

VICTORIAN INSTITUTE OF TEACHING

NUMBER: 135

REGISTERED TEACHER: Colin Graeme DAVIS

PANEL MEMBERS: Terry Hayes, Chairperson
Paul Wilhelm, Registered Teacher
Sophie Panagiotidis, Panel Member

ATTENDANCE: The teacher did not attend the Formal Hearing
Mr Chris Enright, Counsel Assisting with Ms Jen Sheehan,
Instructing Solicitor on behalf of the Victorian Institute of
Teaching

DATE OF HEARING: 14 February 2013

DATE OF DECISION: 5 March 2013

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 5 March 2013 the Panel found the teacher guilty of serious misconduct and unfit to teach.

The Panel decided not to make 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) since 31 December 2002.

By letter dated 21 September 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 employer advised that the teacher may not seek employment in any capacity in any Victorian Government school unless otherwise advised, following his resignation on 6 September 2010, prior to the conclusion of the employer's inquiry.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 8 December 2010 and the Committee decided to conduct an investigation.

By notification dated 10 January 2011, the teacher advised the Institute that he no longer wished to be registered with the Institute, effective from 31 December 2010.

On 16 November 2011, the Committee considered the Investigator's report and decided to continue with the inquiry and refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 22 January 2013 was personally served upon the teacher's solicitor on 23 January 2013.

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 2003 and 2004 the teacher violated his professional relationship with a student who was enrolled at the school, the student by:*
 - a. *Holding conversations of a personal nature with the student in person, by telephone and/or by SMS messaging, without a valid context.*
 - i *In or about January or February 2003, the teacher had a conversation with the student in the school's grounds, during which the teacher said to the student, "I have been thinking about you a lot."*
 - ii *In early 2003, the teacher told the student that he was her "mentor".*

- iii *During 2003, the teacher regularly met the student alone at lunch time in unoccupied classrooms at the school.*
- iv *During 2003 and 2004, the teacher frequently telephoned and/or sent SMS messages to the student from the teacher's mobile telephone number to the student's mobile.*
- v *During 2003 and 2004 the teacher frequently received telephone calls and/or SMS messages on his mobile telephone from the student.*
- vi *During 2003 and 2004, the teacher disclosed inappropriate personal information about himself and his thoughts to the student including:*
 - 1. *Details of the teacher's past personal relationships.*
 - 2. *This allegation has been omitted for privacy reasons.*
 - 3. *This allegation has been omitted for privacy reasons.*
 - 4. *This allegation has been omitted for privacy reasons.*
 - 5. *That the teacher loved the student.*
 - 6. *In 2003, the teacher told the student during a telephone conversation, "If you were older, we would definitely be in some kind of relationship now."*
 - 7. *During 2003, the teacher sent the student a SMS message, with words to the effect, "My heart is beating really fast."*
- b. *The teacher attended at the student's home at an address in suburb A, in the State of Victoria, ('the student's home') when the student was alone.*
 - i *During 2003 and 2004, the teacher regularly attended at the student's home whilst the student was alone*
- c. *During 2003 and 2004, the teacher requested and/or permitted the student to attend at his home at an address in suburb B in the State of Victoria ('the teacher's home') when only the teacher and the student were present.*
- d. *During 2003 and 2004, the teacher requested and/or permitted the student to sleep overnight at the teacher's home when only the teacher and the student were present.*
- e. *During 2003 and 2004, the teacher drove the student in his car on a number of occasions, including on one occasion when the student and the teacher only attended the drive-in cinema at suburb C.*
- f. *Between 2002 and 2004, the teacher gave the student a number of gifts including:*

- i A Nokia 83-10 mobile telephone handset.*
 - ii A handbag.*
 - iii A bracelet.*
 - iv A pair of shoes.*
 - v Gifts of cash, including several sums of \$50.00, to spend how the student wished.*
- 2. Whilst employed as a registered teacher at the school in 2004, the teacher arranged for the student and other students from the school to work on the bar at a 21st birthday party of person A.*
- 3. Whilst employed as a registered teacher at the school between 2003 and 2004, the teacher violated his professional relationship with a student who was enrolled at the school, the student, by forming and continuing a sexual relationship with the student:*
 - a. In 2003, the teacher visited the student at the student's home and kissed the student.*
 - b. In 2003, on a separate occasion to that described in particular (a), the teacher visited the student at the student's home and kissed and fondled the student.*
 - c. In 2004, the teacher kissed the student in the equipment storage area of the gym of the school.*
 - d. During 2003 and 2004, the teacher had sexual intercourse with the student, occurring at various locations including:*
 - i The student's home;*
 - ii The teacher's home; and*
 - iii The teacher's car.*
- 4. Whilst employed as a registered teacher at the school during 2005, the teacher continued a sexual relationship with the former student, which had commenced when the student was enrolled at the school:*
 - a. During late 2004 and 2005, the teacher continued to have sexual intercourse with the former student, occurring at various locations including:*
 - i The former student's home;*
 - ii The teacher's home;*
 - iii The teacher's car; and*

- iv A home in suburb D that belonged to a friend of the former student.*
- b. The former student became pregnant to the teacher in late 2004 or early 2005 and advised the teacher of the pregnancy in early 2005.*
- c. On or about 24 March 2005, the teacher visited the former student at the student's home following a medical procedure to terminate the pregnancy. During the visit the teacher gave the former student ice cream, a magazine and processed a prescription for the contraceptive pill for the former student at a pharmacy.*
- d. In or about July 2005, the teacher gave the former student a black pendant and leather strap necklace.*

THE EVIDENCE

The student gave written and verbal evidence under oath.

The student is a 26 year old professional. She was a pupil at the school from 1999 to 2004 when she completed Year 12. She then did a degree at the University of Melbourne.

The student stated that she was the person whose complaints had led to the Allegations against the teacher.

The student informed the Panel that she had had the teacher as her Physical Education teacher on a rotating basis in the middle and junior years and that he had taught her VCE Physical Education in 2004. She had chosen the VCE subject primarily because the teacher was teaching it.

The student said she and the teacher first became more seriously acquainted during their participation in an excursion at the end of 2002 when she was a 16 year old Year 10 student. In the lead up to the excursion she had regular contact with the teacher and various conversations about an injury she was suffering. On the excursion she received extra attention from the teacher which she believed was because of her injury. He also gave her an old Nokia phone handset of his because she had complained of the inadequacy of her mobile phone handset. Her parents were aware that the teacher had given her the phone. At the end of 2002 she attended a barbeque social event with other participants of the excursion at the teacher's house. During that occasion she had only entered the family room and bathroom as the barbeque had been held in the backyard.

The student stated that, although there had been no contact between her and the teacher over the school holidays, at the beginning of the 2003 school year they acknowledged that they had been thinking of one another. The teacher had said to her, 'I've been thinking of you.' She said that she could not recall in which ways she had been thinking about the teacher.

The student said that, after that conversation she and the teacher began seeing one another regularly at school. They would usually meet in unoccupied classrooms. She did not recall anyone ever seeing them, or if they did, interrupting them. She also orchestrated situations to run into him because she knew his timetable and, on at least one occasion, met him when he was taking an extra in the library.

The student said the teacher described himself as her 'mentor' and gave her books including *The Celestine Prophecy* and *Jonathan Livingstone Seagull*.

The student stated that from the very beginning, and throughout their relationship, the teacher shared many intimate personal details about himself, including his birth and adoption details, his friendships and his past relationships with women, some of whom were teachers at the school. She said the teacher spoke to her about his adoption, his feelings of abandonment, how this had impacted on his relationships with women, including a number of broken engagements and terminated pregnancies, and his experiences in contacting his biological mother and sister.

The student said that the teacher also told her of his close friendship with a married couple, one of whom was a dentist in the USA. He considered them his best friends. He had met them when he was on a tennis scholarship in the USA and they lived on a property with a big lake in, she thought, Idaho or Indiana. She said that the teacher had a metallic sculpture of three figures on his shed which was a celebration/representation of that friendship.

The student said she had felt flattered and quite important to be trusted with such information and could see that they were headed towards a relationship, even though she said she felt that such a relationship would be inappropriate.

The student said that she and the teacher also discussed whether their relationship would last into the future, with the significant age gap of 23 years being the chief barrier.

The student said that over the course of their relationship the teacher had given her several presents, including a pair of shoes, a bracelet, a handbag, cash gifts of up to \$50 at a time and, towards the end of the relationship in 2005, a pendant. When asked by Counsel Assisting why she had kept the presents the student replied that, over 2005, she had become increasingly annoyed about the direction of the relationship and she had kept the presents in case a situation such as the present hearing might eventuate.

The student described to the Panel the ways in which she and the teacher developed their relationship through phone contact. During Term 1 2003 the teacher would call her regularly from his mobile phone, usually between 4-6pm so as not to arouse suspicions and sometimes on weekends when he was training for triathlons. She said she rarely called him because she did not have sufficient money. She said the teacher had used a promotional deal offered by Telstra to enable him to ring her for free for up to three minutes at a time. When shown a series of Telstra telephone records by Counsel Assisting the student identified a sequence of calls where the teacher had called her on 18 consecutive days from 17/2/03 to 6/3/03, some of which probably occurred, she thought, when he was on a school camp at Anglesea. She said that this represented a

common pattern of their communication, although this particular example was a little more intensive than most.

The student said that most of the calls in the early stages of the relationship were about everyday things along the lines of 'What are you doing?' but she did recall one call when she was staying at her father's place in suburb E when the teacher said to her, 'If you were older, we would definitely be in some kind of relationship now.'

The student stated that during 2004 the teacher purchased through Orange a phone under his birth name, PM, using an address she provided in suburb F, which is where she had grown up. She also said the teacher had had his birth names 'P' and 'M' tattooed on his underarms. The reason for purchasing the phone with a false identity was to prevent any one tracking their calls. She said the teacher had stopped his paper phone bills being mailed to his home address. The student said that the teacher called her from the new phone, but he also continued to use his Telstra mobile and a pay phone near his house.

The student stated that the relationship between her and the teacher became physical at the end of Term 1 or the beginning of Term 2 2003, when the teacher had visited her mother's house on the pretext of dropping something off, possibly a bicycle. She was home alone, and they began by talking about something mundane such as football. The teacher had then said 'We're not really here to talk about football' and, as he left, they kissed for two to three minutes. As he drove off the teacher had texted her, 'My heart is beating really fast', or words to that effect.

The student said that after the initial kiss a sexual relationship developed very quickly, probably within two weeks. The teacher had come to her mother's house and they had kissed and touched in the back room. She said that she did not remember the first time they had intercourse but it quickly became a regular occurrence. They had sex at least once a week, often more, from about April 2003, and on rare occasions, would have sexual intercourse every day over the course of the week.

The student instanced several locations where she and the teacher had sex: at both her parents' houses, at the teacher's house, at a family friend's house when she was house minding, in the teacher's car, including at a drive-in at a screening of *Bruce Almighty*, in the car park after a football match and in her car after she got her licence in July 2004. The majority of occasions were in her mother's house after school. This was made possible by the fact that her mother did not arrive home from work, and her younger sibling home from school, until around 5-6pm.

The student provided the Panel with a detailed plan of the teacher's house which she supplemented with detailed knowledge of its fittings and room usage. The student said she could not have been so familiar with the house from the time she attended the excursion barbeque. She added that the teacher had a pug dog called Ralph which was often around the house.

The student said that the overnight stays at the teacher's house were made possible by the fact that she told her mother she was staying at her best friend, witness 1's house. She had asked witness 1 to cover for her if her mother ever rang, though the alibi was never

activated. Later in the relationship, because she had a mobile phone on which her mother could contact her, she did not need this alibi.

The student said that, despite the teacher's nervousness about the dangerous nature of the relationship and the need to keep it secret, she had confided in two of her friends, witness 1 and witness 2. Eventually both their boyfriends knew as well. As to why she told her friends the student replied because she was 'a teenage girl'. She also felt she was justified in telling someone because of the pressure of keeping a lot of secrets. She said that witness 2 was more vocal in her disapproval than witness 1 but, after a while, she confided less in them because of their disapproval. As to who else at school knew, she said the relationship was kept secretive and discreet, and nothing about her and the teacher's behaviour at school would have attracted the attention of teachers or school administrators. They only kissed once at school and that was in the gymnasium storeroom when she was in Year 12.

The student informed the Panel that in September 2003 her mother, while she was overseas on work matters, discovered a number of text messages that the student had sent to the teacher from her mother's phone. She said she had used the phone when she could not afford to send text messages from her own mobile. Her mother had confronted her with them, both from overseas and again when she returned from overseas. Her mother was upset and distraught, but she managed to assuage her concerns by saying the relationship was now in the past. She could not recall if she had admitted to it being a sexual relationship even though her mother had assumed that it was on the basis of the messages. She said she had dissembled, partly out of concern for her mother's wellbeing because of the effect of her divorce on her, and because she felt great responsibility for her mother's welfare. After this she believed her mother became more sensitized about her behaviour, especially out of school, and the teacher more vigilant in the ways they conducted the relationship. The relationship, however, continued and intensified and, as well as involving the locations listed above, also included meetings in the early morning when the student and the teacher would go running together unbeknown to her mother.

The student stated that she had become pregnant to the teacher in January 2005 and terminated it at eight weeks on 24 March 2005. At the time she said she was not having intercourse with anyone else. She said she had not been taking the contraceptive pill during her relationship with the teacher but he had used a condom most of the time when they had sex. She assumed the pregnancy may have been the consequence of a faulty condom.

The student said that she had determined if she ever conceived she would terminate the pregnancy. When she told the teacher that she was pregnant he seemed shocked and worried. She said the teacher gave her the money for the medical procedure which cost about \$200 after the Medicare rebate.

The student said the termination was performed by a doctor at the family planning clinic in Carlton. The doctor also wrote her a script for the contraceptive pill, Levien. She said she was finished at the clinic by lunchtime and caught a taxi home.

The student said she was annoyed that the teacher did not accompany her to the clinic but instead attended a school sport carnival. However, he visited her at her home later that afternoon bringing her ice cream and a *Madison* magazine. He also went out and filled her prescription for the contraceptive pill at a pharmacy in the suburb B shopping centre. When asked by the Panel as to why she had kept the contraceptive pill package (Exhibit E) the student replied that, as with the gifts, it was more an abstract than a concrete decision on her part, a sort of subconscious recognition that she might in the future be required to explain the situation.

The student said that her relationship with the teacher gradually cooled after the termination. She said she was less inclined to put any effort into the relationship as she became increasingly frustrated with having to make so many compromises. Also, she said, she was becoming involved in university life and making new friends, and was now not interested in being with somebody as old as the teacher. She said the teacher continued to text message her intermittently and gave her the pendant for her birthday in July 2005. The last message she received from him was in 2009 and she did not reply. She thought the last time they had sex was in April/May 2005.

The student said that in 2009 she started to reflect upon her relationship with the teacher, and to deal with what had happened in her past, when she began her first serious relationship since the teacher. She said she felt the need to share what had happened to her with someone close, though not necessarily to have it reported to any authority. The first person she spoke to was her 'godmother', witness 7, a longstanding family friend who had played a big role in her life. Witness 7 had encouraged her to speak to her parents, which she did in March 2009, though she did not disclose her pregnancy/termination to them until a month or so later.

The student said her parents disclosed the relationship to the school in November 2009. She said it had taken her a considerable amount of time to build up her confidence to make a formal complaint but her parents had helped her considerably. She said they had a strong sense of community duty and about what is morally right and wrong.

The student said the school subsequently advised that as she was over eighteen the complaint had to come from her, which she did in an email on 4 December 2009.

The student stated that, with her parents, she visited the sexual crimes unit at suburb G Police Station to seek information about the procedures that would follow if she chose to make a formal complaint against the teacher. She said she eventually decided not to proceed with a formal complaint for three reasons. One, a concern about her professional integrity. Two, she did not want to take on the level of responsibility for the repercussions if the teacher were successfully prosecuted: she definitely did not want him to go to jail for possibly four years. Three, she wanted to be spared the ordeal of a court process.

The student said she signed a statement on 7 December 2009 to the effect that Victoria Police had been alerted to the existence of a possible crime, but had chosen not to make an official statement. She had been told that this was a procedural requirement that was necessary in order for the police to close off the case.

Reflecting on the relationship the student says she now felt able to see the relationship more objectively but still felt 'shameful and humiliated'. She did not know what the long term effects on her might be. She said she did not see herself as a victim but got angry, when thinking about the relationship, because she believed her family situation made her very vulnerable. With hindsight she now recognised the power imbalance in a relationship which she knew to be inappropriate but which, she feels, she was pressured into continuing while keeping it clandestine. She said that she realized a few months into it that she was out of her depth with the quickness with which it developed into a sexual relationship.

The student concluded her testimony by stating that it is important for young people to be protected and teachers should not be allowed to get away with behaving as the teacher did with her.

Witness 1 gave written and verbal evidence by affirmation.

Witness 1 is a 26 year old student. She was a student at the school from 1999-2004. She said she met the student in 1999 and they remained best friends throughout their schooling, although the relationship became strained throughout 2004. She believes this was because of her disapproval of the student's relationship with the teacher. They were reconciled in mid 2005 and have remained best friends.

Witness 1 said she knew the teacher as her Year 10 Sports coordinator and, like many students in the school, had been aware of his relationships.

Witness 1 said that she was one of the four students hired as waiters for the 21st party which is the basis of Allegation 2. Her memory of the party was that she was annoyed with the student because, instead of working as the other three students did, she acted more like a guest and spent most of the evening talking to the teacher. Witness 1 said she thought that the party was also the only time that anyone from school, who was not already in the know, might have surmised there was a relationship between the student and the teacher.

Witness 1 stated that the student first told her that she was in a relationship with 'Colin' in early 2003. She said the student always referred to the teacher as 'Colin' in a school where all teachers were referred to by students by their surnames or by nicknames, but never by their first names. She said she believed the student had confided in her because it was too much of a secret to deal with by herself. Witness 1 said she did not believe the student at first because the relationship just seemed to be out of the realms of possibility for a 16 year old. However, she said she came to believe the student because of the amount of detailed intimate knowledge she told her about the teacher: the fact that he was adopted and the effect this had on his relationships.

Witness 1 said initially she responded to the relationship with a mixture of excitement (she said it was pretty much all she and the student talked about in spare periods), distress and disapproval.

Witness 1 said that the student told her that the relationship had its beginnings in a series of intense conversations she and the teacher had had on the excursion and subsequent to that. When witness 1 said she could not understand the mutual attraction, the student replied that she admired the teacher's intellect and she enjoyed talking to a man who treated her like an intelligent adult because that was missing from her life. Witness 1 said that she always thought that the student's main motivation for being in the relationship was that she missed her father.

Witness 1 said she believed the relationship first became physical when the student and the teacher kissed in the school gymnasium storeroom. She also knew that the student had stayed overnight at the teacher's home several times because the student had asked her to provide her with an alibi, if necessary, by telling her mother she was staying at her place. Witness 1 said she never had to use the alibi.

Witness 1 said that eventually her distress about the relationship became so great that she confided in her mother sometime in 2003. Her mother was furious and wanted to inform the school. The only thing that prevented her mother from doing so was that witness 1 became hysterical and inconsolable as she feared the student would never speak to her again if it was revealed she had informed on her. Witness 1 said, in retrospect, she wishes her mother had acted on the disclosure.

Witness 1 said she also told her then boyfriend. As to who else at school might have known witness 1 said the student had told another friend, witness 2, and her boyfriend and another male friend. She said that many Year 12, as well as other students, had heard rumours about the relationship and anyone who heard them was inclined to believe they were true. She said she was not sure if any teachers or the school administration were aware of the relationship.

Witness 1 said the student also told her that her mother had discovered some SMS messages that were sent to the teacher on her mother's phone. She said she believed that this had prompted the student's mother to suspect that something inappropriate was going on. She said she remembers being very angry with the student's mother for not acting on her suspicions.

Witness 1 said that throughout the relationship the student was, emotionally, very volatile. She could be very happy one moment, then incredibly stressed the next. She said she thought the student was very stressed because of the need to be so secretive. She remembered how the student said that the teacher became furious with her about revealing the relationship to witness 1 and told her she was not being secretive enough.

Witness 1 said the student became more secretive, furtive and distant with her when she expressed her disapproval. At some point in Year 12 the student told her that the relationship had ended but she did not believe her because of her relatively calm demeanour. She recalled one incident where they were driving in the student's car with a couple of friends and she offered to answer the student's phone. The student said 'No' emphatically and moved it out of her reach. Witness 1 said she had felt very humiliated in front of their friends.

Witness 1 said that in late 2005, after they had reconciled, the student, weeping more hysterically than she had even seen her do before, told her she had had an abortion after becoming pregnant to a friend. Witness 1 had assumed the person was a friend of the student's step-brother, but in 2009 the student told her that the teacher was the father.

Witness 1 said she believed that the relationship had had emotionally damaging effects on the student in a number of ways. She said the relationship was so abnormal and so incredibly secretive that it had distorted the student's view of reality. She cited as an example the way in which the student would speak of a young man they knew in their Year 12 as just a 'boy'. Witness 1 said she believed the relationship affected the student's ability to have normal relationships and to show affection in front of others. Witness 1 said she also believed that the relationship had produced a divide between the student and her parents because of the ways in which she had to keep a huge life-changing event secret from them.

When asked by Counsel Assisting about the student's academic performance witness 1 said that the student had done incredibly well in her VCE but probably could have done better.

Witness 2 gave written and verbal evidence by affirmation.

Witness 2 is a 26 year old medical professional. She attended the school between 1999 and 2004. She said she and the student had been friends since they were 10 years old though they had drifted apart a little at the end of Year 12. She said she knew the teacher as a Physical Education teacher at the school who took her for occasional sports classes.

Witness 2 said she believed the relationship between the student and the teacher started in Year 10 when she went on a school camp or excursion. When the student got back from the trip she told her that the teacher had been paying her a lot of attention and had given her a mobile phone.

Witness 2 said that on one occasion, either at the end of Year 10 or the beginning of Year 11, the student had told her that the teacher took a bicycle over to her house and kissed her when they had been in the kitchen. She thought the student was quite struck by the kiss and had said that no 16 year old boy would kiss you in broad daylight in the middle of your kitchen.

Witness 2 said that she and the student would, while travelling to and from school, talk about the relationship quite frequently in 2003 but less so in 2004 because the student sensed that she was not too happy about the relationship and therefore would not talk about it. Witness 2 said that by 2003 she knew that it was a 'full blown sexual relationship' though she could not remember precisely when the student told her the relationship was sexual or how often they had sex. She said she thinks she may have asked the student whether she was using contraception and she told her that 'Colin doesn't like to use condoms.' Witness 2 said that the student told her that the teacher liked to visit her after school and that she had had sex with him at her father's house in suburb E and at the teacher's house. She said she did not know if the student had had

sex with the teacher at her mother's house where it would have been more difficult as her younger sibling would have been at home.

Witness 2 said that the student recounted the details of some of her conversations with the teacher. Witness 2 said that the student said that the teacher had sometimes commented that she seemed older than she was. Witness 2 said that she thought that the student was very loyal to the teacher and was selective in the details she told her about his life. She said that the student, although occasionally upset, seemed pretty tough: she was somewhat in control of the situation and did not seem like a young 16 year old girl. She lived in a very adult world and had always got along well with adults.

Witness 2 said that she had told her boyfriend of the relationship and her older sister, who said that she was under the impression that the teacher had behaved like this before. Witness 2 said she knew that the student had told another boy who was in a band and he had told his band mates. Consequently the knowledge of the relationship spread from there. She said that by Year 12 basically about 70% of Year 12 students knew, or had suspicions.

Witness 2 stated that, at some point in Year 12, the student told her that her mother had found messages on the latter's phone because the student had used it and had not deleted the messages from the 'Sent' box. The student then told her that she had managed to twist and 'reduce to nothing' the significance of the messages, thereby allaying her mother's suspicions. On the question of text messages from the teacher, witness 2 said that she had seen some which were very friendly though not suspicious, probably before the relationship became sexual. She said that this was at a time when the teacher was possibly grooming the student. Witness 2 added that the point was, however, teachers should not be sending personal text messages to students.

Witness 2 said that she and the student became close friends again in 2008 and, although she knew the student had had an abortion about six months after they renewed their friendship, it was only in 2009 that she told her that the teacher was the father. This made sense to her because she had been told the teacher did not use contraception.

In reflecting on the relationship and its long-term effects on the student, witness 2 made the following observations. She believed that there was an element of grooming in the teacher's early attention: it 'felt kind of predatory.' He knew the student was vulnerable because of her parents' divorce and took advantage of that. Witness 2 said that, although the student came across as strong in her convictions and the way she related to adults, she thought her a 'bit of a fragile soul'. She believed the teacher was very skilled in developing the relationship by making the student feel comfortable, confident and good about herself. Witness 2 said that at the time she did not think the student quite comprehended how wrong the relationship was or how the teacher had taken advantage of her, even though there were 'bumps' and guilt along the way.

Witness 2 said that she thought that only as an adult did the student (even though at times the recall of what occurred made her feel 'sick') gain a perspective on what occurred and that her education as a professional had helped her to gain that perspective.

By making the complaint as she did, she could ensure what happened to her did not happen to any other girl.

Speaking for herself, witness 2 said she now feels terrible about what occurred and that it has affected the way she thinks about some teachers, and men.

Witness 3 gave written and verbal evidence by affirmation.

Witness 3 is an executive and the mother of student 1.

Witness 3 informed the Panel that, after her separation from her husband in 1999 and subsequent divorce, the student and her younger sibling lived with her in her house at suburb A. The children also stayed with their father for two nights per week and on alternate weekends, first at suburb A and suburb E, then with his new wife and family in suburb H. She said that at some time during 2003 the student lived with her full time and this continued through 2004 because this arrangement was less disruptive of her studies. While living with her, the student lived in a self-contained guest area of the house. Witness 3 said that the student would usually arrive home after school about 4.30 pm, unless she had sports practice, and her younger sibling would arrive around 5.00 pm. She herself would arrive home around 6-6.30 pm though she would usually ring the children around 5-6.00 pm to touch base with them.

Witness 3 said that, from the student's early days at the school, she was generally aware of the teacher because the student was heavily involved in school sport. She said the first time she really recalled the student talking about the teacher was at the end of 2002 when she and he went on the excursion as part of a school group. At the end of the excursion the student had attended a barbeque in the backyard of the teacher's house and she had collected the student from the barbeque.

Witness 3 also recalled the teacher dropping the student off home from sports practice on about three occasions. She said that at the time she had seen nothing unusual in this and had justified it to a friend who had queried it by saying, 'He's a sports teacher, he's great with kids.'

Witness 3 stated that when she was on a work trip overseas in September 2003, her daughters were left at home in the care of her mother. Witness 3 said that, while in city A, she discovered on her mobile phone a series of about 10-15 text messages sent by the student to 'bub' or 'bubba' saying how much she missed him and wanted to see and talk to him. She said she knew the person to be the teacher because she had heard the student and her friends refer to him by those nicknames. The messages, while not explicit, were quite intimate and passionate. She said that there were also a number of responses from the teacher which were shorter and more contained. Witness 3 said the messages left her with the impression that the teacher and the student had previously spent time together and had spoken on the phone. She said that her initial response was a mixture of shock and panic. Rather than cause her mother anxiety, she immediately telephoned a friend and neighbour to make sure the student was home. Then she telephoned the student, told her she had discovered the messages and asked her 'What was going on?' She said the student became upset and started crying, repeating 'It's not what you think.'

Witness 3 said she had intended to catch the first plane home but the student had begged her not to do so.

Witness 3 said that, when she returned three days later, she confronted the student and explicitly asked her if she had had sex with the teacher, to which she replied 'No!' Witness 3 said she thought the relationship had not yet become sexual but was moving in that direction, even though the student had insisted it was nothing more than a 'silly teenage infatuation'. Witness 3 said that the student seemed to want to protect the teacher, especially when she told her of the possible legal and career consequences for the teacher. The student had led her to believe that she had sought out the teacher's attention but he had not actively participated in the relationship.

Witness 3 said that she was prepared to believe that the student had sought the teacher out because of the difficult emotional times she was going through with her father. When they spoke the student kept sobbing and saying 'I want my daddy.' Witness 3 said that the student had found her parents' divorce very difficult and the changed living circumstances of her newly married father had exacerbated the situation. She said living in a blended family made it difficult for the student to have any private time with her father to whom she had been very close.

Witness 3 said that the student had begged her not to pursue the matter, giving her assurances that she would no longer see the teacher out of school. Witness 3 said she reluctantly agreed, partly because she really wanted to believe the student and, given that she had always been very honest, had no reason not to believe her. She was also very concerned about the psychological and emotional effects on the student if she had taken action. As it was, the student, throughout the period of the relationship, had been treated for stomach stress, including by alternative health methods recommended by her father. In retrospect the student also believed that the student had dissembled to protect her as it was not a good time for her after her marriage breakup.

Witness 3 said that, from that time, she had no inkling that the student had continued the relationship, and certainly no knowledge that the teacher had visited her home throughout 2003-4. She said that the first time she became aware of the situation was when the student disclosed the fact that she had been in a relationship with the teacher for two and a half years. The student had told her this when they were driving to witness 7's house at town A on the Labour Day weekend, 2010. She said that about 6- 8 weeks later the student had told her the details of her pregnancy/termination. Witness 3 said that the student also revealed that the teacher had given her a number of gifts, as well as money.

Witness 3 stated that when the student disclosed the relationship to her she felt a mixture of shock and anger that the student had deceived her. She was completely taken aback that a covert relationship had been able to be conducted over such a long period of time. She said that later she felt very remorseful that she had not been able to support the student, especially at the time of the abortion. Even now she feels 'I've let her down terribly.' Witness 3 also said she felt ferociously angry towards the teacher whom she described as 'a weakling...a weak man.'

Witness 3 said that the student had broached the subject of making a complaint and she and her ex-husband had supported her in understanding the processes and possible consequences of doing so. Witness 3 said that, after a number of months, the student was clear in her own mind that the teacher had behaved wrongly and she did not think that he should still be at the school. Witness 3 said that the action of seeking information regarding police charges, even though the student did not eventually proceed with that course of action, helped her to understand the seriousness of the matter. She said she believed that that enquiry helped the student understand for the first time that she was not to blame.

Witness 3 said she believed the relationship had had a long term damaging effect on the student. She said she is often anxious, perhaps overly organized and methodical, and says she feels 'badly ashamed and humiliated.' Witness 3 said the student is particularly tentative about her ability to form long term relationships as she has already ended a relationship with someone who found it difficult to accept what had happened.

Witness 4 gave written and verbal evidence under oath.

Witness 4 is the father of the student.

Witness 4 informed the Panel that after he and the student's mother divorced, he lived for a time in suburb A and then suburb E before moving in with his new wife and her family in suburb H. He said that the child sharing arrangements involved the student and her sibling living with him two nights a week and on alternate weekends. However, from some time in 2003, the student lived, for the most part, full time with her mother because it was more conducive to her studies.

Witness 4 said that almost everything he knew about the student's relationship with the teacher came from her, although the student's mother had told him of discovering the text messages that the student had sent the teacher on her phone.

Witness 4 said that he did not remember the student mentioning the teacher while she was in Years 7-10. In her later years of schooling he recalled her speaking generally about the PE teachers at the school and was aware she spent some time in the PE office. As the student was a sports captain he had thought nothing of it.

Witness 4 said that the student first told him of the relationship with the teacher in early 2009. Witness 4 said that he did wonder at first if the student might have imagined the relationship, but when she told him she and the teacher had met in person up to three times a week, he believed her. He said subsequently he has never doubted anything the student told him of the relationship.

Witness 4 stated that on that first occasion the student had told him that she had been in a relationship with a teacher from the school for two and a half years without revealing it was the teacher. She said the relationship had begun on the excursion and that she had been in contact with the teacher as recently as 2009.

Witness 4 said that, in a number of subsequent conversations, the student revealed to him that she received 3 – 4 text messages a day from the teacher and used to meet him regularly at her mother's house. Witness 4 said he had formed the impression of the intensity of the relationship but was unsure of its sexual nature as the student resented him asking her any questions about the details of her sexual relations.

Witness 4 said that the student also told him that the teacher loaned her books and they used to speak about philosophy. He said she had also spoken about her feelings for the teacher. Witness 4 said he was confident that the student was in love with the teacher and that she thought her love had been reciprocated.

Witness 4 stated that some time after she first disclosed her relationship with the teacher, the student told him that she had become pregnant to him and had had an abortion. He said the student had revealed this to him when he had asked her what evidence she had of the relationship with the teacher. The student told him that she had kept the contraceptive pill packet that had been prescribed after the abortion, which he described as 'a pretty tawdry relic of a relationship.'

Witness 4 said he believed the relationship had affected the student in damaging ways and she was not as mentally healthy as she might appear to be. First, it had affected all of her relationships during the period of its occurrence because of the levels of secrecy and furtiveness involved in conducting it. Witness 4 believed it certainly accounted for her 'erratic' friendships with witness 1 and witness 2. Second, it had stunted her emotional development and witness 4 thought, as a consequence, she was having to deal with issues as a 17 year old girl might, rather than as a young woman in her mid twenties. Third, she found the whole process of disclosure and complaint very distressing in ways that accentuated the fact that she felt 'repulsed and humiliated' when she thought about the relationship. Witness 4 said he hoped she was not prompted to do anything rash.

Witness 4 said he had never put pressure on the student to make a formal complaint but he had encouraged her to do so when she was ready for it. He said he had preferred making the complaint through the teacher's employer rather than the police to ensure the student was protected from the public scrutiny associated with a criminal trial. He also said that, after discussions with the police, neither he, his ex wife or the student wanted the teacher to go to jail.

Witness 4 said that he believed the student undertook the action she did for three reasons. One, she was in a new relationship with a person her own age and wanted to 'come clean' and be honest in that relationship. Two, it was only as an adult and with the advantage of hindsight, that she was starting to recognize the impact of the teacher's actions on her. And three, it was important to her that no other young woman be put in the same situation she found herself in.

Witness 4 said he did not ascribe any negligence to the school regarding its duty of care. He assumed teachers were aware of mandatory reporting requirements in such matters but wondered if some teachers may have had suspicions which they did not act on.

As for the student's academic performance he said it was very good. It could have been better and it was lucky, given the circumstances, that it was not worse.

Witness 5 gave written and verbal evidence under oath.

Witness 5 informed the Panel that he had been Principal of the school from 1988 - 2012. He knew the teacher as a hardworking teacher who had contributed extensively to the school's extra-curricular sporting program. He also knew the student to be a terrific young girl and a very clever student whom he had taught Mathematics in Years 8/9. Witness 5 said that he had first become aware of a possible inappropriate relationship between the teacher and the student when the deputy principal, teacher 3, informed him of the student's complaint in November 2009. Up to that point he had received no complaint about the teacher's behaviour with the student or any other students, nor had he ever had any reason to be concerned about the teacher's relationships with female students. Regarding meetings between the teacher and the student alone in classrooms he said there were often times during lunch time or after school when teachers met students on a one-on-one basis for legitimate reasons to discuss work.

Witness 5 stated that had he known about the relationship, he would have acted immediately by raising the matter with the teacher and informing the employer as he had many times in the past on matter of teachers' professional behaviour.

Witness 5 said that the school had developed a staff code of conduct as part of its school charter but could not recall any occasions when staff were specifically in-serviced about teacher – student relationships. He said he thought it self-evident that having inappropriate relationships with students was contrary to teacher professionalism.

Witness 5 said that he thought that the fact that the student had not pursued the matter with the police had, to date, minimized the impact on the school, and that very few in the school community were aware of the matter. He said he had raised the circumstances of the teacher's resignation discreetly with staff, in part because the employer had advised him about confidentiality matters in case of possible criminal proceedings. He had simply reported to staff that the teacher was not at school at the beginning of the school year, and then, later, that he would not be returning.

Witness 6 gave written and verbal evidence by affirmation.

Witness 6 is a Co-ordinator and a teaching coach at the school. She has also taught Science and Biology at the school since 1988. School 1 was her first teaching appointment.

Witness 6 informed the Panel that from 1990-1999 she was in a relationship with the teacher and at one stage they were engaged, though the relationship had not always been 'smooth sailing'.

Witness 6 said she found the whole situation, including that of appearing at the hearing, very difficult because of her past relationship with the teacher but, as she was not making

allegations herself, she felt she had a moral and professional responsibility to attend and answer questions.

Witness 6 said she had met the teacher six months before he started teaching at the school. She knew that he had gone to the USA on a tennis scholarship and had received a teaching degree there. She also knew he had been engaged previously and there was talk of a pregnancy. She knew he had two close friends who were dentists who lived on a large property adjoining what she thought was a state forest in Vermont. In fact she had met them on a later visit.

Witness 6 said she had supported the teacher in dealing with the emotional implications of his adoption. She believed he did not find his adopted status easy and it was complicated by having an adoptee father who had high expectations regarding his sporting prowess and achievements. Witness 6 said she had assisted the teacher in making contact with his biological mother and, in fact, she herself became friends with her.

Witness 6 said that after the relationship breakup she found teaching at the school very difficult but she prided herself on her professionalism which she maintained in her collegial relationship with the teacher, as he did with her. She knew little of the teacher's personal life post the relationship breakup.

Witness 6 said she taught the student in Year 11 Biology and then again in Year 12 Biology when the student had insisted on being in her class because of the good working rapport they had established the previous year. She found her to be a hard working, positive student who wanted to achieve, and was very good at discussion and group leadership.

Witness 6 described the relationship between the teacher and the student, from what she observed, as very 'chummy'. There was a lot of laughing and joking around, and the student took freedoms not taken by other students, such as walking in and out of the Coordinators' office in free periods and sitting on desks and chairs while there. However, she said she never observed any behaviour she considered inappropriate and if she had, would have discussed her concerns with the Welfare staff.

Witness 6 said that the student phoned her early in 2005 to have a coffee. She said there was nothing unusual about this as she kept up social contact with many of her ex-students. She was, however, surprised by the tenor of the conversation beginning with the student's account of the 'mates' friendship she had struck up with the teacher on the excursion, which sounded more like two adults looking after one another rather than a teacher and a student.

Witness 6 said she became uncomfortable when the student started asking questions of a more personal nature about her relationship with the teacher, referring to the teacher as 'Colin' or by a nickname which she could not recall. She was surprised about how much the student seemed to know about the teacher. Witness 6 said that, apart from bumping into the student in a cafe where she was working, she had had no further contact with her after that first meeting.

Witness 6 said that, early in 2010, the staff had been informed that the teacher had left because he was not coping with the workload and then later, that he had resigned. However rumour and speculation circulated in the school and local community about him having had an affair with a student. She said when questioned by students and ex-students she has always remained discreet and replied to the effect that ‘gossip gets around.’

Witness 6 said she believed the relationship between the teacher and the student was wrong on so many levels. People in positions of authority over young people need to be careful about how they exercise that authority. Parents have a right to feel their children are safe at school.

When questioned by the Panel about the student’s vulnerability she said she found it difficult to make a judgment. The student had always impressed her as a ‘strong girl’ but ‘people can put on a persona.’ When asked about the teacher she thought him ‘selfish...self-orientated... a sportsman, everything was about him.’

Witness 7 gave written and verbal evidence by affirmation

Witness 7 is the Chief Executive Officer of a religious organisation. She is a close friend of the student’s family, particularly witness 3, and the student’s unofficial ‘godmother’ having known her all her life.

Witness 7 was also a sessional member on the Institute’s disciplinary panels for a number of years, although she has not worked with any members of the present Panel. Witness 7 said she did not believe there was a conflict of interest between her previous role as a panel member and her personal involvement in the matter before this Panel. She said she was capable of distinguishing between the responsibilities of her professional training and the experiences of her personal involvement. In fact, she added, if anything her involvement in this particular matter had enhanced and deepened what had previously been a theoretical understanding of such matters.

Witness 7 said that, when they were walking dogs in February 2009, the student revealed to her that she had had a long term relationship with a sports teacher at her school but she did not reveal his name. Witness 7 said that disclosure shocked and devastated her. She said she proceeded to have what she called a ‘staged conversation’ in which she asked the student a number of questions such as ‘for how long?’ and ‘how often?’ allowing the student to reveal as much information as she wished. Witness 7 said that, in this and subsequent conversations, she made clear she was not making judgments but simply wanted the student to talk about her feelings, how she was coping, and what she wanted to do next.

Witness 7 said she had been aware of the student’s pregnancy and termination and connected them to this relationship, which the student confirmed. She said she had assumed the student had not told her parents about either the relationship or the pregnancy/termination and was, in a sense, seeking her help about what she might do next. Witness 7 said she had felt desperately sad about the student undergoing the pregnancy/termination alone.

Witness 7 said that, in the course of the conversations, the student told her that the teacher would come to her mother's house and that mobile phone calls and SMS text messages were an integral part of the communication between them, including at one stage the student accessing her mother's mobile. Witness 7 said she remembered expressing surprise at how open the communication seemed to be.

Witness 7 said she also questioned the student as to who else she had told about the relationship, and she had indicated witness 1 and several other students.

Witness 7 said she then encouraged the student to tell her parents so they could work towards notifying the appropriate authorities. Witness 7 also said that, as a former teacher and sessional member of the Institute, and in the work she has done on matters of sexual assault and family violence, she was aware of the complexity of the issue but was concerned about the teacher's duty of care and the risk he might pose to other students.

Witness 7 said that she had no doubt that the relationship had been a 'categorically negative experience' for the student, one in which a young person's innocence was taken away in her formative years, and involving issues that the student would have to work through for the rest of her life. She believed the student, fortunately, to be a strong woman who had protective factors and people supporting her in dealing with the matter.

DISCUSSION OF THE EVIDENCE

The teacher declined to attend the hearing. The Panel noted the lengthy communication between the Institute and the teacher, dating from the advice that the Institute had referred the matter to investigation (10/12/10) to the letter, received from the teacher's lawyers, Schembri and Co (13/2/13). The Panel believes that every attempt has been made by the Institute to ensure that the teacher received natural justice and procedural fairness.

The Panel also noted that in the letter from Schembri and Co (13/2/13) the following statement was made: 'We are instructed to advise that our client (the teacher) does not admit to the allegations made against him and does not intend to provide any further response in relation to those allegations. We ask that the Victorian Institute of Teaching not be critical, nor draw any adverse inference on the basis of our client's decision not to exercise his rights to comment on the allegations made.'

The Panel recognized the teacher's right to silence and to exercise his privilege against self-incrimination.

The letter also informed the Institute that the teacher has made a decision not to teach again.

The Panel also concurred with witness 7's opinion that her professional experience as a former sessional panel member and her personal involvement in the hearing before the Panel did not involve a conflict of interest. Indeed, the Panel agreed with witness 7's

assessment that to be personally involved in a matter such as this can only deepen and enhance whatever theoretical knowledge one might have previously had.

Furthermore, the Panel believes that witness 7 is to be commended for two reasons. One, for the care and sensitivity with which she assisted and supported the student in bringing her past into the light where it might be examined and possibly exorcised. Two, for the professional expertise she demonstrated in guiding her to a possible pathway, other than criminal procedures, to pursue the matter in order to ensure a wrong might be, if not fully righted, then not repeated.

As there were no direct witnesses to the majority of events cited in the Allegations the Panel believed that the student's credibility and the reliability of her evidence were the crucial elements in its deliberations and determinations. The Panel found the student to be very credible in the way she recalled, in specific and copious detail, the events, locations, conversations and revelations that characterised the relationship. She offered a clear and cogent account of its beginnings, its secretive and furtive development and continuation, and its messy and very painful ending which involved a pregnancy and termination. She was forthright about the deceit and duplicity involved on her part with her parents, especially her mother, and the ways in which she implicated her friends in that deceit, either directly (witness 1) or by confiding her secret to them and expecting their approval (witness 1 and witness 2). She identified a sample of Telstra records involving communications between herself and the teacher which were, in Counsel Assisting's words, 'strong, ongoing and intensive.' They revealed a pattern of contact that occurred sometimes seven days a week, at all hours of the day and night, and during both school terms and term breaks.

The other piece of tangible evidence the student identified was the contraceptive pill package the teacher purchased for her post-termination, described by her father as 'a pretty tawdry relic of a relationship.' It was certainly a catalyst for the student to remember, with startling vividness, the minutiae of the day of her termination: her mother dropping her off at university early, the visit to the planning clinic alone, her trip home in a taxi, her annoyance with the teacher for attending a sports carnival rather than accompanying her to the clinic, his unquestioning assumption that he was the father and paying the \$200 for the medical procedure, his furtive solicitude post the termination replete with gifts of ice cream and a magazine, his trip to the chemist to fill the contraception prescription, the prescription itself, etc.

Also, the Panel notes her evidence has not been contradicted.

Although now feeling 'ashamed and humiliated', the student said she was determined not to present herself as a victim and this came through strongly in the authoritative, even objective, manner in which she gave her evidence. She was however, with hindsight, able to see that the teacher had exploited the emotional vulnerability she was experiencing because of her parents' divorce. She was also able to articulate the power imbalance in the relationship. It was not simply because the teacher abused his position of authority as a teacher, but because of the enormous psychological and emotional pressure he put on her to sexually consummate the relationship and to continue it through deceit and secretiveness.

The Panel believed evidence provided by the student's parents, which described their responses to her disclosure of the relationship in 2009, corroborated the existence of an inappropriate relationship. Witness 4 admitted that when the student first told him of the relationship he was inclined not to believe her. What convinced him was the fact that she told him she had met the teacher on several occasions, and the sheer amount of intimate details she revealed about the relationship, as well as her feelings about it, in subsequent conversations.

Witness 3's response to the disclosure was one of shock and anger towards her daughter because she realized she had been deceived by her, and that the relationship she had denied in September 2003 not only existed but had lasted for two and half years. At that time, when she had discovered the personal text messages from the student to the teacher on her mobile phone witness 3 had believed the student's protestations that nothing inappropriate had occurred and that the relationship, characterized by her as a 'silly teenage infatuation', was now over.

The Panel also found the student's school friends, witness 1 and witness 2, to be very credible witnesses who offered complementary perspectives on the ways they experienced the relationship. Their evidence was largely consistent with the student's, further adding to their credibility. Both were open about the mix of emotions that the relationship elicited in them at the time, from an initial vicarious excitement through to distress and disapproval. They were candid about the way they saw the student responding, happy one moment, stressed the next.

Knowledge of the relationship, and the expectation that she provide an alibi for it, was clearly traumatic for witness 1. She said she became so distressed that she felt she had to tell her mother. Then she became so hysterical, because she feared the student would end their friendship if she knew she had told her mother, that her mother took no action.

Witness 2's direct knowledge of the relationship came in the form of having been shown by the student, in the early stages of the relationship, some text messages sent by the teacher. Even then witness 2 took them as evidence that the teacher was grooming The student, whom she considered 'a bit of a fragile soul'. He was able to prey upon the student, she thought, because of the emotional vulnerability she was showing because of her parents' divorce. Witness 2 was very clear about seeing the messages and what was wrong about them: teachers should not be sending personal messages to students.

The Panel noted there were some anomalies in the student's friends' accounts of the relationship. For example, witness 1 thought it became physical with a kiss in the school gymnasium storeroom whereas witness 2 thought it began with a kiss in the kitchen of the student's mother's house. The Panel did not believe such anomalies questioned the reliability of the witnesses' evidence as the student attested that both kisses occurred. The Panel accepted the anomalies as evidence of the fact that the witnesses were trying to recall events of some six – seven years earlier. Also, while both friends were taken into the student's confidence, it was apparent to the Panel that she was selective about what particular information about the relationship she revealed and to whom. No one confidante was ever given the full picture.

Witness 6 also provided corroborating evidence regarding the extent of the knowledge the student possessed about the teacher's personal life, especially his adoption and the facts surrounding that, his time in the USA and the lifestyle of his American friends. She found it disconcerting that these were intimate facts about The teacher she herself knew because of their nearly ten year relationship, and here was a young ex-student, barely out of school, revealing that she was aware of them as well. When the student tried to engage her in conversations about her past relationship with the teacher, that discomfort increased.

The Panel found witness 6 to be an impressive witness who offered her evidence with the discretion and tact that she said had characterized the manner with which she had dealt with the speculations and rumours circulating in the school community after she teacher's abrupt departure. She made it clear that she found giving evidence about a person to whom she had once been personally and professionally close very difficult but felt it was her moral and professional responsibility to do so. She acknowledged that she was conscious of the fact that, in whatever contexts she had to deal with the matter, she did not want to be seen to be out to 'get' the teacher, even when the subsequent revelations made her feel sick. Nevertheless, when questioned as to what she thought of the teacher she spontaneously offered a succinct and devastating character assessment: 'selfish...self orientated'.

The Panel questioned the student, her friends, her parents and witness 7 as to what they thought the long term effects of the relationship might be on the student. The student said she did not know. All the others, even those who thought the student was 'pretty tough' and had good coping mechanisms and support, thought it would have long term damaging emotional and psychological consequences. Witness 7 described the relationship as a 'categorically negative experience', the consequences of which the student would have to work through for the rest of her life. Witness 1 thought it had implications for the student forming adult relationships because it had distorted her view of reality. Witness 3 concurred with that view, believing the student was very tentative about forming and maintaining relationships. Witness 2 said the student often 'did not feel good about herself.' Witness 4 believed that the relationship had stunted her emotional development and she was now dealing with emotional issues as a 17 year old girl might, rather than as a mature young adult. And, perhaps most ominously, he worried about her mental health and hoped she would not be prompted to do anything rash.

Both witness 6 and witness 5 offered strong professional opinions on the abuse of professionalism implicit in the Allegations. Witness 5 thought the inviolability of the pupil – teacher relationship was intrinsic to the concept of teacher professionalism. Witness 6 concurred, and went further in describing the Allegations as examples of the abuse of the authority teachers naturally exercise over young people, as well as an abuse of the trust parents have the right to expect when they place their children in teachers' care.

The Panel questioned how such a relationship could have been maintained for so long without being detected by teachers or the school administration. Especially when, according to the student witnesses there was, as one Panel member expressed it, 'an expanding grapevine of knowledge' about it amongst the senior student population.

Witness 4 said he was not critical of the school and saw no evidence of negligence on its part. Witness 5 made it clear that no one spoke to him of any suspicions about the teacher and his relationships with any students and, if they had, he would have acted instantly. Witness 6 described the relationship between the teacher and the student as ‘chummy’ but saw nothing in their behaviour that alerted her to the fact that they might be in a clandestine relationship. She too, made clear that, if she had, she would have discussed her concerns with Welfare staff.

In the light of these responses, the Panel felt that there is probably a salutary tale in this whole sorry matter for all schools. The majority of the profession assume, like witness 5 and witness 6, that the inviolability of the student – teacher relationship is something that should be second nature to teachers. For the overwhelming majority it is, but a case such as this one makes clear that there are exceptions. Perhaps all school communities would benefit from some foregrounding, through explicit professional development, of the values embedded in the Victorian Teaching Profession Code of Ethics, and the principles articulated in the Victorian Teaching Profession Code of Conduct.

FINDINGS

The Panel found all four Allegations proved based on the student’s evidence. Although there were no other direct witnesses supporting the facts in Allegations 1, 3 and 4 there was a matrix of strong corroborating evidence provided for Allegations 1, 3 and 4 by the student’s school friends, her parents and witness 7.

The Telstra records produced by the Institute counsel underpinned the facts in Allegation 1 (iv) and (v).

Witness 2 saw SMS messages from the teacher to the student which, though not explicit, were of a personal nature. She made the essential point: teachers should not be sending personal messages to students. (Allegation 1(v))

Witness 1 had direct experience of the party which forms the basis of Allegation 2.

Witness 6 provided evidence, which in the Panel’s view, confirmed the level of intimate knowledge the student had of the teacher’s personal history referred to in Allegation 1 (vi).

In reaching its conclusion the Panel relied on the balance of probabilities ruling instanced in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The Panel recognized there were a number of minor anomalies in the supporting evidence provided by the student’s school friends and her father (did the relationship become physical in the student’s kitchen or in the school gymnasium storeroom? Did the teacher wear condoms? Did the student believe he would leave his wife for her?) The Panel believed that such anomalies could well have been the product of credible witnesses trying to recall events and conversations of a relationship conducted in a hothouse atmosphere of excitement, secretiveness and selective confidentiality between ‘teenage girls’ that occurred six – seven years previously. Nevertheless, at the centre of the evidence was the student’s very cogent, consistent and

detailed recall of events, intimate conversations and locations intrinsic to the conduct of the relationship.

The Panel did not believe that Allegation 2 involved serious misconduct and, in fact, questioned as to why it was included as an allegation. From the evidence available the students were employed to serve at the party; they were not invited to socialize with other guests, some of whom were presumably teachers at their school. While some might question the wisdom of having under – aged students present at a private function, for whatever purpose, where alcohol is consumed there was nothing to suggest that anything untoward occurred. Again, while the teacher may have had ulterior motives in ensuring the student’s presence at the party, there is no evidence that anything inappropriate occurred between them.

The Panel recognized there was an ambivalence in Allegation 4 relating to the student’s status as a student. The Allegation refers to her as ‘former student’, and even though it raises the possibility that the pregnancy may have occurred in late 2004 when she was, one assumes, still technically a student of the school, the student’s own evidence about the termination occurring at eight weeks in March would suggest that she was no longer a student at the time of the pregnancy. Having said that, the Panel considered the facts recorded in the Allegation as strong supporting evidence of the existence and continuation of a deeply inappropriate relationship which began when the student was a student. The teacher’s solicitude, secretive and inadequate as it was, certainly suggested that he thought himself to be the father and that the relationship, for its brief continuation post the termination, continued to be a covert one.

The Panel believed that Allegations 1 and 3, taken individually and together, demonstrated serious misconduct on the teacher’s part and his unfitness to teach. They describe a relationship that was professionally inappropriate and morally wrong. It violated, in the most extreme way, ‘Principle 1.5: Teachers are always in a professional relationship with the students in their school, whether at school or not’, as stated in the Victorian Teaching Profession Code of Conduct.

The teacher’s behaviour involved the abuse of the professional integrity, respect and responsibility teachers ought to exercise with young people in their care. These are qualities which are enunciated in the Victorian Teaching Profession Code of Ethics. It involved elements of predatory grooming in which a young person’s emotional vulnerability, because of her parents’ divorce, was subtly and relentlessly exploited. It placed enormous psychological and emotional pressure on the student to live a life that was secretive and duplicitous. It has had, according to her parents and friends (including witness 7), long term deleterious emotional and psychological consequences for the student.

The teacher’s behaviour has also had enormous emotional collateral damage. It caused immense distress and anguish to the student’s closest school friends who were obliged to carry the ‘secret’ of the relationship. It abused the trust of the student’s parents, particularly her mother, whose distress and expressed remorse at having let her daughter down ‘terribly’ was palpably evident to the Panel. It mocked a school community by being conducted furtively and clandestinely, under its very nose as it were, for such a

long period of time. It betrayed the public trust invested in teachers by the wider community to do the right thing by its children.

In so doing the teacher's behaviour abused the professionalism expected of teachers and ran a serious risk of bringing the profession into disrepute. As both witness 6 and witness 5 made clear, to recognize the essential wrongness of such behaviour is intrinsic to the nature of teacher professionalism.

In finding that the teacher is unfit to teach the Panel drew on the ruling in *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 (169 – (170) and the factors it enumerated regarding conduct which demonstrated lack of fitness to teach: the 'continuing and persistent nature' of the conduct; an approach to teaching and children in a teacher's care which is 'profoundly and irretrievably flawed'; the effect of the teacher's behaviour on the school community and the standing of the profession; the lack of evidence of any insight, candour, or corrective action on the part of the teacher.'

The Panel recognized that the teacher's decision not to attend the hearing made it impossible for the Panel to test criteria and examine evidence related to his insight, candour, remorse or possible corrective action. Having said that, it found the evidence of his behaviour being of a 'continuing and persistent nature' and his approach to teaching being 'profoundly and irretrievably flawed', overwhelming.

The Panel also makes clear that its findings are not intended to be punitive. Their primary purpose is to protect the public interest. It is something that the student and those who advised her to take the course of action she did, particularly her parents and witness 7, understood well. It was undertaken to ensure that the teacher was not able to do to other young students what he did to her.

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 5 March 2013 the Panel found the teacher guilty of serious misconduct and unfit to teach.

DETERMINATION

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

A handwritten signature in black ink, appearing to read 'Terry Hayes', written in a cursive style.

TERRY HAYES, CHAIRPERSON

A handwritten signature in cursive script, appearing to read "Paul Wilhelm".

per:
PAUL WILHELM, REGISTERED TEACHER

A handwritten signature in cursive script, appearing to read "Sophie Panagiotidis".

per:
SOPHIE PANAGIOTIDIS, PANEL MEMBER