

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 039

**REGISTERED TEACHER:** George Frederick EYRE

**PANEL MEMBERS:**

**Garry Salisbury** Chairperson

**Patricia Ryan** Registered Teacher

**Kay Bodna** Specialist Member

**ATTENDANCE:** MR EYRE did not attend the Formal Hearing.

MS ANNE SHEEHAN Counsel Assisting, with Ms Carolyn Pickett instructing.

**DATE OF HEARING:** 19 September 2006

**DETERMINATION UNDER SECTION 42(2):**

On 19 September 2006 the Panel decided to cancel the registration of George Frederick Eyre from 19 September 2006

# REASONS

## BACKGROUND

The teacher applied to be registered as a teacher with the Victorian Institute of Teaching (the Institute) on 13 October 2004 and was granted full registration from 13 October 2004.

The inquiry is the result of a notification from the Department of Education and Training (the Department) pursuant to section 27 of the Act, that it had taken action in relation to a registered teacher, the Teacher. The teacher was a casual relief teacher with the Employer. The teacher's permission to seek casual relief teaching was withdrawn on 19 November 2004 after the Employer was advised that the teacher was to appear in the Mildura Magistrates Court on 20 December 2004 charged with 1 count of child stealing, one count of committing an indecent act with a child under 16, 1 count of committing an indecent assault against a child under 16 and one count of unlawful assault against a child under 16. The charges were dismissed by the Magistrate on 5 May 2005.

The notification was referred to the Disciplinary Proceedings Committee on 10 August 2005 and the Committee determined pursuant to section 31 to refer the matter to a formal hearing.

On 28 March 2006 the Institute arranged for an investigator to take witness statements in preparation for the formal hearing. On 7 June 2006 the Disciplinary Proceedings Committee confirmed that the matter would proceed to formal hearing.

A Panel was constituted in accordance with section 39 of the Act and a Notice of Formal Hearing dated 2 August 2006 was served on the registered teacher by registered post on 2 August 2006.

## Nature of Allegations

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

- In the early evening on Sunday 24 October 2004 in Mildura, the teacher
- whilst driving in a white van approached a fourteen year old girl (the student) walking down the street and engaged in a conversation with her resulting in the girl getting into the van with the Teacher.
  - drove the girl to the car park of the TAFE College and parked the van for approximately twenty to twenty five minutes.
  - that whilst parked the Teacher tried to kiss the girl who pulled away.

## 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. 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.

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.*

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).

A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach.

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 a self respecting profession. Or the conduct may illustrate that the teacher would not be able to work satisfactorily in a school environment. Whether conduct amounts to serious misconduct will depend on the minimum standards demanded by the teaching profession. Conduct that deserves disapproval may not be serious misconduct (see *Ziems*).

The degree of remoteness of the conduct in question from professional practice must also be considered according to *A Solicitor v The Council of the Law Society of New South Wales* (2004) HCA 1 in which it is stated at paragraph 34:

*...the nature of the trust, and the circumstances of the breach, were so remote from anything to do with professional practice that the characterisation of the appellant's personal misconduct as professional misconduct was erroneous.*

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

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

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

## **DOCUMENTS CONSIDERED**

The Panel was provided with the following documentary evidence:

- Witness statement of the student dated 03/05/2006 (numbering 2 pages) and attachment
  - SC1 – statement 24/10/2004 (4 pages)
- Witness statement of the teacher dated 27/04/2006 (numbering 1 page) and attachment

- GE1 – statement of interview (21 pages)
- Copy transcript of Magistrate’s Court Proceeding (40 pages)

The following exhibits were presented to the Panel:

- A. Letter from the teacher dated 11 September 2006 – stamped VIT 18 September 2006
- B. Magistrates’ Court Transcript – covering letter dated 15 September 2006.
- C. Witness Statement – the student
- D. Application to be Re-registered – 10th August 2005
- E. Registration Details

### **THE EVIDENCE**

On 2 August 2006 the Institute notified the teacher by letter that a formal hearing would take place in order to consider allegations of possible serious misconduct and/or a lack of fitness to teach. By letter dated 11 September 2006 the teacher expressed his sincere apology for not being able to attend the hearing. He said he had nothing to add verbally to the matter and that he had a commitment to casual ‘block work’ (other evidence was provided to indicate the teacher’s employment in the horticulture industry). The teacher provided a telephone contact at the Mental Health Services at Mildura Hospital and an elder of the Seventh Day Adventist Church at Mildura. He invited the Panel to contact these two people and said that he had authorised the release of any information necessary.

The Panel heard evidence under affirmation from the student. There were no other witnesses.

#### Evidence from the student

The student’s evidence was heard in closed hearing after a submission by Counsel Assisting. The Panel agreed with the submission of the Counsel Assisting that the matters to be heard were of a personal and intimate nature for the witness; that this case was an exception envisaged by Parliament in framing the Act; and that the witness was only fourteen years of age at the time of the alleged offence.

The student said she was born on the 13 August 1990. She is now 16 years of age and is a year 10 student at the School 1. At the time of the alleged offence she was 14 years of age.

Her evidence was that at the time of the alleged offence she was walking home after being with a friend and it was dark. A van pulled up next to her as she was walking, the door opened and the teacher (who was unknown to her at the time) asked her for directions to a street. She said she did not know where it was and walked on. The

teacher then drove further on and stopped. He asked her questions about her family, invited her to hop in the van and then told her to shut the door. In the Magistrates' Court transcript dated 4 May 2006 the student said he asked her to jump in his van and she said she was too scared to. He said she did not have to be scared. The student said she hopped into the van because the teacher said he knew her family.

The teacher did not stop at her house which was only walking distance away. He then drove her to the TAFE carpark which was empty and illuminated only by streetlights. The student said the teacher asked if they could be friends and "Can I be your boyfriend?" The student said she was shocked and scared. She said he wanted to shake hands and pulled her closer. She said "he pulled me towards him and got close to me." In her evidence to the Magistrates' Court the student said he tilted his head sideways and it looked like he was going to kiss me." She said that she then pulled back and went to open the door but was scared that he might come after her in the carpark which was dark and deserted. The student said that the teacher apologised and asked her to keep it a secret. He then asked her details about her school, her teacher and her classes.

The student said she had been in the carpark for approximately 20 minutes. She said she was scared all the time. She said she was still a bit scared that she would see him around the area. When asked to describe the effects on her she said she did not hang out with her friends anymore and was scared that "...he might get his family on to me." In her evidence to the Magistrates' Court the student said the teacher then drove to her Nan's house and dropped her off. The student said she went inside, she was upset and crying and her Nan called the police straight away.

## **DISCUSSION OF EVIDENCE**

The Panel noted that the teacher was given the opportunity to appear and chose not to. Although the processes of a Formal Hearing had been explained to him, his request that the Institute collect evidence on his behalf indicated a lack of understanding of the Institute's statutory role.

The Panel found the student to be a credible witness and her evidence was accepted in full. The Panel accepted that her evidence had been given under oath on two separate occasions and had been consistent in all its essential ingredients at both the Magistrates' Court and this Formal Hearing. The Panel was impressed with the honesty of the student's answers to the questions put to her, her complete lack of artifice and the unhesitating, uncomplicated way she outlined the events and her feelings about those events. The Panel came to the view that any reasonably sensitive teacher should have sensed her fear and confusion as a result of the situation she found herself in.

The Panel found her account of walking home and being asked for information credible. Her description of then being asked another set of questions relating to her family resulting in her getting into a van with someone she did not know on a dark night, was also accepted. The Panel was troubled by the teacher's behaviour because the student appeared to the Panel as very much a young girl with all the language, mannerisms and appearance that any teacher of adolescents could identify. The teacher was not present to address the belief formed by the Panel that he used a number of techniques to cause

her to enter his van. He first asked her for directions in an apparently innocent fashion and when that did not have the desired effect he tried to establish a link with her family or her church or both.

The student testified at the Magistrates' Court that she was about to leave the van at another point. The teacher requested that she shut the door because it was cold. He said that where he was parked made it difficult for other vehicles to get through although the student told him they could. This suggested to the Panel that the Teacher used his maturity and verbal skills to ensure the student remained in the car even though it was clear from her evidence that she was scared.

The time of day when these events occurred and the teacher's subsequent action of taking her to a secluded carpark after she entered his vehicle, were a series of events which did not reflect well on him. The teacher's justification that the student had agreed to "go for a spin" with him was contradicted by The student who said that he just said "come for a spin" and had then driven off. Since he was the driver she was not in a good position to alter his decision. There is no dispute that he drove the student to the car park of the TAFE College and parked the van for approximately twenty to twenty-five minutes. In his evidence at the Magistrates' Court the teacher said that he asked the student questions about her boyfriend followed by his request that he be her boyfriend. The teacher then suggested to her that perhaps he was too old for her. It appears to be about this time that the teacher sensed that the student was frightened although her evidence is that she had been scared much earlier.

The evidence provided in relation to the teacher's alleged attempt to kiss the student is not conclusive but it is established that the teacher drew closer to the student while holding her hand and that she tried to pull away and that he then apologised for his behaviour. The teacher said in his transcript of interview that he could not really explain what his intention had been in picking the student up. This lack of insight was a recurring theme in the teacher's evidence and an aspect of his character that troubled the Panel greatly and contributed strongly to the perception that the public should be protected from him.

The teacher admitted to the Magistrates' Court that he had apologised to the student saying that he did not mean her any harm because he had realised she was only young. This seems to have occurred after the teacher had moved close to the student. The student said in her evidence to the Magistrates' Court that she was unsure whether he had tried to kiss her and in the teacher's evidence he denied it. The Panel's perspective was that in the setting that the teacher had created through his own actions, it is not unreasonable of the student to be fearful and apprehensive of what the teacher was going to do next as she backed away from him against the car door. At least the student had the presence of mind to request at that point that he take her home (a point on which they both agreed) and that the teacher by this point had come to some realisation of what he had done. This realisation only occurred to the teacher at the end of the episode.

## **FINDINGS UNDER SECTION 42(2)**

The Panel was of the view that the teacher had the student in his control, that he should have sensed her unease if not her fear and apprehension and that taking her to a deserted, secluded car park in the dark showed a severe lack of judgement and that the whole episode showed serious misconduct on his part.

Even on an interpretation that the teacher was misguided or suffering an isolated lapse of judgement, the Panel found evidence of a lack of insight into the student's feelings over an extended period of time. The community expects teachers to have a high level of insight and its absence is an indication of unfitness to teach. In not appearing, The teacher was not able to satisfy the Panel that this behaviour would not reoccur. The Panel came to the view the evidence showed that the public needed to be protected from someone who showed a lack of insight, that the events were not trivial or of momentary effect at the time and that the teacher's conduct was a substantial departure from the accepted standards for the teaching profession. While the events could be interpreted as one incident, the Panel felt the extended period of time in which the teacher had the student in his van gave him ample opportunity to change his alleged perception that she was a young woman and to grasp that she was fearful and apprehensive.

In the teacher's evidence to the police there is the suggestion that he was remorseful. He said "I had done a disgrace to my own conscience"(sic). The Panel was not in a position to judge the scope or depth of his remorse and accepted the view of Counsel Assisting that while the teacher made an early confession and appeared to be remorseful there was a sense of unease about whether this could happen again and whether he was a danger to children. It was clear to the Panel that he had substantially departed from the standards of the teaching profession and that serious issues surrounding his fitness to teach had not been resolved. The public needed to be protected from these acts and a person of this character.

On the issue of whether the teacher was guilty of serious misconduct the Panel examined his conduct in relation to the special responsibility placed on teachers because of the professional relationship a teacher has with children and students. The Act imposes severe penalties for those guilty of offences against children. The teacher as a teacher had an extra responsibility beyond that of an ordinary member of the public because his training should have sensitised him not only to children's vulnerability in dealing with adults, but also developed his skills in judging their feelings which they can sometimes not articulate. The Panel was very clearly of the view that at the time of the allegations the student not only looked like a fourteen year old girl but her mannerisms and language would have revealed her to be so. We also accepted the student's evidence that she was scared during the whole episode and so the Panel regarded his enticing of the student into the van through a number of subterfuges; his transporting of her to a dark, empty car park; his physically intimidating behaviour towards her in his van; and his conversations with her of a personal and private nature as serious misconduct and a substantial departure from the standards of the teaching profession.



The Panel found that the teacher was guilty of serious misconduct in that in the early evening on Sunday 24 October 2004 in Mildura, the teacher

- Whilst driving in a white van approached a fourteen year old girl (the student) walking down the street and engaged in a conversation with her resulting in the girl getting into the van with the teacher.
- Drove the girl to the car park of the TAFE College and parked the van for approximately twenty to twenty-five minutes.

This serious misconduct was

- not trivial or momentary
- it was a substantial departure from professional standards
- the fault of the teacher and within his control

The Panel also found that the teacher was unfit to teach because his behaviour showed

- a substantial departure from the standards of the teaching profession
- a lack of insight and understanding of right and wrong

The Panel decided to cancel the registration of the teacher.



**GARRY SALISBURY, CHAIRPERSON**



**Per:  
PATRICIA RYAN, REGISTERED TEACHER**



**Per:  
KAY BODNA, MEMBER**