

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 105

REGISTERED TEACHER: Raymond Thomas CONNOR

PANEL MEMBERS: Jane O'Shannessy, Chairperson
Rowland Richardson, Registered Teacher
Anne Farrelly, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented
Ms Melinda Richards, Counsel Assisting with Ms K Galanos, instructing

DATES OF HEARING: 16 & 17 November 2010

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

On 24 November 2010 the Panel decided to cancel the registration of the teacher from 22 December 2010.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 31 December 2002.

By letter dated 15 December 2008, the principal of the school, principal 1, notified the Institute of action taken in relation to the alleged serious misconduct of the teacher, a registered teacher.

The teacher resigned from the school effective from 21 November 2008.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 21 January 2009 and the Committee decided to refer the matter to an investigation.

On 25 August 2010, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 14 October 2010 was served upon the teacher by registered post on 15 October 2010.

THE ALLEGATIONS

The allegations of serious misconduct and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

Whilst employed as registered teacher at the school, the teacher:

1. In 2006, failed to maintain a professional relationship with Year 8 student, student 1, in circumstances where he:
 - a. During Term 1, gave gifts to student 1 including writing materials and envelopes, a horse magazine and music stickers.
 - b. In Term 1, asked student 1 to write to him privately, to place what she had written in the envelopes he had given her and to give him the envelopes in the mornings before class;
 - c. In Term 1 took student 1 from a mathematics class to the library and, without valid context:
 - i highlighted parts of the journal she wrote for him that he wanted to talk to her about;
 - ii asked her about her home life and how she was feeling;

- iii told student 1 that she could find his telephone number in the telephone book and invited student 1 to contact him any time of the day or night,
 - iv at the end of the conversation, tapped her several times on the knee without a valid reason (“the library incident”).
 - d. A few days before the library incident , rubbed student 1’s shoulder without a valid context as she left the computer room
2. In 2006 failed to maintain objectivity in his professional relationship with student 1:
- a. By interacting with in the manner described in the particulars of allegations 1(a)-(d) inclusive.
 - b. By telling student 1’s mother that she was a “troubled child” and he would be a “father figure” to student 1.
3. Engaged in the conduct alleged in paragraphs 1 and 2 after having been formally warned in a letter dated 1 March 2005 from principal 2, the former principal of the school, amongst other things :
- a. to maintain only professional relationships with students and parents;
 - b. not to comment to students or parents about his private life and family;
 - c. not to offer professional judgments in chatty, informal and inappropriate situations;
 - d. not to arrange to meet students alone;
 - e. not to question students about their private life or that of their parents, but to raise any concerns with the Head of Campus or school counsellor;
 - f. not to make his private email address or private phone number available to students or parents
 - g. not to initiate correspondence to parents;
 - h. to ensure that communication was strictly professional in nature relating to academic matters only, unless first cleared with the Head of Campus;
 - i. work on the intensity with which he looked at people and not to make female students uncomfortable by staring at them, (“the March 2005 warning”).
4. In 2008, failed to maintain a professional relationship with Year 9 student, student 2, in circumstances where the teacher:
- a. wrote numerous letters to student 2 without a valid context, including:
 - i a 10 page handwritten letter, written in or about early June 2008 late at night and early in the morning, which included a detailed account of his activities outside of school and the comment “..Like ‘A’, I’m here to support you”
 - ii a 2 page handwritten letter dated 16 June 2008, which included the following comments:
 - 1. *“When the world goes pear shaped it is reassuring to have someone there. ... This is why, through that ‘lull’ period, when everything seems hunky dory,*

that 'mentor', 'supporter', etc needs to at least maintain that level of rapport, trust, etc. So when, as they invariably do at times, things go sour, you already have a solid and stable platform established with the 'mentor', 'pastoral person'. Of course I am talking about you and me. It needs to be a two way street."

2. *"It is an error to let the pastoral relationship lapse just because things seem fine. ... student 2, make it work ... with me."*

- iii a 5 page handwritten letter, written in or about June 2008, in which he repeatedly referred to student 2 as "*chicky babe*", "*chooks*", "*chooky*" and "*darl*" and likened his relationship with student 2 to the relationship between 'A' and 'B' in the film 'C', and which included the following comments:
1. *"So, young chicky babe, recall just the other day the missive I gave you ... I noted, for your benefit, 'A' never gave up on 'B', despite the attitude and shit she dumped on him. Like, I am not giving up on one of my 'B' (you)."*
 2. *"Sometimes situations arise in which one needs to step into in order to help another, possibly at the risk of causing a little short term grief and angst in the process. Such a situation has arisen, and whether you like it or not student 2,. it is one of those few occasions where I am stepping in – so the plot is not lost"*
 3. *"Teacher 1 is not happy, mum's not happy, and clearly you could be happier (in maths). This of course impacts on me. I am, after all, your Homeroom teacher ... your 'A' (if I may be permitted to say so)."*
 4. *"Student 2, I'm pleading with you ... don't fight me, but work with me – please. Let's make it work chooks – if only for your sake. Phew! I know darl, it's just one of those things that I just gotta do for you to help you keep your head above water."*
 5. *"Like I said before, I am not here to give up on you. This means darl, that some things need to happen at times which (I know) you'd rather avoid. Being in Maths with you, at this stage, is just such one of these times"*
 6. *"Sometimes we need an intermediary (a person acting as a 'go between'). Sometimes too, it is (secretly) just nice to have someone there with us "*
 7. *"Chooky, I know that you know, but I do care – really do. This is why I do all this type of stuff ... because I really do give a damn"*
 8. *"Unfortunately, there ain't too many 'As' in this world. Treasure them darl, when they appear. Such serendipities are priceless ... if you treat them right. We're in it together chicky babe!"*
- b. Often touched student 2 on the shoulder or on the knee when speaking with her, without a valid reason
- c. Had inappropriate discussions with student 2, without a valid context, including:
- i Telling student 2 that he was hurt when she did not spend time with him and/or complained that she did not notice him;

- ii Telling her that he had looked at her “MySpace” account, giving her the impression that he knew the contents of it off by heart;
 - iii Telling student 2 he looked at all the pictures on her USB stick she’d given to him for the purpose of him assessing an assignment on it.
5. In 2008 failed to treat student 2 with courtesy and dignity in circumstances where he:
- a. Failed to model and use impartial language with student 2 including:
 - i Constantly referring to himself as student 2’s ‘A’, as alleged in paragraph 4(a)(i) and (iii).
 - ii Referring to student 2 as “chicky babe”, “chooks”, “chooky” and “darl”, as alleged in paragraph 4(a)(iii).
 - b. Wrote a play which was acted out in student 2’s English class and subsequently disclosed to student 2’s mother that student 2 was the in the play.
 - c. Failing to enhance student 2’s autonomy and sense of self worth by writing numerous letters to student 2 telling her or inferring that she needed him and she could not succeed without him, as alleged in paragraph 4(a).
 - d. Failing to respect student 2’s privacy in sensitive matters relating to family problems including:
 - i When student 2 wrote an assignment on child abuse, the teacher wrote a number of inappropriate comments on it
 - ii After student 2 had complained to the teacher about his comments, he wrote a further letter to her containing, amongst other things:
6. Failed to maintain objectivity in his relationship with student 2 by:
- a. Showing her special bias or preference, as alleged in paragraph 4.
 - b. Making student 2 feel singled out during Term 2 of 2008, by taking special interest her and by giving her notes about what to do about school work and other matters that did not relate to school work ,
 - c. Drawing her into his personal agenda by discussing his own experiences with child abuse, as alleged in paragraph 5(d).
7. In 2008, failed to maintain objectivity in his relationship with Year 9 student, student 3, in circumstances where:
- a. He interacted with her in such a manner which displayed bias or preference including:
 - i During Terms 3 and 4, paying her special attention by taking her out of class, or asking her to come to the front of the class so she could talk to him, whilst other students were completing set work.
 - ii When singling out student 3 in the manner described in paragraph 7(a)(i), the teacher :

- o asked her how she was coping, about her family and if everything was OK.
 - o told her he treated her as “one of his own” and that he was “here for her” and how he would like it if she needed to talk to anyone to go to him,
 - o comment that he “loved seeing her grow up and mature physically and mentally”.
- b. After student 3 had complained to the Campus Director, teacher 2, about the teacher’s behaviour, he approached student 3 when she was alone and said words to the effect that “she’d gone behind his back when he had been so good to her, he never thought she would talk do that and he felt hurt because he cared so much for her and that she’d thrown it all in his face.”
8. Engaged in the conduct alleged in paragraphs 4 to 7 after receiving the March 2005 warning.
9. Engaged in the conduct alleged in paragraphs 4 to 7 after having been formally warned in a letter dated 7 June 2006 from principal 1, the principal of the school, amongst other things :
- a. to undergo professional counselling to assist him in understanding the pattern of behaviour that was emerging and to assist him with skills and strategies to have appropriate conversations and proper relationships with female students
 - b. to avoid at all costs conversations that enter into the private arena with students, and to direct concerns about a student’s welfare to the Head of Campus or to the student counsellor;
 - c. to be aware that his concern for the wellbeing of certain students and his approach to them, in particular girls, has on a number of occasions been unwelcome and not well received when given, and has called into question his motivation and professional judgement and jeopardised his relationship not only with the student involved but with the total student body;
 - d. should the same issue happen again, and should the allegations be substantiated, that his future employment at the school would become untenable.

DISCUSSION OF THE EVIDENCE

The Panel found the students and their parents to be credible witnesses who articulated clearly and consistently both the content of the allegations and the impact that the teacher’s actions had had upon each of them. Throughout the hearing the teacher regularly referred to the fact that in his writing of letters to student 2, giving ‘gifts’ to student 1 and talking to student 3 he was undertaking what he believed to be his pastoral role. He repeated on a number of occasions that he saw himself as someone students could use to laugh at and get angry at. He drew comparison between a person in his past

who he felt had acted as his mentor and the role he wished to play for the students. In working to fulfil this role he focused his attentions on a select number of young female students. This attention involved him taking it upon himself to, in the case of student 2, write her long detailed letters telling her things about his own personal life while at the same time directing her to change her ways and to use him as her personal support and guide in working to do this. In the case of student 1 giving her gifts and endeavouring to engage her in discussions about her personal and family history and again with student 3 seeking to have her discuss her personal and family life with him.

All the girls spoke of feeling singled out and made to feel as if they were receiving “special attention”; their evidence suggested a level of intensity in the way in which the teacher attended to them. In all his dealings with these students the teacher failed to notice or to even consider that such “special” attention from a teacher and a male teacher could cause a high level of discomfort. Indeed when faced with the knowledge that student 1 had felt compelled to leave the school as a result of this attention, the teacher commented that it was somehow due, not to his actions but to the overreaction of the student. At no time did he refer these students to the school psychologist even though, through his actions, he showed he believed each of the girls was in need of extra emotional support.

In support of his actions with regard to student 2 the teacher relies on the fact that he did so with the support of her family in particular her mother. The Panel is of the view that regardless of the level of support a family may give to a teacher’s actions in dealing with their child it does not negate the responsibility of the teacher to act in a manner that is appropriate. In suggesting this, the teacher shows a complete lack of understanding of the role of a teacher and the boundaries that must be observed and enforced.

In giving his evidence the teacher denied having ever touched students, or giving student 1 writing paper and envelopes with an invitation for her to use it to communicate privately with him and he denied ever representing himself as a counsellor. The Panel is of the view that the teacher has very limited insight into the inappropriateness of his actions nor a real understanding of their impact upon the students and indeed their families. This seeming inability to reflect critically upon his behaviour is further reinforced by the fact that he had received a formal warning letter in March 2005 in relation to a number of complaints from female students and their families with regard to his actions in 2003 and 2004. While these incidents do not form part of this hearing, the warning letter is nonetheless important in the Panel’s view because it clearly provides a number of directives on how the teacher should engage with students and their families in the future.

The teacher received another formal letter in 2006, a letter of final warning, with regard to student 1 again stating how he should deal with students. The fact that it arose out of similar dealings with girls is highly suggestive that the teacher had not taken on board any of the guidance that had been offered to him.

The second letter of warning with regard to his behaviour directed that he should undertake counselling with a registered psychologist. The teacher decided, he says in consultation with the psychologist that no more than one session was required. This

coupled with the manner in which he described the sessions “an intrusion into my life”, and failing to focus on the positive things he had done shows, in the Panel’s view, that the teacher had not understood the seriousness of his behaviours nor the need to work on what was by this time a serious pattern of behaviour in the way he acted with regard to certain female students.

Further to his comments that he had spoken to a range of people about his situation and had been told that he was fine highlights a failure to truly reflect on his actions. His comment toward the end of the hearing that in hindsight he perhaps should have attended more sessions, arose, in the Panel’s view, not out of any real sense of introspection or remorse for his actions, but rather out of a need to say what it seemed he felt the Panel may have wanted to hear. This was reinforced by the question by counsel assisting about whether he had sought any counselling since that time, and he replied no, as again his new work colleagues had told him the way he was working was fine.

The Panel does not believe that the communications with students was sexually motivated; it does however believe that they were intrusive in the extreme. It also believes the communication was manipulative and controlling in nature.

The Panel notes that the teacher’s behaviour continued from 2004 through to his resignation in 2008 despite repeated verbal warnings, a number of in-school investigations and two letters of formal warning. In the presentation of his evidence, the Panel saw nothing to satisfy itself that the teacher had any real insight into his behaviour, any understanding of the role and responsibilities of a teacher towards his students and their families and no sense of remorse for the upset and anxiety that had resulted from his actions. While he agreed in his final comments that he had made mistakes, he said he makes no apologies even though he would have preferred it had not happened. He spoke in terms of being willing to make good any *perceived* wrongdoings or misgivings because he was in his view fulfilling his pastoral responsibilities towards the students.

Based on the balance of probabilities as set down in *Briginshaw v Briginshaw* (1938) 60 CLR 336 and all the written and verbal evidence, the Panel found that the following allegations were substantiated;

- Allegation 1 (a), (b), (c)(i-iv)
- Allegation 2 (a), (b)
- Allegation 3 (a-i)
- Allegation 4 (a) (i-iii), (c) (i-iii)
- Allegation 5 (a)(i-ii), (b), (c), (d)(i-ii)
- Allegation 6 (a), (b), (c)
- Allegation 7 (a)(i-ii), (b)
- Allegation 8
- Allegation 9 (a), (b), (c), (d)

The Panel did not find enough evidence to substantiate allegations 1 (d) and 4 (b).

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

It is the role of the Panel to ensure that it protects the public and maintains the standards and reputation of the teaching profession. *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279.

In that role it is for the Panel to decide whether the teacher engaged in serious misconduct. For the conduct to be serious in nature it must be reasonably regarded as disgraceful or dishonourable by fellow professionals of good repute and competency. *Guss v Law Institute of Victoria Ltd* (2006) VSCA 88 (1), citing *Allison v General Council of Medical Education and Registration* (1894) 1 QB 750, 763. It must not be trivial or momentary but rather a substantial departure from what would reasonably be expected of a registered teacher. See *Parr v Nurses Board of Victoria*, Victorian Civil and Administrative Tribunal, Kellman J, 2 December 1998. The Victorian Institute of Teaching's Code of Ethics provides that a teacher is charged with treating their students with courtesy and dignity (Principle 1.2), maintaining objectivity in their relationships with students (Principle 1.4) and recognising that they are in a professional relationship with their students (Principle 1.5).

It is the Panel's view that the teacher's actions amounted to serious misconduct. Given the persistent pattern of behaviour over an extended period of many years the Panel formed the view that the teacher's actions were not momentary. Observing the impact of the teacher's actions on the girls and their families the Panel believes that that the teacher's actions, rather than being trivial were in fact highly detrimental.

When assessing the teacher's fitness to teach the Panel considered the following factors set out in *Davidson v Victorian Institute of Teaching* (2007) VCAT 920, (169-170);

1. There must be a perception that the conduct complained of is of a continuing and persistent nature.
2. Conduct which throws doubt on how the person would behave in the classroom in the future.
3. An act or series of acts of serious misconduct that is/are explicable in context and unlikely to recur do not of themselves demonstrate lack of fitness.
4. A finding that a person is unfit to teach carries with it an assessment that that person should not be in a position of authority and trust with children, because his or her whole approach to teaching and to the children in his or her care is profoundly and irretrievably flawed.
5. The whole of the teacher's conduct as found is relevant to a decision as to whether the teacher is fit to teach. Any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher.

Further in making its finding with regard to the teacher's fitness to teach, the Panel considered the ability of the teacher to provide an adequate explanation, whether he had reflected on his behaviour and any evidence of remorse. It considered these matters at the

time of the hearing. *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, (21).

At no time throughout the hearing did the Panel get any sense that the teacher had sufficiently reflected on his actions and their impact on the students and their families. Despite being given ample opportunity to show remorse for his actions, the teacher presented as incapable of expressing any remorse because he held that his behaviour was driven by a pastoral concern for the female students involved. The Panel remained unconvinced that the teacher is able to reflect in an appropriate and professionally objective manner about the real impact of his actions on others. He consistently stated that he could see that his actions had caused upset, but then would abrogate the blame for the upset onto the students for overreacting or the parents for consenting to his actions. Further, he repeatedly attributed blame on the school.

The Panel concluded that the teacher was unfit to teach because his conduct was of a continuing and persistent nature. Given his lack of remorse and the fact that the teacher has been given a number of warnings in the past about his conduct, the Panel finds that the teacher is likely to repeat the conduct in the future. His conduct undermined the trust placed in him as a teacher and resulted in direct harm to his students. These findings lead to the inevitable conclusion that the Teacher's registration should be cancelled.

The Panel notes that there was a failure on the part of the school, given the directive that the teacher attend *sessions* with a psychologist, to follow through on this when it became aware that the teacher had stopped counselling after only one session. In the Panel's view, more attention could have been given to ensuring the teacher fulfils the requirements of psychological counselling as required in the letter.

Finally, given that the teacher was subject to a final warning and it had been noted by the school that his conduct showed a pattern of repeated behaviour, it would have been expected that the school's procedures would have enabled better monitoring of the teacher's relationships with students.

The Panel determines that the teacher engaged in serious misconduct and is not fit to teach.



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JANE O'SHANESSY, CHAIRPERSON

John O'Connell

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per:
ROWLAND RICHARDSON, REGISTERED TEACHER

John O'Connell

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per:
ANNE FARRELLY, REGISTERED TEACHER