

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 098

REGISTERED TEACHER: Edward WOLF

PANEL MEMBERS: Susan Halliday, Chairperson
Terry Hayes, Registered Teacher
Anne Farrelly, Registered Teacher

ATTENDANCE: The teacher
Ms Gail Hubble, Counsel Assisting with Ms K Galanos instructing

DATE OF HEARING: 11 and 12 March 2010

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

On 4 June 2010 the Panel decided to cancel the registration of the teacher from 4 June 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 31 July 2008, the employer notified the Institute that they had taken action in relation to the alleged serious incompetence of a registered teacher, the teacher.

As a result of these allegations, the teacher's employment with the employer was terminated, effective 29 May 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 24 June 2009, the Committee considered the investigator's report and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 15 February 2010 was served upon the teacher by registered post on 17 February 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 a registered teacher at the school, the teacher:

1. Failed to treat students with courtesy and dignity and employ appropriate classroom management techniques, including:
 - a. On the 18 July 2006 said to student 7, "If you cause me problems in my class I will be so hard on you that you will either cry or hook me, and if you hook me I will fucking kill you," or words to that effect.
 - b. On or about 23 March 2007, following a complaint from another teacher that 4 of the teacher's Year 10 students: student 1, student 4, student 2 and student 3, had disturbed her class, the teacher:
 - i. told the students that they were "idiots"
 - ii. said to the students, "I don't give a shit what you do, I get paid anyway," or words to that effect
 - iii. said to student 2, "you have half a brain but don't use it", or words to that effect
 - iv. said to student 3, she was "deaf" and had a "sad self centred life"

- v. told student 4 that he was “socially retarded” and “useless”. The teacher also commented to student 4 that it was his parents’ fault he was brought up so badly and that student 4’s “mother still wiped his arse” or words to that effect. In reference to a gold chain with a cross that student 4 wore around his neck the teacher commented “You think you’re so tough with that gold chain”, or words to that effect
 - c. During Term 1 of 2007 in a year 10 class said to student 5, “why don’t you do as your name says and die, son”, or words to that effect.
 - d. In or about Term 1 of 2007 in a Year 10 class called student 8 “a little worm”.
2. Failed to treat colleagues with courtesy and respect including:
- a. WITHDRAWN
 - b. In the presence of other teaching staff, frequently called members of the school’s administration “hopeless”, “uneducated” and “ill-informed”.
 - c. Would become verbally aggressive, intimidating and personally derogatory in any debate where he was challenged by the school’s administration and/or when other colleagues would disagree with his point of view.

PRELIMINARY ARGUMENT

Counsel Assisting made her opening statements noting specifically that Allegation 2(a) had been withdrawn, and that the investigation undertaken by the principal of the school, which was included as part of the principal’s evidence, covered a range of employment matters not before the Panel.

The teacher represented himself. The teacher was informed by the Panel that he could not deliver information from the bar table and assume it was ‘evidence’ as all evidence was to be given under oath/affirmation. Further, the teacher was reminded that he needed to be particularly mindful of the fact that ‘employment’ and ‘registration’ were different things, and that he needed to concentrate on matters relevant to the allegations that were before the Panel.

In his opening statement the teacher spoke to the principal’s broader investigation as well as the allegations before the Panel. He stated that there had been a “*massive unwarranted attack*” on his character. He indicated that he had at times spoken harshly to students, but they were students engaging in behaviour that required such a response from him. He stated that his words in such circumstances were his disciplinary tool. He noted that he did not consider it appropriate that he lose his livelihood and reputation for utilising words as a disciplinary tool. The teacher indicated that he had been unfairly treated. He stated that he would present information that would prove that the foundations for the principal’s motivation to progress the investigation that

resulted in him being unemployed and appearing before the Victorian Institute of Teaching were inappropriate and unfair foundations.

The teacher indicated during his opening submission that he was undecided as to whether or not he would give evidence under oath / affirmation. He noted that he had previously made responses to the allegations before the Panel and that all the relevant material that he wanted before the Panel was included in the Hearing materials. The teacher was reminded that the Panel relied on sworn evidence and that he would need to attest to his previous responses under oath/affirmation if he wanted the Panel to consider them as his testimony.

THE EVIDENCE

Evidence In Relation To Allegations 1 (a), 1(b), 1(c) and 1(d)

The principal stated that he had been the Principal since 2005 and a teacher for 33 years. He said the teacher had been at the school since the early 1990s and their common time at the school amounted to about two and a half years. The teacher's employment was terminated in July 2008. He acknowledged his witness statement and confirmed that it was true and correct.

The principal reported that he told the teacher in person and in writing that the words used with student 7 in July 2006 were totally unacceptable. The teacher had said something along the lines of *"if you cause me problems I'll be so hard on you that you will either cry or hook me, and if you hook me I will fucking kill you"* to the student. An Assistant Principal and one other were in attendance during the initial meeting where this matter was discussed with the teacher, as he recalled. The teacher admitted he had spoken to the student in the manner alleged.

The principal said the teacher said that he was not confident that problems with students were handled well by the Head of School or other persons designated to deal with such issues, and that he needed to manage them himself using a 'big bull' versus 'little bull' approach, where the big bull set the scene for the little bull. The principal said that the teacher was reminded of the appropriate processes to manage problem behaviour; the teacher continued to talk about needing to manage students himself, his way. He was told again that he must desist and send students to the designated co-ordinators if he was having problems with behaviour. The teacher was also told that if he continued to behave in the manner that he had been, then he was likely to face disciplinary proceedings at a school level.

In relation to the student 7 incident in July 2006 the teacher stated in writing that *"I said to him that if he did not comply with what he had been told I would speak to him so harshly that he would only have two options: to cry or hook me one, and further, that if he hooked me one, I would fucking kill him. My intention was to shock. I do not resile from my words...I asked him if there was anything he now wanted to say to me. He said no and we parted. There was no rancour in our conversation. Voices were not raised."*

The teacher's written response was also critical of the mother, the parenting of the student and the school generally for not instilling boundaries that the teacher personally considered acceptable. The teacher also wrote that *"many male students in this school have not learned to keep within boundaries so that they and others can learn successfully ... in an old bull / young bull situation, firmness, clarity and serious intent need to be conveyed in a way that the student will finally respond positively. This can be sorted out by the older male teacher – but not by being verbally weak and employing processes that can not work within the time available(for me, one semester)."*

The principal informed the Panel that over time there had been a number of documented similar complaints about the teacher. He described one earlier complaint where a letter had been received by the Head of School and former Principal in August 2002. Documentation was presented showing that the parent had complained about inappropriate and unprofessional comments that extended to family members, made by the teacher during an interaction with the student. The teacher's written response to these allegations was also tendered. The Panel noted the teacher wrote *"I decided to shock him into awareness by being harsh to him. Nothing else had worked and it was clear that he had not experienced a directive relationship with an adult that had been able to teach him how to behave appropriately."*

The principal stated that the investigation undertaken at the school had been triggered by a female student who raised her concerns about an inappropriate interaction between students and the teacher where unacceptable things were said to four students by the teacher. The principal stated that he had not spoken to the teacher about the matter personally. The teacher was leaving for Long Service Leave in a matter of days and he had entrusted the two assistant principals to deliver a document, to which the teacher was requested to respond. The allegations and the request for a response to them were contained in the document. The response was requested by the middle of the next week, prior to the commencement of the teacher's Long Service Leave (for the period of a term). The assistant principal's reported back that the teacher stated that he would not be responding within the requested timeframe, and further would only be responding to his employer – inferring that the principal was not his employer.

The employer was made aware of the situation, and a decision was made that the teacher would be removed from the school to work elsewhere when he returned from Long Service Leave while an investigation took place. The teacher did not return to the school to work.

When the principal was in the witness box, the teacher questioned the principal about his real motivation for the progression of the investigation, claiming via his questioning that the principal had acted for personal reasons. The principal denied this, noting there were complaints that needed investigating. The teacher also questioned the principal about his relationships with the school teaching staff and his commitment to the school. The witness stated that he felt he had good relationships and that he was committed. The principal confirmed that there had been two merit and equity matters, both upheld in the individual teachers' favour over the period of a year, and that at times teachers at the school did receive warnings that related to unacceptable behaviour or performance.

The principal recalled that there had been an introductory chat with the teacher when he arrived as the new principal, but stated that he did not recall the specific details. After questioning he stated that there may have been some discussion of family background in general terms, and some comments made by the teacher related to not engaging in academia and politics, and wanting to spend time with family. The principal had no specific recall and was quite vague about the content of the original discussions.

Presenting his defence the teacher asserted that both his own immigrant family background and the principal's immigrant family background were relevant to proceedings, and then put to the principal that it was their alternative historical backgrounds that provided the foundations for the principal's motivation to attack him and his work, and in turn progress the school's investigation. The principal stated that this was not the case. The teacher sought to tender immigration records he deemed relevant to the principal's family background and proceedings. Counsel Assisting did not consider the material relevant.

The Panel adjourned and returned to inform the parties that the Panel had determined that the material was not in its view relevant to the allegations before the Panel and did not want to view the documentation. The teacher was informed that he could however continue questioning the principal about his motivation. He was also told that he could detail verbally what he personally wished to share in relation to his thoughts about the principal's motivation, if and when he chose to provide sworn testimony.

When asked, the principal noted that the school investigation file contained all of the matters of concern that the school had on record about the teacher.

When asked, the principal indicated that the school's Staff Health Survey results were similar to those identified as 'like schools' and he added, when questioned, that some schools in surrounding areas had better results, but were not mapped as 'like schools.'

The assistant principal stated that she was now Assistant Principal at the school and had been a teacher for 37 years. The teacher had been at the school for two years prior to the arrival of this witness in 1993. Prior to becoming Assistant Principal in 2000, the assistant principal was an English teacher and Student Wellbeing Co-ordinator at the school.

A number of work related interactions took place over the years between the teacher and the assistant principal, in the areas of Student Wellbeing and Curriculum. Other interactions took place after the assistant principal became Assistant Principal in relation to policies and particular students in Yrs 9 & 10.

The assistant principal confirmed that she was in a meeting with the principal and the teacher in August 2006 where it was raised that the teacher had spoken to a Yr 10 student, student 7, in an unprofessional and threatening way. The teacher admitted to the allegations but defended his action noting that the administration should not interfere with his professional practice, including how he managed poorly behaved

students. The teacher had also admitted to making concerning comments to another student that a parent had written to the former principal about.

In relation to student treatment and learning the assistant principal noted that the teacher's views and practice were at odds with current educational thinking and requirements. The assistant principal stated "*he treated students as passive learners, as receptacles who should sit and listen to receive his knowledge. Students would challenge his teaching style and he increasingly over time lost his temper when challenged by either students or staff members.*" The assistant principal indicated that, in her professional opinion, the teacher lacked the ability and motivation to teach students across the full range of ability levels, in a manner that was required. The assistant principal, when asked about what she based her opinion about the teacher on, stated that it was an opinion that she had formed after discussions with the Yr 10 Coordinator, other staff and talking to the students who were sent out of the teacher's class. She stated that the administration had not engaged readily with what was happening in individual classes in past years, and in 2007 opinions were largely based on students, parents and teachers who came with complaints or other complaint referrals.

The assistant principal noted staff were encouraged to bring student issues to the Student Co-ordinators. She indicated that the teacher was vocal about his position that the Student Co-ordinators and others within the administration designated to deal with poor student behaviour, were not handling the problems and hence poor student behaviour impacted on his teaching, and in turn teachers like him had to manage the poor behaviour. She indicated that the teacher generally opted not to send students who were behaving badly to Student Co-ordinators.

The assistant principal detailed an incident in March 2007 when four students in the teacher's Yr 10 class had an issue with the teacher's behaviour, and comments he made to them. The incident was reported to the Yr 10 Co-ordinator, and then to herself. The principal proceeded to interview the relevant students. A letter containing the allegations about what had transpired in the class on 23 March 2007, and another incident relating to a different student in a Yr 10 class on 7 March 2007 was prepared for the teacher. The assistant principal saw the letter and confirmed it was the one provided to the Panel. Asked by the principal to give the letter to the teacher, the assistant principal did so engaging in some discussion. On viewing the letter she stated that the teacher said in relation to its content, "*that's about right*", referring to what the allegations covered. He indicated that he would take the matter up with his employer, and his employer was not the assistant principals or the principal of the school, rather the employer. The assistant principal stated that the teacher considered that the administration had no right to require a response from him, that they were managers only, and should not be interfering with his teaching practice and how he managed behaviour in his classroom. He indicated that only his employer - the employer - had the right to do that. Further he indicated that he did not view the assistant principals or the principal of the school as 'delegates' of the employer.

The assistant principal stated, when questioned by the teacher, that as far as she knew there had never been an incident arising from lack of supervision on the part of the teacher. She indicated however that there were times where she believed the teacher

did not fulfil his role as he did not 'actively' supervise students when assigned sports responsibilities or yard duty.

Student 1 stated that the contents of his statement were true and correct. He attended the school doing Yr 12 in 2009. In Yr 10, Student 1 was in the teacher's class. Student 1 stated that during Term 1 in 2007 he and three friends (three males and one female in total) left the class and went outside to talk as they didn't have any set work to do. Student 1 recalled *"it was a hot day, and the teacher was talking to an international student at the front of the room and he was taking quite a while so we went outside."*

Outside the four students were spoken to by another teacher because they were out of class. They returned to their class and the other teacher also entered the class to speak to the teacher. Student 1 stated that after the other teacher left the room, the teacher called them *"idiots"* and told one of his friends that he was *"socially retarded"* and, referring to a gold chain around his neck, said *"you're not that tough, I bet your mother still wipes your arse for you."* His female friend argued with the teacher about the inappropriate things being said, standing up for her male friends, and then the teacher told her that she was *"self centred."* Student 1 said that the teacher's comments were inappropriate. He noted that the comment about being *"socially retarded"* was directed at several of them. The female student made the complaint.

Student 1 stated that he had not ever heard other teachers talk the way the teacher did on that day. *"What was said you don't expect from anyone, let-alone a teacher. The teacher should not have made those sorts of comments to students."* Student 1 stated that normally he and his friends got on okay with the teacher but he was aggressive and very angry towards them on this day.

Student 1 said that he generally liked the teacher's classes. He noted that he taught using sarcasm and by being provocative. Student 1 recalled that the teacher started teaching about the Samurai by stating that Asian people were cleaner than other races which resulted in students having heated arguments with him. Student 1 indicated that the teacher's classes could be enjoyable and that he felt he was capable.

Student 2 stated that his statement was true and correct. He also stated that he was a Yr 12 student at the school in 2009. Now at university he said he had been one of the four students involved in the Yr 10 class incident with the teacher in March 2007. He was 15 at the time. Student 2 had the teacher for two terms, and recalled that the incident took place in Period 5 when the teacher was working with one student, and the class did not have much work to go on with after the roll was done. He stated that the group of four left the room when they'd finished the work they had. The four went outside without seeking permission from the teacher. They started talking to a student that was leaning out of a window of another classroom. The teacher from the other classroom came outside and asked where they were from and why they were outside. The other teacher talked to their teacher, who then asked why they had disrupted another class. *"He then started yelling at us. He told one friend that he was socially retarded and then he said something like I bet your mother still wipes your arse."* Student 2 stated that he was told by the teacher *"you have half a brain but you don't use it."* The teacher then told the

female student that she was *“stuck in her sad self-centred world”* and he said this to her because she stood up for him and the other two students.

Student 2 stated that the teacher was generally a good teacher and that he gave students more freedom, compared to other teachers. He said that he knew his subject area, helping those who wanted to learn and letting others who didn't go their own way. Student 2 didn't take the matter further but filled in an incident report after a formal complaint was made by one of the four students.

Student 2 said that the comments made to the female in the group (student 3) really stuck in his mind and, of the four of them, she took the comments the hardest. He noted that other students would have known that the comments were directed at them, and some around them could have heard what was said. Student 2 said it was the first time he had heard the teacher speak to students in the manner they had experienced, and that he had not ever heard other teachers speak in the same way. He noted it was not a mature thing to leave the classroom without permission.

Student 3 stated that her statement was true and correct. A Yr 12 student at the school in 2009 she was currently 18 and coaching as well as working part-time. She noted that she was one of the four students involved in the Yr 10 class incident with the teacher. Student 3 recalled it was a hot day in March 2007 and that she and three male students walked outside of the classroom during lesson time, and sat outside to talk. The teacher was with a student at the front of the class – an ESL student who was not a member of their class. There was an interaction with a student in another classroom via a window. The other teacher intervened, and the four went back to class. They were spoken to by their own teacher after the intervening teacher had come to see him.

The teacher asked student 3 why she hung around with the people she did. The teacher also told one of her friends that he had *“half a brain but didn't use it.”* She recalled the teacher getting angry very quickly and yelling at them. He then told one of the male students that he was *“socially retarded”* and that his mother *“still wipes his arse.”* She recalled him saying to the other male student that he *“wasn't going to get anywhere in life”* and there was no hope for him. Student 3 said she spoke up and said that the statements were untrue. The teacher then told her he'd called her name three times when doing the roll and she had not answered. She said she apologised, and he remarked that maybe it was because she was *“deaf”*. She said *“well maybe it is.”* The teacher slammed his hand down on the desk and screamed *“no – it's because you are stuck in your sad self centred life.”* Then as he walked to the front of the room he said to all of them that he *“didn't give a shit what we did as he got paid anyway.”*

Student 3 stated that the teacher would always start arguments in class when teaching, and that sometimes they got out of control. She stated that he was unpredictable and that some days a remark from a student was *“like flicking a switch and he would start yelling.”* Student 3 stated that the teacher was generally good at his subject but did not manage the Yr 10 class very well. She stated that she completed an incident report after raising what had happened with the Yr 10 Co-ordinator.

Student 3 stated that her first reaction was shock that a teacher would say what was said. She noted that the comments he made to the students did not reflect what the students were actually like. She stated that they were pretty good people who did their work, and did well.

Student 3 stated that the teacher saw them leave the classroom, and that she was sure that this was the case as she saw the teacher look up. She stated that the teacher was busy with a student, and hadn't started teaching anything, and as she had finished her work she had nothing to do.

Student 3 noted that the teacher knew his subject but he also had very strong personal views on things which he made known in class. Religion was one example she provided. *"He often belittled other religions. I do not like how he spoke about my religion - and that it was a false religion I had never heard other teachers speak the way he did that day."*

Student 4 stated that his statement was true and correct. He completed Yr 12 at the School in 2009. He said he was one of the four students involved in the Yr 10 class incident in March 2007 and that he left the classroom with his friends without permission. Once outside they disturbed another class, resulting in a teacher speaking to their teacher. Student 4 said that there was not much going on in class and the teacher was talking to one student at the front, possibly an ESL student. So they went outside, spoke to students in another class, and then were told off. Once back in class the teacher had a go at them, saying to him *"you think you're so tough with that gold chain."* Student 4 stated that he was wearing one around his neck. Student 4 stated that the teacher also called him *"socially retarded"* and *"useless"* and said that it was the fault of his parents that he had been brought up badly, and that his mother *"still wipes his arse."*

Student 4 stated *"having your family dragged into it, especially given that the teacher didn't know my parents or anything about them was wrong."* He indicated that he was affronted. He noted that the teacher could have had a go at him alone, but to have a go at how he had been brought up was offensive and negative. Student 4 said he felt the comments meant that he had not personally turned out to be a decent human being. Student 4, reflecting, stated that the comments made by the teacher were out of line, as well as inappropriate things to say to 15 year old students. He noted that he was actually 14 at the time. He did not make the complaint but, looking back, the witness stated that he believed that the complaint needed to have been made.

Student 4 said that he had not heard other teachers speak to students in the manner that the teacher did on that day. He stated that considering they weren't doing much in class and there was no work set, that he didn't see much wrong with leaving the classroom. He said they left the classroom about half way through lesson time.

Student 4 stated that he found the teacher's remarks very offensive. He noted that the teacher had said to the female student that she was *"self centred."* Reflecting, student 4 also noted that he considered the teacher to have a lot of knowledge but when he was teaching he was someone who tried to intimidate students. *"He wasn't able to maintain*

classroom discipline with our class. He would talk to individual students but not keep the rest of the class engaged in any work. He was a smart man and he taught us with knowledge, but he intimidated students."

Student 5 stated that he was 19 and currently working. He confirmed that his statement was true and correct. He stated that he was in Yr 10 at the school in 2007. He exited the school in the middle of 2008 aged 17. He did not complete VCE. Student 5 was in the teacher's Yr 10 class. There were 18 boys and 2 girls in the class and the subject went for two terms. He agreed that he and others was poorly behaved in class.

Student 5 stated that he recalled a class where the projector suspended from the ceiling was out of focus. This happened on occasions and students would bang on the back wall to correct the problem. Students banged on the wall. The teacher focused on him, blamed him for the banging and said *"why don't you do what your name says, and die son."* Student 5 said he was sent out of the room by the teacher, but that at the time he was leaving anyway of his own accord, as he was angry at what had been said.

Student 5 stated that it was not an acceptable thing for the teacher to say and he went to see the Yr 10 Co-ordinator. He said he wrote a statement about what had happened. He indicated that, when the teacher made the comment, he was shocked, angry and confused. He said it was not very pleasant. Student 5 refused to return to the teacher's class on the day of the incident, and for the rest of the term. He had the opportunity to negotiate his way back, but did not want to go back to the teacher's class. *"I was angry because he was telling me to die son ... it was the first time I'd felt angry enough to leave a class."*

Student 5 stated that he also heard the teacher call another student, student 8, *"a little worm."* Student 8 was a small person physically. *"I remember it clearly and I'm a hundred percent sure it was said. I was in the classroom at the time and student 8 was misbehaving."*

Student 5 reflected on the class and noted the movies shown were not interesting and did not engage the class. He said the teacher would raise his voice, but no more than other teachers.

Student 6 was a Yr 12 student at the school in 2009. Now aged 18 he was at university. He acknowledged his witness statement, noting its contents were true and correct. He stated that he was 15 when attending the Yr 10 class with student 5.

The teacher taught student 6 for Term 1 and Term 2 in 2007. The class was mostly boys, and rowdy. *"We weren't watching the film and the teacher snapped and student 5 was told by the teacher to do as his name said - to die son."* At the point in time student 6 said that he didn't think the teacher literally wanted him to die. People laughed. He recalled student 5 leaving. He said he believed he went to the Co-ordinator's office, and that he was pretty upset by the remark.

Student 6 thought he recalled the teacher calling student 8 *"a little worm"* and recently checked with student 8 about his recall. He said that during that recent conversation

student 8 told student 6 that he had been called “*a little worm*” by the teacher. Student 6 agreed that student 8 was probably misbehaving at the time. He did not agree that the teacher said student 8 was “*trying to worm his way out*” as suggested by the teacher. He stated that the incidents with student 8 and student 5 were the only two incidents that went too far that he had witnessed.

Student 6 stated that the teacher was different to other teachers. “*He had a superior attitude, and he came across as if he was superior to, and better than, students.*” He said that he didn’t really engage with the students, and he didn’t come down to the students’ level. He gave a student work and the student did it. He seemed intellectual but had difficulty managing the Yr 10 class and would let the bad behaviour go, and then when things escalated the teacher would “*crack it.*”

A witness for the teacher, teacher 1, stated that he had had a long teaching career in the areas of English and History, and had known the teacher for 15 years while at the school. He was no longer at the school. Teacher 1 considered the teacher to be an honest and caring educator who established boundaries and achieved effective student results. He indicated that he believed the teacher’s History teaching in Yr 10 and Yr 7 was sound and motivational, and that he had some first hand experience in relation to this. He stated that people looked up to the teacher as he was analytical of ideas and supportive of colleagues. In staff meetings he would question rigorously what was being discussed, not always negatively, and would put his points firmly. He considered he behaved in the best interests of students.

A witness for the teacher, teacher 2, stated that he had had a long teaching career in maths and science, and that he had known the teacher for an extensive period of time. He was no longer at the school. He stated that in his opinion the teacher had good relationships with students, including ESL students. He noted that, while he didn’t go into his classes, he had heard positive comments about the teacher made by students. He stated that he was viewed as fair by students.

Teacher 3 joined the school in 2004 and knew the teacher for about three years at the school. Teacher 3 said that the teacher’s relationship with students, to the extent that she had observed, was one of respect. She stated that she shared a staff room with the teacher and their desks were in close proximity. She said she had observed him in class through a window, and with students at the staff room door. “*I worked closely with him and he had a supportive respectful relationship with students. He worked with both senior and junior students. I remember that he bonded with a difficult student and became his advocate.... students came and thanked him.*” Teacher 3 said there were a number of things said by the teacher to students that she would not say, and that she considered a number of the comments he made to have been inappropriate. She added that she thought that “*sometimes students needed to be shocked out of their comfort zones but not with language like that.*”

Teacher 4, a witness for the teacher, said that she had been a teacher for many years and had known the teacher for 12 years. It was her view that the mature students gravitated to the teacher and that he had positive and productive relationships with his students. Teacher 4 indicated that it was a loss to the profession to have the teacher out

of the service. She considered him competent and well researched. She was informed about his practice as she also taught History and the teacher took over her Film Study class. Teacher 4 agreed that the comments made by the teacher to students, before the Panel, were inappropriate.

Witness for the teacher, teacher 5, indicated that she had known the teacher from about the year 2000 onwards. She had been employed at the school for a number of years and she had taught LOTE, ESL English and Drama. The teacher and teacher 5 talked about teaching a lot, as he would give her a lift after work daily. Teacher 5 stated that she often heard the teacher conducting lessons through the walls and they were good lessons. *"If the lesson wasn't working you would hear it. His classes worked well and students asked good content questions. He was productive and successful. He also mentored students and students selected him as a mentor. One boy visited the teacher after his exams had finished."*

Teacher 5 indicated that she considered that the teacher was an excellent teacher and that she was a good judge of excellence having herself been awarded for it. She noted that he had a gift and was able to impart knowledge in a manner that many other teachers could not. Teacher 5 stated that in her view the teacher imparted knowledge directly and effectively.

Teacher 5 considered the range of comments made by the teacher that were before the Panel, and she stated that they were not appropriate. She indicated that the processes for discipline were sometimes hard to follow in the school, especially if you had a class of students who behaved badly. Teacher 5 stated that at the school teaching staff did not have discussions about discipline strategies.

Evidence In Relation To Allegations 2 (b) and 2(c)

In her written statement the assistant principal said that the teacher used an aggressive tone, made derogatory comments at staff meetings and accused staff members of ignorance. She said he referred to the school administration as *"hopeless"*, *"uneducated"* and *"ill informed"*.

The assistant principal stated that the teacher was publicly confrontational and cited three instances, two involving her, which she documented for her personal records, and one involving the ESL Coordinator. The first incident occurred on 19 July 2000 when the teacher approached her in the main staff room after school to challenge an administration decision that all faculties would be required to report on the use of technology in their work requirements and assessment tasks. She said that the teacher considered it an *"interference with his pedagogy"*. She indicated that when she tried to explain the rationale behind the decision the teacher became *"more and more upset, and was shouting"*. She said that she had said to him that she *"would not discuss the matter any further with him as he was raising his voice and threatening me while I had not raised my voice"*. When asked what she meant by *"threatening"* the assistant principal said that she felt that the teacher was invading her personal space by approaching her very closely and towering over her. She also felt that it was if he was *"bullying me into accepting his behaviour due to his demeanour"*.

The second incident occurred before school on 26 July 2000 at the roll cupboard in the school office foyer. The teacher approached her and said that, after thinking about their conversation regarding the use of technology in work requirements and assessment tasks, he was even more convinced that the policy was a stupid one. She said that the teacher did not raise his voice but harangued her, without letting her speak, about "*the ignorant idiots*" who were responsible for the policy, who didn't know anything about education and who were motivated by self interest. The assistant principal stated that, because the teacher did not seem prepared to discuss the issue in a rational manner but instead continued "*playing the man*", she attempted to walk away from him into the staff room. He then followed her while still haranguing her. The assistant principal said she could not remember the exact words used about various staff members but she considered them defamatory. She indicated that she deliberately shut out the things he had said about her but she did remember that he said to her, amongst other things that "*you're ignorant*" and "*you're a joke*" and "*people have no respect for you.*"

The third incident related to an occasion when the assistant principal, who was sharing an office with the ESL Co-ordinator, witnessed the teacher enter the office and harangue the ESL Co-ordinator about a change in ESL policy, to such an extent that the Co-ordinator burst into tears.

The assistant principal stated that she believed the teacher differentiated in the way that he responded to people. He was very supportive of teaching colleagues but antagonistic and abusive to colleagues in the school hierarchy, with one exception, the other assistant principal, teacher 6, who, she said, in potential altercations with staff was inclined to say "Yes, yes I agree with you, even if he didn't."

In response to cross examination the assistant principal stated that she believed that the teacher did come within three feet of her when arguing with her, entering her envelope of personal space.

Also in response to cross examination by the teacher, the assistant principal said that at a staff meeting on 15 August 2005 she had not been referring specifically to him when she said that objections to the Strategic Planning process, which had included her rewording the recommendations of one working party, were "political, bullying and arising from dishonest motives." She said she made these remarks because she believed some staff had not entered into the spirit of the process as required by the employer, regarding the guidelines for the development of the School Charter. She also said that the letter dated 12/12/2005 sent to the teacher thanking him for his contributions to the Strategic Planning process was not a generic one. It had been customised to reflect the contributions of the individual staff member.

The five witnesses called by the teacher were all former colleagues. All commented on his interactions with themselves and other staff members, as they had experienced and observed such interactions in the staff rooms they had shared with him, committees on which they had worked with him and in formal staff meetings. None of the five witnesses were personally aware of any instances where he had treated staff members (including members of the administration) in ways described in the allegations. They

were of the collective opinion that they had never heard him be ‘personally derogatory’ about other staff members or engage in ‘personalised criticism’.

All five witnesses called by the teacher described the teacher as supportive and compassionate towards colleagues. Teacher 2 recalled the teacher being critical of the administration around education based issues; however while the teacher argued the issue he said that he never attacked people personally. Regarding the teacher’s awareness of the diverse sensitivities of the staff when engaged in argument teacher 2 said *“you never felt threatened unless your knowledge base was under threat.”* He also related a sports carnival incident where he had been supported by the teacher providing the correct legal advice in relation to a parent wanting to remove their child when the administration said that the child could not leave.

Teacher 1 said the teacher was looked up to by many staff because he provided challenging ideas. He also noted that he was keen on procedure and process. He did not recall the teacher becoming derogatory, verbally intimidating or aggressive. He said he did partake in robust debate with staff and individuals (in a school in which teacher 5 said *“debate was not encouraged”*). Teacher 1 said the teacher did have strong views and could become heated and animated in such debate but he had not heard him refer to people as *“idiots”* or *“a joke”*. He noted that the teacher pursued points if he felt they were being evaded, but not with a temper; however he was often frustrated and it showed. The teacher was aware when he was in a meeting and his frustration was controlled, according to the witness.

Teacher 3 said that on the committees on which she served with the teacher he was a rigorous debater on points of pedagogy but listened to the opinions of other staff. Teacher 5 said he was a key contributor to the harmonious atmosphere of the staff room she shared with him.

Teacher 3 recalled the August 2005 general staff meeting where the assistant principal made reference to people being *“political, bullying her and having dishonest motives.”* She recalled the words personally, and was of the view that the words related to the teacher as they were used directly after he spoke. Teacher 3 had taken notes of the words. Her discussions with school colleagues indicated to her that others also believed that the words were used in reference to the teacher, and no-one else. When the teacher asked the assistant principal to withdraw the words, she would not. Teacher 3 indicated that the teacher was supportive of herself and others on staff. *“He was concerned about his colleagues’ welfare.”*

Teacher 4 said the teacher’s advice and guidance was sought by a whole range of staff even though on one occasion in December 2003 the assistant principal had remarked to her that she was not placing two new graduates in a particular staff room because she did not want them to be *“infected”* by the teacher. Teacher 4 described the teacher as *“something of an advocate”* for other teachers. Teacher 3 said the teacher *“asked questions at staff meetings that many were afraid to ask”*. Teacher 2 suggested that the teacher’s strength was that he focused on procedural matters and proprieties and that this was resented by a minority on the staff who reacted badly to the clarifications the teacher requested on mandated changes. Teacher 1 said that the teacher would not

accept questions being evaded and in debates, particularly with the assistant principal, there was *“a bit of passion on both sides.”*

Teacher 4 also recalled the August staff meeting in 2005. Her recollections mirrored those of teacher 3. Teacher 4 stated that the teacher was viewed as an advocate and his guidance was sought by many on staff. *“He was seen as someone who knew and used proper process and regulation ... and he did not make derogatory comments.”* But teacher 4 recalled that the assistant principal had made two derogatory comments. The first one was in 2000 when a desk was transferred into the History office. The assistant principal said the teacher would now be sitting in the History office and his presence may alter the chemistry in a negative way. The second comment was made in December 2003. Teacher 4 was informed by the assistant principal that new graduates would not be sitting in our History staff room as the teacher may *“infect”* them.

Witnesses for the teacher said that staff morale had been in decline at the school from about 2006 onwards.

Teacher 5 recalled the general staff meeting in August 2005. Teacher 5 took notes as the teacher had asked her to do so a couple of hours before the meeting. She stated that there were references to politics and bullying, and it was an emotional outburst on the part of the assistant principal. Everyone knew it was the teacher that she was referring to. Teacher 5 stated that the teacher asked for the words to be withdrawn, but they were not. Teacher 5 indicated that while debate was not encouraged during staff meetings, some teachers, including her, debated policies and ideas, and the teacher was actively involved. The teacher was seen as sometimes critical of the administration by the witness and she recalled that the teacher did not approve of the leadership team and the way they went about their work. She noted that there were many on staff who held the same views. Teacher 5 stated that the teacher could be passionate but not aggressive, but also noted that some staff had a lower threshold for debate.

Teacher 5 said that the staffroom that she was in with the teacher was harmonious and the teacher was part of that. *“We shared ideas and laughed. He was a key part of the good times. The teacher’s perspectives were always welcome. It was the best staffroom I have ever been in.”*

The teacher stated that the responses and positions in the Hearing materials previously provided by him were true and accurate.

The teacher stated that he wanted the Panel to understand his views in relation to the foundations for the principal’s motivation for the progression of the allegations and investigation that started at the school. The teacher stated that family histories were particularly relevant, and that his research had led him to believe that the principal’s grandfather was a Hungarian war criminal. The teacher stated that he had unwittingly talked about being a second generation Holocaust survivor when first chatting with the principal. In addition he had emphasised that his family history was a key reason why he always put his own family first. Unaware until recently of the principal’s past family history, the teacher believed that he had triggered untoward action on the part of the principal having provided his own background information. He also indicated that his

clear willingness to put his family first was at odds with the way the principal experienced his own work and family issues, which in his view also contributed to the principal's motivation.

The teacher stated that he was 61 and had been in the teaching profession for many years working with youth and adults. He had several qualifications, and had worked extensively with immigrants. Originally an English and History teacher in NSW in 1969, the teacher also trained as an ESL teacher. In 1973-79 he worked as an ESL teacher at school 1. He then took on the role of Senior Development Officer at a University. Having returned to Victoria in 1983 he then returned to teaching in 1985, teaching at a Language Centre until 1987. From 1990 to 2007 the teacher was employed at the school teaching ESL, History and, more recently, Film Studies.

When asked if he wanted to teach again the teacher answered *"the employer will not employ me again, and I can not work in a confessional school, and I am not prepared to use my skills in a privileged school, so that leaves the alternative schools of which there are few."* The teacher stated that he did want his registration even if he did not teach again, as it was about reputation.

The teacher was questioned about past events involving students, where parents had complained including when he had kicked a chair that a female student was precariously sitting on and a comment the teacher made in 2002 where he had said to a student *"just because your dad got his rocks off now I have to deal with you."* When questioned about these two incidents he stated he had acted to shock the students and to achieve his desired outcome – which was to continue with the teaching that should be taking place and to impress upon the students that they were not special, and not the centre of the world, and were to do as he wanted.

The teacher said that he was not aware of what was and wasn't right when it came to what can be used verbally to shock students. *"If what is said results in the student desisting with disruptive behaviour, and you can get on with teaching, then what you have said to shock has worked."* He stated that given what Yr 10 boys say to each other, and to teachers, he did not see them as sensitive, hence it takes quite a bit to shock them. He added that if these students can give it, then they should be able to take it. He said that the problem at the school and the geographical area where he was teaching, (unlike in the west where he had previously taught) was that the students could give it but could not take it back.

A difficult and sexist student who was over confident as his father was in a powerful role with the school needed verbal shocking, in the teacher's view. *"The boy had a sense of entitlement that made him unsafe and he needed to be made aware that he was not immortal. It is part of the duty of secondary education to prepare students to show them that they are not the centre of the world."* The teacher indicated that he was satisfied with how he had handled the behaviour of the student from a teaching point of view by saying *"just because your dad got his rocks off now I have to deal with you."* His only level of dissatisfaction, he told the Panel on reflection, was that he was being asked about it some time later. The teacher added that dealing with students was hard for teachers as they were not backed by school administrators and parents, so teachers were not likely

to be involved in the 'socialisation' of students any more. He made it clear that the way he managed behaviour, by shocking students verbally, was all about socialising students.

In relation to another response to a Yr 10 student in 2006 the teacher indicated that he would mirror the poor language of a particular student in order to show that it got them nowhere. When asked, he said he saw little use for role modelling positive interaction with certain students. He stated that it was likely that he told the student in question to "*shut the fuck up*" as alleged, as he knew the student and he knew that the student did not take offence at such things. He indicated that a small number of students would have heard the comment, but those students would not have had an issue with his comment in his view, and would have understood the nature of the interaction.

In relation to the 18 July 2006 incident with student 7, the teacher agreed he said "*if you cause me problems in my class I will be so hard on you that you will either cry or hook me, and if you hook me I will fucking kill you.*" The teacher stated that the student was planning to do a course after Yr 10 and was not concerned about his school work and his behaviour was poor in class, and distracted others. "*He had ignored my instruction and had no sense of fear in relation to his academic progression.*" The teacher did not recall ever sending the student to the Yr 10 Co-ordinator saying "*it was expected that you do so if you can't handle the situation. I was handling the situation and did so by having this one-on-one conversation with the student.*" The teacher said that he could see that a parent may be upset by the comments made to the student, but considered the words were "*effectively appropriate and had the desired effect.*" The teacher said "*teachers only have words, and if those words are efficacious then they are appropriate.*" He added that there needs to be some context, and that words needed to be geared in relation to age and gender, but young males not responding to direction need to understand that enough is enough.

The teacher said that lots of things could be offensive to students but he did not see that he could take all of those things into account when a problem needed to be immediately resolved verbally in the classroom. The teacher indicated that he resolved his own classroom issues. He stated that he used language to shock students into behaving after detailed consideration of the situation, and having applied his own sound assessment of the situation.

The teacher indicated that what he said to student 3 was objective in his view, as she was in her own self centred world. He had called her name out three times and she didn't answer, so he had to look up to see if she was there in order to mark her off the roll. When she intervened and spoke up in relation to the three male students, the teacher told her it was none of her business. It was put to the teacher that he had attacked the student as a person. The teacher said "*I wanted her to see things as if she wasn't the centre of the world*" and that she had no business defending the boys. He recognised that he may not have been fair to her emotions, given her evidence; however, he indicated that it wasn't really his problem that she was sensitive. The teacher said that if he was doing disciplinary work with her, he would probably not

have used the words he did. He indicated that she was someone who needed to know her place and understand that she was not special.

The teacher said that he had not seen the students leave his class. He said, reflecting, that it did not really concern him that they weren't doing work as it was a hot day, and half the kids were at TAFE, and he had not set any new work (allowing them to continue on with an assignment if they hadn't finished). Further the teacher said that given he had the opportunity to work with an individual ESL student he wasn't concerned that the students weren't doing work. What he said he was very concerned about was that the boys had interacted with students from another class and that whatever had happened had been sufficient for the other teacher to come to see him immediately. *"The issue was that the teacher left her class to come and complain to me."* That meant it must have been serious, hence the two boys that had interfered with the class had been way out of line and that's why he had told them that they were *"socially retarded"* and that they *"shouldn't be allowed out without a minder."* The teacher said he did not talk about the jewellery, and that he did not refer to the mother. The teacher denied saying a number of the other comments that the Yr 10 students all claimed he said. He indicated that he may have said that the female student was *"deaf"* and recalled using the words *"self centred world."*

In relation to student 8 the teacher said he said *"stop trying to worm your way out of it"* and the teacher disputed the evidence given by student 5 and student 6.

In relation to the Year 10 class, student 5 was told by the teacher to stop banging on the wall. The teacher agreed that he said *"why not do as your name says"* but he did not add *"and die-son"* at the end. The teacher acknowledged it was a play on words. After questioning he agreed the meaning of the first statement was clear and meant the same to the student, irrespective of whether he did or did not say *"and die son."* He said that the students laughed. Then student 5 left the classroom.

When asked the teacher said *"the comment was ill-judged because it didn't work"* not because of the content or because of the play on words or because of how it may have, or have not, impacted on the student. He stated that his verbal shock technique did not achieve the behaviour he required and hence he then went to the Yr10 Co-ordinator to say that all of his efforts to manage the boy's behaviour had not achieved a resolution.

The teacher stated that he had the necessary professional insight but indicated that he was not of the view that what was now required of teachers and how they were supposed to interact with students were positions that he agreed with. He made it clear to the Panel that he did not agree that he had done the wrong thing, or that he needed to be remorseful for how he'd interacted with the various students. He also made it clear to the Panel that the problems resided with others not him.

The teacher said that he made the comment to shock student 5 into self awareness, and it was a considered objective comment and a strategy he used with others. He stated that he used verbal humour, including on this occasion. He stated that he did not set out to humiliate students, and if he had then it said something about the students. He noted that he was aware now that students are very much more sensitive compared to

the past. He indicated that maybe the student was humiliated because he got the play on words about his name, after his classmates, so he was embarrassed about being slow to get the joke – something that the teacher indicated to the Panel was not really his problem as the teacher.

The teacher indicated that he was not uncomfortable with what he had done or his methods which attempted to shock students into self awareness through language. The teacher said that he accepted that he had hurt the students' feelings, having heard the evidence, and then added *"but it's because kids are more sensitive now."* The teacher made it clear to the Panel that he did not consider what he had said was inappropriate, and that he did not have an issue with his methods. Consequently there was no need for remorse or contrition with respect to the individual students, and the allegations before the Panel, as words were his disciplinary tools.

The teacher stated that arriving at the school in the 1990s he found that culturally things were different to the schools in the west. In the west *"if you called a kid to rights they'd take notice"* but if you called a kid to rights at the school they'd indicate that you had done something wrong, and then their parents would back them up.

The teacher indicated that he considered that to shock a child was a reasonable way to progress their education and to ensure their safety. He indicated that students needed to be reminded regularly that they needed to see themselves *"in the world"* not as the *"centre of the world."* He stated that students at the school had a sense of entitlement that was unreasonable, but their parents often supported that sense of entitlement which he indicated to the Panel amounted to flawed parenting. The teacher stated that in the west young people did not argue back, or behave in opposition to a teacher's wishes. They did not have parents who would support their bad behaviour. The teacher stated that there had been even greater changes in the last 10 years. In support of his position the teacher stated that when first at the school what he did notice were *"all the braces on teeth, and the second generation accents – it was like Footscray with money."*

The teacher stated that he did not send students to the Co-ordinators unless it was an extreme situation as he saw it as his job to sort things out. He indicated that he endeavoured to manage students' behaviour the vast majority of the time during his teaching career.

The teacher stated that he could recall calling the school administration *"hopeless"* and *"ill-informed"* on the basis of what they did and how they responded to certain things. The comments were not directed towards individuals. He did not recall using *"uneducated"*. The teacher noted that in his view his interactions with others and how he put his positions was not intimidating for others. The teacher stated that he was interested in the contest of ideas and presented his point of view, not aggressively or with the intention of intimidating people, but in a firm and impassioned manner. He indicated that he had the right and responsibility to do so.

The teacher believed he had been 'targeted' because of his habit of circulating position papers about educational and curriculum matters. As to whether he was alert to the range of diverse sensitivities amongst the staff he presented his opinions to, he

indicated that he presented his opinions directly, transparently and openly. He said he left it up to staff and students to take what they wanted from his presentations. The teacher denied attacking the assistant principal or calling her "a joke". The teacher could not recall if he had referred to her as "incompetent". He believed that, on the contrary, she defamed him. He stated "*I am a problem to people in authority, especially Assistant Principals.*"

The teacher stated that at 61 years of age he will not change, and that he will not alter his values and standards as "*I have been prepared to pay for them all my life.*" He told the Panel that he would accept the Panel's judgement, but indicated that the question that remained would be, whether or not history in the fullness of time would concur with the judgement of the Panel. The teacher concluded by stating "*I am not ashamed of anything I have done - I am responsible, but I am not ashamed.*"

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

While the assistant principal was the only witness to give verbal evidence in support of these allegations, the Hearing Book contained statements from a number of staff members given in response to the employer's investigation into the teacher's behaviour. Conducted in 2007, the investigation was extensive and the materials available to the Panel contained a number of observations and commentaries relevant to the second allegation.

The evidence before the Panel in relation to Allegation 1 was consistent and troubling. The Panel considered the teacher was personally entitled to his views about parenting techniques, modern youth from certain parts of the city and student discipline. However the Panel was firm in its resolve that the teacher did not have the right to rely upon, or act out such personal views to the detriment of students and school relationships. Further the Panel considered that the teacher failed to take on board that his personal views did not automatically amount to appropriate professional views. The Panel agreed with the teacher that he was responsible for his actions and feels it essential to point out that he is also responsible for the consequences of his actions. These include damage to the reputation of the profession, and the trust placed in teachers by parents and the community at large.

The teacher did not provide information that indicated that he moderated his behaviour to reflect what was professionally required of him, despite having had a range of opportunities to do so. He did, however, when giving evidence indicate that he did not much care for the views of others, who did not view things as he did, irrespective of whether they were in administration, other teachers or parents. The teacher, in the Panel's view operated in a manner that was arrogant and wilfully oblivious to the deleterious impacts of his attitudes, treatment of students, and his "*shock language*" discipline tactics.

The Victorian Teaching Profession Code of Conduct is clear about the need for a teacher to maintain a safe physical and psychological environment for students. The Code also requires that teachers communicate well and appropriately with their students. The

Panel is of the firm view that the practices of the teacher fell well short of these requirements given the examples before it. This remained the Panel's view irrespective of how the teacher positioned, justified or interpreted his own conduct when giving evidence. In addition the Code also states, among other things that teachers are to:

- create environments that create mutual respect
- model and engage in respectful and impartial language
- protect students from intimidation, embarrassment, humiliation and harm
- enhance a sense of self worth
- use consequences commensurate with the offence when disciplining
- make decision in students' best interests
- do not draw students into their personal agendas
- consider parents' perspectives when making decisions which have an impact on the education or wellbeing of a student
- take appropriate action when responding to parental concerns
- be positive role models at school.

The Panel is of the view, given the evidence before it, that the teacher breached each of the above ten requirements in a significant way, and had limited if any concern about doing so.

The teacher did not express contrition or remorse as he did not feel it; nor did he consider that he should feel it. His personal upset stemmed from having to attend the Hearing and defend his reputation and registration status. He was not impacted, from what the Panel could see, by the seriousness or the nature of the particulars of Allegation 1. The teacher's own witnesses acknowledged, when asked about specific circumstances, that he had interacted poorly with students using language that was inappropriate, and language that they would not themselves use, or condone. His disciplinary practice and language were clearly unaligned to that of his close and trusted colleagues. Despite a range of concerns having been raised over the years the evidence shows that he 'marched on' with his own methods of 'verbal shock discipline' whilst ignoring the counsel and warnings that followed parental and student complaints.

Based on the available evidence and the balance of probabilities the Panel determined that Allegation 1(a) , 1(b) i, ii, iii, iv, and v, 1(c) and 1(d) were substantiated and evidenced serious misconduct on the part of the Teacher.

In making this decision about serious misconduct, the Panel *in Parr v Nurses Board of Victoria* (VCAT, 2 DEC 1998) where His Honour observed "...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 trivial, or of a momentary effect ... It must be a departure, in a substantial manner, from the standards which might reasonably be expected of a registered nurse. This departure from such standards must be blameworthy and deserving of more than passing censure."

In *Allison v General Medical Council* [1891-4] All ER 768 that professional misconduct was said to encompass conduct “*which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute.*”

Teachers hold powerful and influential positions in relation to students. They are role models who shape future behaviour. Good character, sound judgement and sensitive astute decision making in relation to student discipline are essential qualities. They have the trust and respect of students, parents, colleagues and the community at large and they are entrusted to act appropriately and cautiously in difficult and challenging times and contexts. To act in a manner that disregards and disassociates oneself from such matters is of serious concern and untenable.

In *Burgess v Board of Teacher Registration QLD* [2003] QDC 159, “*the standards of a profession in which the community entrusts the immensely important task of educating young children and adolescents*” were referred to in relation to the importance of upholding those standards. The Panel agrees that these standards must be adhered to by all teachers including the teacher.

Given the teacher’s testimony about his practices, his strength of allegiance to his views and tactics, and the lack of relevant contemporary professional insight articulated by him, the Panel is of the view that the teacher is currently not fit to teach. In coming to this conclusion the Panel reflected on the decision in *Davidson v Victorian Institute of Teaching* [2007] VCAT 920. It was noted that in relation to lack of fitness to teach there is a perception that the conduct complained of is of a continuing and persistent nature, and that it is conduct which throws doubt on how the teacher will conduct himself in the future.

The Panel has no reason to feel confident that the teacher would avoid his favoured discipline practices and ‘shock language’ if he was in a challenging situation in the future. The Panel considers that the teacher did not demonstrate that he can appropriately differentiate between what is good and what is bad disciplinary practice, and further considered much of what he deemed to be good, reasonable, necessary and his responsibility, to be totally unacceptable and harmful.

This is a decision that has been made to protect the public, and in particular to protect the interest of students. It is not a punishment. Fitness has been assessed at the time of inquiry. To regain registration as a teacher it is the view of the Panel that the teacher would need to travel quite some distance in order to be able to legitimately demonstrate a sound understanding of his repeated failure to discipline students in an appropriate, ethical and professional manner. Indeed, in the view of the Panel a complete reversal of many of his current views would be required. Flaws associated with how to communicate properly and the teacher’s tendency throughout the Hearing to blame students (and their parents) for his responses and reactions in disciplinary situations, cemented the decision made in relation to lack of fitness.

In relation to Allegation 2(b) and 2(c) review of the evidence resulted in the Panel agreeing that there appeared to be a rift between staff at the school over past years. There was evidence of conflict and tension and the Panel considered it important to

view Allegation 2 in context. Regarding the nature of the rift, based on the evidence that the Panel had before it, it could be characterised as follows: on the one side was an administration mindful of its responsibilities to implement curriculum change according to departmental guidelines and policies. They were supported by many staff in that endeavour. On the other side were staff members who saw the teacher as a courageous advocate for their concerns about due process and professional autonomy. The former saw the teacher as confrontational and obstructionist and were on 'red alert' about his potential for disruption and interventions, particularly at staff meetings. The latter saw some of the administration's actions and decisions as riding roughshod over staff's concerns about the necessity and processes for implementing curriculum and other change. For them the teacher was a 'champion' or 'defender' – a person prepared to ask the challenging questions that no one else was willing to ask. The staff meeting of 15 August 2005 perhaps epitomised the tensions involved. The working party, of which the teacher was a member, felt their recommendation had been distorted by the assistant principal. In reply, she said she had altered it out of necessity to ensure that it met departmental guidelines for developing school charters. The atmosphere was charged and things were said by the assistant principal to which the teacher took umbrage because he believed, as did other witnesses, that perhaps the assistant principal should have addressed the circumstances more dispassionately and objectively. The messages a number of staff received on the day (both directly and indirectly) were not conducive to positive relationships.

In such a context and with reference to Allegation 2(b) the teacher made it clear that he felt justified in using the terms "*ignorant*" and "*ill informed*" when talking about the administration. This was supported by witnesses he called, close colleagues who stated that, while he had often been critical of the administration's decisions, they had never heard him be 'personally derogatory' or engage in 'personalised criticism'. The assistant principal disagreed and considered the remarks he made to her about the ICT coordinator and other staff involved in the decision about the teaching and reporting on technology as defamatory, as were the terms of abuse he directed at her. The Panel considered that, in the heat of argument, there is probably a fine line between attacking a decision ('this is a joke') and the person making it ('you're a joke.').

Similarly regarding Allegation 2(c) the Panel recognised that there is a fine line between being confrontational, which even the teacher's witnesses agreed he was, and being aggressive, bullying and intimidating which some staff found him to be; though again, apart from the examples provided by the assistant principal, the actual evidence was lacking in specificity. What is obvious to the Panel is that when the teacher argued or debated, he often engaged in behaviours which, while not amounting to serious misconduct, were oblivious to the common courtesies all colleagues, given their 'diverse sensitivities', are entitled to, not simply those you consider to be colleagues sympathetic to your point of view.

The Panel noted that Allegations 2(b) and 2(c) referred to incidents that occurred over a long period of time. They involved a teacher with a long and, in the eyes of a number of colleagues, distinguished career at the school. Additionally from the perspective of the jurisdictional boundaries of the Victorian Institute of Teaching the incidents and their

consequences needed careful scrutiny and consideration given their ‘employment’ and ‘workplace’ alignment.

The Panel, based on the available evidence and the balance of probabilities, is of the view that in relation to 2(b) and 2(c) serious misconduct is not substantiated, and considers the incidents which led to these allegations to be more intermittent than indicative of a sustained pattern of intentional intimidatory behaviour. The teacher’s passion for matters educational was part of the school landscape and seemed to have been accepted by a variety of colleagues. Unfortunately in the view of the Panel, his passion was accompanied by a volatility in expressing it, which clearly disconcerted and discomforted others of his colleagues. Some teachers felt he erred on the side of discourtesy or lack of professionalism. In retrospect the assistant principal thought she may have handled her altercations with the teacher differently rather than engaging in heated argument with him in inappropriate places.

The Panel hopes that the promulgation of the Institute’s Code of Conduct will assist all schools, including the school, in avoiding such impasses in the future.

Allegation 1 is proven and amounts to serious misconduct and shows that the teacher is not fit to teach. The teacher failed to treat students with courtesy and dignity and to employ appropriate classroom management techniques. Particulars (a) (b) (c) and (d) were considered by the Panel to have been accurate accounts of what took place. The Panel has determined that because the teacher is unfit to teach and given his attitude is likely to remain unfit to teach, his registration should be cancelled.



SUSAN HALLIDAY, CHAIRPERSON



**per:
TERRY HAYES, REGISTERED TEACHER**



**per:
ANNE FARRELLY, PANEL MEMBER**