

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 068

REGISTERED TEACHER: Sean David GRADY

PANEL MEMBERS: Marilyn Mooney, Chairperson
Kevin Moloney, Registered Teacher
Toni Meath, Registered Teacher

ATTENDANCE: The teacher was represented by Mr Chris Nisiforou
Ms A Sheehan Counsel Assisting with Ms A Haslam
instructing

DATE OF HEARING: 27 March and 26 June 2008

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

On 21 July 2008 the Panel decided to suspend the registration of the teacher from this date until 31 December 2009. This means that the teacher is unable to apply to be registered as a teacher until 1 January 2010.

REASONS

BACKGROUND

The teacher was provisionally registered as a teacher with the Victorian Institute of Teaching (the Institute) on 27 July 2005.

By letter dated 10 July 2006, the employer notified the Institute that it had taken action regarding the alleged serious misconduct of the teacher. The employer advised that the teacher's fixed-term employment ceased prior to the completion of its investigation.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) on 13 September 2006 and the Committee decided the matter should proceed to a formal hearing.

The teacher's provisional registration expired in July 2006. By letter dated 5 October 2006, the teacher advised the Institute that it was improbable that he would teach again and that he had allowed his registration to lapse.

The matter was referred to the Disciplinary Proceedings Committee ('the Committee') on 20 December 2006 and under section 43 of the *Victorian Institute of Teaching Act* 2001 (now section 2.6.47 of the *Education and Training Reform Act* 2006 [the Act]), the Committee decided to continue the inquiry into the conduct of the teacher as if he was a registered teacher.

The Institute arranged for an investigation of the allegations and on 12 September 2007, the Committee considered the investigation report and recommendation and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 14 February 2008 was served upon the teacher by registered post on 20 February 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Notice of Formal Hearing dated 14 February 2008
2. The teacher – Victorian Institute of Teaching Registration Details (4 pages) **001-004**
3. Witness statement of Principal 1 dated 28 May 2007 (6 pages) **005-010**
 - NT01 – Report of Record of Interview conducted 12 December 2005 with Student 1 (4 pages) **011-014**
 - NT02 – Notes of Interview with teacher 1 (2 pages) **015-016**
 - NT03 – Letter Principal 1 to the teacher dated 19 December 2005 (1 page) 017

- NT04 – Letter Principal 1 to the teacher dated 19 December 2005 (2 pages) 018-019
 - NT05 – Letter Principal 1 to officer 1 of the employer dated 19 December 2005 (1 page) **020**
 - NT06 – Copy of MSN messages between friend 1 and Student 4, and friend 1 and Student 3 (8 pages) 021-028
 - NT07 – Record of Interview with Student 3 (undated) (4 pages) 029-032
 - NT08 – Letter the teacher to Principal 1 dated 19 December 2005 (3 pages) 033-035
 - NT09 – Letter Principal 1 to the teacher dated 21 December 2005 (1 page) 036
 - NT10 – Letter Principal 1 to Regional Director 1 dated 21 December 2005 (1 page) 037
4. Witness statement of Investigator 1 dated 14 February 2008 (2 pages) **038-039**
- AL01 – Letter Investigator 1 to Regional Director 1 dated 1 June 2006 attaching Investigation Report (41 pages) 040-080
 - A1 - Letter Principal 1 to the teacher dated 19 December 2005 (2 pages) **081-082**
 - A2 - Letter the teacher to Principal 1 dated 19 December 2005 (3 pages) **083-085**
 - A3 - Letter Regional Director 1 to the teacher dated 21 December 2005 (1 page) 086
 - A4 - Letter Principal 1 to the teacher dated 21 December 2005 (1 page) 087
 - A5 - Letter Principal 1 to Regional Director 1 dated 21 December 2005 (1 page) 088
 - A6 - Letter Regional Director 1 to Investigator 1 dated 21 December 2005 (2 pages) 089-090
 - A7 - Letter Regional Director 1 to the teacher dated 21 December 2005 (1 page) 091
 - A8 - Letter Investigator 1 to the teacher dated 30 January 2006 (2 pages) 092-093
 - A9 - Letter the teacher to Investigator 1 dated 31 January 2006 (2 pages) 094-095
 - A10 - Letter Investigator 1 to the teacher (undated) as delivered to the teacher on 6 April 2006 (10 pages) **096-105**
 - A10.1 - Statement of Student 5 dated 24 February 2006 (3 pages) **106-108**
 - A10.2 - Statement of Student 4 dated 24 February 2006 with hand drawn picture of the teacher’s flat attached (5 pages) **109-113**
 - A10.3 - Statement of Student 3 dated 24 February 2006 with hand drawn picture (5 pages) **114-118**
 - A10.4 - Statement of Student 1 dated 24 February 2006 (3 pages) 119-121
 - A10.5 - Statement of teacher 1 dated 27 February 2006 (2 pages) 122-123
 - A10.6 - Statement of Student 2 undated (3 pages) 124-126

- A10.7 - Acceptable Use Policy for Internet, Email and Other Electronic Communications (9 pages) 127-135
 - A10.8 - Teaching Service Act 1981, Part V – Misconduct and Inefficiency (7 pages) 136-142
 - A10.9 - Teaching Service Act 1981, Teaching Service Orders 1998, Order No: 165 dated 21 September 1998 (6 pages) 143-148
 - A11 - Letter to Investigator 1 from the teacher dated 28 April 2006 (1 page) 149
 - A12 - Letter to the teacher from Investigator 1 dated 5 May 2006 (1 page) 150
 - A13 - Transcript of Interview between Investigator 1 and the teacher dated 9 May 2006 (42 pages) 151-192
 - A14 - Letter to the teacher from officer 1 of the employer, dated 10 May 2006 (1 page) 193
 - A15 - Letter to the teacher from officer 1 of the employer dated 24 May 2006 (1 page) 194
 - AL02 – Letter the teacher to Investigator 1 dated 29 May 2006 (2 pages) **195-196**
 - AL03 – Letter Investigator 1 to Regional Director 1 dated 6 June 2006 (1 page) **197**
- 5.** Witness statement of teacher 2 dated 26 April 2007 (2 pages) **198-199**
- Email officer 1 of the employer to Investigator 2 including copy of email from the teacher to teacher 2 dated 21 February 2006 with attached file ‘KetchupEffect.wmv’ (3 pages) **200-202**
 - Copy of CD containing Windows Media Viewer file ‘KetchupEffect.wmv’ **203**
- 6.** Other material provided by the employer
- Letter employer to Regional Director 1 dated 16 March 2006 (1 page) **204**
 - Letter employer to Regional Director 2 dated 16 March 2006 (1 page) 205
 - Letter employer to the teacher dated 16 March 2006 (2 pages) 206-207
 - Facsimile Region - Manager to officer 1 of the employer dated 14 June 2006 attaching letter the teacher to Regional Director 1 dated 9 June 2006 (4 pages) 208-211
 - Letter from Regional Director 1 to the teacher dated 15 June 2006 (14 pages) 212-225
 - Facsimile Region - Manager to officer 1 of the employer dated 3 July 2006 attaching further response letter from the teacher to Regional Director 1 further response (4 pages) 226-229
 - Letter officer 2 of the employer to the teacher dated 5 July 2007 (2 pages) 230-231

The following exhibits were presented at the hearing:

- A.** Letter from the teacher to the Institute, dated 16 October 2006
- B.** Reference for the teacher Assistant Principal, dated 4 April 2006

- C. Reference for the teacher from Lecturer, tertiary institution, dated 11 October 2006
- D. Reference for the teacher from Director School 1, dated 2 April 2008
- E. Report re the teacher by Registered Psychologist, dated 3 June 2008
- F. *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46
- G. Victorian Teaching Profession Code of Conduct

THE EVIDENCE

The allegations of serious misconduct and/or lack of fitness to teach are that during 2005, whilst employed as a registered teacher at the College and during 2006 whilst a former employee of the College, the teacher:

1. Engaged in inappropriate and unprofessional contact with Student 1, a Year 10 student in 2005 –
 - a. In November and/or December 2005, sent student 1 text messages via his mobile telephone to the effect of
 - i. 'I want to get you into bed'
 - ii. 'I want to blow my load all over you'
 - iii. 'If you were here and no-one could see you, I would like to do you doggy-style and I'd have one hand on your clit and one on your tit'
 - iv. Asking her to sneak out of her home and he would pick her up.
 - b. On or shortly after 30 November 2005, sent student 1 messages from his MSN address to the effect of
 - i. 'You would be a good root'
 - ii. 'You would make me go off'
 - iii. 'I imagine my hard cock is inside you'
 - c. Telephoned student 1 via his mobile telephone and
 - i. Engaged in inappropriate conversations unrelated to school.
 - ii. On or about 24 November 2005, said words to the effect of:
 - 1) 'I want to get you into bed'
 - 2) 'You would be a good root'
 - 3) 'I am horny' and that he was masturbating while talking to her on the phone.
2. Engaged in inappropriate contact, including inappropriate physical contact with Student 2, a year 12 student in 2005 –
 - a. On or around the evening of 18 March 2005:
 - i. At Hotel 1, bought student 2 a glass of wine for her eighteenth birthday.

- ii. Later in the evening, in the foyer of the Hotel 2, leaned towards student 2 and kissed her.
 - iii. After kissing student 2, said to her words to the effect of 'no one needs to know about this.'
 - b. On or around 21 March 2005, sent student 2 a text message via her mobile telephone, inviting her to his home. the teacher then allowed student 2 to attend his home without the knowledge of her parents.
- 3. Engaged in inappropriate contact, including inappropriate physical contact with Student 3, a Year 11 student in 2005 –
 - a. Invited student 3 to attend his flat by sending her messages via his MSN address including words to the effect of 'Would you like to come around?' or 'Can you come around?'
 - b. Sent text messages via his mobile telephone to student 3 stating words to the effect of:
 - i. 'You know you love it'
 - ii. 'Please blow me' in November 2005.
 - iii. 'I'll come pick you up and you can give me a massage' in November 2005.
 - c. On or about 11 November 2005, while student 3 was visiting his home:
 - i. Sent a text message from student 3's mobile telephone without her consent to her friend, friend 2 saying words to the effect of 'I'm not coming' (friend 2 was waiting at the front of the teacher's to take student 3 home).
 - ii. Sat with student 3 on his bed and put his arm on her shoulders.
 - iii. Pushed student 3 from a sitting to a lying position on his bed and held her in that position.
- 4. Engaged in inappropriate contact, including inappropriate physical contact with Student 4, a Year 11 student in 2005 –
 - a. On or before 5 December 2005, sent student 4 messages via his MSN address including words to the effect of:
 - i. 'Do you want to go swimming naked with me at the school pool?'
 - ii. 'Would you come to my house?'
 - iii. 'When will you see me?'
 - iv. 'Can I come to bed with you?'
 - v. 'I'm going to come around and climb in your window.'
 - vi. 'Blow me.'
 - b. On or about 8 December 2005, at a hotel in the Victorian country town:
 - i. Tried to rub or touch student 4's leg.
 - ii. Allowed student 4 to sit on his lap.
- 5. Emailed inappropriate material using the employer's computer:

- a. On 21 February 2006 at College 2, sent an email to another teacher, teacher 2, which contained sexual material.

On 26 March 2008, at the commencement of the formal hearing, Counsel for the teacher requested an adjournment of proceedings. The Panel was informed that the allegations were not being contested and that his client conceded that he had engaged in serious misconduct. Counsel for the teacher indicated to the Panel a need for a period of time in which to produce a psychological report that would demonstrate remorse and insight into the consequences of the misconduct. No further witnesses were to be called and a request was made to the Panel by Counsel that his client be allowed to continue with the current teaching contract at a school in state 1, a remaining four days until the end of the current school term in state 1, and that he also be allowed to take up a subsequent short term teaching contract at the same school for the next term.

Counsel Assisting submitted to the Panel that such a request showed a lack of insight into the seriousness of the allegations. Counsel Assisting also submitted to the Panel that, as the Institute has no jurisdiction in state 1, that the Panel needed to rely on undertakings from the teacher as to what his intentions were during the period of the adjournment, if granted, to protect the public. Counsel Assisting emphasised to the Panel that the testing of insight is crucial and that if an adjournment is granted it must be on the basis that the teacher clearly demonstrates reflection and remorse, a recognition of what has occurred and of the harm that has been done. Consequently, Counsel Assisting urged the Panel not to endorse the teacher taking up the short-term contract and to express concern about whether the public is protected public during the current teaching contract.

The Panel granted the adjournment and accepted the teacher's undertaking, that on completing his present teaching contract in April 2008, he would not engage in any professional or non-professional involvement that required access to or supervision of school aged children including secondary school to Year 12.

On 26 June 2008, at the resumption of the formal hearing, Counsel for the teacher, described the circumstances surrounding the events in 2005/6. The Panel heard that the teacher was not contesting the allegations and was admitting that he was guilty of serious misconduct.

The Panel heard that as a young, graduate teacher from state 2, the teacher arrived in the Victorian country town feeling isolated after a personal relationship had ended. He was also estranged from his family. The teacher told the Panel that he has since learned that he has become a father.

Counsel for the teacher submitted to the Panel that he, the teacher, was now a changed person with a different frame of mind and that, in hindsight, he would not have engaged in the misconduct. The Panel heard that the teacher understands the conduct was wrong and inappropriate, that he is remorseful and that he has a heightened awareness of the seriousness of the issues.

The Panel heard that the teacher had not been teaching during the adjournment period and that, pending the outcome of the proceedings, the school that he had been teaching at in state 1 encouraged him to re-apply for a position. Counsel for the teacher submitted to the Panel that it was not in the public interest for a suitably qualified and skilled teacher to be prevented from teaching and asked that the teacher's registration continue with conditions as he is keen and wants to teach.

A report from the Registered Psychologist was submitted to the Panel as Exhibit E, and indicated that the teacher had made good progress in understanding professional boundaries and in knowing how he must support the professional integrity of the teaching profession. The report recommended that the teacher work to find a suitable mentor if and when he takes up a teaching position in the future.

The teacher then took the witness stand to give evidence under oath. The Panel heard that the teacher agreed that the incidents occurred as written in the allegations and that he understood that they constituted serious misconduct. He told the Panel that he was embarrassed, sorry and remorseful, that he has an increased understanding of power relationships, that he has learned from the experience, that he has benefited from counselling and that he has sought out a mentor. The Panel heard that the teacher had re-connected with family members, although this had been difficult, that he wished to eventually return to teaching in Victoria and that he wanted to support his daughter. The teacher said that he would continue to seek counselling and that he was sorry for 'scarring' people in the Victorian country town community.

Under cross-examination, Counsel Assisting enquired as to the teacher's current situation and support structures. The Panel heard that the teacher's daughter was now 10 months old and that he was currently employed in direct marketing, admitting that remuneration was not sufficient to support his daughter. The Panel also heard that there was extended family in Victoria and that he sought out the Deputy Principal at the Victorian country town College as a mentor.

Counsel Assisting enquired as to what the teacher had learned about keeping a professional distance. The teacher told the Panel that at the Victorian country town, he did not understand professional boundaries and that now he understood where the line was in order to protect himself, and that as a teacher he was not there to be liked nor to be the students' friend. When questioned about what he understood happened when boundaries were not observed, the teacher told the Panel that damage to students could be permanent and that his understanding of this since the events at the Victorian country town had changed greatly. When asked about the nature of the depression mentioned in the psychologist's report, whether it was clinical or a description of his state of mind, the teacher told the Panel that it was the latter and that it had manifested itself in excessive consumption of alcohol and that he had been prescribed medication to assist with sleeping. The Panel heard that the teacher now has an increased awareness of the value of seeking help and that there is now greater communication with family and friends.

Counsel Assisting explored the content of the psychologist's report and the personal learnings as a result of the counselling sessions. The teacher told the Panel that he had

gained an increased understanding of how ‘scarring’ of students may occur and also how he had reflected on situations which tested his professional relationships with students. The Panel heard that he is now more aware of the need to seek assistance and pass on information about students to the relevant people. When asked about how he viewed interaction or involvement with older students outside the school setting, the teacher explained to the Panel that he would make the boundary clear.

Counsel Assisting referred to earlier evidence of blocks on the teacher’s employment with the employer and how this affected subsequent applications for employment and the teacher’s ability to secure a mentor for his teaching practice. The teacher indicated to the Panel that he would need to be honest and explain his situation. The teacher also told the Panel that he was confident of obtaining work in state 1 in the first instance but that he would eventually like to return to Victoria where there are family support structures.

Counsel Assisting led the teacher through aspects of the Institute’s recently launched Code of Conduct pertaining to maintaining professional relationships with students and how this relates to the experience at the Victorian country town and what the teacher has learned. The teacher told the Panel that respect at the Victorian country town was not mutual and that now he was more aware of the line not to cross, that he would no longer have electronic or phone contact with students, barring emergencies, that he is aware that he is setting an example for students, that he understands that students are people to whom he can offer advice and build self esteem, that he would pass on information to the appropriate people if there is disclosure from students which is sensitive. In response to the Code of Conduct’s reference to touching students without a valid context, the teacher accepted that what he did was inappropriate and that he would not put himself in that situation again and would be particularly careful to remove himself from social situations with students.

The teacher clarified for the Panel what he understood by possible ‘scarring’ of the Victorian country town community and students and how he might repair the damage. The teacher said that the Victorian country town students may have a life long disrespect for teachers which may in turn be passed on to their children. He also told the Panel that resolution, for him, lay in striving to be the best teacher he could be. The teacher further clarified for the Panel what he meant by ‘if a student “crossed the line”.’ He told the Panel that students can also cross the line and that it is about being aware of the line “for them and for me”. In explaining the practicalities of the self imposed ban on electronic communication, the teacher indicated to the Panel that he would ensure emails were copied to other relevant people and that contact outside school systems would not happen. The teacher told the Panel that he was not lacking confidence, rather he is just over cautious given the events that occurred.

DISCUSSION OF THE EVIDENCE

The fact that the teacher admitted to the allegations as written, without any spin attached, and that he acknowledged that his behaviour constituted serious misconduct, assisted the Panel with its deliberations. Student witnesses were spared having to give

evidence and to relive the experiences. The Panel commends this action by the teacher and acknowledges that it goes some way to demonstrating his remorse and personal progression in relation to the matter before the Panel.

As the allegations were not at issue, the Panel was, therefore, able to focus on ascertaining the level of remorse, insight and personal learning of the teacher. The Panel notes that the teacher was very young at the time of the events and found himself teaching in an isolated small country town where he became drawn into a lifestyle and culture of heavy drinking. The Panel accepts that this behaviour was exacerbated by a failed relationship with his girlfriend, isolation from family and friends, and communication problems with his parents.

Professional responsibilities, however, are not peculiar to age or place of employment. Allegations 1 to 4 contain details of involvement with students, including socialising, inappropriate communication and inappropriate physical contact. Allegation 5, involving inappropriate material being sent to a colleague some time after the other events had been investigated by the employer, indicated that there was still difficulty, at that time, in understanding the gravity of the situation.

While the teacher demonstrated genuine remorse and a degree of insight, the Panel notes that the teacher needed to be led in articulating such insight on several occasions. The Panel formed the view that the responses of the teacher regarding how he would handle future situations indicated more about how he would protect himself and how he would not place himself in compromising positions rather than indicating an increased understanding of how the student and the public needed to be protected. The Panel considers that the teacher still has considerable work to do in understanding the nature of trust and power in teacher student relationships. Of particular concern to the Panel is the teacher's inability to articulate the possible short and long-term effect his behaviour has had on the students involved.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

Considering the evidence and admission by the teacher, the Panel found that all of the allegations were proven and that the teacher is guilty of serious misconduct. The Panel found that the teacher breached professional standards and abused his position of trust and power. Such a departure from professional standards was of his own doing. (see *Parr v Nurses Board of Victoria* VCAT Dec 1998). The damage caused to the students, their families, the local community and the teaching profession, is considerable. The teacher's conduct reflected behaviour, attitudes and characteristics inconsistent with the moral qualities required of a teacher.

The Panel, however, in considering the teacher's fitness to teach, needed to assess such fitness at the time of the hearing and not at the time when the conduct occurred. In *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 (30 May 2007), Justice Harbison, Vice President and Mr Eccles, Member, at 169 stated:

“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 criminal conduct.”

The Panel formed the view that it is unlikely that such misconduct will be repeated. There is evidence of personal growth and learning by the teacher and that this will continue. The Panel, however, is also conscious of its responsibilities to protect the public and to assist the teacher in being a fit and proper person to teach. In other cases before the Institute (Dore [2008] VIT 60, Mills [2007] VIT 53, Drakeford [2007] VIT 58 a period of suspension has been imposed to emphasise to the public and the profession that such behaviour will not be tolerated and to enable the teacher to have a period of time in which to reflect and to undertake counselling. The Panel also notes the recommendation in the psychological report that the teacher should seek out a mentor which would assist with his on-going personal and professional development and with protecting the public.

The teacher is currently not registered with the Institute and has been suspended in state 1 as a result of these proceedings. The teacher was provisionally registered in Victoria when his registration lapsed. He had not satisfied the standards of professional practice to be fully registered. Therefore if the teacher wishes to return to teaching in Victoria he will have to lodge an application for registration and because he has not achieved the standards of professional practice he would be eligible for provisional registration only. If the Institute grants provisional registration to the teacher, this panel recommends that the following conditions should be placed on his registration:

1. That the teacher organise a registered teacher of at least 5 years experience to act as his professional mentor throughout the first year of his teaching appointment. Such a teacher may be internal or external to the teacher’s workplace.
2. The mentor will through peer support and collegial advice assist the teacher to reflect on his professional practice including developing sound relationships with students.
3. That within 12 months of his next teaching appointment, the teacher provides the Institute with a report from his mentor and from a Principal class teacher to attest that the teacher has satisfied the first two conditions placed on his provisional registration.

The panel is of the opinion that the teacher would benefit from ongoing counselling with a psychologist. Any such counselling should address the following issues:

- An understanding of professional boundaries and professional relationships

- An understanding of the effect of inappropriate relationships with students
- An awareness of the trust and power granted to a teacher
- How to deal with personal issues and develop strong support structures
- An understanding **and commitment** to the Institute's Code of Ethics and the Code of Conduct

A report from a psychologist addressing these issues would be of assistance to the teacher if he applies to be registered as a teacher in Victoria.



MARILYN MOONEY, CHAIRPERSON



per:
KEVIN MOLONEY, REGISTERED TEACHER



per:
TONI MEATH, REGISTERED TEACHER