

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 041

REGISTERED TEACHER: Craig William SMITH

PANEL MEMBERS:

Ms Susan Halliday Chairperson

Mr Kevin Pope Registered Teacher

Ms Rhonda Cumberland Panel Member

ATTENDANCE: Mr Craig Smith was represented by Ms Karen Streckfuss

Ms Anne Sheehan Counsel Assisting with Ms Carolyn Pickett and Ms Annabel Haslam instructing

DATE OF HEARING: 26 October 2006 and 14 December 2006

DETERMINATION UNDER SECTION 42(2):

On 1 February 2007 the Panel determined to suspend the registration of Mr Craig Smith from 1 February 2007 until 1 February 2008 at the earliest and imposed the following conditions

1. Mr Smith must attend at least 10 sessions of treatment with a registered psychologist.
2. Mr Smith's treatment with the psychologist must address the following areas -
 - personal and social behaviour that could compromise the professional standing of a teacher, and the profession of teaching
 - differentiating between personal and professional relationships in relation to adolescents including students and adults
 - development and maintenance of personal professional standards when working with young people, and determining and implementing professional boundaries with individual students,

- power relationships between students (be they male or female) and teachers, ensuring a non-sexist analysis of the issues is progressed and understood
 - risk assessment and early identification of potentially inappropriate situations and venues, identifying credible mature responses and potential solutions
 - an in depth examination of the extent and nature of student, colleague, parental and community trust inherently invested in a teacher
 - appropriate ways in which to affirm and develop student self esteem, probing what it might be like to experience life from the student's perspective
 - what constitutes flirtation and inappropriate communication and behaviour
 - the legal obligations of teachers, particularly when charged with responsibility for student support in relation to school linked extra curricular activities
 - understanding and full adherence to the Victorian Institute Code of Ethics and Code of Conduct (to be published mid 2007)
3. The Panel must be satisfied that Mr Smith's treatment with the psychologist has addressed the 10 points set out above before the suspension of his registration will be removed. The evidence required to satisfy the Panel is that the treating psychologist's report must include:
- a detailed paragraph explaining how Mr Smith was counselled in relation to each of the 10 dot points set out above;
 - comment on the teacher's progress and the evolution of his personal insight in relation to each of the 10 counts; and
 - an assessment of the likelihood of the teacher re-offending.
4. Mr Smith's registration as a teacher will remain suspended until he provides a satisfactory report to the Panel from the psychologist from whom he has received treatment.

REASONS

BACKGROUND

On 31 December 2002 the teacher was deemed registered pursuant to section 91(3) of the *Victorian Institute of Teaching Act 2001* (the Act) because he was a person who was employed as a teacher in a State school in an ongoing position within the period of two years before the commencement of the Act.

This inquiry is the result of a notification from the school pursuant to section 27 of the Act, that it had taken action in relation to a registered teacher, the teacher. The teacher resigned from the school in June 2005 during an investigation by the school into allegations of inappropriate conduct.

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

On 19 January 2006 the Institute arranged for a consultant to take witness statements in preparation for the formal hearing. On 5 July 2006 the Disciplinary Proceedings Committee confirmed that the inquiry proceed to 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 by registered post on 14 September 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:

1. Whilst a teacher at the school, the teacher had an inappropriate relationship with a year 12 student in 2004 including
 - a) Sending SMS text messages to the student commencing in September 2004.
 - b) On several occasions, taking the student for coffee after school.
 - c) On several occasions taking the student to a hotel after one of his music gigs.
 - d) On or about 9 October the teacher kissed the student while they were sitting in his car and touched the student's chest.
 - e) On or about 30 October the teacher kissed the student while they were sitting in his car and touched the student's chest.

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).

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** 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 11** 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 School 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:

- Witness statement of the principal dated 03/02/2006 (2 pages) **001-002** and attachments
 - A – Letter to the teacher dated 6 June 2005 (1 page) **003**
 - B – letter from the teacher dated 13 June 2005 (2 pages) **004-005**
 - C – email from the teacher dated 16/06/2005 (1 page) **006**
- Witness statement of the deputy principal dated 03/02/2006 (2 pages) **007-008**
- Witness statement of teacher 1 dated 17/02/2006 (1 page) **009**
- Witness statement of student 1 dated 16/02/2006 (2 pages) **010-011** and attachment
 - A – statement (2 pages) **012-013**
- Witness statement of the student dated 02/06/2006 (2 pages) **014-015**
- Witness statement of the teacher dated 22/02/2006 (3 pages) **016-018**
- References for the teacher
 - Witness 1, 20/02/2006 (2 pages) **019-020**
 - Witness 2 (1 page) **021**
 - Witness 3 (1 page) **022**
 - Witness 4 17/02/2006 (1 page) **023**
 - Witness 5, Head of Secondary – Students 18/02/2006 (1 page) **024**

The following exhibits were presented to the Panel:

- A** Signed statement of witness 6
- B** Signed statement of the principal
- C** Signed statement of the deputy principal
- D** Signed statement of student 1
- E** Signed statement of teacher 1
- F** Reference of witness 4
- G** Reference of witness 1
- H** Accountability Questions
- I** Fax from the school dated 26 October 2006
- J** Statement of the teacher dated 22 February 2006
- K** Book entitled 'Sex in the Forbidden Zone' by Peter Rutter

THE EVIDENCE

The Panel heard evidence under oath or affirmation from:

The teacher

The principal

The deputy principal

Student 1

Teacher 1

Witness 4

Witness 1

Witness 7

It was alleged that the teacher while a teacher at the school, had an inappropriate relationship with a year 12 student, the student in 2004 including

- a) Sending SMS text messages to the student commencing in September 2004.
- b) On several occasions, taking the student for coffee after school.
- c) On several occasions taking the student to a hotel after one of his music gigs.
- d) On or about 9 October the teacher kissed the student while they were sitting in his car and touched the student's chest.
- e) On or about 30 October the teacher kissed the student while they were sitting in his car and touched the student's chest.

The student's written statement was received by the Panel. It is noted that the student did not appear as a witness.

The principal gave her evidence over the telephone. The principal confirmed that her written statement was true and correct. The principal detailed her professional background and described the school as a P - 12 school, with 985 students, and about 100 staff members located on one campus. The principal stated that a Deputy Principal was in charge of curriculum and another Deputy Principal was in charge of the primary school.

The principal said no formal system for reporting overwork or stress existed, but it was expected that a member of the school management team would be notified in such circumstances. She stated that the school staff were collegiate and supportive, and they confided in each other. She believed that people in need of support and assistance would speak up or others would speak up on their behalf.

The School did not have a strict after hours policy about contact between students and teachers, but required strict observance of boundaries between students and teachers, by staff.

In relation to the teacher, other than the allegations before the Panel, the principal reported the teacher to be highly regarded, talented and very capable.

The Principal stated other teachers from the school may have taken students for coffee and sent SMS text messages. She considered that the teachers at the school knew that everything that was said to students by staff, should be of the nature that it could be published on a notice board. The principal did not see the SMS text messages the teacher sent to the student.

The principal said she had no record indicating the teacher was suffering any "vocational stress" but had some recollection that he was feeling overloaded in 2004. She recalled telling him to delegate.

The principal met with the deputy principal on 26 May 2005. The deputy principal told the principal that teacher 1 had informed him that a former student teacher of the

school, namely witness 8 had told teacher 1 that the teacher had had “some sort of inappropriate relationship” with a student.

The principal reported that former student, student 1 made an appointment to see the deputy principal not long after that, and as principal she was called into the meeting which took place on 3 June 2005. Student 1 spoke about a relationship between her school friend the student and the teacher in 2004, when the teacher was the student’s Year 12 music teacher. The principal reported that student 1 said that she had been told by the student that she and the teacher had coffee after school, kissed, and that the teacher had fondled the student’s breasts and removed her top.

The principal said she met with the teacher and during this meeting he admitted kissing the student and touching her breasts. Later that day the principal wrote to the teacher and in the correspondence dated 6 June 2005 the teacher was informed that he had been stood down while an investigation took place. A response from the teacher was invited prior to the next scheduled meeting on 14 June 2005. The teacher wrote a letter dated 13 June 2005 to the principal, in which he admitted to sending SMS text messages to the student over a period of time, driving the student to her friend’s house, kissing the student and touching her chest while they were in the car on the evening of 9 October 2004. In the letter the teacher also wrote that on the evening of 30 October 2004 he drove the student and student 1 to a third student’s home, and after student 1 had gone inside the house, he kissed the student and touched her chest. The teacher also wrote that he’d overstepped boundaries and he acknowledged the inappropriateness of his relationship with the student.

The principal said that she discouraged SMS text messaging and that there was a sexual harassment policy that she believed staff understood covered staff and students.

The principal said that with respect to references being made to ‘chest’ and ‘breast’, in her mind the chest and breast were one and the same thing. Her understanding was that the contact the teacher made was with the student’s breast.

The principal reported that she believed that students in the school would know that they had support if the problem of an inappropriate relationship arose between a teacher and a student.

The principal said she took legal advice and would have terminated the teacher’s employment had his resignation not been forthcoming. The teacher resigned via email on the 16 June 2005.

The deputy principal appeared in person. He said his written statement was a true and accurate record of events. He said that staff at the school established professional boundaries through their own understandings of what boundaries ought to be, drawing from their own values, the school’s policies and from the school’s induction program. He said that in practice the boundaries were maintained by individuals valuing the importance of the boundaries. He said teachers knew the need for a formal relationship with students when in a teaching role and that he discussed such matters with staff.

The deputy principal said that there was a meeting on 3 June 2005 between student 1, himself and the principal, where student 1 reported a relationship between the teacher and the student.

The deputy principal said he knew the teacher fairly well as a colleague and friend. He recalled the teacher speaking about heavy teaching demands and having a discussion about the teacher allowing space for his music activities from time to time. He said a range of teachers came to him to discuss things, if they had problems or were under stress.

The deputy principal said he was present at the meeting with the teacher on the 6 June 2005. The deputy principal said he was taken aback and shocked about what had happened. He said that the teacher at the time was open and seemed relieved that the issue was being discussed. He recalled that the core of what was spoken about, was that the teacher had kissed the student and touched her breast.

The deputy principal spoke highly of the teacher's teaching ability. He said that the teacher had turned the music program around, and was appreciated by students.

The deputy principal said the student and student 1 held leadership roles in the school and were involved in organising after hours activities. He noted that after hours contact between teachers and these students would be expected. He said that there was no written policy relating to contact between students and teachers in such circumstances. There was a sexual harassment policy in place, which had been introduced in 1995, and placed in the staff handbook in 1998.

The deputy principal said that he believed the teacher was taking steps to change and ensure that events of this kind did not happen again. He said that the teacher had agreed that the behaviour was definitely wrong, and that he wanted to turn things around.

The deputy principal recalled the term breast was used to describe the teacher's inappropriate touching of the student. He also recalled the teacher denying taking the student's top off.

The deputy principal did not have any details about the counselling that he believed the teacher was undertaking, but stated that he thought the purpose of the counselling was to improve the teacher's relationships with his family, given what had happened.

The deputy principal could not recall remorse being expressed by the teacher in regard to the welfare of the student or student 1. He recalled the teacher said he was sorry that the relationship had happened, but could not recall specific remorse or comments by the teacher in relation to the students.

The deputy principal said that in the school teachers promoted warm relationships with students in the interests of good learning, and teachers were friendly with Year 12 students, as they saw themselves as mentors. The Deputy Principal then described the school as not wanting to be seen as a disciplinarian school and yet not simply 'warm

and fuzzy'. He stated that the school policies were there to support student learning for all, and that he expected teachers to understand the law.

The deputy principal stated that taking students to a hotel was not a part of friendly teaching. He did not see the SMS text messages and he did not think it common that teachers and students were in contact via SMS texts. At a staff meeting an informal comment was made, noting that emails to students should only be done in their role as teachers.

Student 1 said her written statement was a true and accurate record of events. She said that she had typed the additional document attached to her statement. Student 1 said that she had had a high regard for the teacher.

Student 1 said that she and the student exchanged SMS text messages with the teacher about school related things, but that the student and the teacher also exchanged other SMS text messages. She said she knew this because she was there when it happened. She recalled seeing one text message that talked about crossing boundaries. She said others were flirtatious.

Student 1 stated that the three of them had been for coffee, and that she knew the student and the teacher had also gone for coffee by themselves.

Student 1 said that it was well known at school that she did not live with her parents. She told the Panel that the three of them had gone to a hotel one night, after a gig. The teacher drove her and the student to her place, and the student stayed in the car with the teacher for about two hours, and then the student came inside and stayed the night at student 1's house. The student told student 1 that the teacher had kissed her and moved her V-neck top to one side and touched her breast. Student 1 believed there was conversation between the two in the car that indicated that there was no long term future in the relationship. Student 1 and the student talked about what had happened that night.

Student 1 stated that the teacher had had several conversations with her about his relationship with the student, saying that he was worried for himself, and worried that the relationship dynamic was not helpful for the student. Student 1 said the teacher told her that he had prayed to God, that he was worried about the spiritual aspect of the relationship and that he did not want to disrespect his wife. The teacher and the student spoke about the relationship, in the presence of student 1 several times. Student 1 said the student was 17 years old at the time.

Student 1 said that the teacher visited her house while they were in Year 12 several times, and also after Year 12 had finished, up until late January 2005. The three had had coffee at her house and the teacher had picked them up, and dropped them off there, prior to Year 12 finishing. The teacher visited after Year 12 had finished, including one visit from 12am to 5am when the student was there. He once visited with his two children. Student 1 indicated that she believed that the teacher's intention was to see the student when visiting. Student 1 said that after such visits the teacher contacted her asking about the student and her intentions.

Teacher 1 stated that her written statement was a true and accurate record of events. She added that in addition to teaching at the school, she was a pastor of the local church and it was also in this capacity that she came into contact with the student teacher, witness 8.

Teacher 1 said that in early 2005, the student teacher who was in her early twenties, told her that she had had a conversation with the teacher, and that he had said that he had kissed a student. Teacher 1 said she was surprised by the information but did not report it to anyone at the time. She said she wanted to find a time to speak to the teacher. Teacher 1 said the student teacher was not sure why the teacher had told her.

Teacher 1 said in early 2005, two students who had completed Year 12 in 2004 had come to her to speak about the teacher and his relationship with a student. This information came after the information from the student teacher, but prior to finding a time to speak to the teacher. The students, one male and one female, talked about rumours and an inappropriate relationship that involved physical contact between the teacher and the student. Teacher 1 said she then decided to speak to the deputy principal about the matter, which she did in late May 2005.

Teacher 1 said she thought the student teacher found the conversation with the teacher embarrassing and she was very uncomfortable about knowing what the teacher had told her. She added the teacher's actions placed the student teacher in a very difficult position.

Teacher 1 stated that she had a high regard for the teacher. She said it was not common practice for teachers to SMS text message students and that the majority of students would not know their teachers' mobile numbers. Teacher 1 was aware of the sexual harassment policy at the school.

Witness 4, a teacher colleague from the school was called as a witness for the teacher. Witness 4 stated that what she had written in a letter submitted to the Panel was true and accurate. Witness 4 said she had known the teacher since 1992 and had a high regard for him. She stated that in her opinion he was inspirational and admired by students.

Witness 4 said that in the fortnight before the teacher left the school, he told her that he had been stupid and had behaved in a manner not becoming of him. The teacher then confessed that he had behaved in an inappropriate manner with a student. Witness 4 told the teacher he was a "stupid idiot" and she told the Panel that she was really surprised at what she had heard, but she did not tell anyone. She said the teacher then took some time off and they had no further conversation about the student involved. Witness 4 said that they were both upset when this happened and that they cried together. She said she thought the teacher would never repeat the mistake if he were to teach again.

Witness 4 recalled that sometimes the teacher had time off due to the stress of workload, and she felt he needed to find some balance with a young family and being a musician outside of school, and in managing all the normal things in life.

Witness 1, a friend, was also called as a witness for the teacher. He stated that he had known the teacher for 25 years. Witness 1 said his letter of February 2006 submitted to the Panel was a true and accurate account of events. The Pastor said he was a member of a community church.

Witness 1 stated that the teacher contacted him at the end of July 2005, asking if he could see him. The teacher wanted to speak with him about his relationship with a student. Witness 1 indicated that he met with the teacher and his wife four times, and then with them separately, and had contact by telephone. He wrote in his letter to the Panel that his aim was to offer any assistance and counsel that would be of assistance to the healing of the deep wound in their marital and family relationships, as well as offering some advice regarding the current matter.

Witness 1 said that he wanted to know what the teacher was upset about; being caught or being wrong. He said he was convinced that the teacher knew that he had done something wrong. He talked with the teacher about how the teacher had reached the point of having a relationship with a student. Witness 1 believed that the teacher recognised how far over the line he had gone, and from what he had been told, witness 1 said it seemed to him that the teacher had tried to sever his relationship with the student.

The teacher told witness 1 that there were several things he did to limit contact with the student. When witness 1 tried to establish the response the teacher received from the student once the teacher decided to stop the relationship in late 2004, the teacher indicated that the student had no hard feelings.

Witness 1 said he talked about ongoing counselling with the teacher, but no professional help from a psychologist or qualified counsellor was sought. His discussions with the teacher were very positive, and their discussions covered the nature of truth, and a strategy to prevent similar events from happening in the future. He said he observed that over time the teacher understood his wrong behaviour, although the focus was on family, forgiveness and the teacher, and how to move forward. He said there was very little discussion about the impact on the student or others involved throughout the process. Witness 1 said that discussion about the possible impact on the student was largely at his own initiative, not the teacher's.

Witness 1 acknowledged that he had heard that there had been ongoing contact between the teacher and the student, after the teacher said he had ended the inappropriate relationship in late 2004. Witness 1 believed the teacher used safeguards in this next stage of the relationship, and in his mind taking his children with him to visit was an example of a safeguard used by the teacher.

Witness 7, a personal friend and mentor of the teacher, was called as a witness for the teacher. Witness 7 and the teacher had met through church and music activities. Witness 7, who said he had qualifications in Business Management and Applied Science stated he had known the family for ten years.

Witness 7 said that he and his wife were concerned about what had occurred and offered friendship. Witness 7 and the teacher worked through a number of Accountability Questions. He said the questions acted as triggers for discussion during a fortnightly meeting. The Accountability Questions covered the teacher's relationship with his God, and his family, as well as strategies to prevent and manage any thoughts about inappropriate relationships. The Accountability Questions were submitted to the Panel. While witness 7 referred to the relationship with the student, during his discussions with the teacher, he said he did not discuss any related impact on the student or other people outside the teacher's family.

Witness 7 said he did not suggest the teacher seek professional help. He did note that he had a strong personal feeling that the teacher would not enter into an inappropriate relationship again. Witness 7 said that the teacher knew that there would be ramifications if he did so, such as losing his family and losing his career.

The teacher stated that his signed statement was a true and accurate record. He had commenced teaching at the school in 1993. He was a music teacher at the school and was promoted to a leadership position, in 2001.

The teacher said he was advised by the principal to say 'no' to further work assignments or requests from other staff, to better manage the stress of teaching and supervising after hours activities. He stated that he struggled with administration and paperwork, and was better at the practical things. A music secretary was employed to help with the workload after discussions with the principal and deputy principal.

The teacher stated that he had repressed feelings that weighed him down. He did not know about a policy, or remember having any training on sexual harassment at the school. In his leadership role of he oversaw other staff but there was no discussion about relationships with students.

The teacher said he had coffee with the student and student 1 twice and once alone with the student.

The teacher admitted sending SMS text messages to the student that amounted to chit-chat. In a message where he used the word 'cute', he said that it was used in the same way as he would use it with his four year old daughter. He said the SMS text messages were fun things, and not meant to be flirtatious. He said he did not think he was flirtatious.

The teacher admitted he told the student teacher that he had an inappropriate relationship with a student. He said he did so in the context of a warning for the student teacher, after he believed she had been ogled by Year 10 boys. He said he was reflecting on his own circumstance and tried to help her avoid such situations. He inferred the situation he felt witness 8 was in, was the same as his own. The teacher, after questioning from the Panel, later stated to the Panel that he could see that the situations were quite different.

The teacher said he kissed the student on two occasions. On the first occasion on 9 October 2004 he kissed the student for quite a while. He said he touched the student at the top of her chest and that the student had her hands on his arms. Before the physical contact, he had been talking with the student about music. He asked the student if she would like him to kiss her, and the teacher said the student said yes.

On 30 October 2004, the teacher said he received a SMS text message from the student and student 1 inviting him to visit. In the end the teacher picked the two students up in his car and they all went to the hotel. They stayed at the hotel less than an hour and the teacher drove the students back to student 1's house. Student 1 went inside and the student stayed in the car. The teacher said he put his hand on the student's chest and her strap fell down, and he kissed her.

After the second incident of physical contact the teacher said he felt he had gone too far and he sent the student a SMS text message to that effect, the next day. He apologised and said something like 'we need to stop doing this'. A similar discussion was had at school between himself and the student. He said he was concerned that what was happening was harming the student and he asked student 1 about the welfare of the student. The teacher stated that he did not consider the student to be distressed.

In December the two students left school. The teacher said he saw them a few times afterwards, and took his children on one occasion after SMS text messaging to ask if he could come over for coffee. Another time he dropped in and the student was there but he did not see her. He told the Panel he considered it the wrong thing to have done to continue to visit. He said the student seemed to have refocussed and was concentrating on getting into tertiary studies and that he was doing most of his talking via student 1.

The teacher stated that he went to see witness 1 for advice and counselling. A small amount of time was spent talking about the possible impact on the student when they discussed things. Time was spent talking about what had happened, and why, the teacher's reactions, feelings of guilt with respect to family, moving forward and prevention.

The teacher agreed he had set up a mentor relationship with his friend witness 7. The purpose was to never let what had happened with the student, to happen again, and to remember how bad it felt to be in the position he was in. Witness 7 had asked him about how the student might feel. The teacher indicated that discussions with witness 7 included conversation about boundaries and guilt.

The teacher stated that he was overwhelmed and that his focus for quite some time was on getting his life, marriage and family back on track. The teacher said he was some way down the path of doing so before he considered the possible impact on the student. He did not know what effect the relationship had had on her as he had not seen her.

The teacher told the Panel that he could see now that he had power over the student, but did not think of it at the time. He saw them as equals – two consenting parties. The teacher stated he read *The Forbidden Zone* (Rutter, P.) for guidance.

The teacher stated that in future he would keep his relationships professional and not be a friend or flirt with students. The teacher said he would try to push away any thoughts in his mind and deal with matters through the right channels, and he would put himself out of harms way, and remove himself. He said he would ask someone to accompany him and not be alone with students.

The teacher stated that he did not think, at the time, of the impact that the inappropriate relationship with the student could have on student 1, nor did he think of the implications of using her as a go between.

The teacher stated that he regretted that he had contributed to a negative perception of the profession, and male teachers, and that his actions had impacted on the school.

At the end of 2004 the teacher spoke to a psychologist to deal with the stress, but did not find the visit helpful. He said that the psychologist had informed him that he needed to make up his own mind about the relationship outside his marriage, based on his own morals. The teacher admitted that he did not tell the psychologist that the person with whom he had had the relationship while married, was a school student.

DISCUSSION OF EVIDENCE

The Panel considers that the witnesses who gave evidence were credible, open and forthcoming in their recollections. Further the Panel wishes to acknowledge the courage and presence of mind of student 1 in the reporting of her concerns about the relationship between the teacher and her friend. Action such as this, and the provision of supporting evidence by student 1 and other young people in her position, should be applauded. The Panel commends student 1's maturity and insight.

The Panel concludes on the balance of probabilities, based on the available evidence and the admissions of the teacher, that the overarching allegation that the teacher, while a teacher at the school, had an inappropriate relationship with Year 12 student in 2004, is proved. The Panel notes that the teacher was co-operative and made a series of admissions about what had transpired during 2004 and 2005. Such co-operation in itself was in the teacher's favour, as he provided the Panel with an insight into the progression he has made thus far.

With respect to the sending of SMS text messages to the student commencing in September 2004, the Panel concluded from the evidence that a range of messages of a personal nature, totally unrelated to the teacher's work as a music teacher, were sent to the student, over an extended period of time.

Evidence pertaining to a wide range of examples of such SMS text messages sent to the student emerged throughout the evidence. These SMS text messages ranged from general chit chat, flirtatious banter and information related to social catch ups, to apologies and admissions made about crossing teacher – student boundaries. Further student 1 gave evidence that the teacher when seeking to gain insights about the student's intentions and when thinking about ending his relationship with the student,

discussed these matters via SMS text messages with student 1, which the Panel found to be most inappropriate.

The Panel notes that both the deputy principal and teacher 1 gave evidence that using SMS text messaging to communicate with students was not common practise and that few students would know their teachers' mobile phone numbers.

The Panel finds on the balance of probabilities, based on all the available evidence and the teacher's admissions, that SMS text messages were used by the teacher from September 2004, to develop and maintain an inappropriate relationship with the student.

With respect to having coffee after school with the student, allegedly on several occasions, the Panel having heard all of the available evidence, accepts that the teacher had coffee with the student on only one occasion, when it was just the two of them. The Panel concludes that the teacher did have coffee with the student and her friend student 1 on several occasions however, and that such activity was inappropriate.

The Panel finds that the practise of taking students for coffee away from the school grounds and outside of school hours needs to be a very carefully considered activity. Such interaction should have solid purposeful links to school and or school related extra curricular activity. The Panel finds that the coffee activity and associated interaction had by the teacher with the two students moved beyond what was appropriate for teachers pursuing appropriate student - teacher relationships, even when some licence is extended to teachers fulfilling a friendly mentor role with Year 12 students.

The Panel finds on the balance of probabilities, based on all the available evidence and the teacher's admissions that the teacher's involvement and initiation of coffee meetings helped procure the inappropriate relationship with the student.

The Panel accepts the evidence of the teacher that he did not take the student to a hotel on several occasions. The Panel concludes on the balance of probabilities, based on the available evidence and the teacher's admissions that the teacher only took the student and student 1 to a hotel on one occasion. The Panel finds that this highly irregular behaviour falls well short of what would be considered acceptable professional behaviour when it comes to maintaining appropriate student - teacher relationships. The Panel finds that this activity with particular respect to the student was party to the inappropriate relationship pursued by the teacher. Further the Panel notes that the student was underage when the teacher took her to the hotel.

The Panel finds on the balance of probabilities, based on all the available evidence and the teacher's admissions, that the teacher kissed the student while they were sitting in his car and touched the student's chest on 9 October 2004. The Panel finds that on 30 October 2004, the teacher kissed the student while they were sitting in his car and touched the student's chest. These allegations are not contested. The Panel finds the teacher's behaviour to be most unsatisfactory.

The evidence provided by the witnesses called by the teacher failed to convince the Panel that the teacher had developed distinct, professionally mature, and appropriate insights and understandings about his unprofessional behaviour. Of particular concern was the limited attention that had been paid to the possible long and short term effects of his behaviour on the student and student 1. The level of regard evidenced for his profession as a whole was also of concern to the Panel.

The evidence made it clear that the teacher failed to seek out professional advice and counselling from a practitioner recognised as appropriate to deal with the specifics associated with his inappropriate relationship with a student. While the teacher accessed support and counselling from church contacts, and made initial contact with a psychologist, these efforts did not focus on the elements relevant to the misgivings the teacher displayed as a teacher.

The Panel also notes that while the teacher indicated that he tried to stop the inappropriate relationship, and the evidence shows that he did so to a degree, his initiation of further social visits and coffee, as well as interaction with student 1 to inquire about the student's intentions was inappropriate. The Panel is of the view that the interaction initiated by the teacher after Year 12 had ended was naïve if not dubious.

Finally from the evidence presented the Panel was concerned about the limited degree of remorse evidenced in relation to his profession, and in particular the student whose reflections on the matter were offered up in a signed statement, and student 1 whom the teacher used as a go-between and a defacto adult confidant.

FINDINGS UNDER SECTION 42(2)

Disciplinary proceedings are not mechanisms to punish, but rather instruments to protect the public interest. The Panel was mindful of this distinction when making determinations in relation to this matter.

The Panel finds:

- That the teacher was a registered teacher.
- That whilst a teacher at the school, the teacher had an inappropriate relationship with a Year 12 student, the student, in 2004 including:
 - (a) sending inappropriate SMS text messages commencing in September 2004;
 - (b) having coffee with the student and her friend outside of school on several occasions, and taking the student for coffee after school by themselves on one occasion;
 - (c) on one occasion taking the student and her friend to a hotel after one of his music 'gigs', when the student was underage;
 - (d) on 9 October 2004 kissing the student while they were sitting in his car, and touching the student's chest;
 - (e) on 30 October 2004 kissing the student while they were sitting in his car and touching the student's chest.
- That the teacher is guilty of serious misconduct.

- That the teacher is not fit to teach at this time.

The Panel concludes the teacher's behaviour amounts to serious misconduct. The teacher not only breached the professional standards of the teaching profession, he exploited the privileged position of power and trust that a teacher is granted. Additionally the teacher took advantage of the unique access he had to the student in question, and her friend, to suit his own particular purposes and intent.

The teacher failed to see the serious and deleterious impact on the students he was involved with for an extensive period of time. The level of remorse and understanding of the students' situation, as evidenced during the hearing continued to fall short of what the Panel considered would be appropriate in the given circumstances. It is the firm view of the Panel that the teacher, up until the Hearing, had not sufficiently focused on the standard of conduct that would allow a return to his profession. The Panel considered the teacher not only lacked insight and professional maturity, but a level of sophistication that the Panel viewed as necessary when working with, and taking responsibility for adolescents in a one on one, or small group education based situation.

The Panel has determined that the teacher is not currently fit to teach at this time, and that he has both remedial and developmental work to undertake prior to being considered fit to teach. The public needs to be confident that students placed in a teacher's care are safe and will not be subjected to, or at risk of inappropriate behaviour. The Panel has therefore suspended the teacher's registration for a minimum of twelve months. In order to lift his suspension and be considered fit to teach, the teacher will need to provide evidence that he has fulfilled the conditions set down by the Panel, and present to the Panel a detailed psychologist report that addresses each of the conditions set.

DETERMINATION UNDER SECTION 42(2):

On 1 February 2007 the Panel determined to suspend the registration of the teacher from 1 February 2007 until 1 February 2008 at the earliest and imposed the following conditions

1. The teacher must attend at least 10 sessions of treatment with a registered psychologist.
2. The teacher's treatment with the psychologist must address the following areas -
 - personal and social behaviour that could compromise the professional standing of a teacher, and the profession of teaching
 - differentiating between personal and professional relationships in relation to adolescents including students and adults
 - development and maintenance of personal professional standards when working with young people, and determining and implementing professional boundaries with individual students,

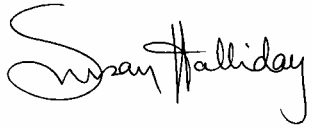
- power relationships between students (be they male or female) and teachers, ensuring a non-sexist analysis of the issues is progressed and understood
 - risk assessment and early identification of potentially inappropriate situations and venues, identifying credible mature responses and potential solutions
 - an in depth examination of the extent and nature of student, colleague, parental and community trust inherently invested in a teacher
 - appropriate ways in which to affirm and develop student self esteem, probing what it might be like to experience life from the student's perspective
 - what constitutes flirtation and inappropriate communication and behaviour
 - the legal obligations of teachers, particularly when charged with responsibility for student support in relation to school linked extra curricular activities
 - understanding and full adherence to the Victorian Institute Code of Ethics and Code of Conduct (to be published mid 2007)
3. The Panel must be satisfied that the teacher's treatment with the psychologist has addressed the 10 points set out above before the suspension of his registration will be removed. The evidence required to satisfy the Panel is that the treating psychologist's report must include:
- a detailed paragraph explaining how the teacher was counselled in relation to each of the 10 dot points set out above;
 - comment on the teacher's progress and the evolution of his personal insight in relation to each of the 10 counts; and
 - an assessment of the likelihood of the teacher re-offending.
4. The teacher's registration as a teacher will remain suspended until he provides a satisfactory report to the Panel from the psychologist from whom he has received treatment.



Susan Halliday CHAIRPERSON



**Per:
Kevin Pope REGISTERED TEACHER**

A handwritten signature in black ink that reads "Susan Halliday". The signature is written in a cursive style with a large, looping 'S' at the beginning.

Per:
Rhonda Cumberland PANEL MEMBER