

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 118

**REGISTERED TEACHER:** **Simon Christopher LONT**

**PANEL MEMBERS:** Marilyn Mooney, Chairperson  
Anne Farrelly, Registered Teacher  
Terry Hayes, Registered Teacher

**ATTENDANCE:** The teacher attended the Formal Hearing and was represented by Robert Cameron, Barrister, with Mr Brian Maloney, Solicitor, instructing  
  
Ms Alanna Duffy, Counsel Assisting with Ms Jennie Somodio, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 24 April 2012

**DATE OF DECISION:** 30 April 2012

#### **FINDING AND DETERMINATION:**

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 30 April 2012 the Panel found the teacher was guilty of serious misconduct and fit to teach.

The Panel decided not to impose a determination because the teacher is not registered.

## REASONS

### BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) from 6 February 2003.

By letter dated 8 January 2010, the employer notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The teacher resigned from his employment with the employer on 26 January 2010.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 21 April 2010 and the Committee decided to refer the matter to an investigation.

On 10 May 2011, the teacher's registration with the Institute was suspended for non-payment of his annual fees.

On 16 November 2011, the Committee considered the Investigator's report and under section 2.6.47 of the *Education and Training Reform Act 2006* (the Act), decided continue with the inquiry and referred the matter to a Formal Hearing.

A Notice of Formal Hearing dated 13 January 2012 was served upon the teacher by registered post on 19 January 2012.

### THE ALLEGATIONS

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

1. Whilst employed as a registered teacher at the school between 29 November 2009 and 30 December 2009 you violated your professional relationship with a female student, ('the student') in that you:
  - a. Used sexual innuendo or inappropriate language with the student; and/or
  - b. Held conversations of a personal nature with the student via electronic means without a valid context:
    1. The conversations were conducted with the student in the late evening of 29 November 2009 and early hours of 30 November 2009.
    2. The conversations by you included phrases such as:
      1. "did u behave urself this weekend?"
      2. "u better behaviour yourself."
      3. "u better, or I will have to come chase u down."
      4. "u shoulda been there to entertain me."
      5. "use ur imagination."
      6. "yep, my imagination is clicking over."

7. "well...I can think of a few ways u could have helped me get over my boredom but u woulda had to have been here in G..."
8. "well I do have a big empty house to myself, since the dickhead flatmate moved out."
9. "well for starters u coulda come over for a few drinkies...but I know u don't drink and then after a few drinkies...or should I say, non drinkies..."
10. "then you could see the sights of the teacher's home address"
11. "and I don't mean on the playstation."
12. "nice deco kiss while I'm up there...whilst lying u down on the bed...slowly running my fingertips up the legs...along the thighs...teasing a little as I go past a nice warm area..."

## **THE EVIDENCE**

The Panel heard evidence by oath or affirmation from the following witnesses:

- The principal
- The teacher
- Witness 1

The teacher's legal counsel indicated that the teacher admitted the allegations as set out by the Institute and admitted that his behaviour constituted serious misconduct.

### **The Principal**

The principal gave his evidence under affirmation and via telephone link. He explained to the Panel that he was the principal at the time of the incident and had been a principal for 10 years. The principal affirmed his written statement as true and accurate.

The principal told the Panel that Year 12 exams finished approximately mid November and that some students continue to have contact with schools to discuss results, etc with school counsellors. He said that the last day of the school year was December 18 2009. The Panel heard that the principal became aware of the allegations on the last day of school when police officers from the Sexual Offences and Child Abuse Unit visited the school and presented him with copies of the Facebook communications between the student and the teacher. The principal told the Panel that although the police were not laying any charges against the teacher they felt that the principal should be aware of the Facebook communications. The principal then contacted the employer for advice.

The principal and the assistant principal met with the teacher later in the day on December 18 to present him with a letter outlining the allegations of inappropriate online communication and requesting him to provide a written response within three working days. However as it was the end of the term this response would not be due until February 2010. The teacher later indicated that he wanted the matter resolved earlier than February so another meeting was arranged for December 31. At this meeting the teacher provided his written response and admitted to the allegations and, after discussions, agreed to resign from his teaching position. The principal told the Panel that the teacher had arranged a counselling session with the employer's assistance program

which had been helpful and that in later contact with the teacher he indicated that further counselling with the employer's assistance program was working well for him.

Under cross examination, the principal told the Panel that at both meetings the teacher appeared distraught and very apologetic to the principal and to the school. The principal said that he couldn't confirm that the teacher had apologised to the student but that his apology was clear on the Facebook pages. As the principal had had very little contact with the teacher in the intervening period he said he was unable to comment on the teacher's level of comprehension or insight into the gravity of what he had done.

The principal told the Panel that the teacher was a well liked teacher who was keen to participate in outdoor activities such as camps and excursions. He said he was a well respected member of the school community, an enthusiastic teacher with a good rapport with students, and had a good understanding of his teaching area. The principal said that he would possibly employ The teacher again but that he would need convincing that The teacher was remorseful and could demonstrate insight and learning into the issues involved.

### **The Teacher**

The teacher gave evidence under affirmation. He told the Panel that his qualifications are a Bachelor of Science and Bachelor of Teaching and he had taught at the school since approximately 2006.

The teacher said that the gravity and seriousness of the allegations had hit him pretty hard, particularly the impact it all had on the people around him and the school community. He said that the school does a great job in difficult circumstances and he didn't want this situation to reflect on the school or harm it in any way. In response to questioning the teacher mentioned the student saying "it was something she didn't deserve".

The teacher told the Panel that he was aware of and had read the profession's Code of Conduct and was aware of the high standard of behaviour required of a teacher. He said that he immediately knew that he had done the wrong thing and tried to apologise to the student. He said that he had two meetings with the principal and then resigned from the school.

The Panel heard that the teacher had three 1 hour counselling sessions with the employer's assistance program. These sessions covered:

- the incident and what led to it
- the teacher's state of mind
- anxiety/stress and how to deal with it
- who the incident impacted on
- why it was wrong and the gravity and stupidity of actions

The teacher told the Panel that the counselling assisted him to understand and identify what he had done to the student and how his actions had impacted on her.

The Panel was told that around April, 2009 he was profoundly affected by his mother's diagnosis of ovarian cancer. He said that leading up to the Facebook incident he was affected by his mother's illness as well as a relationship breakdown. He explained to the Panel that if allowed to resume his teaching career and if faced with a similar situation again, he would not respond to student communication and would seek counsel from senior teachers.

The teacher explained to the Panel that the contact with a student was wrong because the level of trust should not be broken. He said that the impact on the student could cause her to lose trust in educators. The teacher told the Panel that he loves teaching and wants to resume his career. He said that he has tried other jobs but they are not as satisfying as teaching.

The teacher provided a psychological assessment from a Forensic Psychologist. This assessment concluded that there was no ongoing psychosexual disorder. The report states that "he is entirely remorseful and that at a more cognitive level he is contrite. He is self deprecating and intropunitive, noting the inappropriateness and wrongness of his behaviour".

#### **Witness 1**

Witness 1 gave evidence under oath and told the Panel that he managed his own security business. He said that the teacher's mother's illness had had a profound effect on him. It has been and still is a stressful time for the family.

Witness 1 told the Panel that his son had discussed the situation with him on many occasions. They discussed the nature and the impact of the allegations and what steps he had taken since the incident. Witness 1 told the Panel that his son appreciates that he made a mistake and he understands the gravity of the situation. He said that he has tried very hard over the last two and half years to work our right from wrong. He explained that his son acknowledged that he made an incorrect decision and takes full responsibility for what happened. Witness 1 told the Panel that his son's heart and soul were still in teaching and that he would serve the profession well if he had the chance to teach again.

#### **DISCUSSION OF THE EVIDENCE**

The Panel's role in this case was greatly assisted by the teacher's willingness to honestly and openly respond to the allegations and acknowledge that they amounted to serious misconduct. The facts surrounding the events of late evening November 29 and early hours of November 30 are not in dispute.

The Panel considered that his remorse was genuine and that his behaviour was a single moment of very poor judgement and serious wrongdoing. As the allegations were not in dispute most attention was focussed on the subsequent counselling and the teacher's current understanding of his professional responsibilities.

The teacher's father gave heartfelt and credible evidence. He acknowledged that his son had crossed professional boundaries and that he had made a grave mistake. He was very strong that his son had admitted to his wrongdoing, reflected on his behaviour, and would not "let the profession down again".

It was clear to the Panel that the principal considered the teacher to have apologised for his actions and to be distraught that his behaviour would bring unwanted and undeserved negative attention to the school. The principal's evidence showed the Panel that the teacher had a good reputation and was well respected within the school community and that there had been no previous issues concerning the teacher's professional behaviour. The Panel noted that the principal would employ the teacher in the future if he was able to convincingly demonstrate remorse and insight into his behaviour.

The Panel heard of some of the circumstances in which the allegations occurred by way of context. It was to the teacher's credit that the issues of his state of mind in regards to his mother's illness and a relationship breakdown helped to explain his aberrant behaviour but were not tendered as an excuse. The counselling sessions the teacher attended focussed on him understanding his transgression and the contextual issues and how to deal with them. They also explored the impact his behaviour had on others particularly the student and the school community. The teacher's evidence demonstrated considerable remorse and although he didn't initiate the communications he accepted full blame for continuing the contact and for the distress he caused the student.

The teacher was clearly ashamed of his behaviour and was able to demonstrate to the Panel some insight into his actions. He acknowledged that he had abused the trust of a student, had crossed professional boundaries, and had flouted his professional responsibilities. The Panel was confident that the strategies the teacher outlined he would use would be effective if similar situations arose in the future. The Panel accepts that he was very troubled by the possibility that his actions would impact the school in an undeserved negative manner.

## **FINDINGS**

The findings of the matter are not in dispute. In determining whether or not The teacher's conduct was serious misconduct the Panel reflected on the ruling in (*Allinson v General Medical Council* (1891-4) All ER 768) Serious misconduct includes "conduct which would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency". Also considered was (*Parr and Nurses Board of Victoria* (1998) 16 VAR 118. Serious misconduct .... "must be a departure, in a substantial manner, from the standards which might be reasonably expected of a registered nurse." The Panel found that the teacher not only breached the professional standards of the teaching profession, he exploited the privileged position of power and trust that a teacher is granted. The teacher's conduct reflected attitudes and characteristics inconsistent with the moral qualities required of a teacher. The Panel finds the teacher guilty of serious misconduct.

It is clear that in considering the issue of fitness to teach, the teacher's conduct is to be assessed at the time of the hearing and not when the conduct occurred. The Panel considered the words of Justice Harbison, Vice President and Mr Eccles, Member when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920. The Panel noted: *We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur.*

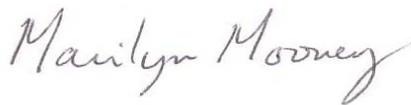
The Panel does not believe that the teacher's conduct was of a 'continuing and persistent nature'. Rather it sees it as a fleeting deviation from his otherwise professional life where he enjoyed the respect of colleagues and was regarded as an enthusiastic teacher within the school community.

On the question of whether the teacher is fit to teach the Panel has taken into consideration his clear demonstration of remorse, his apology to the student and school community, and his willingness to undergo counselling in order to understand his behaviour and to develop appropriate strategies to deal effectively with similar situations if they arise. He has admitted to the allegations and agreed that his actions were of a serious nature and that they represented a substantial departure from the accepted standards of the teaching profession. The Panel finds the teacher fit to teach.

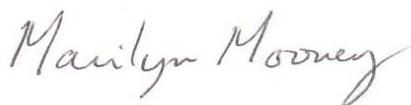
The Panel includes in this decision the observation of the need for the teaching profession to be ever mindful of the implications and perils of using social media as in this instance.

**DETERMINATION**

In making its decision the Panel was aware of the fact that the teacher is no longer registered as a teacher. It did so under Section 2.6.47 the Education Training and Reform Act which allows it to take such action in the case of an unregistered teacher.



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



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

*Marilyn Mooney*

.....  
**per:**  
**TERRY HAYES, PANEL MEMBER**