familiar one. She said she was invited to come to lunchtime meetings and in cold weather it was a good place to escape to.
- She spent time alone with the teacher while he helped her with her 8mm film project. She said they shared increasingly familiar conversation about their lives, etc which she lapped up whilst enjoying the attention. She was also involved in preparing backdrops for the school play in Year 10 and spent more time with the teacher. The Panel heard that during this time nothing untoward happened.
- In Year 11 she wanted to study Art and to continue her relationship with the teacher but her parents discouraged her from continuing with Art. She had no other subject with the teacher but joined the lunchtime social group he organised to meet in the

Art room. The student said that the teacher provided coffee, and sometimes cakes and treats. She said she could not be specific about the time but that she invited the teacher to her street B home for tea and that they caught the bus home together. The Panel heard that their relationship had become more familiar and that they had developed a friendship and a connection. She said she could not recall having any adult supervision at that time. She said the teacher gave her a kiss on the head as he left. The student told the Panel that the teacher was living in suburb B with his wife and talked about his unhappiness in his relationship and in his home life.

- When she was in Year 11, the teacher asked her and another student, student 1 to go on the school camp as assistants. They obtained permission from their parents to go to the camp. She said that they slept in the female section. The day to day activities at the camp included a lot of bushwalking. The teacher loaned her a camera with which to take photos. She could not recall a lot of what the students did on the camp as she and the teacher spent a lot of time together. She identified photos on pages 21 and 22 as being of the teacher taken on the camp and said that from that time she kept personal photos of the teacher.
- Two significant events occurred at the camp but she was not sure which happened first. During one night time after the students had gone to bed the teachers were having drinks which they had purchased from a local hotel. The female teachers went to bed and teacher 1, the teacher, student 1 and herself stayed in the room. The student said that she and the teacher were sitting on the couch. Teacher 1 became drunk and cuddled student 1. The teacher pulled out a fold-out bed and she and the teacher got into the bed together where he touched her genital area and rubbed his penis on her. She said that in hindsight she now knows that he ejaculated and that he went as far as he could without penetrating her. She stayed in that bed till morning when the teacher suggested that she return to her bunk bed. She did not sleep much. Student 1 was not there at that stage.
- The second event occurred when the student went for a walk in the camp environs. She said that the teacher caught up with her, hugged and kissed her and asked her to 'hold him' meaning to hold his penis. He had an erection. She did not respond. She said that she was 'petrified and did not know what to do'. The student told the Panel that the teacher just held her to him and gave her a cuddle. She said that she has memories of being uneasy on the bus back to school and that she felt guilty. She also felt that the teachers were having a conversation amongst themselves about what had happened.
- Back at school on Monday teacher 1 came in to where she and the teacher were in the Art room and said "the shit's hit the fan – you two had better get your stories straight." She said that it was no secret what had happened at camp – peers knew and teachers knew. She has no recall of being approached by any school authorities. She had few friends at the school as she had spent so much time with the teacher.
- Although she could not rule it out, she had no recollection of telling her mother. She said that absolute mayhem broke out at home when her mother did find out what had happened at camp. She knew that the teacher's spouse had phoned her mother. She said that her mother was disappointed in her as well as the teacher. The student said that she phoned the teacher's spouse from a phone box to apologise for what had happened. The teacher's spouse was furious and angry with her and blamed her for what had happened. The teacher's spouse told her that if she did not

leave her husband alone she would go to the papers and then her name would be mud. The student said that she felt horrible and dirty.

- Her next recollection of events was that the teacher told her that one of them would have to leave the school and she recalled that he left the school for school 2 and told her that he wanted to reconcile with his wife and that they would not have any contact. She does not remember much of events between the camp and when he left. It seemed that he was gone quickly out of her life. She avoided contact with people at school and was not going to the Art room any more.
- In 1981 she was in Year 12. For the first part of the year she was living in street B but in June they moved to suburb A. She had to catch a bus to school. The student could not pinpoint exactly when contact was again made with the teacher but it was sometime in the first half of 1981. She has a vague recollection of a note from him being passed on to her from someone at school. He told her he was at school 2 and he wanted to resume formal contact. While she was still living at street B she met him at the Gardens on perhaps two or three occasions. She had distinct memories of the meetings in the gardens which were intimate in nature where he would hold and kiss her. She had to lie to her mother and would make up stories about having to do research in town for some assignment. She said they had conversations about his failed reconciliation with his wife and that he missed the student.
- Her family moved to suburb A in early June 1981. She told the teacher of the move; he left his wife and moved into a flat near suburb A. Their relationship moved to a sexual one at this time and she lost her virginity in his flat. At the teacher's behest the student visited a Family Planning Clinic to organise contraception. To hide this from her mother she cut the packet up and hid the pills in cassette covers. The student said that no one knew about the relationship as she had disappointed the whole family. All members disliked the teacher because he had transgressed 'the line' and had taken advantage of her.
- The colour photo (Exhibit C) was taken by her in April 1982 in the teacher's flat in street A. She said that she and the teacher went to the city to purchase the hifi set seen in the photo. The black and white transparencies (Exhibit D) are also in the teacher's flat. In photos 11 and 12 there is a board in the background where the teacher would display photos. Photos 9 and 10 show the student's foot and the teacher's kitten.
- Whilst still studying Year 12 at the school even though she had moved to suburb A, the student said that she would get up early and pretend to go jogging but she would go to the teacher's flat. He would leave the door open for her and she would go to bed with him. He lived alone for a while and then he had a flat mate. The Panel heard that the student met the flat mate, but he would make the student stay in bed until the flat mate had left for work. She said that they both took some days off work and school to be together. She said that sometimes they would meet at the corner of street C, catch the tram to a city café in street D and then she would catch a bus to school.
- She remained friends with student 1 and a few friends at school but was generally ostracised and male teachers were reluctant to give her extra academic attention. She said that no teachers said anything about the episode but some students would sing a particular song, eg. song A.

- After her exams when she had reconstructive knee surgery the teacher visited her in hospital. He brought her a present, a box set of symphonies, which he had to take home because no one knew about their relationship.
- She was still in plaster in the first week of University when she started her degree at the College and she was still having a relationship with the teacher. No one knew about the relationship until June of that year when her mother's partner died.
- During cross examination by the teacher's counsel, the student agreed that she did a satisfactory Year 12 and qualified for teacher training beginning in 1982. She also agreed that no pressure was brought to bear in asking her and student 1 to help with the school camp. It was an invitation. She has not kept in touch with student 1 after finishing Year 12.
- The student agreed it was common ground that she moved in with the teacher after four years and lived with him as a de facto couple at a variety of addresses. She also agreed that at no stage from January 1981 to 2005 did she make a complaint about any of the matters that had allegedly occurred at the camp. She said she never went to the Police; she should have but did not. She confirmed that her mother, her aunt, the teacher's spouse and the people at the school knew about the events. She was unaware of any other complaint having been made.
- In relation to the incident in the dark room she was unable to recall if it was before or after the camp, but there was inappropriate contact. She was the sole person in the dark room with the teacher. Photography was the teacher's passion. He kissed her in the dark room intimately. It was memorable but she can not remember when the first kiss occurred.
- After her stepfather died she told her mother of her relationship with the teacher. She said that her mother was furious and hostile towards the teacher and was disappointed that he had breached her trust again. This was in mid 1982. The student agreed with the teacher's counsel that although her mother had an immense dislike for the teacher she agreed that her vehicle could be used for the wedding of the teacher's sibling in 1983. She and the teacher attended the wedding as a couple in January 1983.
- The student told the Panel that she had not read her mother's statement. She confirmed that she did not remember whether the principal at the time she was in Year 11 was a man or a woman. She confirmed that in 1981 she was still a student at the school. As far as she knew after he left the school, the teacher was teaching at school 2 and living with his spouse. She did not recall when the teacher obtained a driving licence. She said he did not have one when she was at the school. She confirmed that the photos taken in the teacher's flat were done in 1981 not 1982 or 1983. There are details in the photos that place them as having been taken in 1981.
- The student confirmed that there was a break in contact after the teacher left the school until they resumed seeing each other in the Gardens in the first half of 1981 and the suburb A flat in the second half of 1981.
- Although she was not financially dependent on the teacher during the time of their relationship, he created her emotional dependence from the time she was a student and he was her teacher. At that young age she was emotionally immature.

The Acting Principal

The acting principal gave evidence under oath and confirmed that the statement taken by the investigator for the Institute and provided to her was true and accurate with the

following correction. After looking at her personal 1981 diary she realised that her statement incorrectly named school 3 instead of school 2 as the school that the teacher was moved to. The acting principal told the Panel that she is a retired secondary teacher and that she was at the school from 1978 to 1988. She was Deputy Principal from 1978-79 and 1983-88 and was Acting Principal in 1980-82. The acting principal detailed to the Panel an extensive and diverse range of community and voluntary commitments she has undertaken in retirement.

The acting principal stated that:

- She does not have any official documents in relation to the allegations; however she does have her personal diaries of 1980 and 1981. Her work diary was bigger and covered the issue in more detail. She was at a Principal's Conference in 1981 where she met the Principal of school 2. It was the entry from this event that caused her to recall the correct school that the teacher had been moved to.
- Her recall of the 1980 events is vivid, as she had never had to deal with anything similar in her career. She said that the student's parent phoned her on the Monday morning after the school camp to tell her that the teacher and the student had sexual intercourse on the camp and asked her if she had reported it to the employer.
- She called the teacher in. She probably had the Deputy Principal in at the meeting too but could not recall if this was actually the case. She asked the teacher if there was any truth to the allegation. She said he "quietly and sadly said 'I'm sorry – yes'." The acting principal said that the teacher told her he had confessed to his wife who was standing by him.
- The teacher's spouse phoned her to say that the teacher had confessed to her, that she was standing by him, and that she would co-operate in any way necessary. She had no further contact with the teacher's spouse. The acting principal said she interviewed two teachers, who she believes to be teacher 1 and teacher 4 who were also on the camp, and they both confirmed that the incident occurred. The acting principal told the Panel that due to the time that has elapsed she could not be definite that these were the names of the teachers she interviewed. She said that the teacher did not deny anything. After these interviews she reported the incident to the employer.
- The teacher was moved to school 2 because of the incident with the student on the school camp and not, as is suggested by him, because he was declared in excess at the school. She relied on what the teacher told her. He confessed to her and she was very upset. She does not have any records of communication with the employer or any other records. She confirmed there was no Police involvement.
- She has no recollection of the student being enrolled at the school in 1981. As far as she can recall she was a very good, quiet student who never caused any trouble.

The Student's Parent

The student's parent gave evidence under oath and confirmed that the statement taken by the investigator for the Institute and provided to her was true and accurate. She said that she was the student's parent and that she divorced from her husband in 1980. She had met her new partner, prior to 1980. They moved to suburb A in June 1981 and were there for 12 months before her partner passed away in June 1982. She agreed that during this time the student had an unsettled home life.

The student's parent stated that:

- The student probably told her what happened at camp not too long after she returned home. The student's parent said that she decided to take a 'softly, softly' approach with the student because her daughter was very confused about the incident. She said she could not comment on the student's recollection of her mother being furious and there being mayhem, etc.
- The student's parent could not recall phoning the school but acknowledged that she may have. She said that the teacher's spouse phoned her at home and told her that the whole incident was her daughter's fault.
- The student talked to her about how the teacher was a good teacher and that he did everything for her and talked to her about her problems. The student's parent said that before 1980 she was concerned that student 1 was "brainwashed by the teacher". She said she seemed mesmerized by him.
- She encouraged the student to get away from the teacher and to this end strongly urged her not to study Art in Year 11. The student's parent thought the teacher was a 'sleaze bag'.
- They moved to suburb A in 1981 but the student continued her HSC at the school. She said the student's attitude changed from being happy and content to being nasty with her and with her partner. They found out that the teacher had moved into the area when her partner saw him in a café in suburb A. The student's parent said, "He was bad news, like a little leech in 1981."
- In 1982 the student attended the College, was living at Road B, and was probably partially economically dependent on her.
- During the 8 years or so that the student and the teacher were in a relationship and living together, there was social contact between the families. She said she did this because "I did not want to lose my daughter".
- She could have loaned her vehicle for the teacher's sibling's wedding but could not recall doing so. She said that if she did she was probably "feeling generous" as she still felt the teacher was a 'sleaze bag'.
- She remains upset and resents the teacher for the effect he had on her daughter's formative years. She believes that her daughter was never the same to her after those teenage years. "He was pulling her one way and I was trying to keep her another way".

Teacher 2

Teacher 2 gave evidence under oath and confirmed that the letter dated 2 October 2006 and signed by her was true and accurate. She told the Panel that she was an English and Visual Arts teacher at school 4.

Teacher 2 stated that:

- She first met the teacher in 1984 when she interviewed him for a position at the school. This was a 15 month replacement position but such was his commitment and passion to teaching that he was eventually offered an on-going full-time position. He has held that position for over 20 years.
- The teacher was responsible for building the photography course into a very successful and popular program at the school. She said that in an arts studio space, and more especially in the photographic darkroom, there must be a balance between student safety, a comfortable atmosphere and clear unambiguous

instruction, frequently on a one-to-one basis. Teacher 2 said that the teacher would have been in the dark room with 100s, probably 1000s of students over the 20year+ period. She said there had never been a complaint.

- The visual arts areas at school 4 are open plan and teachers embrace a policy of team teaching and sharing resources which enables them to observe each other instructing and interacting with students at all levels. She said that at all times the teacher spoke and behaved professionally and that the students respected him and enjoyed his classes.
- The vetting process of new staff at school 4 is rigorous. She said that the previous principal had done several preliminary interviews with prospective candidates and checked references before offering the teacher the position. Teacher 2 said that in the interviews she focussed more on subject knowledge and communication skills. The principal would have been rigorous and followed up on his application and referees. If there had been any problems the teacher would never have been employed.
- The teacher had never spoken with her about why he left the school or how he met the student.
- The teacher works professionally and ethically with both young and mature models. She said his use of models of all ages is consistent with established arts practice.
- She had met the student and had been at 2 or 3 social occasions with her.

The Teacher

The teacher gave evidence under oath. He told the Panel that he graduated in 1976. He said that in 1979 he taught Art at the school and knew the student as she was one of his Year 10 students. The Panel heard that since September 1984 the teacher has been a teacher at school 4.

The teacher stated that:

- He could not recall during 1979 allowing the student to spend lunchtimes alone with him in the Art room so that she could complete her work and also could not recall engaging greatly in personal conversations during these times, although he did not rule it out. He said that he certainly would not have discussed the state of his marriage with a young student. The teacher told the Panel that the student was a capable art student. He said he gave technical assistance with her 8 mm film project and his wife made clothes for the characters. He said it was a time consuming process during lunchtimes.
- In 1980, as part of official school policy, he conducted informal student group meetings in the Art room at lunchtimes. Attendance was voluntary and numbers varied between 6 to 10 and sometimes less. The student was one of the students who attended. The teacher refutes the student's evidence that they met most lunchtimes. He said he mostly relaxed in the staff room at lunchtimes and had yard duty as well. The teacher said that he did not recall saying to the student that he "enjoyed or preferred her company to the staffroom". He said that pastoral care issues were discussed but that he was not aware of the student's troubled home life. He said that he became aware of that in 1982.
- He had set up a dark room at the school in 1980 and consequently established a photography course at the school. The student was a photography student and, as her teacher, he would have been alone with her in the dark room as this was

integral to teaching developing techniques. He denied intimately holding and kissing the student in the dark room. The teacher said that the student displayed artistic interests and he encouraged her talents in photography. He said that their contact was not regular with sometimes weeks in between lunchtime contact.

- The teacher said that it was possible but he could not recall catching a bus with the student to her house for dinner and denied kissing her on the head when leaving.
- It was common practice to invite older students to be supervisors at junior camps. He invited the student and student 1 to be helpers at the school camp at camp A.
- He denied allowing the students, the student and student 1, to consume alcohol after the school students had gone to bed.
- He denied that, one night after the school students had gone to bed, he and the student hopped into a fold-out bed and that he touched the student's genital area and rubbed his penis on her leg.
- He did not follow the student to a secluded area of the camp and embrace and kiss her or ask her to 'hold him'.
- He denied ever telling the student that he could not see her anymore and that he was going to patch things up with his wife.
- He refuted the acting principal's evidence and said that he did not admit to inappropriate conduct with the student on the camp. He said that he could not recall being in charge of the camp nor recall the acting principal meeting the bus on arrival back from camp on the Friday nor could he recall having an interview with her on Monday of the next week. The teacher said that he is sure that if a meeting on such a serious issue took place he would remember.
- He had no explanation as to why the student would make the specific allegations to her mother after the camp nor did he have an explanation as to why the acting principal would make the statements she has made.
- He was transferred at the end of 1980 not because of inappropriate conduct but because of insufficient enrolments. He said that the acting principal informed him, either in writing or verbally, that he had been declared in excess and would have to move to another school. The teacher said that he was not offered a choice of schools, rather he was sent to school 2.
- During 1981 he did not have any contact with the student either by telephone, in writing, or in person, and that he did not have a sexual relationship with her during this time.
- He could not have written the letter included in the student's statement before mid 1982 because they did not meet up again until mid 1982 when they ran into each other in the street in suburb A. This was when they discovered that they lived near each other. The teacher said that he could not remember exactly where or when they met but that they met after that for coffee and general chats. He could not recall when the relationship developed into something more permanent saying it was "intangible" and grew from "affection to intimacy".
- During his teaching career he has been on many camps, often as co-ordinator or supervising teacher.
- He separated from his wife in 1981 and moved to suburb A living alone for a while until joined by a flatmate. He obtained his drivers' licence in late 1981 or early 1982 and until this time travelled on public transport. He travelled to school 2 from suburb A by tram and train. He denied that the student was with him when he purchased furniture and a stereo for his suburb A flat. The teacher said that he had

no idea that the student lived in suburb A in 1981 and denied that they travelled together by tram into the city on some mornings.

- The photos provided show he, the student, her mother, and members of his family at various family social occasions. He said that the student drove her mother's vehicle as a wedding car at his brother's wedding.
- He and the student lived in a flat in suburb C in 1984, then moved to town A and eventually built their own home together near town B where they lived as a couple until late 1992. He married for the 2nd time in 1995 and last saw the student approximately mid July 1995.
- He denied seeing the student in 1981 or having any contact by letter or otherwise. They re-met in 1982 when they discovered they were living in close proximity in suburb A. They met in the street. Over a period of two years they developed an affection which led onto an intimate relationship. It was a mutual decision.
- He re-met the student's parent in mid to late 1982 perhaps within a month or two of meeting the student again. He told the Panel that he was invited to the student's home and she and the student's parent were the only ones there when he visited. He was enamoured of the house and his recollections are clear because he remembers the architecture. He said that there had been a number of visits after that including when he met the student's parent's partner in mid to late 1982 or 1983. He learnt that the student's parent's partner was a surgeon/physician and they had a conversation about that and his book. The teacher said that he met up with the student's parent's partner two or three times after this.
- The student's parent's partner ran into him in a café in suburb A. The teacher said he could not remember how often and when exactly he met the student's parent's partner, but that he only met him at the street 3 house. He had no explanation as to how he met the student's parent's partner in mid to late 1982 or 1983 if the student's parent's partner died in 1982.
- After he received notification of the complaint from VIT he eventually searched his personal records for photos, etc and in so doing also discovered the student's personal photo album. The teacher identified photos taken of him in the camp environs by the student in 1980.
- It was not possible for the photos of him in his flat (Exhibits C and D) to have been taken by the student any earlier than mid 1982.

The Teacher's Sibling

The teacher's sibling gave evidence under oath and confirmed his written statement dated 30 October 2006 to be true and accurate.

The teacher's sibling stated that:

- He met the student in mid to late 1982 and visited the teacher and the student at their suburb C flat shortly after they began living together.
- His observations of the student were of a mature, well grounded younger woman. He felt that his brother and the student were well suited as they shared similar interests.
- Other than his wedding and occasional social occasions at their parents' property, he had infrequent contact with the teacher and the student. It was at one of these social occasions that he saw photos of the house building project undertaken by the

student and the teacher. He told the Panel his impression was that the student and the teacher got a real sense of achievement out of building their house together.

- He last saw the student approximately 6 months before they separated. He said he was disappointed as he thought they were very happy together.
- He found out that there was to be a formal hearing 3 months ago from the teacher. He said that he was surprised as there had been a long period since the relationship ended. He said he feels mystified at the student's allegations as they do not reflect his observations of their relationship.
- After separating the student and the teacher had amicable contact for a couple of years until the teacher remarried.

DISCUSSION OF EVIDENCE

An important consideration for the Panel is the effect of the length of time which has elapsed since the events the subject of the complaint. This means that testing the allegations made against the teacher is difficult. Counsel for the teacher has relied upon *Herron v McGregor* (1986) 6 NSWLR 246 which examines the problem of proving allegations after a lengthy period of time. The Panel is mindful of the effects of delay in hearing a complaint arising from events occurring in 1979, 1980 and 1981. Counsel assisting the Institute referred to the case of *R v Hopper* [2005] VSCA 214, where the Court of Appeal approved the trial Judge's direction to the jury on the issue of delay:

One cannot ignore the effect of human imagination, emotion, prejudice or suggestion on how past events are remembered after many years. Having said that, however, it is only human experience that some people honestly and accurately recall the incidents of the past with clarity and can swear to them sufficiently to have a jury believe what they are saying after the jury has given that evidence careful scrutiny. So I'm not saying people inevitably have their memories corrupted, but it can happen, and you have to bear that fact in mind when you evaluate the evidence in this case, when the incidents and the subject of the evidence occurred so long ago.

Before discussing evidence in detail, the Panel will deal with issues which are not in dispute, namely:

- The teacher and the student lived together from 1984 until 1992. Their respective families knew they were a couple from 1983 and they attended the teacher's sibling's wedding as a couple in January 1983;
- In 1981 the student was a student at the school;
- In 1981 the teacher was a teacher at school 2;
- The student, the student's parent and her partner moved to suburb A in June 1981;
- The teacher separated from his wife in 1981 and moved to suburb A;
- The teacher's flat mate in suburb A for some of the period was a woman;
- The teacher obtained a driver's licence in either late 1981 or early 1982 and prior to that used public transport to get to school 2;
- The student commenced teaching studies at the College in 1982;
- The student turned 18 in 1982.

With respect to the 1979 allegations 1) a. i and ii, that is, allowing the student to spend lunchtimes in the Art room with him and engaging in conversations of a personal nature, the Panel considered the evidence in relation to these events as not persuasive of an inappropriate relationship. The Panel considered that while the events may have occurred they do not in themselves indicate an inappropriate relationship at that time. The passage of time and the lack of detail of the student's evidence is not sufficient to establish on balance that these allegations are proven.

In considering the events of 1980, the Panel finds that allegations 1) b. ii, iii, iv, v and vi in relation to being alone in the dark room with the student, holding the student in an intimate way and kissing her, catching a bus with the student to her house for dinner and kissing the student on the head when leaving her house after dinner, are not proven. The evidence presented is not sufficiently clear or detailed as to time, place or frequency nor is there any other substantiation for the Panel to be able to be satisfied having regard to the test in *Re Briginshaw*. In relation to allegation 1) b. i, that informal group meetings were held in the Art room at lunchtimes, teacher 1's statement refers to home groups being set up to provide pastoral care with 6 to 10 students in each group. According to his statement, a senior teacher initiated these home groups. The acting principal's written statement goes some way to supporting this view. The Panel accepts that these meetings were common practice at the time and therefore makes no adverse finding in relation to this allegation. The Panel considers that allegation 1) b. vi, that is, the suggestion that the student and student 1 attended the school camp to help out would also have been consistent with school policy at the time. These allegations do not in themselves indicate an inappropriate relationship at that time.

The Panel considers that the evidence in relation to allegations 1) b. ix and x, relating to the teacher having embraced and kissed the student and having asked her to "hold him" is not proven. The Panel cannot make a finding that these events occurred on a specific date or time. The point is made by Counsel assisting that "*the Teacher need only answer the allegations set out in the Notice, and at its height the evidence in relation to the embrace, kiss and asking to 'hold him' does not support a finding that the event occurred on a specific date by reference to the events the day before.*" The Panel concurs with this.

The Panel then considered allegations 1) b. viii, xi and xii, that is that one night on the school camp in 1980 the teacher and the student hopped into a fold out bed and he touched the student's genital area and rubbed his penis on her leg; after the camp the teacher told the student he could not see her any more and he was going to patch things up with his wife and that the teacher admitted to the acting principal to inappropriate conduct and was subsequently transferred from the school in 1980. The evidence in relation to these allegations in the Panel's view is compelling. The teacher agrees he went on the camp and there is photographic evidence supporting this. In relation to the aftermath of the camp, the Panel considered that the acting principal's evidence was clear, straightforward, credible and consistent and accepts her account as truthful and her recall in relation to the details of the aftermath of the school camp was exceptional. Her evidence was compelling and persuasive. It was clear to the Panel that this was such an important event in her career that she remembered the events and issues vividly, quite independently of these proceedings. Her explanation as to the process she undertook when she first became aware was believable. The acting

principal gave a clear description of her reactions to the phone calls by the student's parent and the teacher's spouse, the interview with the teacher and his confession, and her contacting the employer and its resultant repercussion, that is the teacher's transfer from the school.

The Panel considered that the student's and the student's parent's evidence was consistent with the acting principal's account. In the student's case the Panel accepts that the event was fundamentally crucial in her life and it led to a consensual ongoing relationship with the teacher after they re-established contact in 1981. Her recollections about her mother's and the teacher's spouse's reaction to the event was, in the Panel's view quite convincing despite lacking the details of the sequence of events themselves. The student's parent's evidence, although lacking in the sequential details, supported the acting principal's account in key particulars. Her evidence was also compelling in the way she described learning about the events of the camp, the phone call from the teacher's spouse, and her concern about her daughter's relationship with the teacher.

The teacher's evidence in relation to these events was to deny all allegations made about the school camp, to also deny the allegation that he was transferred from the school as a consequence of those events. He also denied telling the student that he could not see her any more as he was going to patch things up with his wife. The teacher's evidence is in clear conflict with evidence given by the acting principal, and the student and the student's parent. As stated earlier, the Panel found the acting principal's version of events particularly compelling and credible and accepts her version of events. The Panel's observation is that the acting principal clearly has no vested interest in any of these proceedings and she gave her account of events that were noteworthy in her professional career in a truthful and straightforward manner.

Counsel for the teacher argues that there is little reference to the teacher in the acting principal's 1980 or 1981 diary. The Panel accepts the acting principal's evidence that these were her personal diaries and not those she would have had at school. In the Panel's view the diaries do not detract from her evidence at the hearing, which the Panel has accepted. The Panel does not accept the teacher's evidence in relation to allegations 1) b. viii, xi and xii that he left the school because he was declared in excess.

The Panel next considered allegations 2) "That whilst a teacher in 1981 the teacher had an inappropriate relationship with a year 12 student at the school, the student ..."

The student's evidence in relation to the commencement of a sexual relationship with the teacher was that this began while she was in Year 12. Her recollection as to the beginning of the relationship revolves around her memories prior to and after she moved to suburb A in June 1981. The Panel found her evidence credible, particularly her description of a secret relationship that she was hiding from her mother, and in particular, events such as her secret meetings at the Gardens and taking days off school to meet with the teacher, his moving to suburb A after his separation from his wife, her early morning meetings with him after telling her mother she was going jogging, her trip to the Family Planning Clinic to obtain contraceptives and hiding these in cassette covers to avoid discovery.

The student's evidence in relation to the undated letter, which the teacher admitted writing to the student, was that it was written in 1981 while the relationship was still secret. In the Panel's view it is consistent with the student's evidence about her relationship with the teacher that she received it prior to anyone being aware that they were together. On balance, the Panel accepts that the letter was written in 1981.

The teacher's evidence in relation to his having re-met the student in mid to late 1982 is not consistent with the evidence of the student or the student's parent. The teacher's evidence in relation to the circumstances of his meeting the student again and the progression of the relationship was extremely evasive in the Panel's view. His evidence about having gone to the student's house and meeting her step father at this time clearly places these events in 1981 or early 1982 as the student's step father died in June 1982. The teacher's evidence was that he had met the student's step father on a number of occasions at the student's house.

The Panel concludes that the relationship between the student and the teacher resumed in 1981 while she was still a student at the school in Year 12 prior to her move to suburb A and progressed to a sexual relationship after she moved to suburb A.

In relation to the teacher's sibling's evidence, the Panel does not accept his recollection that the teacher's relationship with the student commenced after having met again in mid to late 1982. He married in January 1983 and the teacher and the student attended as a couple. The student's evidence was that their relationship was clandestine until 1982 and the Panel accepts her evidence.

FINDINGS UNDER SECTION 42(2)

Teachers must be trustworthy, honest and proper role models for students. The Panel has a role in protecting the reputation of the profession and in protecting the public in relation to the conduct of teachers. The Panel is mindful of the grave weight of this responsibility.

The Panel must decide whether the teacher is not fit to teach and/or guilty of serious misconduct. According to *Re Briginshaw* 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 him means that the Panel must act with care when deciding that the allegations are proved as the consequences can result in the cancellation of his teacher's registration which means that the teacher could not practice as a teacher.

The Panel was satisfied that the alleged behaviour of the teacher was substantiated in relation to allegations 1) b. viii, xi and xii (1980) and 2) a. b. c. d. e. f. (1981) and amounted to serious misconduct. The Panel has concluded that The teacher did act inappropriately with the student at the school camp in 1980 and that he admitted to this to the then acting principal at the school resulting in his transfer to school 2. The

Panel has also concluded that the teacher did encourage and maintain an inappropriate, clandestine and sexual relationship with the student in 1981 and in 1982. The Panel finds that the teacher was guilty of serious misconduct.

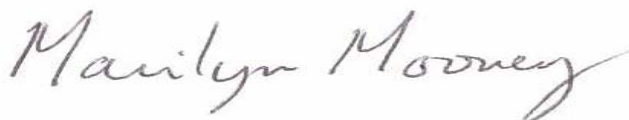
The Panel notes that the teacher denied all allegations in relation to the events at the school camp in 1980, in being forced to transfer schools as a result of those events and his evasiveness in his answers about the subsequent resumption of contact with the student after he was transferred, despite her still being a student at school. The teacher has not displayed or demonstrated any remorse in relation to any of his actions and the Panel is mindful of this.

The Panel notes that sexual relationships between teachers and former students are not a matter with which the Panel is concerned. However allegations of predatory behaviour or “grooming” of students while at school and while they are at their most vulnerable must be a matter of careful scrutiny and consideration. This is why the Panel takes a serious view of the teacher’s past behaviour in encouraging and pursuing a relationship with a vulnerable young girl.

However, the Panel must also consider the passage of time that has elapsed since the alleged incidents, a period of over 25 years. The Panel makes no comment about the subsequent relationship that developed between the teacher and the student. The relationship progressed to the point where they lived together as a couple from 1984 until 1992 when they were both adults and the teacher/student relationship had ceased.

The Panel is bound to acknowledge the teacher’s successful and highly respected career at school 4 where he has been employed since September 1984. The letters and references provided to the Panel attest to his impeccable standing as a teacher and the absence of further complaints. The evidence of teacher 2 a colleague at school 4 also confirmed this reputation.

After careful and serious deliberation the Panel determined that although the teacher is guilty of serious misconduct, he has for the last 25 years conducted himself professionally and has an unblemished record for that period of time. The Panel does not consider that the teacher poses a threat at this time, nor is his competence or commitment to the profession or to students in doubt. The Panel therefore determined not to suspend, cancel impose any conditions or restrictions on the registration of the teacher as a teacher. The Panel concludes that the teacher is fit to teach.

A handwritten signature in cursive script that reads "Marilyn Mooney". The ink is dark and the signature is fluid and legible.

Marilyn Mooney, CHAIRPERSON

Marilyn Mooney

per
Robert Bertagnolio, REGISTERED TEACHER

Marilyn Mooney

per
Sophia Panagiotidis, PANEL MEMBER