

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 0035

REGISTERED TEACHER: Nicholas Andrew FRAMPTON

PANEL MEMBERS:

Susan Halliday	Chairperson
Peter Ryan	Registered Teacher
Kevin Pope	Panel Member

ATTENDANCE: MR FRAMPTON was represented by Mr Sebastian Reid,
Barrister

Counsel Assisting: Ms Anne Sheehan with Ms C Pickett
instructing solicitor

DATE OF HEARING: 8 June 2006

DETERMINATION UNDER SECTION 42(2):

On 7 July 2006 the Panel decided to cancel the registration of Nicholas Andrew Frampton from the date of this decision.

REASONS

BACKGROUND

The teacher applied to be registered as a teacher with the Victorian Institute of Teaching (the Institute) on 16 December 2003. He was granted provisional registration on 28 January 2004.

The Institute was advised by the principal of School 1 by letter of 20 June 2005 that it had taken action against the teacher. The teacher resigned in February 2005 following an investigation by School 1 into inappropriate emails to a student. The notification was referred to the Disciplinary Proceedings Committee on 12 July 2005 when the Committee decided to inquire into the notification and referred the matter to formal hearing. The inquiry was referred to an investigator in preparation for formal hearing on 6 October 2005. The investigator's report was referred to the Committee on 29 March 2006. The Committee confirmed that the matter should proceed to a formal hearing.

Under the Act, the Institute is obliged to notify a registered teacher's current employer of its decision to conduct an inquiry into the registration of the teacher. The teacher was employed at that time by School 2. Following the Institute's notification to School 2 on 20 July 2005, School 2 commenced an investigation and by letter of 25 January advised the Institute that the teacher has resigned effective 4 January 2006. School 2 had been investigating allegations relating to events at School 2 and alleged breaches in July 2005 of the School's policy, by downloading and storing pornographic material on his leased notebook computer.

The notification from School 2 was referred to the Disciplinary Proceedings Committee on 3 May 2006 and the Committee decided to inquire into the notification and referred the matter to a formal hearing. As the second notification relates to the same allegation, as well as a new allegation based on the computer analysis report, both allegations were referred to the same formal hearing for the registered teacher.

Nature of allegations

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

1. That for approximately **six months in 2004** whilst employed as a teacher at School 1, the teacher engaged in online MSN conversations with a year 8 student at the School 1, Student 1 including inappropriate messages of a sexual nature.
2. In 2004 whilst employed as a teacher at School 1, the Teacher engaged in online MSN conversations and email conversations with a year 8 student at School 1, Student 2, including inappropriate emails of a sexual nature between 15 November 2004 and 18 November 2004.

Copies of the emails are attached and marked “**005 - 026**”.

3. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded and stored three pornographic movies to his notebook computer.

A copy of the IT computer analysis report is attached and marked “**041-054**”.

4. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded six pornographic images to his notebook computer.

A copy of the IT computer analysis report is attached and marked “**041-054**”.

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.

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).

The **test** set out in the case law for unprofessional conduct 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 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 presented with the following documentary evidence:

- Notice of Formal Hearing dated 9 May 2006
- Witness statement Witness 1 (2 pages) and attachment **001-033**
 - JG1 – copies of emails (29 pages)
- Document A signed by Witness 1 (3 pages) **034 - 036**
- Witness statement Witness 2 (unsigned) **037**
- Witness statement Witness 3 and attachment **038**
 - MB1 – CD (not attached)
- Witness statement Student 1 **039**
- Witness statement Student 2 **040**

Documents from School 2

- EnCase Computer Analysis Report – Frampton, Nicholas (14 pages) **041-054**
- Letter from School 2 dated 12 December 2005 and attachments **055-066**
 - Letter to the Teacher dated 12 December 2005
 - Report (10 pages)
- Letter from School 2 to the Teacher dated 21 December 2005 (24 pages) **067-090**
- Letter from the Teacher dated 21 December 2006 **091**
- Letter from the Teacher dated 3 January 2006 **092**
- Letter from School 2 to the Teacher dated 23 January 2006 (2 pages) **093-094**
- Witness statement Witness 4 and attachment **095-266**
 - TB1 – copies of emails (171 pages)

THE EVIDENCE

The Panel closed the hearing when evidence was given by two student witnesses, Student 1 and Student 2, as well as the teacher and his psychologist. Opening and closing submissions remained open to the public. The Panel made a further Order suppressing the names of the two witnesses and suppressing the name of the teacher, until the outcome of the matter was published, after having heard the evidence of the psychologist and a further submission from the teacher's representative during the later stages of the hearing.

The teacher did not contest any of the evidence presented and admitted all four allegations.

1. That for approximately six months in 2004 whilst employed as a teacher at School 1, the teacher engaged in online MSN conversations with a year 8 student at School 1, Student 1, including inappropriate messages of a sexual nature.

2. In 2004 whilst employed as a teacher at School 1, the teacher engaged in online MSN conversations and email conversations with a year 8 student at School 1, Student 2, including inappropriate emails of a sexual nature between 15 November 2004 and 18 November 2004.
3. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded and stored three pornographic movies to his notebook computer.
4. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded six pornographic images to his notebook computer.

It was agreed it was unnecessary to call the Institute's witnesses.

The teacher gave evidence under oath and stated that he accepted –

- The written statements of Witness 1, Witness 2 and Witness 3,
- The written statements of School 2 regarding his inappropriate use of a School 2's computer to download pornographic material
- The written statement of Student 1
- The written statement of Student 2
- That the copies of the emails tabled represented the conversation between himself and the two students.

The teacher informed the Panel that he had grown up in a relatively isolated rural region, in a conservative family where anti-gay sentiment was projected. He indicated that he had personally experienced some difficulty in social settings and making friends while at school.

The teacher detailed how he had discovered a love for music and spent a lot of time developing his musical talent at school. The teacher indicated that he had experienced considerable musical success at university and within the wider university community. He had formed his own jazz group within the college and performed in the university philharmonic society. He became a concert manager and president of that society. The teacher said his social contacts were generally confined to the world of university music.

The teacher described himself as introverted, as well as being confused about his sexuality for quite a period of time. He indicated that he now believes he is homosexual.

The teacher stated that he considered it was naivety, and reflecting on his own confusion, that led to his inappropriate actions and discussions with the students. He said he considered they were at the stage where they were generally "going through similar confusion" in their early teens, although he did not specifically think that they were confused about their sexual orientation.

The teacher told the Panel that he had in one way seen the interaction with the students as an outlet to his own repressed emotions and in doing so had made a "monumental mistake". The teacher acknowledged that he had established inappropriate relationships with the students by communicating with them in the way he had, and that he had seriously breached the boundaries of teacher – student relationships. He

stated that he had behaved in a way that put his authority as a teacher at risk, as well as in a manner that risked the reputation of the teaching profession. He also acknowledged an inappropriate use of power in the circumstances.

The teacher stated that there had never been physical contact with the students. He also stated that he had used sexual language to be accepted by the students. The teacher said his behaviour did in his own view amount to serious misconduct. In addition he put it to the Panel that at this point in time, while still working with his psychologist, he was not fit to teach.

The Psychologist gave evidence under oath, in the capacity of the teacher's treating psychologist. He also submitted a written statement. The Psychologist stated that the teacher had been involved with himself in seven sessions thus far. He detailed that he had conducted in depth interviews, administered two comprehensive personality tests and several other issue specific questionnaires. The Psychologist stated that he had formed the opinion that the teacher was neither a paedophile nor a hebaphile. The Psychologist stated that the teacher was however someone who was confused about his sexuality, embarrassed by his homosexuality, and overwhelmed by the thought of his sexuality being discovered by his family. The Psychologist indicated that he was concerned about the teacher, and how he would manage such a disclosure to his family.

The Psychologist stated that circumstances had required the teacher to confront his sexuality before he was psychologically ready to do so. The Psychologist also stated that now the teacher's misdemeanours had come to light he considered there to be little risk of recidivism. However given the teacher's psychosexual immaturity he considered it inappropriate for him to return to teaching at this stage.

DISCUSSION OF EVIDENCE

The evidence was not in dispute. The teacher admitted the allegations which meant that the students did not have to give evidence. The Panel acknowledges that the early admission by the teacher meant that young students did not have to be put through the trauma of giving evidence. By not forcing the students to give evidence the teacher has shown insight into the trauma he caused these students by his actions.

The Panel also acknowledged that the admissions of the teacher showed he had made some progress with respect to mapping the appropriate and necessary boundaries between a teacher and student. Further the Panel accepted that the teacher had engaged in some important self reflection. The Panel was encouraged by the teacher's on-going efforts to work with a psychologist, given the impact his personal issues had had on his professional life, and most particularly, to ensure his full understanding of the impact of his behaviour in relation to students, and the profession at large.

FINDINGS UNDER SECTION 42(2)

As a teacher, the teacher is a role model, a trusted adult and a person with clear responsibilities for the care of students. The teacher's psychosexual immaturity and personal confusion, while unfortunate, do not in any way excuse his behaviour which has resulted in him falling well short of the expectations and requirements of a teacher. The teacher's psychosexual immaturity and personal confusion do not lessen the impact of his behaviour, nor the risks of such behaviour.

The teacher's purposeful continuation of an on-line interaction of a sexual nature with two young students amounts to a substantial departure from the accepted standards of the teaching profession. This is the case irrespective of the teacher's sexual orientation and / or the gender of students. This departure from accepted standards was the teacher's personal choice. To cease the interaction was within the power, will and control of the teacher. The on-line interaction was wilful behaviour, that in the view of the Panel, lacked the necessary regard for the students involved, and for the teaching profession as a whole.

The following four allegations are substantiated –

1. That for approximately six months in 2004 whilst employed as a teacher at School 1, the teacher engaged in online MSN conversations with a year 8 student at School 1, Student 1 including inappropriate messages of a sexual nature.
2. In 2004 whilst employed as a teacher at School 1, the teacher engaged in online MSN conversations and email conversations with a year 8 student at School 1, Student 2 including inappropriate emails of a sexual nature between 15 November 2004 and 18 November 2004.
3. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded and stored three pornographic movies to his notebook computer.
4. That on 12 July 2005 whilst employed as a teacher at School 2, the teacher downloaded six pornographic images to his notebook computer.

The Panel considers the teacher's behaviour to be serious misconduct. Further the Panel has formed the view that the teacher is not fit to teach. The teacher's lack of moral responsibility and his acute absence of personal insight, in the given circumstances, dictates his current unsuitability as a teacher.

These determinations are made mindful of the teacher's frank personal admissions, and his expressions of remorse and regret. It is also noted that the teacher himself voiced that while he greatly desired the opportunity to return to teaching music, that he did not feel that it was appropriate to do so in the immediate future.

The Panel finds the teacher to be guilty of serious misconduct and that he is not fit to teach.



CHAIRPERSON



per
PETER RYAN, REGISTERED TEACHER



per
KEVIN POPE, REGISTERED TEACHER