

# VICTORIAN INSTITUTE OF TEACHING

## DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 067

**REGISTERED TEACHER:** David Jonathan KEHAGIAS

**PANEL MEMBERS:** Marilyn Mooney, Chairperson  
Anne Farrelly, Registered Teacher  
Drew Hopkins, Registered Teacher

**ATTENDANCE:** The teacher was represented by Ms Suzanne Jones of Counsel, with Ms Marilyn Mensforth, Holding Redlich, Solicitor instructing  
Ms Anne Sheehan Counsel Assisting with Ms C Sherman Victorian Institute of Teaching, instructing

**DATE OF HEARING:** 23 and 24 June 2008

### **DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION TRAINING AND REFORM ACT 2006*:**

On 23 July 2008 the Panel determined to suspend the registration of the teacher until 1 September 2009. This means that the teacher cannot apply to be registered as a teacher in Victoria until 2 September 2009.

## REASONS

### BACKGROUND

The teacher was provisionally registered with the Victorian Institute of Teaching (the Institute) on 23 March 2005 and was granted full registration on 25 January 2006.

By letter dated 15 October 2007, the College notified the Institute of action taken against a registered teacher, the teacher. The teacher resigned from the College with effect 4 October 2007.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) on 14 November 2007 and the Committee decided to refer the matter for investigation.

On 12 March 2008, the Committee considered the investigation report and recommendation and decided to refer the matter to a formal hearing.

The Institute received notice from the teacher that he no longer wished to be registered with the Institute, effective from 3 March 2008.

The matter was referred to the Committee on 16 April 2008 and under section 2.6.47 of the *Education and Training Reform Act 2006* (the Act), the Committee decided that the teacher should be treated as if he is a registered teacher.

A Notice of Formal Hearing dated 18 April 2008 was served upon the teacher by registered post on 22 April 2008.

### DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 18 April 2008
2. Letter the Deputy Principal to C Sherman dated 15 October 2007 (2 pages) **001-002**
3. The teacher - Registration Details (4 pages) **003- 006**
4. The teacher Notice of withdrawal of Registration 3 March 2008 (1 page) **007**
5. Report of the Disciplinary Proceedings Committee dated 16 April 2008 (6 pages) **008- 013**
6. Document entitled 'Chronology of Events' (2 pages) 014- 015
7. Notice of Investigation letter Institute Manager to the teacher dated 23 November 2007 (3 pages) **016- 018**

8. Witness statement of the principal 13 December 2007 (1 page) 019
  - Attachment 1 – Report of alleged professional misconduct & unethical behaviour by the teacher & the student (1 page) **020**
  - Attachment 2 – Notes of meeting from 20 September 2007 (2 pages) **021-022**
  - Attachment 3 – Letter to the principal from the teacher (3 pages) **023- 025**
  - Attachment 4 – Letter to the principal from the teacher (1 page) **026**
9. Witness statement of the Deputy Principal dated December 2007 (1 page) **027**
10. Witness statement of school counsellor dated 10 December 2007 (2 pages) **028-029**
  - Attachment 1 – Report by the school counsellor dated 19 September 2007 (3 pages) **030- 032**
  - Attachment 2 – Undated MSN text extracts (15 pages) **033- 047**
11. Witness statement of the student dated 11 January 2008 (3 pages) **048- 050**
12. Witness statement of student 1 dated 24 January 2008 (1 page) **051**
13. Transcript of Interview with the teacher dated 10 December 2007 (21 pages) **052-072**

The following exhibits were tendered at the hearing:

- A. Witness Statement the student, dated 11 January 2008
- B. Document entitled: 'Protection of Student and Staff Policy'
- C. Witness Statement the principal, dated 13 December 2007
- D. Witness Statement the school counsellor, (undated)
- E. Witness Statement the Deputy Principal, dated December 2007
- F. Document entitled: Annual Review Meeting 2007 – the teacher
- G. Report - Psychologist 1, dated 18 June 2008
- H. Letter entitled: 'To the members of the VIT panel' (3 pages) with an enclosed document entitled 'To the members of the VIT Panel Case Reference No. 1356' (2 pages)
- I. Reference of teacher 1, dated 19 May 2008
- J. Reference of teacher 2, dated 4 December 2007

- K.** Reference of referee 1, dated 5 December 2007
- L.** Reference of teacher 3, dated 10 December 2007
- M.** Reference of teacher 4, dated December 2007
- N.** Poem entitled 'Better place'
- O.** Response of the teacher to Allegations outlined in the Notice of Formal Hearing (18 April 2008), dated 20 June 2008
- P.** Letter Psychologist 2 dated 21 June 2008
- Q.** Victorian Institute of Teaching (Draft) Code of Conduct

## **THE EVIDENCE**

The allegations of serious misconduct and/or lack of fitness to teach are:

Whilst employed as a registered teacher at the College, the teacher:

1. Failed to maintain a professional relationship with a Year 12 student ('the student') in 2007:
  - a. Prior to 31 August 2007, engaged in inappropriate contact with the student including:
    - i. Talking to the student alone in his office about personal matters and telling her that:
      - 1) She was 'beautiful'.
      - 2) She had a 'sweet heart.'
      - 3) He loved her.
      - 4) He made her feel special.
    - ii. In or around June or July, inviting the student and another student out to lunch during the school holidays.
    - iii. Sending SMS messages to the student via his mobile telephone about personal matters including about her boyfriend and family.
    - iv. Engaging in personal conversations with the student via MSN messaging including:
      - 1) Confirming arrangements to meet the student at a suburban train station and then to take her and another student out.
      - 2) Asking the student about her boyfriend and her relationships.
      - 3) Telling the student words to the effect of:

- 'Ps please don't tell anyone – big no no teachers talking to student on this.'
  - 'You are just a beautiful person, body mind and soul.'
  - 'You know something....ive missed you.'
  - 'You have no idea how much I rate you and there is a lot to miss.'
- b. On Friday 31 August 2007, engaged in inappropriate contact, including physical contact with the student as follows:
- i. While the student was in his office, asking her if she would go out to dinner with him.
  - ii. While the student was out with friends, sending an SMS message asking her if she would meet him that night and go out to dinner with him.
  - iii. At approximately 7.15pm, collecting the student at the College and driving her to a look out in a suburb, where they sat in his car and he:
    - 1) Told the student she was beautiful.
    - 2) Leaned over the student.
    - 3) Kissed the student's neck.
    - 4) Asked the student what she would do if he 'did anything.'
    - 5) Licked the student's ear.
    - 6) Massaged the student's neck.
  - iv. After taking the student to the look out referred to in paragraph biii., accompanying her to a restaurant in a suburb and:
    - 1) Grabbed the student and held her like they were a couple.
    - 2) Introduced the student to girls he knew as his cousin.
  - v. After leaving the restaurant referred to in paragraph biv., while sitting in his car with the student:
    - 3) Pulled the student's seat back and leaned over her.
    - 4) Undid the student's jacket and pulled it down off her shoulders.
    - 5) Kissed the student's chest.
    - 6) Placed his hand on the student's breast and licked her chest.
    - 7) After the student told him to stop, he persisted and said to the student words to the effect of 'Just enjoy it for now.'
  - vi. Following the incident described in paragraph bv., while driving the student back to the College:
    - 1) Grabbed the student's hand and pulled it over onto his leg, near his crotch.
    - 2) Held the student's hand.
    - 3) Told the student that he wished he could have picked her up by the butt and wrapped her legs around him.
  - vii. Following the incident described in paragraph biv., at approximately 10.30pm, while sitting in his car with the student at the College:

- 1) Asked her for one more kiss.
- 2) Leaned over her.
- 3) Tried to kiss her, despite her saying that she didn't want to kiss him.
- 4) Told her words to the effect of 'cherish the moment.'
- 5) Told her that he would let her go if she kissed him.
- 6) Pulled her back into his car when she attempted to get out.
- 7) Said to her words to the effect of, 'don't tell anyone we're together' and 'this is our secret between you and me.'

c. Following 31 August 2007, engaged in inappropriate contact with the Student including:

- i. Talking to the student via MSN messaging about personal matters including words to the effect of:
  - 1) 'So you never told me what you thought about last Friday night?'
  - 2) 'You're a strong, beautiful, intelligent, independent woman who should do whatever the fuck you want to do.'
  - 3) 'I've got to go – ill see you tomorrow – should be in my office 3 and 4... have a good night....xoxox'
  - 4) 'Ok – well I don't you know why? 1. could feel this building up and up and up and up. 2. we expressed how we felt (well I did anyway). 3. we didn't fully cross any lines. 4. there needed to be a release.'
  - 5) 'I'm trying to help sort through the shit I created.'
  - 6) 'Please don't feel awkward – you know what I have even more respect for you than ever before...cause I trust you....you could have crossed the line Friday night many times, but you didn't and thank you for that...because I know I can be alone with you and know that nothing will happen cause you won't let it happen.'
  - 7) 'So we're right back where we were on Thursday!! But with more knowledge...and safe in the fact that you know that I will always have love for you.'
  - 8) 'Thought about Friday night much?'
  - 9) 'Can anyone else see this screen?'
  - 10) 'Well I thought about how good it felt to hold you....how soft your lips were...and how good it felt when your hands pulled around my hair and neck and held me...and how good you smelt and tasted.'
  - 11) 'I was thinking about your fantasy...and how I told you mine...and how I wish I had had the chance to have picked you up by your butt and your legs would wrap around me.'
  - 12) 'We need to get past this awkwardness that you feel.'
  - 13) 'look into you heart and listen to your head – on Friday night you would have loved it a) as it was b) more innocent c) no g/f more happen?'
  - 14) 'You ignoring me???....'We can talk about it – we can talk through it you know...talk to me – what are you thinking.'
  - 15) 'Can you forgive me?'
  - 16) 'I want nothing but the best for you and to think that I have made you feel like this is killing me....tell me what can I do to make you feel safe again? Is there anything? I will do anything you ask of me.'

17) 'If you need to talk please call me.'

## **EVIDENCE**

### **Closure of Hearing**

The Panel ordered that due to the intimate and personal nature of the evidence being given, the proceedings would be closed while the student gave evidence. Anything that might identify the witness, including her name and the name of the school, must not be published or broadcast. The Panel further ordered that any information that might enable the teacher to be identified prior to the making of the final determination must not be published.

### **The student**

The student confirmed under oath that her witness statement dated 3 January 2008 was true and correct. During 2007 the student was eighteen years of age and in Year 12. She gave evidence that from early 2007 she had started going to the teacher's office on a regular basis, both individually and with other students. She stated that she "got along really well" with the teacher whom she referred to as Mr K. During these visits, which took place in all her spare periods, the student would discuss personal information relating to her family situation, her feelings about herself and the issues she was having with her boyfriend. She stated that she felt comfortable around the teacher as he was "easy to talk to and hang out with".

The student told the panel that the teacher made her feel special because when she made derogatory comments about herself such as, "I let people walk all over me..." he would tell her she was a beautiful person and she should respect herself more.

In May of 2007, the student said that she and another male student had the idea of writing a poem for the teacher. She composed the poem for the teacher in response to the death of his grandmother with whom they knew him to be close. The poem, (exhibit "N"), contained the words "you are my idol by far". Under cross-examination, the student attested that it was a friendship poem, even though she also stated that she thought the teacher was "good looking and cool". The student stated that she had drawn two hearts either side of his name, but denied that this suggested that she was attracted to him, rather describing it as a "schoolgirl thing". She told the Panel that she viewed the teacher as "like a big brother because he helped her with everything".

In June/July 2007, a MSN relationship started between the student and the teacher. The Panel heard that the teacher had her MSN due to the fact that it had automatically recorded when she was looking at her Face Book on the computer in his office. The student told the Panel that in the week prior to 31 August 2007, she sent a text to the teacher who was on a school trip. In the text she told him that she had found out her boyfriend had cheated on her. She stated that the teacher replied saying, "take care I will talk to you when I get back".

The student said that on Friday 31 August 2007, she received a text from the teacher about getting together that evening. She stated that he was assisting her in the break-up with her boyfriend and that the teacher had wanted to show her the engagement ring

that he had for his girlfriend. The student said that she would meet him at a café nearby. The Panel heard that when she arrived she got into the teacher's car and drove to his house for him to pick up something he had forgotten. After this they drove to a suburb because he said it was a beautiful place where he went to when he needed to think.

After the teacher stopped the car, the student stated that following an initial silence, they began to talk about their personal lives, how her boyfriend treated her "like crap" and him about his plans to propose to his girlfriend. The student said that when she told him that she would "never get anyone like 'M' again because I am so ugly" he stated that she was beautiful. The student told the panel that she felt "a bit awkward and not sure how to respond". She stated that following this discussion the teacher leant over and undid her seatbelt. She gave evidence that while doing this he started to kiss her on the neck. She stated that she "froze" and then started asking the teacher about his girlfriend. The teacher then stopped and suggested that they go to dinner.

When they were walking into the restaurant the student gave evidence that the teacher put his arm around her, but removed it when he saw three people he knew. She stated he introduced her as his cousin. After dinner they returned to the car where, the Panel heard evidence from the student that she talked to the teacher about her inability to say no. She stated that she told him two stories; one of being drunk at a party and being surrounded by a group of boys who were groping at her and another when she was drunk and was taken by a boy into a room. The student described how the teacher advised her that she needed to learn to say no.

The student stated that while still parked in the restaurant car park, the teacher began kissing her on the neck again. She said he was breathing heavily and licking her ear. She said that she did not say anything as she "froze". The student then told the teacher she had a curfew. The student told the Panel that the teacher then pulled her jacket off her shoulder and touched her breast. Under cross-examination the student stated that she did not tell the teacher to stop as she "froze and she was too scared to say too much". The Panel heard that the student said to the teacher "what are you doing you have a girlfriend". At this point, she stated that the teacher stopped, started the car and drove off. The Panel heard that during the drive back to the café where the student's car was parked, the teacher placed her hand on his leg. The student said that she did not remove her hand because "she didn't want to antagonise" him and that she did not know what else to do. The student told the Panel she talked to the teacher about his girlfriend, family and stuff like that. She stated that he told her about his fantasy of "picking her up by the butt and her legs spread around him". When questioned about whether she shared any fantasies of her own she stated, "I did have a fantasy that we were in his office and kissed, but it was schoolgirl stuff".

When they arrived back at the café, the student stated that the teacher again tried to kiss her and at this point she told him "I can't do this you have a girlfriend". Back in her own car she spoke to her friend on her mobile phone telling her she would be unable to come out with her that night. The student stated that she did not tell the friend about the teacher. She told the Panel that she cried on the way home. The student said that at no time on the following day did she text the teacher to tell him she had a lovely time. She did, however, say that she would still go to his office on the way to maths class and say



hi, but that she now never went into any of the “personal stuff”. The student stated that she might have responded to the teacher’s questioning saying that she was okay. She said that her friend commented on the change in the nature of her relationship with the teacher.

In the time following the night of 31 August 2007, there were a number of MSN communications between the teacher and the student. There was some confusion about the exact sequencing of the communications. In her evidence the student stated that when the teacher discussed the events of the Friday night she felt “bad weird”. She said that when he put three options of how the event could have played out, “(a) as was, (b) more innocent (c) no g/f (girlfriend) more happen”, she believed this was not normal conversation between a student and a teacher and that it was becoming increasingly more personal. The student stated that she had trusted the teacher and thought that he would not cross the line. In the MSN communication between herself and the teacher she wrote, “I didn’t think u would do that because u have a girlfriend and when u did try I was scared at what else u were capable of doing.” (See casebook p. 47). She stated further that she felt betrayed by the actions of the teacher. After persistent questioning from a friend about her change in mood and her discomfort around the teacher, the student stated that she disclosed the events of 31 August 2007. As a result of this disclosure and the friend’s response, she realised the seriousness of the situation and it was at this time that she spoke to the school.

### **The Principal**

The principal of the College, confirmed under oath that his witness statement dated 10 December 2007 was true and correct. The principal stated that he had been the leader of the school from Term 3 2004. He told the Panel that upon his arrival he worked on the development of a policy relating to conduct of teachers in their dealings with students. The principal described the process as long and lengthy undertaken in full consultation with staff and students. This policy was tendered to the panel as Exhibit B. The principal stated that the policy was revisited every six months at a full staff meeting. For any staff unable to be at the meeting, the minutes were prominently displayed and staff were directed to them. With regard to beginning teachers, the principal detailed for the Panel the induction program used at the school. A full day was allocated with a number of follow-up afternoon sessions. During these sessions this and a range of other policies were drawn to the attention of the inductees. New teachers were also assigned a mentor.

Questions were put to the principal regarding the workload of the teacher. He stated that general working hours were 8.30am to 4.30pm, however the principal noted that “in the early years of teaching it is a hard slog, everyone is aware of this”. He agreed that the teacher did have a substantial workload in 2007 as his role as sports coordinator did require him to work longer hours. The principal noted that the teacher was required to attend a significant number of events. He also noted that the teacher was expected to be present at all interschool sporting events.

With regard to the teacher’ load in teaching a new VET VCE subject, the Principal stated that “it was a greater load and responsibility and it was onerous, but he believed that The teacher did teach it in 2006, so he did have some experience”.

The principal gave evidence that he was aware that the teacher had a number of personal issues. He stated that he knew that the teacher was deeply affected by the death of his grandmother. He also knew that the teacher had some issues with illness and a persistent ankle ailment.

With regard to the events of 31 August 2007, the principal told the Panel that the teacher was cooperative in both his written and verbal response to the allegations. He also stated that up until this date the teacher had an unblemished record.

### **School Counsellor**

The Panel heard evidence under oath from the school counsellor. She told the Panel that she qualified as a counsellor through Relationships Australia in 1999. She stated that she was a teacher of 20 years experience, that she also had a teaching load at the school and that she had over 9 years experience as a counsellor.

The school counsellor stated that she was asked to take the statement of the student with regard to the events of 31 August 2007. The school counsellor agreed that she had no involvement with the student in a counselling capacity. She told the Panel that she had met the student previously and that her impression of her was one of an anxious girl. The school counsellor said that knowing the student she believed that the alleged events would have been damaging to her. She noted that in her view “damage can arise where there is an inequity in power and trust is broken”.

When shown the school conduct policy the student stated that the policy had been drafted in consultation with the staff. She said it was well known amongst the teachers and followed in practice as evidenced by teachers ensuring that they only saw students individually when in open view.

### **The Deputy Principal**

The Deputy Principal affirmed his statement dated 10 December 2007 and gave evidence via telephone. He told the Panel that he was the Deputy Principal. As part of this role he was responsible for some professional development. He stated that he was aware that the teacher was undertaking Professional Development in the VCAL subject he was teaching. He acknowledged that the teacher, with the leaving of the VET coordinator at the end of Term 1 of 2007, was left in a stand-alone capacity teaching a new subject. The Deputy Principal said that he was aware that the teacher was experiencing some challenges with his work load, but he felt that that this would have been the case with most teachers taking a senior class for the first time.

Referring to the Annual Review that he wrote on the teacher, the Deputy Principal stated that it was conducted in June 2007. He agreed that there was recognition that the teacher was facing challenges in terms of time management. He noted that the teacher had been keen to take on a leadership position and he was the type of person who was reluctant to say no.

The Deputy Principal stated that he endeavoured to support the teacher by requesting that other teachers attend and supervise some of the interschool sporting events. This he noted had limited success.

The Deputy Principal told the Panel that he was aware that the teacher was having a difficult time dealing with the death of his grandmother and that he appeared to be a “sensitive family oriented person”. He acknowledged that the teacher came in to work on the afternoon of the funeral to follow-up on sporting arrangements. In his written statement the Deputy Principal noted that he was part of a meeting on 20 September 2007 in which the allegations were put to the teacher. In his oral evidence the Deputy Principal stated that in his view the teacher acknowledged his actions and when the allegations were put to him he responded genuinely and with remorse.

### **Psychologist 1**

Psychologist 1 under oath, stated that he is a practising psychologist with 46 years experience. He met with the teacher on 18 June 2008 for three and a half hours after he was referred to him by his legal counsel. In his consultation with the teacher, Psychologist 1 was guided by the notes of the teacher’s consulting psychologist, Psychologist 2, (see exhibit “P”) and the Victorian Institute of Teaching decision *Craig Smith* [2007] VIT 41. He also utilised the then draft Victorian Teaching Profession Code of Conduct.

Psychologist 1 stated that it was his view that the teacher recognised the shortcomings in his behaviour. He believed that the teacher acknowledged the anguish and damage that his actions had caused to both the student and his family and that he needed to examine his own vulnerabilities, needs and frustrations and how these contribute to a person’s actions.

Psychologist 1 stated that the emotional distress that the teacher was experiencing in his personal life might have had some impact on his actions. He detailed for the Panel the nature of these stresses including:

- his mother’s affair and her subsequent leaving of his father
- the secrecy involved in keeping the knowledge of the affair from his father until the later stages
- the high level of support his father required as a result of the separation
- the miscarriage of his sister-in-law’s and brother’s first child and their subsequent separation
- his ankle problems and the resultant weight gain due to having limited mobility and the subsequent effect on his self-esteem.

These were coupled with the teacher’s feelings of isolation and vulnerability in his new work roles. Psychologist 1 noted that the teacher was “painfully aware of his vulnerability,” but he did not see this as excusing his actions. Psychologist 1 noted that the teacher had been having weekly one hour counselling since September 2007 and that this was on-going. He noted that in these sessions the teacher stated he was working to:

- learn strategies for avoiding actions that involve ‘specialling’ a student
- differentiate between personal and professional relationships
- assess risk and avoid isolation

- be aware of his power as a teacher and the vulnerabilities of students
- appreciate the emphasis on trust in the teaching profession and appreciating that his actions showed a lack of appreciation of the trust placed in him by the student.

During the session Psychologist 1 explored with the teacher his actions specific to 31 August 2007. He told the Panel that the teacher held the perception at the time that the student had affectional overtones for him. Psychologist 1 stated that the teacher now recognises that the student “froze” and her actions were not a manifestation of affection. Under cross examination by counsel for the Institute, Psychologist 1 was questioned as to whether the teacher had truly reflected on his role in the events, given statements such as labelling what had taken place as “fifteen minutes of madness”, citing his girlfriend’s purported statement that the student had been attracted to him and his assertion that the student had sent him a text saying that “she had a fantastic night”. Psychologist 1 responded by noting he had explored with the teacher that there will be sexual attractions and that he will need to be aware of this.

Counsel for the Institute took Psychologist 1 through the MSN messages between the teacher and the student both prior to and following the event. Psychologist 1 acknowledged that the messages from the teacher were increasingly personal, lacking in any distance and exhibiting too much focus on an individual student. He agreed that they could not be construed as counselling. With regard to the communications following 31 August 2007, Psychologist 1 agreed that they constituted a further breach of trust. He agreed that throughout the messages there was no expression of affection by the student toward the teacher.

Psychologist 1 stated he believed that the teacher was genuine in his remorse, although he acknowledged there are no guarantees of honesty. Nonetheless, he stated that he believed the teacher had a genuine desire to change.

When questioned about the teacher’s potential fitness to teach, Psychologist 1 stated that his depression related to the events and situation he found himself in at the time. He said that the teacher felt he was called to teach and became tearful at the prospect of never being able to teach again.

#### **Teacher 4**

Teacher 4 is a teacher at the college. He affirmed a reference written for the teacher dated December 2007, (exhibit “M”). In giving his evidence via the telephone Teacher 4 stated that he only became aware of the allegations against the teacher a week prior to giving this evidence. He told the Panel that he was aware that the teacher had admitted to the allegations. He said that he developed a collegial relationship with the teacher in his role as coordinator. He said this involved day-to-day contact.

With regard to the reference Teacher 4 told the Panel that he wrote it for the purposes of the teacher seeking future employment. He agreed that the reference to the teacher’s trustworthiness was now brought into question in light of the admissions. He further stated that we were ‘not put on earth to judge, we all make mistakes, it is what we do afterwards that defines us’. With regard to the reference’s validity as an assessment of the

teacher' abilities as a teacher, Teacher 4 stated he believed the reference is still applicable. He stated that the teacher never came to him to discuss the pressure he was under in his roles, but from watching him that the roles required tremendous time and effort. Teacher 4 stated that he was aware of the conduct policy prior to the teacher leaving the school.

### **Teacher 2**

Teacher 2 is a teacher at the College and he affirmed the reference he wrote for the teacher dated 4 December 2007, (exhibit "J"). Teacher 2 told the Panel via telephone that he wrote the reference in ignorance of allegations against the teacher. Teacher 2 stated that he was the teacher's mentor and that he initially spent a large amount of time with him, but this lessened as the year progressed. He told the Panel that he was available to the teacher, but given the nature of the teacher's position and its high demands it was difficult to "tie him down". Teacher 2 said he was aware that the teacher's family took up a large amount of his time.

The Panel heard that Teacher 2 was aware of the school policy on conduct and had been involved in the work with the staff to verify the words and to make it appropriate to everyday issues. He stated that he would not have taken the teacher through it specifically, but that it was held up by the leadership and anticipated that staff would comply. In concluding he told the Panel that putting the allegation to one side he would still say that the teacher had been trustworthy.

### **The teacher**

The teacher gave evidence under oath and admitted to the allegations. He said that his statements Exhibits H and O were true and correct.

The teacher told the Panel he completed his Bachelor of Education in 2004 and taught at the school from 2005 up until when he was stood down in September 2007. In his time at the school he taught students across all levels. In 2007, he was the Head of Sports, teaching a new VCE VET Certificate 4 subject as well as a number of other classes.

The teacher said that when starting at the school he took part in a two day induction program in which he was introduced to a range of policies including the school conduct policy. He stated that he was aware of the rules around interaction with students, including those related to referral of students who were seeking counselling. His awareness of this policy in its application is highlighted by his comment to the student in a MSN communication in which he said "ps please don't tell anyone – big no no teachers talking to students on this". (See casebook p. 34)

The teacher stated that 2007 presented a number of challenges both professionally and personally. At the beginning of 2007, he took up the position of Head of Sport. He stated this involved the supervision and coordination of all outside school competitions. He told the Panel he had to work long hours ranging from 6am to attend training until 5-6.30pm for the completion of administration tasks. He detailed how this role was more onerous due to the fact that it was extremely difficult to get other staff involved as such involvement was purely voluntary.

The teacher stated that with regard to the VET subject he was teaching in 2007 that he was not fully qualified to teach this subject as he had not completed all the required modules. He stated that the difficulties and pressures in teaching this subject were exacerbated by the resignation, in Term 1 of 2007, of teacher 5. The teacher gave evidence that he felt isolated, as he was the only one teaching in the area. In response to cross-examination by the Institute's counsel regarding the demands of his teaching roles, The teacher stated that the staff review (see exhibit "F") in which he said he was thoroughly enjoying the role was a fair reflection of his position. He stated that he did tell the Deputy Principal that he was struggling with the long hours and trying to stay on top of all his classes. He stated that while he was thoroughly enjoying the role it nonetheless had its challenges. He conceded that he did not seek out other colleagues with whom he could discuss his difficulties.

The teacher stated that on top of the pressures he was experiencing at school there were a number of challenges in his personal life. His girlfriend's parents separated in January 2007 and her mother turned to him for support. His grandmother, with whom the teacher stated he shared a very close relationship, died in May 2007. On the day of his grandmother's death the teacher found an email that indicated that his mother was seeing someone else. He noted that his parents' subsequent separation left his father in a depressed state and he suffered a breakdown. The teacher stated that it fell to him to support and care for his father. He also told the Panel that his brother and sister-in-law suffered a miscarriage and this led to the temporary breakdown in their relationship. The teacher told the Panel he again found himself offering support to his brother who moved back to the family home. The teacher detailed for the Panel the physical problems he suffered as a result of injuring his ankle. He had surgery; however it was not as successful as hoped and he found his previously highly active sporting life curtailed. He told the Panel that he gained a large amount of weight and this greatly affected his self esteem. This, he stated, was heightened by the fact that he was a PE teacher.

Throughout this period, the teacher told the Panel he did not share his concerns and worries with his girlfriend because she was anxious over her exams and he did not wish to burden her. Instead, the Panel heard that the teacher confided in the student. He stated that he first met the student in 2005 when she was part of a group preparing a dance routine for a school community day.

In 2007, the teacher was allocated an office. He stated that the office had glass windows and a glass door. He told the Panel that the student and her friend student 2 would regularly visit his office. He stated that many students came to see him. The teacher stated that the student would often come alone. When she came to his office, he said that they would talk about school, her boyfriend and the issues she was having with her mother. He stated that she would constantly put herself down saying things like, "who would want to be with me, I'm so ugly". The teacher told the Panel he tried to boost her confidence by giving her compliments. He stated that he told the student about the personal difficulties he was experiencing. He said he also discussed his plans to ask his girlfriend to marry him. The teacher stated that the student would come to see him individually at least three times a week. In response to a question as to why he did not refer the student to a counsellor, he stated, "he was naive in thinking that he could do the job".

The teacher said that he received a poem from the student with his name on the outside with two hearts beside it. He told the Panel that the poem had been written by the student in response to the death of his grandmother. He stated that it had meant a lot to him, "he was touched", but in retrospect he read too much into it. The teacher also gave evidence of times when the student was among a group of friends who were talking about "hot teachers" and although his name was not used she had looked at him and giggled. He conceded that this was a "schoolgirlish thing to say" rather than an indication of her sexual attraction to him.

The teacher told the Panel that he initiated a MSN relationship with the student. He told of finding her email on his computer after she had viewed her Face Book on his office computer. He told the Panel that he kept her address "because he thought it would be a good way to keep in touch after the end of Year 12". He stated that he viewed the student as a friend. In his initial evidence, the teacher stated that comments such as, 'You are just a beautiful person, body mind and soul;' 'You know something.... I've missed you;' 'You have no idea how much I rate you and there is a lot to miss,' made in the messages prior to 31 August 2007, were aimed at helping the student to feel better about herself. Under cross-examination by the Institute's counsel, the teacher stated that at the time he saw the relationship as one of companionship and friendship rather than an attraction. Although upon further questioning he conceded that he had had feelings of attraction since June 2007.

In the week leading up to Friday 31 August 2007, the teacher told the Panel that while on a school camp he received a text message from the student saying that she had broken up with her boyfriend. He stated that he told her he would talk to her when he returned. As he was tied up during period 6 on the Friday he suggested that they could go out to dinner that night to talk. The teacher gave evidence that he texted her in the early evening to see if she was still interested in coming out. He stated that they organised to meet at a nearby café.

The Panel heard that he picked the student up at the café in his car and after returning home to collect his wallet he drove to a suburb. He told the Panel that after stopping the car he said to the student that this was the place he came to when he needed to think. He said that he put his arm around her because "she seemed tense and upset". He detailed how he then "gave her a hug, leant her back, leaned in on her and we kissed". He stated that he believed the student smiled so he went on to "kiss her on the neck for a few minutes". He stated that the student then asked about his girlfriend to which he said he responded, "you're right.... sorry". He told the Panel that he suggested that they go and eat.

While they walked into the restaurant, the teacher said that he put his arm around her. He stated, "She put her arm around me". He told how, when he saw people he knew he removed his arm and told them the student was his cousin. The teacher gave evidence that when back in the car after dinner he gave the student another hug, moved her seat back and kissed her on the neck and breast. He admitted that he pulled her top down and kissed her chest. The teacher stated that he asked the student "is this okay? Do you want me to stop?" He stated that she responded saying, "I don't know how to say no". The

teacher said that he replied “this (was) not right.” He stated that the student then told him of the two instances when she had found herself in situations where young men were doing things to her that she was not comfortable with. He then told the Panel that as they drove off he placed the student’s hand on his leg. He noted that as they drove back to her car they talked about families and her boyfriend. He stated the student removed her hand from his leg.

When they arrived back at the car, the teacher stated that he asked her for a final kiss. He said that he had expected it to be on the lips, but when it was on the cheek he said to her “that’s not fair”. The teacher told the Panel that as the student went to get out of the car a group of drunken men walked past, so they ducked down and when they had passed by the student got out of the car. He stated that he then drove off to his girlfriend’s house. He told the Panel that the following day he received a message from the student saying, “thank you for wonderful evening”. The teacher stated that he messaged back saying “no thank you” and then deleted it because he did not want his girlfriend to see it.

In the days following the 31 August 2007, the teacher detailed for the Panel, the nature of his MSN communications with the student. He agreed that he initiated the MSN communications beginning on pages 38 and 43 of the case book. He agreed under examination that through the communications he had tried to relive the moment with the student acknowledging statements such as “how good it was to hold you.... how soft your lips were....how good you smelt and tasted” were not reciprocated in any way. He agreed his question “can anyone see the screen?” (see casebook page 43) showed that he was fully aware that his actions with regard to the student were outside the bounds of acceptable student teacher relations and worked to draw the student into further secrecy.

He stated that at the time he still believed he had a friendship with her, but subsequent counselling had shown him that he had viewed the events from only his own perspective. The teacher agreed that comments such as, “I know I can be alone with you and know that nothing will happen cause you won’t let it happen” placed responsibility on her and that “this was wrong”. He agreed that his continual reference to the events of Friday evening were attempts to try and justify his acts and have the student maintain the secret. He admitted that, “I initiated everything”.

Under cross-examination, the teacher agreed that he had feelings of attraction towards the student from June 2007, but he believed he was in control of these. He agreed he had allowed the attraction to translate into him “making advances on the student”. He acknowledged his actions in relation to her “have traumatised her in some way, a negative way”. The teacher acknowledged that the student had not, at any stage, shown that she was “fine with the situation”. He stated, “in hindsight she was probably terrified”.

He gave evidence of the nature of the counselling he had been undertaking since September 2007 and stated that he had attended weekly and that this was on-going. He told the Panel that he was being treated for depression and that he had explored his actions and his personal circumstances that had lead to his actions. He stated that he has become aware that “everything I did was a massive removal from the standards of teaching”. The teacher told the Panel “it was inappropriate because there was a power



imbalance - she saw (me) as a teacher; 'regardless as to whether teaching the student or not my role is that of educator-I need to be a positive role model and I did not live up to this with the student". He stated, "I thought I could be someone she could turn to but, I was using the student ... because of my issues and to make me feel good about myself ". He noted that it was "wrong to use students for validation". The teacher acknowledged that the student did nothing to lead him on. He stated with regard to her, "I have had a negative impact on someone else's life, I will regret for the rest of my life."

The Panel heard that he had a desire to teach again and that he believed that the counselling had assisted him in addressing the personal issues that had led to his actions. The teacher stated that if he were to teach in future he would not take on positions of responsibility, but would focus on teaching, time management and proactive self-help. He stated that he would "never let the situation happen again."

## **DISCUSSION OF THE EVIDENCE**

The Panel commends the student for bringing this matter to the attention of her school, thus enabling these important matters to be investigated

### **Serious misconduct**

The Panel's deliberations were assisted by the fact that the teacher admitted that he was guilty of serious misconduct, and that at this present point of time he is unfit to teach. In particular, the teacher admitted all the allegations of misconduct alleged against him except for the following:

- allegation 1(a)(i)(3)(4);
- allegation 1(b)(iii)(4)(5)(6);
- allegation 1(b)(iv)(1);
- allegation 1(b)(v) (6 'licked her chest')
- allegation 1(b)(vii)(3)(4)(5)(6)

Counsel assisting the Panel agreed that those allegations had not been proved on the balance of probabilities, and accordingly they will not be addressed in this decision.

This leaves three clusters of admitted behaviour, which are set out in allegations 1(a), 1(b) and 1(c) respectively, and which collectively can be classified as serious misconduct by the teacher. The evidence suggests that the following conclusions can be drawn about those behaviours.

**Regarding allegation 1(a)** (which concerns inappropriate contact with the student prior to 31 August 2007) the evidence demonstrates that the teacher developed a relationship with her at school, which, in its intimacy, intensity and emotion, went beyond what is appropriate to a professional teacher/student relationship. This relationship developed during 2007 through personal contact at school, in particular through many conversations in the teacher's office, and through SMS telephone messaging, and MSN computer communications. Topics discussed by the two included

the student's problems with school, boyfriend and parents. The teacher admitted in his evidence that he did not refer the student to the counsellor to assist her with these matters as he naively thought that he could help her himself. He admitted that he came to see the student as a friend, and that this was a mistake. In cross-examination the teacher admitted that he began to feel attracted to her during term three, 2007. The student also appeared to value the relationship, and this is indicated by facts such as her writing a poem for him when his grandmother died, and texting him about her boyfriend's behaviour when the teacher was on a trip. In evidence the student described the teacher as "like a big brother because he helped me with everything."

Whilst this blurring of professional boundaries by the teacher was highly inappropriate and unprofessional, by itself it might not have amounted to serious misconduct. However, it must be noted that the establishment of an unprofessional relationship of this nature did set the scene for the very serious misconduct of 31 August 2007. When seen in that context, it underlines the inappropriateness of the teacher's behaviour in allowing such a relationship to develop.

Part of the skill set of a teacher is to be aware of the way in which students can respond emotionally to teachers. Unfortunately, the teacher failed to be aware of these aspects of his relationship with the student. Perhaps this was because of his inexperience alone, or perhaps because, in addition to inexperience (as he detailed in his evidence) there were difficulties in his personal life, plus work pressures, which made him emotionally vulnerable at the time. As he acknowledged in his evidence, the student made him feel better about himself. This in turn points to the importance of teachers being aware of not using students to meet their own emotional needs, and having insight into the sorts of circumstances which can undermine the professional distance required in student-teacher relationships.

**Regarding allegation 1 (b)** the evidence establishes that on the evening of Friday 31 August 2007, the teacher inappropriately invited the student out for dinner, and during that evening engaged in inappropriate physical contact of a sexual and romantic nature. Whilst there is some dispute over the precise details of the contact during the evening, what is clear from evidence is that the teacher initiated unwelcome physical contact of a sexual nature, and that the student was frightened by his behaviour. The evidence suggested that he seemed unaware of the extent to which the student was upset by, and rejecting of, his advances. Regardless of whether he ought to have realised how she was responding to him, it is clear that the teacher knew that, by making sexual contact with a student, he was engaging in serious misconduct.

Counsel assisting the Institute submitted that the teacher's behaviour on 31 August 2007 amounted to a very serious incident of sexual harassment. Counsel for the teacher submitted that the Panel should not accept this submission as it involves introducing a concept from another jurisdiction. As sexual harassment is a concept capable of various definitions, the Panel cannot determine whether sexual harassment has occurred here unless there is a clear test to apply to the facts to determine whether they do indeed amount to sexual harassment. Whilst State and Commonwealth anti-discrimination legislation contain definitions of sexual harassment, no definition was put to the Panel as being appropriate to apply in this case. Accordingly, it is not possible to make a decision on whether the teacher's actions amounted to sexual harassment. In any event, as the

preceding paragraph indicates, the admitted behaviour of the teacher amounts to serious misconduct, regardless of whether he ought to have realised how the student felt about his actions.

**Regarding allegation 1(c)** the evidence established that, following the night out on the evening of 31 August 2007 when the student rejected his romantic advances, the teacher continued to engage in inappropriate MSN messaging with her. The tone and content of the messaging reinforced the inappropriateness of the nature of his relationship with the student and compounded the serious misconduct that had already occurred. A disturbing aspect of this messaging is that, as it progressed, it placed considerable pressure on the student by pushing her to review the events of 31 August 2007 and her feelings about the evening, and by implication, her feelings about the teacher. The evidence supports the submission made by counsel assisting the Institute that, in these messages, the student offered no encouragement to the teacher, nor did she at any stage share his views as to how good the experience was. Again, he appeared to be unaware of the power imbalance that exists between a teacher and a student, and how a teacher's words or actions might be experienced by a student as pressure.

The observations of Kellam J in relation to unprofessional conduct of nurses are helpful in determining when serious misconduct of a teacher has occurred.

*"In my view the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be a departure, in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure". Parr v Nurses Board of Victoria VCAT (2 December 1998, cited with approval in Domburg v Nurses Board of Victoria [2000] VSC 369, per Ashley J.*

It is a truism that engaging in unwelcome physical contact of a sexual nature clearly departs from the standards which might be expected of a teacher. With regard to the nature of the relationship between the teacher and the student before and after the events of 31 August, the decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Davidson v Victorian Institute of Teaching (Occupation and Business Regulation)* [2007] VCAT 920, indicated that development of a relationship of over-familiarity which blurs the proper professional distance between teacher and student can also amount to serious misconduct. In *Davidson* the Tribunal commented that:

*In contrast to other professions, where the professional task is very distinct from the relationship, the relationship which is formed with a student is central to the teacher's exercise of professional skill. Without a good relationship, it will be impossible to inspire the child to learn. However, too close, or overfamiliar, a relationship may endanger the teacher/student relationship and cause real harm to the student. The teacher of minors is always an adult relating to children, never to equals .... It cannot be the case that a teacher must never involve him or herself in the private pain of students. In part, this is what the*

*profession of teaching requires. However, in interacting with children, a professional distance must always be maintained. [149]-[155]*

The Tribunal further commented that

*Teachers must not take improper advantage of the trust of parents or of students. Teachers who abuse their position need to be dealt with firmly to signal to teachers, parents and the community that high standards will be maintained.” [162]*

Whilst here we are dealing with a student who is not a minor, the same position of trust applies, the same power imbalance exists and accordingly there is the same vulnerability of the student even though she was no longer 17 years of age. Accordingly, a distance must be maintained.

### **Fitness to teach**

Evidence from the teacher and a psychologist, Psychologist 1, was presented to the panel which is relevant to whether he is fit to teach. A letter from Psychologist 2, a consulting psychologist, from whom the teacher has received counselling, was also presented.

The teacher’s evidence indicated that he feels very remorseful over what happened and for the emotional pain he caused to the student. Furthermore, through counselling with Psychologist 2 he has gained insight into the reasons for, and the inappropriateness of his behaviour, and the negative impact he had on the student. The evidence suggests he is developing a greater awareness of the professional responsibilities of a teacher, and strategies and skills to prevent him from engaging in similar behaviour again.

Whilst the evidence regarding the teacher’s progress in developing greater self-awareness regarding his actions, and the nature of the relationship with the student, is encouraging, it was disappointing that Psychologist 2 did not appear in person before the Panel to give evidence. The teacher has admitted that, at the moment he is not fit to teach, but believes he will be in the future. The Panel would have been assisted greatly in hearing more detail about the distance he has travelled in his journey towards greater self-awareness and readiness to return to the classroom with its resultant relationships with students. Without evidence from Psychologist 2 it is difficult to predict how long it will take before the teacher reaches this point. The panel was advised that Psychologist 2 was employed by an employer and that he does not prepare reports and appear as a witness in proceedings. The evidence from Psychologist 1 was helpful, but as he had only spent a total of three and a half hours with the teacher, his conclusions were not as helpful as the conclusions of the treating psychologist would have been.

When making a determination on fitness to teach, the Panel takes account of the purpose of disciplinary proceedings. In the decision of *Smith* [2007] VIT 41, at page 4 the Panel, referring to the High Court decision in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279, stated that:

*“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)."*

Also relevant to this question are the comments of Kirby J

*"In giving meaning to the phrase 'misconduct in a professional respect' in the context within which it appears, it must be kept in mind that the consequence of an affirmative finding is drastic for the practitioner and the purpose of providing such a drastic consequence is not punishment of the practitioner as such but protection of the public. The public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements. Such people should be removed from the register or from the relevant roll of practitioners, **at least until they can demonstrate that their disqualifying imperfections have been removed.**" (emphasis added) Per Kirby P, Pillai v Messiter (No 2) 1989 16 NSWLR 197, (at 201)*

In Davidson VCAT noted -

*"We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct."*

In *New South Wales Bar Associations v Cummins* (2001) NSW CA 284 His Honour Chief Justice Spigelman referred with approval to the observations of McHugh JA (as he then was) in the *Prothonotary of the Supreme Court of New South Wales v Richard* (NSWCA 31 July 1987, unreported):

I agree with the further observations of McHugh JA in *Richard*, when his Honour said:

*".... An order for the involuntary removal of the name of a practitioner from the Roll of solicitors is made only because the probability is that the solicitor is permanently unfit to practise. Unless the court is persuaded that the probability exists, the proper order to make will usually be one of suspension or fine instead of removal."* (paragraph 26).

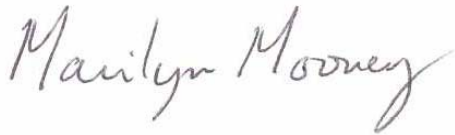
The teacher's behaviour was reprehensible. Such behaviour is totally unacceptable and deserving of censure. Unfortunately, his case is not the first where a teacher's career has been derailed through emotional over-involvement with a student. His case underlines the importance of schools counselling young teachers on the danger of their becoming romantically attracted to students who are close to their age. It is to be hoped that schools use the new Victorian Teaching Profession Code of Conduct developed by the Institute as an opportunity to explore these issues, along with other matters raised by this case, such as the importance of trust, and an understanding of power imbalances in the teacher-student relationship.

Character evidence from other staff members at the teacher's school indicate that, before these current matters arose, he was a hard working and competent young teacher with a promising future in the profession. Evidence of the progress he is making through counselling indicates that his approach to teaching is not "profoundly and irretrievably flawed" (to use the language of *Davidson*). However, the protection of the public and students remains a major consideration for the Panel. Accordingly, there should be a period of suspension of teaching registration to enable the teacher to undergo further counselling. His registration should not be reinstated until he serves this period of suspension and the Institute is satisfied that he is fit to teach.

In making its decision, the Panel was mindful of previous Panel decisions – *Vahe Sargsyan* [2007] VIT 40, *Kenneth Mills* [2007] VIT 53 and *Gavin Dore* [2008] VIT 60. These decisions involved teachers found guilty of serious misconduct in which the Panel decided to suspend the registration of the teacher and impose conditions involving psychological counselling. In this case the teacher is no longer registered as a teacher. The Panel is unable to impose a condition on the suspension of his registration. However the Panel would recommend that the teacher continue undergoing counselling with his treating psychologist and that the following matters be addressed:

- 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
- developing an understanding of when a student's personal and emotional issues should be dealt with by a counsellor, rather than a teacher
- developing insight into the circumstances in which the teacher's own emotional needs could influence the nature of a relationship with a student
- power relationships between students and teachers, and an understanding of how the power imbalance between a teacher and student can impact on the behaviour of a student.


- 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
- what constitutes romantic and inappropriate communication and behaviour
- understanding and full adherence to the Victorian Teaching Profession Code of Ethics and Code of Conduct



.....  
**MARILYN MOONEY, CHAIRPERSON**



.....  
**per:**  
**ANNE FARRELLY, REGISTERED TEACHER**



.....  
**per:**  
**DREW HOPKINS, PANEL MEMBER**