

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 099

REGISTERED TEACHER: Peter Melvin SHEA

PANEL MEMBERS: Garry Salisbury, Chairperson
Michael Butler, Registered Teacher
Jeanette Barclay, Panel Member

ATTENDANCE: The teacher did not attend the Formal Hearing
Mr Andrew Flower, Counsel Assisting with Ms K Galanos,
instructing

DATE OF HEARING: 6 April 2010

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

On 7th April 2010 the Panel decided to cancel the registration of the teacher from 7 April 2010.

REASONS

BACKGROUND

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

By letter dated 17 September 2008, the employer notified the Institute that it had taken action in relation to the conduct and fitness of a registered teacher, the teacher.

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 20 May 2009, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

The teacher's registration was suspended on 1 April 2009 for non-payment of registration fees.

On 10 March 2010, the Committee decided to continue the inquiry into the allegations against the teacher and confirmed that the matter should proceed to a Formal Hearing.

A Notice of Formal Hearing dated 21 January 2010 was served upon the teacher on 22 January 2010.

THE ALLEGATIONS

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

It is alleged that whilst employed as an expert teacher at the school:

- a. On 8 February 2008 the teacher spoke in an inappropriate manner to a group of year 10 male students including
 - i Referring to the boys as 'chicken chokers' implying that they masturbated
 - ii Referring to himself as the or a 'fucking cock'
 - iii Inviting the boys to ask him anything they wanted to know of a sexual nature saying words to the effect of 'you want to talk about cocks, we'll talk about cocks'
 - iv Telling the boys he had had sex for the first time when he was 13 or 14 but it did not last long
 - v Telling the boys he had 'fucked a woman up the arse' or words to that effect
 - vi Telling the boys he had 'had his arse licked by a woman' or words to that effect.

- vii Having a discussion with the boys about 'fisting' a woman's vagina or words to that effect
 - viii Saying that some women had asked him to use dildos on them
- b. On 8 February the teacher
- i Following the discussion referred to in (a), and after the assistant principal had entered and left the room, telling the students that they should not speak about what had happened in class, using words to the effect that 'what happened in the class, stayed in the class'
- c. During the second half of term 1 of 2008 the teacher in discussions with students
- i Continued to refer to the male students in the class as "CC's meaning 'chicken chokers' when female students were in the room
 - ii Continued to refer to the male students in the class as 'chicken chokers' when there were no female students in the class
 - iii Continued to refer to himself as the 'big C' meaning 'big cock' when female students were in the class
 - iv Continued to refer to himself as 'big cock' if there were no female students in the class

THE EVIDENCE

The teacher did not attend the formal hearing on the 6th April, 2010. The Panel noted that the Institute had attempted to contact the teacher on several occasions. Australia Post documents were tendered as evidence that the teacher had been duly served.

The principal gave evidence under oath.

He informed the Panel that he was the Principal of the school and had been a teacher for a total of 35 years including 15 years as Principal. He stated that a parent alerted him to inappropriate conversations between the teacher and Year 10 male students. He obtained handwritten statements from the male students in the class and obtained a mobile phone recording of some of the conversation. Council assisting placed no weight on the taped conversation as the content was unclear.

The principal informed the Panel that the teacher had taught at the school since 1998 and that he was aware of only two minor complaints against the teacher in this time. When asked to explain why the teacher alleged that a clique of boys were trying to undermine his authority, the principal told the Panel that that particular group of students were a challenge but denied the picture painted by the teacher of the school. The teacher had claimed that there were physical assaults and extortion against teachers but the principal explained that these were not assaults but a tradition that teachers were thrown into the pool after a swimming carnival.

The principal informed the Panel that he believed the teacher did not come to the School's Administration because he would have regarded that as a failure. The principal told the Panel that he believed that the teacher's view of himself was that of a southern

gentleman as he (the teacher) was American. The principal suspected that the teacher simply wanted to stop certain behaviours from these particular Year 10 boys and made an error of judgment by engaging in sexual conversations with them.

Student 1 gave evidence under affirmation (by telephone).

Student 1 informed the Panel that he was a Year 12 student at the school and that his witness statement was true and correct. He told the Panel that he was surprised at the explicitness of the conversations between the teacher and the Year 10 class and confirmed that the statements in the allegations against the teacher did occur. Student 1 believed the conversations took place because the boys had been 'egging him on'. He informed the Panel that although initially the students had a laugh about it in the school yard, they realised how serious it was later and told the teachers.

Student 2 gave evidence under affirmation (by telephone).

Student 2 read his witness statement and agreed that it was true and correct. Student 2 informed the Panel that he was a Year 12 student at the school. He told the Panel that the boys had heard from older students that the teacher was an easy target and decided to 'try him out'. Student 2 did not believe that the students respected the teacher and also believed that other teachers thought he was substandard as well. Student 2 informed the Panel that they realised the seriousness of the issue after class and a student went on to tell his father.

Student 2 informed the Panel that when the boys made their written statements, there was no exchange of ideas. They were seated at individual desks and there was no talking. He informed the Panel that the students had prepared their statements individually and then discussed them later.

Student 3 gave evidence under affirmation (by telephone).

Student 3 read his witness statement and agreed that it was true and correct. Student 3 is a Year 12 student at the school. Student 3 told the Panel that the teacher did not have a reputation for sexually explicit discussions amongst previous senior students. He confirmed that the teacher's discussion was of a sexually explicit nature and included sexually explicit language. He said the teacher had used language he wouldn't expect to hear from a teacher.

Student 4 gave evidence under affirmation (by telephone).

Student 4 read his witness statement and agreed it was true and correct. Student 4 informed the Panel that he was a student at the school. His witness statement outlined many examples of sexually explicit discussions which took place between the teacher and the Year 10 class. Student 4 told the Panel the teacher's use of the terms CC and other names over a period led the boys to believe that the teacher was making a fool of himself. Student 4 did not believe that the boys were trying to set the teacher up.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel was guided by the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 which said 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.

The Panel found clear evidence that the teacher's behaviour was a substantial deviation from the proper standards of the teaching profession, that he had damaged the reputation of the profession and that the public needed to be protected from the type of behaviour the teacher exhibited.

In assessing whether the teacher was guilty of serious misconduct the Panel was guided in its decision making by *Briginshaw v Briginshaw* (1938) 60 CLR 336 that the allegations need to be proved on the balance of probabilities and to the reasonable satisfaction of the Panel. The Panel accepted that the four student witness's testimony was consistent and coherent. Their reaction to the confronting language of the teacher indicated that they felt it was highly inappropriate and not a matter on which they could remain silent. Their handwritten statements were written contemporaneously, typed and then signed by them. Their evidence was definite and direct as to the language used by the teacher. Their oral evidence was consistent with their written evidence and expressed in the authentic language of adolescent boys. Counsel Assisting submitted that while the Panel could not judge the demeanour of the student witnesses because the interviews were conducted over the telephone and their evidence was not expressed in an adult way or showed evidence of careful preparation, these potential weaknesses of the evidence were not enough to displace its probative value because of the manner in which it was given and collected. The Panel accepted this submission.

While there were some inconsistencies between the boys' evidence, the Panel came to the view that the allegations were supported by the evidence. The focus of the teacher's comments and the language he used were clearly inappropriate, obscene and would never be used by a teacher exercising correct professional judgement. The principal's report showed that the evidence against the teacher was correctly accumulated and cogent. The signed statements provided by the four teenage boys to the principal were consistent with the signed statements they made to the Institute Investigator. The Panel was satisfied that on the balance of probabilities that the allegations against the teacher were all substantiated.

The teacher did not appear before the Panel as was his right. The Panel was mystified by the teacher's behaviour and there was some evidence in his statement that he was not coping with the changes he saw in the school and students. A charitable view would be that the teacher showed very poor judgement. The principal said there had been two occasions previously where the teacher had shown poor judgement. The Panel came to the view that the teacher's decisions in relation to his behaviour went beyond mere poor judgement and were bizarre and inexplicable. The Panel found it hard to understand what the teacher could possibly hope to achieve by having a discussion

using such graphic and obscene language. The Panel could find no evidence (apart from his own statement) that the teacher was “set up” by the students. The principal said that the teacher had never complained to him about the students’ behaviour.

The Panel could not accept that even if all the teacher’s allegations had been found to be true, that they justified the content and language used in his comments to the class. The suggestion that they had set up the teacher was specifically and emphatically rejected by at least one of the student witnesses. At least two of the student witnesses agreed that they “egged” the teacher on and that he was an “easy target” and “easy to wind up”. While they agreed that they asked the teacher questions they were genuinely shocked at his responses which took the discussion to a level which the boys had not anticipated. The teacher appears to believe that he was trapped into making graphic, explicit and obscene remarks to the boys. The teacher failed to understand that as the professional, adult teacher he had the responsibility to control the conversation. When he sensed that he was losing control of the conversation (if that is what he believed happened), it was his responsibility to terminate it and seek help from other staff. While the teacher claimed that he did not instigate the conversation, the graphic language he used over a period of time suggests that the conversation was always within his will, power and control indicating serious misconduct.

It is in the nature of students to seek to understand and test where a teacher’s boundaries lie and professional teachers are always aware of this and act accordingly. The teacher appeared to lack an awareness of this fact of classroom life and instead was trying to absolve himself of his professional responsibilities. The teacher does not appear to show in his written statement any understanding that he had a professional responsibility to remain in control of the class. The teacher’s behaviour indicated a lack of classroom management skills and his reputation, in so far as it can be judged by the four students who testified, was that he was an ineffective teacher. The allegations suggest that the teacher took on a task which was ill-judged on a number of levels and for which he lacked the necessary skills to manage. He also did so in a way that was not transparent or done in the context of the school’s policies and processes.

The Panel was guided by *Guss v Law Institute of Victoria* (2006) VSCA 88 citing *Allinson v General Council of Medical Education and Registration* (1894) 1 QB 750,763 that misconduct in a professional sense is conduct which would reasonably be regarded as disgraceful or dishonourable by fellow professionals of good repute and reputation. The Panel found this to be the case in substantiating the allegations against the teacher.

The Panel was also guided by *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 which found that a good relationship with a student is central to the teacher’s exercise of professional skill, but that too close or over familiar a relationship may endanger the teacher/student relationship and cause real harm to the student. The Panel found that this was one of the boundaries over which the teacher had crossed. The teacher appeared not to understand that his behaviour shocked and offended the students who testified because they, without hesitation, saw his behaviour as inappropriate for a teacher. In raising the matters that he did and using the language he did, the teacher appeared unable to discern where the boundary between teacher and student is located. He did not address this issue in his written statement.

The teacher's comments were not trivial and were a substantial departure from the standards which might reasonably be expected of a registered teacher. The Panel was also guided by *Parr v Nurses Board of Victoria* (1998) VCAT, Kellam J, who said that the departure from such standards must be blameworthy and deserving of more than passing censure. The teacher's behaviour was not trivial and he continued to use the code "CC" to refer to the male students in the class during the term. The teacher's behaviour was his fault, not the students who admitted to initially encouraging him to discuss sexual matters. The evidence suggests that rather than being the victim of calculating students, the teacher acted wilfully and recklessly without regard for the consequences and is thus guilty of serious misconduct. (see *Re: Christine Trigger and The Australian Telecommunications Commission* (1984) 4 FCR 242). The teacher should have had the knowledge, experience and will to ignore the suggestions of his students when they were inappropriate. The community is entitled to think that teachers will always do so. To be unable to maintain this clear boundary is a failure on the teacher's behalf and reflects on his fitness to teach.

The Panel was faced with the difficult problem of having a single written statement to assess the teacher's fitness to teach. He did not respond to the allegations put to him by the principal. The teacher's statement indicated that he saw himself as a victim of extortion, bullying, assault and malice. He regretted that his frustrated attempt at relating went wrong but otherwise expressed no remorse for his behaviour. His written statement does not appear to engage with the severity of the allegations made against him but argues in effect that the conspiracy against him by students and the school explains and justifies the language he used. On balance the Panel came to the view that the teacher's character had defects that made it difficult for him to be a member of the teaching profession and that he is not able to work satisfactorily in a school environment. The teacher has broken the trust that must exist between teachers and the community, ignored the proper standards of the teaching profession and could not be trusted with students. The teacher's behaviour is not predatory but indicates character flaws which make him unfit to teach. This continuing lack of moral responsibility, suggested by his inadequate responses to the allegations made against him and an absence of insight and understanding of right and wrong in the context of ethical fitness, support the Panel's view that he is unfit to teach. (see *New South Wales Bar Association v Cummins* (2001) NSWCA 284 and *Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46).

It was also behaviour which falls significantly below the standards of conduct for the teaching profession and damaged the reputation of the teaching profession. It is commendable that the four students who testified clearly understood that the teacher's behaviour breached the standards of the teaching profession although they did not express it in formal terms. The teacher subsequent to the conversation told the students that it had to remain a secret suggesting that he at least, at some point, had realised the inappropriateness of his behaviour.

The teacher had a position of power and influence in relation to the student - a position of trust. His serious misconduct reflected in a significant way on his suitability to work as a teacher. He illustrated attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South*

Wales Bar association v Cummins (2001) NSWCA 284). The Panel had no evidence to demonstrate that the teacher possesses the moral qualities required of a teacher.

The Panel was of the view that the teacher was guilty of serious misconduct and was unfit to teach. As such his registration should be cancelled. The Panel found the teacher's departure from proper professional standards unjustifiable.

The teacher did not appear before the hearing so the Panel had no opportunity to gauge his demeanour or assess his behaviour in the light of the totality of his teaching career. The Panel had a number of serious concerns that the teacher chose not to address and any attempt to seek registration in the future as a teacher by the teacher would need to show evidence that:

- He possessed the proper judgement of what are appropriate discussion items, the language to be used in class discussions and that he is able to monitor and maintain control of classroom discussions. The Panel had serious concerns about the teacher's judgement over a range of issues.
- He understands that there is a boundary between teachers and students in terms of what is appropriate behaviour and that his judgement to discern when this boundary is about to be crossed have improved significantly.
- His classroom management skills had developed to such an extent that he could show a range of strategies to maintain control and that he possessed the will and judgement to exercise them without hesitation. The Panel was concerned that the teacher lacked classroom control and his serious misconduct in the period outlined was partly a symptom of a broader classroom management issue.
- He understood that as the teacher he was in a position of power and influence over students and that he could not relinquish these if the class became difficult. He needed to show that he could work with staff and the processes in any school he taught in to identify where he needed assistance.
- He understands that he must always operate in a context where he is responsible to other teachers, the Principal, the parents and the broader community and that the trust and responsibility he is given cannot be abused. His attempt to swear the students to secrecy does not reflect well on him. He needs to show that he understands that his behaviour has the potential to undermine the reputation of the teaching profession in the community.
- He understands and shows remorse for his behaviour which undermined the trust parents and the community quite rightly have in teachers. He would need to show that he could be trusted with students when so much of a teacher's work occurs in individual classrooms behind closed doors.



GARRY SALISBURY, CHAIRPERSON



**per:
MICHAEL BUTLER, REGISTERED TEACHER**



**per:
JEANETTE BARCLAY, PANEL MEMBER**