

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 31

REGISTERED TEACHER: PETER JOHN MORAN

PANEL MEMBERS

Susan **HALLIDAY**, Chairperson

Kevin **POPE**, Registered Teacher

Sophia **PANAGIOTIDIS**, Specialist Member

ATTENDANCE: The teacher was not represented

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

DATE OF HEARING: 16 February 2006

DETERMINATION UNDER SECTION 42(2) OF THE ACT

On 21 March 2006 the Panel decided to cancel the registration of the teacher from the date of this decision.

EFFECT OF THE DECISION

This means that the registration of the teacher has been cancelled from 21 March 2006 and he cannot be employed as a teacher in any primary or secondary school in Victoria.

REASONS

BACKGROUND

The teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (the Act). The Victorian Institute of Teaching (the Institute) was advised by the teacher's employer by letter dated 29 April 2004 that it had taken action against the teacher because of alleged serious misconduct. The notification from the employer was made in accordance with section 27 of the Act.

At its meeting on 14 July 2004 the Disciplinary Proceedings Committee, (the Committee) a committee of the Institute Council considered this matter and decided to hold a formal hearing. An investigation was conducted on behalf of the Institute into the allegations against the teacher. Following the investigation the matter was again referred to the Committee and at its meeting on 23 November 2005 the Committee confirmed its decision to hold a formal hearing into the allegations against the teacher.

The teacher was sent a Notice of Formal Hearing dated 12 January 2006 with all relevant documents attached advising him that the formal hearing would be held into his serious incompetence and/or lack of fitness to teach on 16 and 17 February 2006.

The Notice of Formal Hearing set out the following allegation:

1. In an incident at the school on 23 July 2003
 - The teacher was on yard supervision in area 3
 - A group of students gathered in the vicinity of an area know as 'w6'
 - An altercation occurred between students and a female student was injured
 - The teacher was present in the area known as 'w6' and asked students to stop or move away or break it up and waved his arms to disperse students.
2. It is alleged that the teacher did not
 - a. intervene to prevent the altercation between students,
 - b. intervene to stop or break up the altercation,
 - c. intervene to assist the female student injured in the altercation.

THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 27 of that Part provides:

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.

According to the High Court, 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 that profession.

Fitness to Teach

The term *fitness to teach* is not defined in the Act. The Panel is aware of case law regarding disciplinary proceedings in other jurisdictions which refers to the term *fit and proper person*. The Panel has had regard to those cases and other case law on disciplinary matters to decide what is meant by the term *fitness to teach*.

As stated in *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46 a person who is fit to teach must show that they possess the knowledge to carry out their duties and responsibilities, and that they possess *sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further inquiry, as a person to be entrusted with the sort of work which the licence entails*.

In *Burgess v Board of Teacher Registration Queensland* [2003] QDC 159 the Queensland District Court stated that *any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher. The weight to be attached to that behaviour was a matter for the Board to determine*. The persistence of the inappropriate behaviour was relevant to a finding of unfitness to teach. A teacher's conduct should not impair *the standards of the profession to which the community entrusts the immensely important task of educating young children and adolescents*.

Serious Incompetence

Simple negligence or errors of judgement are not sufficient for serious incompetence. However negligence of a sufficiently high level could amount to incompetence. If a teacher's practice is such that it would defeat the cause of imparting knowledge to students then this would be serious incompetence.

The conduct need not be criminal, committed in bad faith or involve moral wrongdoing to be incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors* [1999] NZCA 145).

In *Zechner v Department of School Education* [1999] FCA 445 a teacher was dismissed for incompetence which was affirmed by the Court. In finding incompetence the Court noted that the teacher was:

- unable to implement meaningful lessons
- unable to communicate ideas or information
- unable to develop rapport and confidence with students
- not trusted by parents or other teachers to perform the duties of a teacher
- poor relationship with colleagues

- unable to maintain teacher/student relationship
- deficiencies in curriculum knowledge
- unable to see the need to improve teaching skills.

These skills were fundamental requirements for a teacher and a failure to exercise these skills indicated incompetence.

Whether incompetence 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 of the act or omission. 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* decision of VCAT 2 December 1998).

If the act or omission that constitutes the incompetence is within the will, power or control of the teacher it is more likely to be serious incompetence. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct. However if the teacher's incompetence was caused by their inability to cope with the work situation, this may be incompetence but may also be lack of appropriate support. (see *Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242). However the teacher may be unfit to teach.

Standard of proof

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).

DOCUMENTS CONSIDERED

The Panel had available to it the following documents

- Witness statement of Principal dated 27 October 2005, numbering 2 pages and attachments
 - RL1 – report 23 July 2001
 - RL2 – student incident report 23 July

- RL3 – letter from parent dated 24 July 2002
 - RL4 – unsigned letter from parent 30 July 2002
 - RL5 – letter from parent dated 29 July 2002
 - RL6 – letter to the teacher dated 31 July 2002
 - RL7 – letter from the teacher dated 3 August 2002
 - RL8 – letter to the teacher dated 7 August 2002
- Witness statement of Assistant Principal dated 20 October 2005, numbering 2 pages and attachments
 - JC19 – statement Teacher 1
 - RL1 – report 23 July 2001
 - JD1 – handwritten statement Student 1 23 July 2002 (2 pages)
 - JD2 – typed statement Student 1 (2 pages)
 - JD3 – letter Student 2 24 July (2 pages)
 - JD4 – statement Student 2 (2 pages)
 - JD5 – handwritten statement Student 3 (2 pages)
 - JD6 – typed statement Student 3 (2 pages)
 - JD7 – handwritten statement Student 4 (2 pages)
 - JD8 – handwritten statement Student 5
 - JD9 – typed statement Student 5 (2 pages)
 - JD10 – handwritten statement Student 6
 - JD11 – typed statement Student 6 (2 pages)
 - JD12 – handwritten statement Student 7
 - JD13 – statement Student 8 (2 pages)
 - JD14 – statement Student 9 (2 pages)
 - JD15 – statement Student 10 (2 pages)
 - JD16 – statement Student 11 (2 pages)
 - JD17 – statement Student 12 (2 pages)
 - JD18 – unsigned letter from parent 25 July 2002
 - RL3 – letter from parent 24 July 2002
 - RL4 – unsigned letter from parent 30 July 2002
 - RL5 – letter from parent 29 July 2002
- b) Documents from Department of Education & Training
- Letter from Principal dated 8 August 2002
 - Letter from the teacher dated 14 August 2002
 - Letter to the teacher dated 21 October 2002 (13 pages)
 - Letter on behalf of the teacher dated 6 November 2002 (3 pages)
 - Letter to the teacher dated 21 December 2002 (10 pages)
 - Copy witness statement Assistant Principal
 - Copy witness statement Assistant Principal (2 pages)
 - Copy letter from the teacher dated 25 July 2003 (7 pages) and attachment
 - Letter from Parent 17 August 2002 (2 pages)
 - Copy transcript of employer hearing (456 pages)
 - Copy Report of Inquiry 25 August 2003
- c) Copy video cassette of incident from employer

THE EVIDENCE

The opening statement of the teacher

In his opening statement the teacher stated that the incident in question was neither an altercation nor a fight. He claimed that during his time as a teacher that he had broken up many fights. The teacher went on to stress that the incident in question was a brawl, and that the incident was reported as a brawl. The teacher added that he counted 12 students who were directly involved in the brawl, and further that there were in his view 70 to 80 students present at the time of the incident. He indicated that from the outset he wanted the Panel to understand that the incident in question was not an altercation or a fight, but it definitely was a brawl.

The teacher stated that he wished to point out that there was an error in the nature of the allegations put forward, and that he believed that two people were injured.

The teacher also wished the Panel to note that despite there being a yard duty roster, there was no-one in Area 4, which was the Oval. He said that according to the staff bulletin this area was supposed to be supervised by Teacher 2. At the time the incident occurred, the teacher stated that he stood near the wall waiting for Teacher 2 to come to help him. The teacher stated that in his experience, teachers assisted each other. The teacher said that at the time he did not know that there was no teacher in Area 4. The teacher continued to stand by the wall during the incident as no-one came to assist him.

The teacher stated that he believed that he was the only teacher doing yard duty on that day, and that he found himself in a situation where he was surrounded by 80, 90 or 100 students. He claimed he waited in a specific position for assistance because no one teacher could go in and stop the brawl between the girls.

Assistant Principal

The Assistant Principal informed the Panel that he was now the Principal of the school. He was the Assistant Principal for two and a half years and at the time of the incident involving the teacher. He confirmed the accuracy of his written statements with attachments provided to the Panel.

The Assistant Principal stated that he first knew about the incident when two female students, friends of Student 13, came to him just after the incident. He said that he went to the area where the fight had occurred, and found Student 13. He stated that he organised assistance, and also spoke to the teacher. The Assistant Principal said that he was due in class, but he organised first aid for Student 13. The Assistant Principal stated that he arranged for witness statements to be taken from students, and then later watched the security video, from the area where the fight was, with Teacher 3. He organised that the witness statements to be completed as quickly as possible, because he realised that this was a major incident.

The school had security video cameras because of the number of incidents that had occurred at the school. The surveillance system was installed because of vandalism and bullying at the school. It was a computerised system with a six week memory. There were 15 to 20 video cameras throughout the school; however they did not all work at the same time. Some of the cameras were "dummies" but the cameras were swapped around. The cameras operated 24 hours a day. The security cameras recorded at eight frames per second, and an image was produced every two seconds. The Panel viewed the video.

The Assistant Principal said that following the incident, Student 13 went to the sick bay, and her mother was contacted. He said the interviews with students took many days.

The Assistant Principal indicated that he believed that the verbal altercation, before the physical action between the girls, had lasted about three and a half minutes. The teacher who was present should have done something to stop the fight. Some students had told the Assistant Principal that they heard the teacher tell them to move on, when the fight was happening.

The Assistant Principal said that there were telephones in the portable classrooms that could have been used to alert someone, or the teacher could have asked one of the reputable students, like Student 2 who was standing near him (as shown by the video) to go and get help. The teacher could have gone to the staff room himself, which was a short distance away, to get help.

In the Assistant Principal's opinion the teacher could have moved into the group of students, as the crowd gathered, given those in front of him were not directly involved (as shown in the video) instead of standing at the back of the crowd. The teacher could have moved closer to the handrail where the incident took place. By not doing anything, the teacher could not have any impact. Once the fight had started there was probably less the teacher could have done, but he should have done something during the lead up to the fight, or after the fight.

The Assistant Principal noted that after the incident, Student 13 was distressed. When the Assistant Principal arrived, the teacher was still there. In the Assistant Principal's opinion the teacher should have assessed the situation. It was evident that an injury had occurred, as there was blood and hair. The teacher told him there had been a fight and gave him a list of names. Student 13's friends verbally abused the teacher and they were hostile towards him because of his lack of assistance during the incident.

Subsequently the Assistant Principal had communication with the students regarding issues of trust between students and teachers. He stated that the girls were not unscathed. He said students were affected by the incident, and one in particular did not do as well as expected at VCE. Two students chose to leave the school because they could not trust the teachers and the school any longer. Student 13 had decided to stay at the school, but then left during her VCE year, as did another student who he believed had suffered a negative impact. Student 13 had ongoing counselling and had also tried to take her own life.

The Assistant Principal said that the incident had had a major impact on students' lives and performance. He added that while the incident was one thing, the students also saw a person in a leadership capacity who did not act, which led to lack of trust and cynicism on the part of students.

A community conference was organised, and students and their families were invited. The conference was a form of restorative justice where people came together in the same room to revisit the incident, talk about the impact, and understand what it would have been like to have been in the other person's shoes. People were able to talk without interruption and it was an attempt to change the students' paradigm. The Assistant Principal thought the teacher had been invited to attend the conference. The Assistant Principal said that the conference did not run smoothly and was not successful and was not of great benefit.

When questioned by the teacher, the Assistant Principal confirmed that the girls went to their own year level coordinator, after the incident, to get help for Student 13. The year level co-ordinator directed them to the Assistant Principal who was also in the staffroom. The Assistant Principal spoke to Student 13 who was lucid and coherent, in his view, but very distressed. Student 13 could comprehend questions, but had difficulty maintaining consciousness. She eventually collapsed into unconsciousness.

The Assistant Principal said in his opinion the teacher did not act like a professional teacher, and that he would have expected different behaviour from teaching staff in such circumstances, to that displayed by the teacher. He said teachers should not put themselves in danger but should use proactive measures in these sorts of situations. There was no indication that the teacher had sent anyone to get help. The Assistant Principal emphasised that teachers had a duty of care to students.

The Assistant Principal explained that there were five yard duty areas at the school at the time, and that one teacher was usually assigned to each area on a roster. The teachers were not supplied with walkie-talkies. The system had been changed four times since the incident following reviews. There had also been staff training, and staff were now issued with walkie-talkies. The yard duty areas had been reduced to three and there had been no problems since, although there may have been some fights.

The Assistant Principal said it had been assumed there was a teacher on duty in Area 4 – the teacher whose name appeared on the roster. The teacher could well have been relying on the teacher that was supposed to be on duty, to come to his assistance. It was possible that the teacher on duty in Area 1 could have noticed there was something wrong, but the Assistant Principal did not know why this did not occur. There was no evidence that the Area 1 staff member was not on duty.

After the incident, the Union wanted to ensure protection of their members and a review of the yard duty process was undertaken. There was also an extensive investigation after the specific incident which showed that a teacher was on yard duty in Area 1, but the teacher on the roster for yard duty in Area 4 was not there.

The Assistant Principal having observed the teacher in the classroom, confirmed that the teacher can use his voice, and had sufficient volume to be loud, if he wished. If he were in the teacher's place the Assistant Principal would have moved the students on earlier. He would have asked a reliable student to get extra assistance, or even ask students to help. The Assistant Principal said that Student 12, one of the taller girls could have helped. Student 12 had actually persuaded students to disperse.

The Assistant Principal said that there had never had an incident like this at the school before. There had been fights, but none with such serious consequences. After the incident, the Assistant Principal identified and interviewed those students involved in the brawl, as well as those students who were present and considered most reliable.

The Assistant Principal said that at the time of the incident the student population was about 950, and the present population was 1300.

Principal

The Principal stated that he had been the Principal from 1994 to the end of January 2003 and a teacher since 1967. He had worked at the school since 1984.

The Principal confirmed there had been an incident involving a student by the name of Student 14 in 2001. The incident took place at the end of a school day when Student 14 and other students confronted a female teacher. They were badly behaved, disrespectful to the teacher and throwing food. The teacher had assisted the female teacher, by grabbing the student and taking him to the Principal's office.

The Principal and the teacher discussed what was expected of a teacher and what was reasonable in these circumstances. It was appropriate for a teacher to come to the aid of another teacher. However in relation to contact with students the Principal discussed with the teacher the need for judgement, and that only in very particular circumstances was there a need for physical contact with students. The Principal stated that he had not told the teacher at any time, that students and/or their property should not be touched.

According to the Principal the circumstances and the student's behaviour in 2001 were not unusual, and it was not necessary for the teacher to use physical force. He said the teacher knew who the students were, and it could have been handled differently.

In relation to the incident being heard by the Panel, the Principal advised that the teacher was not at school the day after the incident. The Principal contacted the teacher and they talked about the incident, and the need for an incident report. The teacher told him that he had not seen a doctor.

The Principal obtained the incident report completed by the teacher from either the Assistant Principal or the Year 10 level Coordinator. In The Principal's opinion about 50 to 55 students had gathered when the fight took place. Letters of complaint were received from parents almost immediately after the incident and parents had also contacted welfare staff. After an investigation, disciplinary procedures were commenced

and the Principal wrote to the teacher. The Principal was surprised and staggered at the teacher's response.

The Principal said that information about duty of care was contained in the school handbook and was part of school policy. The issues surrounding duty of care were reinforced through staff discussions.

In response to questions from the teacher the Principal said he could not remember who invited the teacher to the community conference but he thought it might have been Person 1, the facilitator. The Principal had emphasised that it was important that all the parties attended. The Office 1 of the employer was aware of the incident and the decision to hold a community conference was acted upon fairly quickly. The employer Team 1 supported the school, and organised the conference held on 31 July 2002. The matter had been serious enough to refer to the employer's Office 1.

There were a number of security cameras on campus, controlled by computer located in the general office where it could not be accessed by students or staff. The video screen in the general office was on continually. The video screen outside the Assistant Principal's office was turned off quite some time before this incident. The Principal did not know who had disconnected it, but noted that the screen was turned off as it was proving to be a distraction to people.

The Principal confirmed that the teacher was dismissed and given 30 minutes to clear his desk.

The teacher

The teacher said that three or four other students were involved in the Student 14 incident with Student 14 being the ringleader. The teacher went to help another teacher and the students circled him. Student 14 accused him of assault and the Principal told the teacher that his career was over.

There had been other incidents at the school involving violence between students and teachers. The school had a history of violence. The administration did not support the staff, and this lack of support had undermined the whole culture of the school. The school was out of control and a lot of staff did not do yard duty.

The teacher said he loved teaching and liked the students. He had taught Student 13 and knew her quite well. He explained that he was not allowed to physically grab a female student; it just was not permitted and nor would he. He simply could not touch the female students in this situation.

On the day of the incident, the teacher was in the school yard on duty. He had the school bulletin with the roster in one hand and a salad roll in the other when he noticed a number of students crossing the Oval into Area 4. Area W6 was on his right. The brawl must have been prearranged; it appeared premeditated. The female students were crossing the Oval to see Student 13. Student 15 said to him "you'd better come." The teacher stated that the noise was incredible and reverberating. He looked over to see if Teacher 2 was on yard duty in area 4.

The teacher walked around area 6 and heard shouting, swearing and abuse. He stood at the rear of the pack of students and told the students to disperse. He waived his arms but no one took any notice. He decided to keep watch until Teacher 2 arrived. He sent *two little kids* possibly Year 8 students, to get the Assistant Principal. He stayed near the back wall, got a pen and paper, and a couple of times he called *Disperse!* Green apples and gravel were thrown and an apple hit Student 13.

The teacher said there was no one else on yard duty as staff who should have been there were not present. Teachers were not on yard duty because morale at the school was so low. He waited for assistance, but as nobody came he had no alternative but to stay where he was.

The teacher told the Panel that the girls were having a *bitch fight*, a physical fight. He saw Student 13, Student 16 and Student 15 and as soon as Student 13 threw a punch, all the students started yelling *Jerry! Jerry!* to stir things up. The teacher thought that there were 10 to 12 girls involved. He decided not to intervene. He would not be able to do anything because and he could not grab or have physical contact with female students. It was his responsibility as a teacher not to put himself at risk of harm (with reference to occupational safety) and so he stayed where he was.

When the fight was over, the teacher did not think Student 13 was concussed, particularly given that she had yelled at him *I'll get you sacked you f**king c**t*. Student 13 had said this in the teacher's opinion because she was the leader of her group and had lost face. The teacher agreed that Student 13 had lost some hair, but he did not see any blood or bruising. The teacher did not see Student 13's head bashed against a metal pole and did not think it happened. In the teacher's opinion one teacher could not have stopped the fight from occurring, and once it had started, he could not have stopped it. The police were spoke to staff after the incident and they were told by the police, that one police officer would not get involved in a fight unless another officer was present.

The teacher submitted that the Panel should not accept the evidence of the Assistant Principal or the Principal. The teacher knew some of the students who were involved, and estimated that there were about twelve involved in the fight. He had not been allowed to interview the students.

After the fight the teacher spoke to Student 13 and asked her if she wanted to go to the staff room. He said she told him that she did not. Student 13 denied having said this later.

The teacher claimed he had sent two students to get the Assistant Principal when the fight started. The video tape was replayed and the teacher pointed to two boys on the tape, saying he believed they were the two students. The two just went at the edge of the crowd, but they did not do as he asked. The teacher stated that he thought he sent them for assistance just before the brawl started. He was waiting for assistance and if students were asking him questions, he could not recall what they were. He believed

that the best course of action was to wait for assistance, and give instructions from where he was.

In terms of his own actions, the teacher felt he was in control of the situation. If a student's head were to go through a window for example, then he would have been prepared to intervene physically. From where he was standing he could see to the left and to the right, and could have got to Student 13 in a couple of second, if he needed to.

The teacher considered his actions at the time were appropriate, and he still believed them to be so. The teacher's actions allowed him to ensure he maintained a professional relationship with students. The teacher believed that he enhanced the respect for the teaching profession by his actions, because he did not assault or physical contact any student. After the fight he offered to assist Student 13 by asking her if she wanted to go to the staff room, albeit from a distance, as he was being verbally abused by other students. Student 13 walked to the edge of the railing, shouting at him and abused him twice. He collected the names of students who were there and gave those names to the Assistant Principal.

The teacher believed that if he touched a student he could be accused of assault. He had sought expert opinion and knew he was right. He had been told not to touch students or their bags, and in circumstances such as this teachers were told to stand back. He made a judgement not to intervene. The students had laughed at him when he told them to disperse, as they intended having a brawl. The teacher argued that he did do the right thing trying to prevent the brawl because he raised his arms and told students who had gathered to disperse; but the students disregarded his instructions. If the incident happened today he would have gone straight to the staff room and asked for assistance. He believed that he would have needed six, eight or ten people to stop the fight, as one teacher could not have broken it up. He reflected that the wisest thing he could have done was to go for assistance.

In relation to failing to intervene, the teacher said that he did not know of any teacher who would have intervened because it would be assault if they touched a student. He repeated he would not touch girls, and that asking him to do so would be asking him to break the law. He had done what he could by asking Student 13 if she wanted to go to the staff room, and while she had lost a clump of hair, he did not do anything further to assist because of the tirade of abuse hurled at him by her friends. It would not have been in his interests to try to do anything else to assist given the state of mind of Student 13's friends.

The teacher stated that because he had made these decisions, which he still considered to be appropriate and correct, he had been made the 'sacrificial lamb'. In the future, in such circumstances he would not intervene but rather he would leave the scene and get assistance. He would ask the female staff to deal with the female students.

DISCUSSION OF EVIDENCE

The Panel viewed the video tape which showed the teacher following students from the Oval. The teacher agreed that this had happened. Within a short space of time the teacher knew there was going to be an altercation of sorts, yet he did not seek help, or ask any students to do so.

Having positioned himself to the rear of the group of students, which continued to grow in size as their anticipation increased, the Panel were of the view that the teacher did little other than watch the events between students unfold. To a significant degree the teacher agreed that this was the case in his own evidence. The teacher's view that he could do nothing himself and needed to wait for assistance (which did not come, hence there was little he could do in the circumstances) was considered most unsatisfactory by the Panel.

The Panel viewed the teacher's lack of foresight and effort, as shown by the video and the teacher's decision not to intervene at various stages, as feeble and inexcusable. The Panel was of the view that the teacher could have intervened. From the available evidence the Panel deemed there to be several instances when the teacher could have, and should have acted, in a variety of ways, to prevent the situation from escalating. The Panel considered that the teacher's lack of action contributed to students getting hurt. That said, the Panel accepted that the student suffered considerable injuries due to the incident.

The Panel did not find the teacher's account of sending *two little kids possibly Year 8s, to go and get the Assistant Principal* as credible. Further the Panel considered the teacher's efforts which consisted of him raising his arms, waving them, and telling students to disperse, as contemptible in the circumstances.

The video evidence, and the evidence in students' statements showed that a number of students looked to the teacher as the adult and teacher, to do something to stop, or diffuse, what was unfolding in front of them. The evidence showed that the teacher generally failed to do so, and then proceeded in a self righteous manner to justify why his decision had been correct.

The teacher stated that he felt he was in control during the incident. While the Panel acknowledged his view, the teacher also said, that in order to demonstrate that he was in control of things, *that if a head were to go through a window, then he would have been prepared to intervene*. The Panel considered this to be a ludicrous statement given the video evidence showed the distance between the teacher and the students in the fight would have precluded him from stopping *a head from going through a window*. Secondly, to suggest that he would act or intervene once a head had already gone through a window, seemed somewhat tardy, if not redundant, in relation to his responsibility for students. The teacher had explained that *from where he was standing he could see to the left and to the right, and potentially could have got to Student 13 in a couple of seconds, if he needed to*. If this was the case, the question must be asked why did not he do so? Further, why argue such a firm and confident position about the ease with which he could have intervened, if he considered the situation warranted his

intervention, yet simultaneously submit a suite of reasons for not intervening, that he projected as impenetrable.

The evidence shows that the teacher's lack of action had an immediate negative impact and a deleterious affect on the lives of students after the event. While the teacher indicated that in his opinion *one teacher could not have stopped the fight from occurring, and further that once it had started, he could not have intervened and stopped the brawl*, the Panel was of the view that the teacher could have, and should have done far more than he did. Based on the evidence and the teacher's mindset, it is the view of the Panel that the teacher exercised poor judgement, and neglected his duty to act in the best interests of the students in his care.

Some of the examples submitted into evidence by the teacher that formed his suite of seemingly impenetrable reasons for not intervening, caused the Panel considerable concern. The teacher's statement that *the police were invited to come and speak to staff and that they were told by the police, that one police officer would not get involved unless another officer was present*, was used to support his decision not to intervene, minus any legitimate context. The teacher's evidence which amounted to a selective and modified interpretation of occupational health and safety legislation in order to project a legal argument about his need to ensure personal safety above and beyond his responsibility to students, was most problematic. The teacher's statements in relation to possible assaults on students, exemplified a self serving simplistic interpretation, in the Panel's view (with an unbalanced reference to female students), regardless of any consideration of the need to protect young people in his care who were being harmed.

FINDINGS UNDER SECTION 42(2) OF THE ACT

The Panel finds that) on 23 July 2003 at the school, the teacher was on yard supervision in Area 3. A group of students gathered in the vicinity of an area know as 'w6'. An altercation occurred between students and a female student was injured. The teacher while present in the area known as 'w6' asked students to disperse and waved his arms.

The teacher did not intervene to prevent the altercation between students, stop or break up the altercation, or assist the female student injured in the altercation.

The teacher fell well short of contemporary requirements, placing a range of people at risk. The determination of serious misconduct and lack of fitness to teach is not a punishment, rather an assessment of the current situation mindful of the need to protect the public interest, to maintain standards, and to ensure the reputation of the profession.

The Panel determined that the teacher's conduct amounted to serious misconduct. The teacher's lack of personal insight, and lack of remorse, as well as his inability to reflect objectively, and his obdurate mindset in relation to having made sound and appropriate decisions, which he indicated that he would repeat, underpinned the Panel's decision that the teacher was not fit to teach.



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Susan Halliday, CHAIRPERSON



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Kevin Pope, REGISTERED TEACHER



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Sophia Panagiotidis, SPECIALIST MEMBER