

VICTORIAN INSTITUTE OF TEACHING
DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 157087 **Hearing Number** 4412 & 10097

REGISTERED TEACHER: Michael MCINTYRE

PANEL MEMBERS: Julia Wake, Chairperson
Kerry-Anne Hoad, Registered Teacher
Brendan Murray, Panel Member

ATTENDANCE: Mr McIntyre attended the Formal Hearing and was self-represented.

Mr Nicholas Petrie (BARRISTER), Counsel Assisting with Ms Natalie Ozer (VIT SOLICITOR), Instructing Solicitor on behalf of the Victorian Institute of Teaching.

DATE OF HEARING: 18 & 21 March 2022

DATE OF DECISION: 01 April 2022

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

On 01 April 2022 the Panel decided to cancel the registration of the teacher from 01 April 2022 and disqualify the teacher from applying for registration under Divisions 3, 3A and 4 of Part 2.6 of the *Education and Training Reform Act 2006 (Vic)* (**Act**) for a period of 2 years from this date.

REASONS

BACKGROUND

The teacher was first registered as a teacher with the Institute (with number 157087) on 31 December 2002. The teacher began working at the school in or around July 2016.

On 11 May 2018, the teacher was interviewed by the school after it was alleged that he sent flowers and a card to the school for student 5 in acknowledgment of their 18th birthday. During the school's investigation of the incident, emails of concern between the teacher and three students were obtained.

On 14 May 2018, following the incident and investigation, the school suspended the teacher from duty and directed the teacher to cease contacting students, pending the outcome of the school's investigation. The school made notifications to the Commission for Children and Young People (CCYP) and the Victoria Police.

On 16 May 2018, the Institute received a notification from the CCYP that the teacher was the subject of a reportable allegation of sexual misconduct committed against a child. A Notice of Interim Suspension dated 15 June 2018 was sent to the teacher informing him of the Institute's decision to suspend his teachers' registration.

On 19 June 2018 the Institute notified the teacher of its decision to inquire into the allegations against him, as to whether they amount to misconduct, serious misconduct and/or breach of the Victorian Teaching Profession Code of Conduct (the Code). The teacher was offered the chance to meet with the Institute or provide a written response to the allegations at this stage, and it was noted that if this option was not taken up within 21 days, the matter would proceed to a formal investigation.

On 11 July 2018 the teacher resigned his employment as a teacher at the school. On 8 November 2018 the Institute wrote to the teacher's solicitor, providing an update on the Institute's investigation, details of the allegations against him and requesting to speak with the teacher on 29 November 2018 (but noting he was not obliged to do so).

On 22 November 2018 the teacher's legal representative responded to the Institute and advised the Institute that the teacher would be declining the Institute's request to participate in a record of interview and instead would be responding to the allegations in writing. In a letter dated 23 January 2019, the teacher responded to the Institute, via his legal representative.

On 9 September 2020, the teacher provided the Institute with a written document which was sent to the Institute from his email account.

On 16 September 2020, the Institute's Professional Conduct Committee (the Committee) determined to refer this matter to a Formal Hearing. The teacher was informed of this via letter dated 18 September 2020.

On or about 21 June 2021, the teacher provided the Institute with a written document dated 15 June 2021 which was sent to the Institute from his email account.

The Institute determined pursuant to sub-section 2.6.34(2) of the Act, to conduct a formal hearing and constitute a panel pursuant to section 2.6.43. A Notice of the formal hearing was given in accordance with s 2.6.44 on 17 February 2022, along with a Hearing Book for the formal hearing. A slightly amended Hearing Book was given behind cover of a further notice of formal hearing on 21 February 2022.

THE ALLEGATIONS

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

Allegation 1: Inappropriate gift giving

While registered as a teacher and employed at the school you failed to maintain a professional relationship with certain students of the school (contrary to Principle 1.5 of the Code) and/or failed to maintain objectivity in your relationship with certain students of the school (contrary to Principle 1.4 of the Code), by giving or sending gifts which could be reasonably perceived as showing bias or favouritism (on the respective dates) to:

- a. Student 1 (in or about November 2016 and November 2017);
- b. Student 2 (between January 2017 and June 2018);
- c. Student 3 (on or around 29 March 2017);
- d. Student 4 (in or about April 2018);
- e. Student 5 (in or about May 2018); and
- f. Student 6 (in or about 2017).

Additionally, it is alleged that you sent student 2 a letter in October 2018 after you had been suspended by the Institute and had resigned from the school.

Allegation 2: Inappropriate email contact

While registered as a teacher and employed at the school you failed to maintain a professional relationship with certain students of the school (contrary to Principle 1.5 of the Code) and/or failed to maintain objectivity in your relationship with certain students of the school (contrary to Principle 1.4 of the Code) by sending emails, which failed to keep your personal agenda separate from the students' learning environment and/or engaged in communications with a learner beyond the boundaries of a professional relationship without a valid reason, to:

- a. Student 2;
- b. Student 3; and
- c. Student 7.

Allegation 3: Inappropriate physical contact

While registered as a teacher and employed at the school you failed to maintain a professional relationship with one or more of the following students of the school (contrary to Principle 1.5 of the Code) by touching them without a valid reason (on the respective dates):

- a. Student 1 (in or about November 2017); and
- b. Student 2 (on or about 20 April 2018).

Allegation 4: Inappropriate discussions or actions about drug and/or alcohol use

While registered as a teacher and employed at the school you failed to maintain a professional relationship with one or more of the following students of the school (contrary to Principle 1.5 of the Code) by engaging in communications or actions relating to drug and/or alcohol use which were beyond the boundaries of a professional relationship and for which you had no valid reason:

- a. Student 7;
- b. Student 1; and
- c. Student 2.

Allegation 5: Inappropriate counselling services

While registered as a teacher and employed at the school you failed to work within the limits of your professional expertise with respect to one or more of the following students of the school (contrary to Principle 1.3 of the Code) by offering, or suggesting that you were offering counselling services; and/or failing to refer to students to the school's counselling services:

- a. Student 2; and
- b. Student 1.

Allegation 6: Drawing students into the teacher's personal life and agenda

While registered as a teacher and employed at the school you drew one or more students of the school into your personal life and/or personal agenda (contrary to Principle 1.4 of the Code) through inappropriate discussions or communications, including:

- a. Student 2;
- b. Student 3; and
- c. Student 1.

Allegation 7: Pattern of behaviour

Your conduct referred to in allegations 1-6, constitutes a pattern of behaviour, which means you are not fit to teach.

In addition, you have demonstrated you have not understood the gravity of your behaviour or actions referred to in allegations 1-6.

THE EVIDENCE

The teacher presented to the Formal Hearing Panel (the Panel) on 18 and 21 March 2022, held in a virtual hearing room hosted by the Institute. He was self-represented. The Institute of Teaching was represented by Mr Nicholas Petrie (BARRISTER), Counsel Assisting with Ms Natalie Ozer (VIT SOLICITOR), Instructing Solicitor on behalf of the Victorian Institute of Teaching.

The Panel was provided with sworn affidavits, and their attendant exhibits, of the students and the Investigator for the Institute, Mr Sean Irvin, as well as correspondence between the Institute and the teacher.

The Chairperson of the Panel outlined a process for the hearing, such that the Panel would hear from Counsel for the VIT, followed by the teacher, then the questioning of the witnesses called by

the teacher. The Panel would have the opportunity to ask the teacher any questions of clarification prior to closing submissions.

All witnesses provided evidence under oath. The teacher was directed to ask questions in accordance with rules found in s41 of the *Evidence Act 2008 (Vic)*. The teacher provided his opening submission as a written statement at the end of Day 1 of the hearing.

Summary of evidence:

- Evidence of gift giving of make-up, flowers, birthday card, foodstuffs, jewellery and a can of beer to particular students between 2017 and 2018. This evidence was acknowledged and accepted by the teacher during the hearing.
- Evidence of email communication between the teacher and student 2 from 2017 to 2018 of a personal nature and were sent from both the teacher's school and personal email addresses.
- Evidence of email communication between the teacher and student 3 in 2017 that was of a personal nature sent from the teacher's school email address.
- In both his written submissions and his testimony to the Panel, the teacher acknowledged that his email communications did include communication to students that were inappropriate and breached professional standards. He acknowledged that he was expected to maintain professional boundaries and accepted full responsibility for transgressing these boundaries.
- Evidence was submitted that the teacher hugged student 1 on the school premises more than once.
- Evidence was submitted that the teacher hugged student 2 and kissed her on the cheek on the school premises.
- The teacher accepted the evidence relating to the physical contact with student 1 and student 2 as being correct.
- During the hearing the teacher admitted to the evidence that he had verbal conversations with students about drugs and alcohol in the context of an upcoming debutante ball.
- Evidence of email communication between the teacher and student 7 from 2018 referencing the teacher providing marijuana to student 7.
- In testimony to the Panel, the teacher referred to the offer to provide 1kg of 'pure weed' to student 7, in return for having him reinstated, the gift-giving of the can of beer to student 2 (a minor at the time), the 'Mac in Black Enterprises' Loyalty Card and the way he signs off on his emails ('macinblack...'), and Mac in Black Counselling services, as his sense of humour. He submitted to the Panel that they were all jokes.
- In his testimony to the Panel, the teacher acknowledged discussing matters of a personal nature with student 2 and student 1 over a period of time. He acknowledged that he was not qualified as a counsellor and that he was fully aware of the availability of school counselling services but did not refer students to these services.
- Evidence of email communication from the teacher to student 2 which discussed personal details of another student.
- In her testimony to the Panel, student 7 acknowledged that at the time of her email interactions with the teacher she considered his comments as reflecting his sense of humour, and that it wasn't until after his suspension that she began to view them in another light. Student 7 confirmed that she and student 2 would drop-in and 'chill' (relax) with the teacher and that other teachers didn't do this, '*none tried to form relationships with us*'.
- Evidence was submitted that, whilst under suspension from the school, and under instructions not to communicate with students, the teacher had communications with student 7 and student 2. This evidence was accepted by the teacher as correct.

- In questioning student 2, student 7 and student 1, the teacher stated that he wanted to demonstrate to the Panel what he believed to be inconsistencies in their affidavits, compared to the email communications. The questioning challenged the student's recollections of the chronology of events referred to in communications and affidavits.

In addition to the evidence and affidavits presented in the Hearing Book, and the opening submission of the teacher, Counsel for the VIT, drew the Panel's attention to evidence which the Institute considered to amount to a lack of fitness to teach in the applicant's outline of submissions.

The VIT Barrister submitted that the teacher's conduct contravened Principles 1.3, 1.4 and 1.5 of the 'The Victorian Teaching Profession Code of Conduct and The Victorian Teaching Profession Code of Ethics' ('the 2008 Code of Conduct and Code of Ethics' respectively) in 2008.

The VIT Barrister also submitted that the conduct of the teacher departed to a substantial degree from that which a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher in the following ways:

- While registered as a teacher and employed at the school the teacher failed to maintain a professional relationship with certain students of the school (contrary to Principle 1.5 of the Code) and/or failed to maintain objectivity in his relationship with certain students of the school (contrary to Principle 1.4 of the Code), by giving or sending certain gifts. In addition to this gift giving being inappropriate, it tended to show the teacher acted with preference, bias or favouritism toward certain students contrary to his requirement to maintain objectivity (Principle 1.4 of the Code).
- While registered as a teacher and employed at the school the teacher failed to maintain a professional relationship with certain students of the School (contrary to Principle 1.5 of the Code) and/or failed to maintain objectivity in his relationship with certain students of the school (contrary to Principle 1.4 of the Code) by sending emails, which failed to keep his personal agenda separate from the students' learning environment and/or engaged in communications with a learner beyond the boundaries of a professional relationship without a valid reason.
- While registered as a teacher and employed at the school the teacher failed to maintain a professional relationship with one or more students of the school (contrary to Principle 1.5 of the Code) by touching them without a valid reason.
- While registered as a teacher and employed at the school the teacher failed to maintain a professional relationship with one or more students of the school (contrary to Principle 1.5 of the Code) by engaging in communications or actions relating to drug and/or alcohol use which were beyond the boundaries of a professional relationship and for which the teacher had no valid reason.
- While registered as a teacher and employed at the school the teacher failed to work within the limits of his professional expertise with respect to one or more students of the school (contrary to Principle 1.3 of the Code) by offering, or suggesting that he was offering counselling services; and/or failing to refer to students to the school's counselling services.
- The teacher's conduct referred to in allegations 1-6, constitutes a pattern of behaviour, which means the teacher is not fit to teach. This is because:

a. The conduct related to a number of students.

b. There were various different types of inappropriate conduct (emails, gift giving, physical

touching, discussion of alcohol and drugs, counselling services etc).

c. The conduct happened over an extended period of time.

d. the teacher has admitted the conduct aligns with the teaching style he has always engaged with.

In addition, the teacher has demonstrated he has not understood the gravity of his behaviour or actions referred to in allegations 1-6.

The teacher has also expressed a lack of insight into how his behaviour was a breach of the Code.

Finally, the various actions and admissions above (along with many others) suggest the teacher has not understood the power imbalance between his students and him as a teacher, nor the fact that it was he who was responsible for maintaining professionalism and setting appropriate boundaries.

After hearing the submission from Counsel for the VIT, the teacher made his opening submission, the substance of which is as follows:

- The teacher has been suspended since 14 June 2018, three years and nine months. “... I ask the Institute to consider the mental anguish that has been suffered as a result of the tardiness of bringing this matter to a conclusion when making their decision.”
- The teacher voluntarily sought counselling to examine the nature of his behaviour in relation to the Code of Conduct, “... but after 14 sessions, the latter half dealing with my own mental health, I stopped the sessions because there had been no response to my proposals to resolve the matter and the costs were adding up.”
- The teacher challenged procedural fairness of the Institute’s processes.
- The teacher questioned how the affidavits were obtained by the investigator and what questions were put to the witnesses. He challenged some of the assertions made by the witnesses.
- In relation to the allegations of inappropriate email communication:
 - a. “I will save the panel's time by declaring I accept without question that my email correspondence with some students was too personal at times. In the case of student 2, what began as a response to a cry for help, I allowed to develop into a relationship that went beyond an acceptable teacher-student relationship as set out in the Code of Conduct. It was my responsibility to maintain professional boundaries and I failed to do so.”
 - b. “I am fully responsible for the email exchanges and the personal relationship that developed. I told the student on numerous occasions that she bore no responsibility for the situation that I find myself in.”
 - c. “It was never my intention to cause any emotional distress to the student, as is evident in the number of emails offering emotional support and I deeply regret if I have done so. It was my intention to attend this formal hearing to accept total responsibility for my conduct and cop whatever sanction the Institute determined, And I do today in relation to the email conversations of a personal nature between myself and any student.”
 - d. “Throughout the past 3 years and 9 months, however, I have been steadfast in my belief that no student was ever at risk from my behaviour.”

- The teacher challenged the allegations regarding inappropriate gift giving, inappropriate touching, inappropriate discussions or actions about drugs or alcohol and masquerading as a counselor. He provided a context for each of the allegations:
 - a. He gave gifts to all his Year 12 students in Accounting and his Tutor, it didn't amount to favouritism. He did add students to his list whom he had more personal dealings with. He gave gifts to students who had shown him kindness.
 - b. His sense of humour could be taken out of context by outsiders, his students accepted his sense of humour which included his email sign-offs and references in cards.
 - c. He acknowledged that the card sent to student 2 was an 'ill-thought out decision', but the content was not inappropriate.
 - d. As a Business teacher, fictitious company names are used all the time. He has been using Mac in Black Services (and derivatives thereof) for 10 years and it is 'tongue in cheek'.
 - e. His communication with a parent indicated that they were aware of his care for students and the use of 'Mac in Black Services'.
 - f. He was aware of student counselling services and would refer students to them if required. If students chose to talk with him, he wouldn't turn them away. He shared a text from the parent of student 1 and used it to explain the positive relationship he had with her and her daughter - she was also a teacher at the school.
 - g. Student 2 chose to talk with him, however he did ask if she spoke to others. Knowing student 2, he didn't refer her to other counselling services.
 - h. References to the '1kg of weed' were in the context of a comical discussion at school. The teacher stated he does not condone the taking of any drugs.
 - i. Acknowledged that the conversation about alcohol at upcoming parties was about protecting kids. He should have emptied the can of Bintang he gave student 2 before giving it to her and it had a message 'For Santa' on it, it was not intended for her to drink.
 - j. The teacher agreed that kissing student 2 on the cheek was inappropriate touching and couldn't explain why he did that. He argued that he gave student 1 a hug in the context of consoling her when she received a message that a family member had died and had touched her on her back. Student 1 didn't express any discomfort to him with these actions.
- The teacher concluded his opening submission by stating that he could have handed in his license years ago, but he was here to take responsibility for his actions.

The teacher agreed to respond directly to questions from the Panel under oath:

The Panel asked the teacher what his understanding of perception was - how others could perceive his gift-giving to students?

The substance of his response was:

He started giving gifts in 2017, and continued in 2018. He gave flowers for birthdays, and gave out muffins, chocolates and a rose to each student at the end of the year. No-one raised a concern with me about this - no staff stopped him from the practice, he thought it was ok.

The Panel asked the teacher what he understood to be the purpose of professional boundaries in the profession?

The substance of his response was:

The purpose is to define the relationship between student and teacher. Guide what a transgression is, what the line in the sand is before a transgression leads to something else. There has to be a line somewhere to protect students and staff.

DISCUSSION OF THE EVIDENCE

The Panel notes that there is substantial verification of the facts between the email communications as presented in the Hearing book, the questioning of the witnesses and of the teacher and the detail of the teacher's submissions and the Panel considers that allegations 1 - 4, 6 & 7 are substantiated.

The remaining substantive questions for the Panel are to determine whether those allegations amount to misconduct or serious misconduct, whether the teacher is fit to teach, and which, if any, appropriate sanctions should be imposed.

The Panel considers that the teacher knowingly entered into a personal relationship with student 2 between 2017 and 2018 as evidenced by inappropriate gift-giving, email communication, physical contact and personal interactions. The panel considers that the teacher knowingly entered into a personal relationship with student 1 between 2016 and 2018 as evidenced by inappropriate gift-giving, physical contact and personal interactions. The panel considers that the gift-giving of flowers and cards with personal notes to three additional students over 2017 and 2018 by the teacher was in breach of professional expectations and the email exchanges with two other students were personal in nature and discussed inappropriate topics between teacher and student.

It is the opinion of the Panel that these occurrences are a serious violation of the boundaries of a professional relationship with a learner and a significant departure from the expectations of the profession and the public in regards to a teacher - student relationship.

The Panel concludes that the multiple breaches, over a 2-3 year period, of professional expectations with multiple students constitutes a pattern of behaviour which means the teacher is not fit to teach.

In his opening submission to the Panel of 18 March 2022, the teacher accepted unreservedly responsibility for Allegation 2, however he provided context for Allegations 1 & 3 - 6. The teacher, in his written submission and under oath, explained that he treated students with care, that he had a sense of humour and students were never at risk with him. By his own admission he verified his conduct in relation to allegations 1, 3, 4 and 6 and it is the opinion of the Panel that this conduct was a significant departure from the expectations outlined in Principles 1.4 and 1.5 of the Code of Conduct. The Panel accepts that the context of 'Mac in Black Services' Loyalty Card and references to derivatives of this fake business, such as 'Mac in Black Counselling Services' reflects the teacher's sense of humour and were not intended to assume a responsibility for counselling students. The Panel is satisfied that the teacher was aware of the student counselling services at the school, however demonstrated a lack of judgement in not specifically referring student 2 and student 1 to seek professional support.

It is the opinion of the Panel that the teacher failed to maintain objectivity in his relationships with learners by behaving as a friend and adopting a 'parental' manner towards students and failed to maintain a professional relationship with learners. The Panel concluded that the email communication from both his school and personal email addresses, including emails late at night and over school holidays, were personal in nature and drew students into his personal agenda.

Evidence from students indicated a perception of favouritism for student 2 and student 1, which caused them both discomfort. The teacher was aware of the inappropriateness of his email communication prior to suspension with an email sign-off to student 2 on 27 April 2018 as *'Mr MacIloveyousomuchitmaycostmemyjob,'* and also afterwards when he communicated with student 7 on 28 May 2018, *'btw, don't tell anyone you and I have been 'chatting', other than your partner in crime, of course...'* The teacher communicated with student 2 as recently as 6 - 9 months prior to this hearing via Facebook Messenger. It is the opinion of the Panel that the teacher demonstrated a significant lack of insight of the impact that a personal relationship between a teacher and a student may have on a student given the power imbalance between teacher and student.

The teacher in his response to a Panel question regarding his understanding of the purpose of professional boundaries was found by the Panel to be:

a) *quite correct* in identifying that professional boundaries assist teachers in avoiding the slippery slope towards more serious violations such as sexual misconduct. In the eyes of a reasonable member of the public the teacher's comments about students' looks, (e.g. *"... Mr Mac said that I looked "hot"'*"), his hugs and kisses on the cheek (both actual and via emails), his gift giving and his email sign offs (e.g. *"Mr Macidontdeserveyou; Mr MacIloveyousomuchitmightcostmemyjob"*), may well have positioned him at the top of that slippery slope towards more serious violations. And;

b) *quite incorrect* in limiting his response to the area of sexual misconduct. A naïve understanding of the violation of professional boundaries in a teacher student relationship is usually reflected by an almost exclusive reference to sexual misconduct as was the case with the teacher's response to the panel. A deeper understanding of the violation of professional boundaries in such a relationship is reflected by an appreciation of the challenge of the balance between authority versus friendship and availability versus responsibility in a relationship that has a power and experience imbalance. The risk to students' well-being is inherent in a relationship between teacher and student that is allowed to develop into a relationship where there is an expectation of emotional reciprocity - where each party surrenders a level of control over their own emotional well-being and, simultaneously, takes on a level of control over the other's emotional well-being. In such a relationship where one partner is younger, often a minor, less experienced, less mature, often vulnerable and possibly without social support it is this partner who is significantly at risk of emotional damage. It is clear from the teacher's response that he remains blind to this risk despite the testimony of the students that demonstrate their level of discomfort with his interactions, their level of responsibility for his emotional state and their fear of the withdrawal of his emotional support. (e.g. *"I remember that when Mr. Mac emailed me about having a Nandos date with him, I would laugh his offers off so as not to hurt his feelings. I knew I wanted to reject his offers but I did not want him to feel bad about asking me. I didn't want him to isolate me again like he did when I rejected giving him my phone number."*). Student 2 stated when asked about her affidavit statements by the teacher, *"I wish you didn't kiss me - too far...this is not OK...I didn't speak or meet with him at school, but kept email communication. 'Wanted it to be normal, but it wasn't'.* The emotional distress evidenced by student 2 and student 7 when being cross examined by the teacher was an indication of the complex emotional relationship that existed between them and the hurt it still causes.

It is the opinion of the Panel that the teacher has demonstrated a lack of understanding of the gravity of his breach of the Victorian Teaching Profession Code of Conduct and the damage that

‘special’ relationships between student and teacher can cause to students. Whilst the teacher sought counselling assistance specifically related to the profession’s Code of Conduct, he wasn’t able to convince the Panel of his understanding of the purpose of professional boundaries or of how to implement the Code in his practice. The teacher described his behaviour of developing close personal relationships with students as characterising his 37-year teaching career. It is considered by the Panel that there is a potential of further harm to students in the absence of a clear understanding of the distress that has been caused to some students involved in this hearing.

FINDINGS

In making its findings the Panel has taken into consideration the following from the Act and the Code of Conduct (2008):

1. Section 2.6.1 of the Education and Training Reform Act 2006 (the Act) defines ‘misconduct’ in this way:

conduct of the teacher... occurring in connection with the practice of teaching that is of a lesser standard than a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher.

2. Subsection 2.6.3(1A) of the Act:

Provides that: “When performing any regulatory function under subsection (1), the Institute must consider the wellbeing and safety of children, including by taking into account community expectations.”

3. ‘The Victorian Teaching Profession Code of Conduct and The Victorian Teaching Profession Code of Ethics’ (‘the 2008 Code of Conduct and Code of Ethics’ respectively’) in 2008. [1]

The expressed purpose of the 2008 Codes, as published at the time is: to promote adherence to the values teachers see as underpinning their profession; to provide a set of principles to guide teachers in their everyday conduct and assist them to solve ethical dilemmas; to affirm the public accountability of the teaching profession; and to promote public confidence in the teaching profession. As such, the misconduct in the context of the Act can be seen in the light of teachers complying with the Codes of Conduct and Ethics respectively. [2]

4. Principle 1.4 of the 2008 Code of Conduct provides that:

Principle 1.4 Teachers maintain objectivity in their relationships with learners

In their professional role, teachers do not behave as a friend or parent/carer.

They

- interact with learners without displaying bias or preference
- make decisions in learners’ best interests
- do not draw learners into their personal agendas

- do not seek recognition at the expense of professional objectivity and goals [some examples omitted].

5. Principle 1.5 of the Code of Conduct provides that:

Principle 1.5 Teachers are always in a professional relationship with their learners, whether at the education setting where they teach or not.

Teachers hold a unique position of influence and trust that should not be violated or compromised. They exercise their responsibilities in ways that recognise there are limits or boundaries to their relationships with learners. The following examples outline some of those limits.

A professional relationship **will** be violated if a teacher [some examples omitted]

- Has a sexual relationship with a learner;
- Touches a learner without a valid reason
- Holds conversations of a personal nature or has contact with a learner via written/electronic means (including email, letters, telephone, text messages or chat lines) without a valid context.

The Panel makes the following finding:

Allegations 1, 2, 3, 4, and 6 have been proven and amount to serious misconduct, with acknowledgement of breach of Principles 1.4 and 1.5 of ‘The Victorian Teaching Profession Code of Conduct and The Victorian Teaching Profession Code of Ethics’ (‘the 2008 Code of Conduct and Code of Ethics’ respectively).¹The facts of the matter before the panel are inextricably woven together and evidenced by email communication and testimony under oath. The Panel finds that all the proven allegations 1 - 4 and 6, may be characterised globally together as serious misconduct, consistent with the approach of the Courts in disciplinary hearings where the facts are inextricably woven together (*Sterling v Legal Services Commissioner* [2013] VSCA 374.) The body of evidence before the Panel amounts to a substantial departure from the principles outlined in the profession’s Code of Conduct. The teacher has been found to be blameworthy and deserving of more than passing censure and therefore a finding of serious misconduct is justified.

It is the opinion of the Panel that a proficient teacher of senior classes with extensive experience and who is cognisant of the Code of Conduct would have awareness and the capacity for self-critical reflection to recognise when the boundaries of a professional relationship were being compromised. The Panel concluded that the teacher did not act in the student's best interests, and he was aware that professional boundaries were breached.

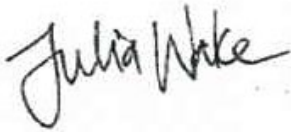
In determining a finding for Allegation 7, the Panel is required to consider whether the teacher’s conduct constitutes a pattern of conduct demonstrating he is not fit to teach. It is the opinion of the Panel that the teacher engaged in conduct that involved multiple students and multiple forms of unacceptable conduct from 2016 to 2018 and had the potential to escalate. The Panel also takes into account the teacher’s statement that this behaviour characterises his teaching practice of 37 years alongside consideration of Sub-section 2.6.3(1A) of the Act which provides that the Institute, when performing one of its functions pursuant to sub-section 2.6.3(1), must “...consider the wellbeing and safety of children, including by taking into account community expectations.”

¹ Note that the Institute published a new Victorian Teaching Profession’s Code of Conduct and Code of Ethics in May 2021.

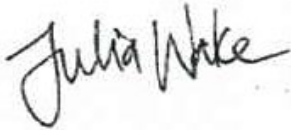
The Panel concluded that, in the apparent absence of an understanding by the teacher of the potential for harm to students that his behaviour posed, his overall behaviour amounts to an established pattern of conduct that has the potential to continue.

DECISION:

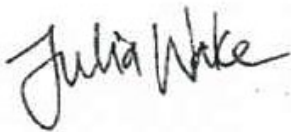
The Panel found the teacher to be somewhat remorseful for his actions and acknowledges the length of time for this matter to be heard. The Panel also acknowledges the teacher's acceptance of Allegation 2 without dispute. Taking these factors into consideration and the seriousness of the breach of the Code of Conduct, the Panel has determined to cancel the registration of the teacher and impose a period of disqualification for 2 years from 1 April 2022 to 1 April 2024. This period of disqualification recognises the lengthy time from when the Professional Conduct Committee of the Institute determined a Formal Hearing should be constituted to when the Formal Hearing occurred. The Panel's role is to protect the public and the reputation of the profession. The cancellation of registration and the period of disqualification it has fixed reflect the gravity of the teacher's serious misconduct.



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JULIA WAKE, CHAIRPERSON



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per:
KERRY-ANNE HOAD, REGISTERED TEACHER



.....
per:
BRENDAN MURRAY, PANEL MEMBER